



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency:

North Carolina State Board of Elections

2. Rule citation & name:

08 NCAC 17 .0109 Photo Identification for Absentee Ballots

3. Action:

☐ Adoption

☒ Amendment

☐ Repeal

4. Was this an Emergency Rule: ☐ Yes

Effective date:

☒ No

5. Provide dates for the following actions as applicable:

a. Proposed Temporary Rule submitted to OAH: November 27, 2019

b. Proposed Temporary Rule published on the OAH website:

c. Public Hearing date: December 12, 2019

d. Comment Period: November 27, 2019 through December 12, 2019

e. Notice pursuant to G.S. 150B-21.1(a3)(2): November 27, 2019

f. Adoption by agency on: December 13, 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 2019-239
Effective date: November 6, 2019
- ☐ A recent change in federal or state budgetary policy.
Effective date of change:
- ☐ A recent federal regulation.
Cite:
Effective date:
- ☐ A recent court order.
Cite order:
- ☐ State Medical Facilities Plan.
- ☐ Other:

Explain:

The State Board initially adopted temporary rule 08 NCAC 17 .0109 implementing the inclusion of photo ID for absentee by-mail voting in August 2019. The rule provided for methods of submission of the voter's copy of their ID or alternative affidavit with the absentee request or with the voted ballot. Subsequently, Session Law 2019-239 changed the requirements for photo ID for absentee by mail voting, providing that the photo ID requirement can be met only with the return of the absentee ballot and not with the request form, and requiring that the State Board adopt rules to implement the changes. Therefore, it is necessary for the Board to amend the previously adopted temporary rule.

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 2019-239 (attached) requires the State Board to adopt rules for the implementation of voter ID for absentee by mail voters.

Because absentee ballots will be sent out for the March 3, 2020 primary beginning January 13, 2020, it is imperative that the changes to the temporary rule be in effect prior to January 13, 2020. In addition, 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.

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:

Kelly Tornow

Phone:

919-814-0717

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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, North Carolina State Board of Elections

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RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

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**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019**

**SESSION LAW 2019-239
SENATE BILL 683**

AN ACT TO AMEND THE LAWS GOVERNING MAIL-IN ABSENTEE BALLOTS; TO RESTORE THE LAST SATURDAY OF EARLY ONE-STOP VOTING; TO EXTEND THE TIME BY WHICH COUNTY BOARDS OF ELECTION NEED TO REPLACE DIRECT RECORD ELECTRONIC VOTING EQUIPMENT UNDER CERTAIN CONDITIONS; TO AUTHORIZE A COUNTY TO TEST NEW VOTING EQUIPMENT DURING A SIMULATED ELECTION; AND TO MAKE APPROPRIATIONS FOR CURRENT OPERATIONS OF THE STATE BOARD OF ELECTIONS, CONSISTENT WITH HOUSE BILL 966 OF THE 2019 REGULAR SESSION.

The General Assembly of North Carolina enacts:

PART I. AMEND LAWS GOVERNING MAIL-IN ABSENTEE BALLOTS

SECTION 1.1.(a) G.S. 163-228 reads as rewritten:

"§ 163-228. Register of absentee requests, applications, and ballots issued; a public record.

(a) ~~The~~ With respect to each request for mail-in absentee ballots, the State Board of Elections 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 ~~the~~ applicant is registered.
- (4) Address to which ballots are to be mailed, ~~or, if the voter voted pursuant to G.S. 163-227.2, 163-227.5, and 163-227.6, a notation of that fact.~~ mailed.
- (5) Repealed by Session Laws 2009-537, s. 3, effective January 1, 2010, and applicable with respect to elections held on or after that date.
- (6) Date request for application for ballots is received by the county board of elections.
- (7) The voter's party affiliation.
- (8) The date the ballots were mailed or delivered to the voter.
- (9) Whatever additional information and official action may be required by this Article.

(a1) With respect to each early "one-stop" absentee ballot voted under G.S. 163-227.2, 163-227.5, and 163-227.6, 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.
- (2) Number of assigned voter's application when issued.
- (3) The precinct in which the voter is registered.
- (4) The date the voter voted early "one-stop."
- (5) The voter's party affiliation.
- (6) Whatever additional information and official action may be required by this Article.



(b) ~~The State Board of Elections may provide for the register official registers required by this section 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 equipment.~~

(c) The official register required by subsection (a) of this section shall be confidential and not a public record until the opening of the voting place in accordance with G.S. 163-166.01, at which time the official register shall constitute a public record. The official register of absentee requests, applications and ballots issued required by subsection (a1) of this section 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.

(d) The State Board shall require the county board of elections to transmit information in the official register provided for in this section and the list required by G.S. 163-232 ~~to be transmitted~~ to the State Board. The State Board shall adopt rules to implement this subsection, including frequency of transmittal.

(e) Notwithstanding subsection (c) of this section, the State Board or a county board of elections shall inform the voter of the status of that voter's request for mail-in absentee ballots upon inquiry of the voter or the voter's near relative or verifiable legal guardian."

SECTION 1.1.(b) G.S. 163-233 reads as rewritten:

"§ 163-233. Applications for absentee ballots; how retained.

(a) The county board of elections shall retain, in a safe place, the original of all applications made for absentee ~~ballots and shall make them~~ ballots, which shall be available to inspection by the State Board of Elections or to any person upon the directive of the State Board of Elections. ~~Board. Any copies of any photographic identification associated with the absentee ballots shall not be a public record.~~

(b) The county board of elections shall create a list of applications made for absentee ballots received by the county board, which shall be updated daily from the date the county board begins to mail application and ballots through the date of canvass. Such list shall be a public record.

(c) All applications for absentee ballots shall be retained by the county board of elections for a period of one year after which ~~they~~ those applications may be destroyed."

SECTION 1.1.(c) G.S. 163-82.10 reads as rewritten:

"§ 163-82.10. Official record of voter registration.

(a) Official Record. – The State voter registration system is the official voter registration list for the conduct of all elections in the State. The State Board ~~of Elections~~ and the county board of elections may keep copies of voter registration data, including voter registration applications, in any medium and format expressly approved by the Department of Natural and Cultural Resources pursuant to standards and conditions established by the Department and mutually agreed to by the Department and the State ~~Board of Elections.~~ Board. A completed and signed registration application form, if available, described in G.S. 163-82.3, once approved by the county board of elections, becomes backup to the official registration record of the voter.

(a1) Personal Identifying Information. – Full or partial social security numbers, dates of birth, the identity of the public agency at which the voter registered under G.S. 163-82.20, any electronic mail address submitted under this Article, Article 20, or Article 21A of this Chapter, photocopies of identification for voting, and drivers license numbers that may be generated in the voter registration process, numbers, whether held by either the State Board of Elections or a county board of elections, are confidential and shall not be considered public records and subject to disclosure to the general public under Chapter 132 of the General Statutes. Cumulative data based on those items of information may be publicly disclosed as long as information about any individual cannot be discerned from the disclosed data. Disclosure of information in violation of

this subsection shall not give rise to a civil cause of action. This limitation of liability does not apply to the disclosure of information in violation of this subsection as a result of gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable.

(a2) Voter Signatures. – The signature of the voter, either on the paper application or an electronically captured image of it, whether held by the State Board or a county board of elections, may be viewed by the public but may not be copied or traced except by election officials for election administration purposes. Any such copy or tracing is not a public record.

...."

SECTION 1.2.(a) G.S. 163-230.1(h) is recodified as G.S. 163-226(f).

SECTION 1.2.(b) G.S. 163-230.1, as amended by subsection (a) of this section, reads as rewritten:

"§ 163-230.1. Simultaneous issuance of absentee ballots with application.

(a) Written Request. – A qualified voter who ~~desires to vote by absentee ballot, is eligible to vote by absentee ballot under G.S. 163-226,~~ or that voter's near relative or verifiable legal guardian, shall complete a request form for an absentee application and absentee ballots so that the county board of elections receives that completed request form not later than 5:00 P.M. on the Tuesday before the election. That completed written request form shall be in compliance with G.S. 163-230.2. The county board of elections shall enter in the register of absentee requests, applications, and ballots issued the information required in G.S. 163-228 as soon as each item of that information becomes available. Upon receiving the completed request form, the county board of elections shall cause to be mailed to that voter a single package that includes all of the following:

- (1) The official ballots ~~that the~~ voter is entitled to vote.
- (2) A container-return envelope for the ballots, printed in accordance with G.S. 163-229.
- (3) An instruction sheet.
- (4) A clear statement of the requirement for a photocopy of identification described in G.S. 163-166.16(a) or an affidavit as described in G.S. 163-166.16(d)(1), (d)(2), or (d)(3) with the returned ballot.

(a1) Mailing of Application and Ballots. – The ballots, envelope, and instructions shall be mailed to the voter by the county board's ~~chairman, chair,~~ member, officer, or employee as determined by the board and entered in the register as provided by this Article.

(b) Absence for Sickness or Physical Disability. – Notwithstanding the provisions of subsection (a) of this section, if a voter expects to be unable to go to the voting place to vote in person on election day because of that voter's sickness or other physical disability, that voter or that voter's near relative or verifiable legal guardian may make the request ~~under subsection (a) of this section~~ for absentee ballots in person to the board of elections of the county in which the voter is registered after 5:00 p.m. on the Tuesday before the election but not later than 5:00 p.m. on the day before the election. The county board of elections shall treat that completed request form in the same manner as a request under subsection (a) of this section but may personally deliver the application and ballots to the voter or that voter's near relative or verifiable legal guardian, and shall enter in the register of absentee requests, applications, and ballots issued the information required in G.S. 163-228 as soon as each item of that information becomes available. The county board of elections shall personally deliver to the requester in a single package:

- (1) The official ballots the voter is entitled to vote.
- (2) A container-return envelope for the ballots, printed in accordance with G.S. 163-229.
- (3) An instruction sheet.
- (4) A clear statement of the requirement for a photocopy of identification described in G.S. 163-166.16(a) or an affidavit as described in

G.S. 163-166.16(d)(1), (d)(2), or (d)(3) with the returned application and voted ballots.

(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, ballots from the voter, or the near relative or the verifiable legal guardian of that voter,~~ the county 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 of Elections 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 of Elections.~~ 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. 163-229(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. 163-227.2, 163-227.5, and 163-227.6. No election official shall issue applications for absentee ballots except in compliance with this Article.

(d) Voter to Complete. – The application shall be completed and signed by the voter personally, the ballots marked, the ballots sealed in the container-return envelope, and the certificate completed as provided in G.S. 163-231.

(e) Approval of Applications. – At its next official meeting after return of the completed container-return envelope with the voter's ballots, the county board of elections shall determine whether the container-return envelope has been properly executed. If the board determines that the container-return envelope has been properly executed, it shall approve the application and deposit the container-return envelope with other container-return envelopes for the envelope to

be opened and the ballots counted at the same time as all other container-return envelopes and absentee ballots.

(f) **Required Meeting of County Board of Elections.** – During the period commencing on the third Tuesday before an election, in which absentee ballots are authorized, the county board of elections shall hold one or more public meetings each Tuesday at 5:00 p.m. for the purpose of action on applications for absentee ballots. At these meetings, the county board of elections shall pass upon applications for absentee ballots.

If the county board of elections changes the time of holding its meetings or provides for additional meetings in accordance with the terms of this subsection, notice of the change in hour and notice of the schedule of additional meetings, if any, shall be published in a newspaper circulated in the county at least 30 days prior to the election.

At the time the county board of elections makes its decision on an application for absentee ballots, the board shall enter in the appropriate column in the register of absentee requests, applications, and ballots issued opposite the name of the applicant a notation of whether the applicant's application was "Approved" or "Disapproved".

The decision of the board on the validity of an application for absentee ballots shall be final subject only to such review as may be necessary in the event of an election contest. The county board of elections shall constitute the proper official body to pass upon the validity of all applications for absentee ballots received in the county; this function shall not be performed by the ~~chairman~~ chair or any other member of the board individually.

(f1) Each container-return envelope returned to the county board with application and voted ballots under this section shall be accompanied by a photocopy of identification described in G.S. 163-166.16(a) or an affidavit as described in G.S. 163-166.16(d)(1), (d)(2), or (d)(3).

(g) **Rules.** – ~~The State Board of Elections, Board,~~ by rule or by instruction to the county board of elections, shall establish procedures to provide appropriate safeguards in the implementation of this section. The State Board shall adopt rules to provide for the forms of identification that shall be included with returned application and voted ballots. At a minimum, the rules shall include the following:

- (1) Acceptable photocopies of forms of readable identification, as described in G.S. 163-166.16(a).
- (2) A process for a voter without acceptable photocopies of forms of readable identification under subdivision (1) of this subsection to complete an alternative affidavit in accordance with G.S. 163-166.16(d)(1), (d)(2), or (d)(3) that includes inability to attach a physical copy of the voter's identification with the written request as a reasonable impediment to compliance with the identification requirement. If a reasonable impediment under this subdivision states inability to attach a physical copy of the voter's identification with the written request, the reasonable impediment shall include one of the following:
 - 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.
 - c. The last four digits of the voter's social security number."

SECTION 1.3.(a) G.S. 163-230.2 reads as rewritten:

"§ 163-230.2. Method of requesting absentee ballots.

(a) **Valid Types of Written Requests.** – A completed written request form for ~~an~~ absentee ballot ~~ballots~~ as required by G.S. 163-230.1 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 created by the State Board~~ 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) ~~The identification required in accordance with State Board rules, as provided in subsection (f) of this section.~~ One of the following:
 - a. The number of the applicant'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 applicant's special identification card for nonoperators issued under G.S. 20-37.7.
 - c. The last four digits of the applicant's social security number.
- (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.
- (7) A clear indicator of the date the election generating the request is to be held, except for annual calendar year requests in accordance with G.S. 163-226(b).

(b) Request to Update Voter Registration. – A completed request form for ~~an absentee ballot~~ ballots 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. 163-82.14(d).

(c) Return of Request. – The completed request form for ~~an absentee ballot~~ ballots 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. 163-166.12(a)(2) shall accompany the completed request form.~~ elections only by any of the following:

- (1) The voter.
- (2) The voter's near relative or verifiable legal guardian.
- (3) A member of a multipartisan team trained and authorized by the county board of elections pursuant to G.S. 163-226.3.

(d) Confirmation of Voter Registration. – Upon receiving a completed request form for ~~an absentee ballot~~, ballots, 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. 163-230.1(b). If the voter's official record of voter registration conflicts with the completed request form for ~~an absentee ballot~~ ballots 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~~ ballots that does not comply with this subsection or subsection (a) of this section, the board shall not issue an application and ~~ballot~~ ballots under G.S. 163-230.1. A request for absentee ballots is not valid if any of the following apply:

- (1) The completed written request is not on a form created by the State Board.
- (2) The completed written request is completed, partially or in whole, or signed by anyone other than the voter, or the voter's near relative or verifiable legal guardian. A member of a multipartisan team trained and authorized by the

county board of elections pursuant to G.S. 163-226.3 may assist in completion of the request.

- (3) The written request does not contain all of the information required by subsection (a) of this section.
- (4) The completed written request is returned to the county board by someone other than a person listed in subsection (c) of this section, the United States Postal Service, or a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2).

(e1) Assistance by Others. – If a voter is in need of assistance completing the written request form due to blindness, disability, or inability to read or write and there is not a near relative or legal guardian available to assist that voter, the voter may request some other person to give assistance, notwithstanding any other provision of this section. If another person gives assistance in completing the written request form, that person's name and address shall be disclosed on the written request form in addition to the information listed in subsection (a) of this section.

~~(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. 163-166.16.~~
- ~~(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. 163-166.16(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. 163-229.~~section.

SECTION 1.3.(b) G.S. 163-226(b) reads as rewritten:

~~"(b) Annual Request by Person With Sickness or Physical Disability. – If the applicant so requests and reports in the application that the voter has a sickness or physical disability that is expected to last the remainder of the calendar year, the application shall constitute a voter may request for an to vote by mail-in absentee ballot for all of the primaries and elections held during the calendar year when the application-completed written request under G.S. 163-230.1 is received."~~

SECTION 1.3.(c) G.S. 20-30(6) reads as rewritten:

- ~~"(6) To make a color photocopy or otherwise make a color reproduction of a drivers license, learner's permit, or special identification card which has been color-photocopied or otherwise reproduced in color, unless such color photocopy or other color reproduction was authorized by the Commissioner. Commissioner or is made to comply with G.S. 163-230.2. It shall be lawful to make a black and white photocopy of a drivers license, learner's permit, or special identification card or otherwise make a black and white reproduction of a drivers license, learner's permit, or special identification card."~~

SECTION 1.3.(d) On or before May 1, 2020, the State Board of Elections shall report to the Joint Legislative Elections Oversight Committee and the General Assembly as to its plans to implement Sections 1.2 and 1.3 of this act and any recommendations for statutory changes necessary to implement these provisions.

SECTION 1.3.(e) Notwithstanding G.S. 163-230.2, as amended by this section, the State Board shall issue absentee application and ballots to any voter who has submitted a valid

request for absentee ballots prior to the effective date of this act for elections held in 2019 and 2020.

SECTION 1.4. G.S. 163-229(b) reads as rewritten:

"(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 of Elections, 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. 163-231, those persons' signatures, and those persons' addresses.
- (4) A space for the name and address of any person who, as permitted under G.S. 163-226.3(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. 163-82.16.
- (7) A prominent display of the unlawful acts under G.S. 163-226.3 and G.S. 163-275, except if there is not room on the envelope, the State Board of ~~Elections~~ 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. 163-230.2~~ G.S. 163-230.1.

The container-return envelope shall be printed in accordance with the instructions of the State ~~Board of Elections, Board,~~ which shall prohibit the display of the voter's party affiliation on the outside of the container-return envelope."

SECTION 1.5.(a) G.S. 163-237 reads as rewritten:

"§ 163-237. Certain violations of absentee ballot law made criminal offenses.

(a) False Statements under Oath Made Class ~~2-1~~ Misdemeanor. – If any person shall willfully and falsely make any affidavit or statement, under oath, which affidavit or statement under oath, is required to be made by the provisions of this Article, ~~he that person~~ shall be guilty of a Class ~~2-1~~ misdemeanor.

(b) False Statements Not under Oath Made Class ~~2-1~~ Misdemeanor. – Except as provided by G.S. 163-275(16), if any person, for the purpose of obtaining or voting any official ballot under the provisions of this Article, shall willfully sign any printed or written false statement which does not purport to be under oath, or which, if it purports to be under oath, was not duly sworn to, ~~he that person~~ shall be guilty of a Class ~~2-1~~ misdemeanor.

(c) Candidate Witnessing Absentee Ballots of Nonrelative Made Class ~~2-1~~ Misdemeanor. – A person is guilty of a Class ~~2-1~~ misdemeanor if that person acts as a witness under G.S. 163-231(a) in any primary or election in which the person is a candidate for nomination or election, unless the voter is the candidate's near relative as defined in ~~G.S. 163-230.1(f)~~ G.S. 163-226(f).

(d) Fraud in Connection with Absentee Vote; Forgery. – Any person attempting to aid and abet fraud in connection with any absentee vote cast or to be cast, under the provisions of this Article, shall be guilty of a misdemeanor. Attempting to vote by fraudulently signing the name of a regularly qualified voter is a Class ~~I~~G felony.

(d1) Sell or Attempt to Sell Completed Absentee Ballot. – Any person who sells or attempts to sell, or purchases or agrees to purchase, a completed written request, a completed application for absentee ballots, or voted absentee ballots, shall be guilty of a Class I felony.

(d2) Destruction of Absentee Ballot. – Any person who intentionally, with the intent of obstructing a vote by a registered voter, fails to deliver or intentionally destroys a completed written request, a completed application for absentee ballots, or voted absentee ballots, shall be guilty of a Class G felony.

(d3) Copies or Retention of Identifying Information. – Any person, other than the voter or near relative or verifiable legal guardian of that voter, who copies or otherwise retains the request for absentee ballots, a completed application for absentee ballots, or any identifying information, as defined in G.S. 14-113.20, disclosed in a request or application, shall be guilty of a Class G felony.

(d4) Compensation Based on Requests. – Any person who compensates another, or who accepts compensation, based on the number of returned written requests for absentee ballots under G.S. 163-230.2, shall be guilty of a Class I felony.

(d5) Intent to Unlawfully Influence. – Any person who commits, attempts to commit, or conspires to commit a crime identified in G.S. 163-82.6(b), 163-226.3(a), 163-274, 163-275, or this section with the intent to unlawfully influence or interfere with a primary or election, or to otherwise unlawfully gain, shall be guilty of a Class F felony.

(d6) Disclosure of Register of Absentee Ballot Requests. – Notwithstanding G.S. 132-3(a), any person who steals, releases, or possesses the official register of absentee requests for mail-in absentee ballots as provided in G.S. 163-228 prior to the opening of the voting place in accordance with G.S. 163-166.01, for a purpose other than the conduct of business at the county board of elections, shall be guilty of a Class G felony.

(e) Violations Not Otherwise Provided for Made Class 2-1 Misdemeanors. – If any person shall willfully violate any of the provisions of this Article, or willfully fail to comply with any of the provisions thereof, for which no other punishment is herein provided, ~~he that~~ person shall be guilty of a Class 2-1 misdemeanor."

SECTION 1.5.(b) This section becomes effective December 1, 2019, and applies to offenses committed on or after that date.

SECTION 1.6. Rule Making. – The State Board of Elections shall adopt emergency rules for the implementation of this Part in accordance with G.S. 150B-21.1A. This section does not require any rule making if not otherwise required by law.

PART II. RESTORE THE LAST SATURDAY OF EARLY ONE-STOP VOTING

SECTION 2.(a) G.S. 163-227.2(b) reads as rewritten:

"(b) Not earlier than the third ~~Wednesday~~Thursday 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~~3:00 P.M. on the last Saturday 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. 163-227.6. A county board of elections shall conduct one-stop voting on the last Saturday before the election from 8:00 A.M. until 3:00 P.M. 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. 163-166.16. 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. 163-119, 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. 163-277.~~ application for absentee ballots. 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 2.(b) G.S. 163-227.6, as amended by S.L. 2019-22, reads as rewritten:

"§ 163-227.6. Sites and hours for one-stop voting.

(a) Notwithstanding any other provision of G.S. 163-227.2, 163-227.5, and this section, 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 of Elections as part of a Plan for Implementation approved by both the county board of elections and by the State Board of Elections 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. 163-45 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 of Elections 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 of Elections 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 of Elections 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.~~ whether the Plan disproportionately favors any party, racial or ethnic group, or candidate.

(b) The State Board of Elections 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. 163-129 to demand and use as an election-day voting place, unless the State Board of Elections 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.~~ disproportionately favor any party, racial or ethnic group, or candidate. In providing the site or sites for one-stop absentee voting under G.S. 163-227.2, 163-227.5, and this section, 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 163-227.2, 163-227.5, and this section. 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 of Elections~~Board.

(c) For all sites approved for one-stop voting under this section, a county board of elections shall provide the following:

- (1) Each one-stop site across the county shall be open at that same location during the period required by G.S. 163-227.2(b).
- (2) If any one-stop site across the county is opened on any day during the period required by G.S. 163-227.2(b), all one-stop sites shall be open on that day.
- (3) On each weekday during the period required by G.S. 163-227.2(b), all one-stop sites shall be open from ~~7:00 A.M. to 7:00 P.M.~~8:00 A.M. to 7:30 P.M.
- (4) If the county board of elections opens one-stop sites on Saturdays other than the last Saturday before the election during the period required by G.S. 163-227.2(b), then all one-stop sites shall be open for the same number of hours uniformly throughout the county on those Saturdays.
- (5) If the county board of elections opens one-stop sites on Sundays during the period required by G.S. 163-227.2(b), then all one-stop sites shall be open for the same number of hours uniformly throughout the county on those Sundays.
- (6) All one-stop sites shall be open on the last Saturday before the election, for the hours required under G.S. 163-227.2(b) for that last Saturday.

(d) Notwithstanding subsection (c) of this section, a county board of elections by unanimous vote of all its members may propose a Plan for Implementation providing for the number of sites set out below in that county for absentee ballots to be applied for and cast with days and hours that vary from the county board of elections, or its alternate, and other additional one-stop sites in that county. If the county board of elections is unable to reach unanimity in favor of a Plan for Implementation, a member or members of the county board of elections may petition the State Board to adopt a plan for the county and the State Board may adopt a Plan for Implementation for that county. However, any Plan of Implementation approved under this subsection shall provide for uniform location, days, and hours for that one site throughout the period required by ~~G.S. 163A-1300(b)~~G.S. 163-227.2(b). This subsection applies only to a county that meets any of the following:

- (1) One site in a county that includes a barrier island, which barrier island meets all of the following conditions:
 - a. It has permanent inhabitation of residents residing in an unincorporated area.
 - b. It is bounded on the east by the Atlantic Ocean and on the west by a coastal sound.
 - c. It contains either a National Wildlife Refuge or a portion of a National Seashore.
 - d. It has no bridge access to the mainland of the county and is only accessible by marine vessel.
- (2) Up to two sites in a county that is bounded by the largest sound on the East Coast and the county seat is located at the intersection of two rivers, which divide the county.

(e) Notwithstanding ~~G.S. 163A-1300~~G.S. 163-227.2 and subdivisions (c)(2) and (c)(3) of this section, a county board of elections by unanimous vote of all its members may propose a Plan for Implementation providing for sites in that county for absentee ballots to be applied for and cast in elections conducted in odd-numbered years. The proposed Plan for Implementation

shall specify the hours of operation for the county board of elections for an election conducted in that county for that odd-numbered year. If the county board of elections is unable to reach unanimity in favor of a Plan for Implementation for that odd-numbered year, a member or members of the county board of elections may petition the State Board to adopt a Plan for Implementation for the county, and the State Board may adopt a Plan for Implementation for that county. However, throughout the period required by ~~G.S. 163A-1300(b)~~, ~~G.S. 163-227.2(b)~~, any Plan of Implementation approved under this subsection shall provide for a minimum of regular business hours consistent with daily hours presently observed by the county board of elections for the county board of elections, or its alternate, and for uniform locations, days, and hours for all other additional one-stop sites in that county."

PART III. EXTENSION OF TIME BY WHICH COUNTY BOARDS OF ELECTIONS NEED TO REPLACE DIRECT RECORD ELECTRONIC VOTING EQUIPMENT UNDER CERTAIN CONDITIONS

SECTION 3.(a) Notwithstanding Section 3.11 of S.L. 2018-13, the State Board of Elections (State Board) may authorize, upon such terms and conditions as the State Board deems appropriate, a county board of elections to use a direct record electronic (DRE) voting system in any election prior to July 1, 2020, provided the State Board determines the following conditions are satisfied:

- (1) The county board of elections submits a hardship request to the State Board to use a DRE voting system in an election or elections prior to July 1, 2020, as specified in the request, and provides documentation that replacement of the machines prior to July 1, 2020, would create an undue hardship for the county.
- (2) The county board of elections provides sufficient information for the State Board to conclude that the use of the DRE voting system will not jeopardize the security of the election or elections.
- (3) The county board of elections has begun the process and time line for replacing the DRE voting system and provides documentation to the State Board regarding the time line for that process and specifically the time of testing as required by G.S. 163-165.9.

SECTION 3.(b) This section is effective when it becomes law and expires August 1, 2020.

PART IV. AUTHORIZE A COUNTY TO TEST NEW VOTING EQUIPMENT DURING A SIMULATED ELECTION

SECTION 4.(a) G.S. 163-165.9(a) reads as rewritten:

"(a) Before approving the adoption and acquisition of any voting system by the board of county commissioners, the county board of elections shall do all of the following:

- (1) Recommend to the board of county commissioners which type of voting system should be acquired by the county.
- (2) Witness a demonstration, in that county or at a site designated by the State ~~Board of Elections, Board,~~ of the type of voting system to be recommended and also witness a demonstration of at least one other type of voting system certified by the State ~~Board of Elections, Board.~~
- (3) ~~Test, Test~~ the voting system in at least one of the following ways:
 - a. ~~during~~ During an election, ~~the proposed voting system~~ in at least one precinct in the county where the voting system would be used if adopted.
 - b. During a simulated election, in accordance with standards established by the State Board.

SECTION 4.(b) This section is effective when it becomes law.

PART V. APPROPRIATIONS FOR THE STATE BOARD OF ELECTIONS

SECTION 5.1. The appropriations made in this Part and S.L. 2019-209 are for maximum amounts necessary to provide the services and accomplish the purposes described in the budget for the State Board of Elections in accordance with the State Budget Act. Savings shall be effected where the total amounts appropriated are not required to perform these services and accomplish these purposes, and the savings shall revert to the appropriate fund at the end of each fiscal year, except as otherwise provided by law.

CURRENT OPERATIONS AND EXPANSION

SECTION 5.2. Appropriations from the General Fund for the budget of the State Board of Elections are made for the fiscal biennium ending June 30, 2021, as follows:

Current Operations – General Fund Elections	FY 2019-2020	FY 2020-2021
Requirements	\$8,091,301	\$6,980,220
Less: Receipts	\$102,000	\$102,000
Net Appropriation	\$7,989,301	\$6,878,220

OTHER APPROPRIATIONS

SECTION 5.3.(a) State funds, as defined in G.S. 143C-1-1(d)(25), are appropriated for each fiscal year of the 2019-2021 fiscal biennium, as follows:

- (1) All budget codes listed in the Governor's Recommended Budget and in the Budget Support Document for State Board of Elections for the 2019-2021 fiscal biennium submitted pursuant to G.S. 143C-3-5 are appropriated up to the amounts specified, as adjusted by the General Assembly in this act.
- (2) Departmental receipts up to the amounts needed to implement the legislatively mandated salary increases and employee benefit increases provided in this Part for each fiscal year of the 2019-2021 fiscal biennium.

SECTION 5.3.(b) Receipts collected in a fiscal year in excess of the amounts appropriated by this section shall remain unexpended and unencumbered until appropriated by the General Assembly, unless the expenditure of overrealized receipts in the fiscal year in which the receipts were collected is authorized by G.S. 143C-6-4. Overrealized receipts are appropriated in the amounts necessary to implement this subsection.

SECTION 5.3.(c) Funds may be expended only for the specified programs, purposes, objects, and line items or as otherwise authorized by the General Assembly.

OTHER RECEIPTS FROM PENDING AWARD GRANTS

SECTION 5.4.(a) Notwithstanding G.S. 143C-6-4, the State Board of Elections may, with approval of the Director of the Budget, spend funds received from grants awarded subsequent to the enactment of this Part for grant awards that are for less than two million five hundred thousand dollars (\$2,500,000), do not require State matching funds, and will not be used for a capital project. The State Board of Elections shall report to the Joint Legislative Commission on Governmental Operations within 30 days of receipt of such funds.

The State Board of Elections may spend all other funds from grants awarded after the enactment of this Part only with approval of the Director of the Budget and after consultation with the Joint Legislative Commission on Governmental Operations.

SECTION 5.4.(b) The Office of State Budget and Management shall work with the State Board of Elections to budget grant awards according to the annual program needs and within the parameters of the respective granting entities. Depending on the nature of the award,

additional State personnel may be employed on a time-limited basis. Funds received from such grants are hereby appropriated and shall be incorporated into the authorized budget of the State Board of Elections.

SECTION 5.4.(c) Notwithstanding the provisions of this section, the State Board of Elections may not accept a grant not anticipated in this Part if acceptance of the grant would obligate the State to make future expenditures relating to the program receiving the grant or would otherwise result in a financial obligation as a consequence of accepting the grant funds.

STATE BOARD OF ELECTIONS – USE OF GENERAL FUND APPROPRIATIONS

SECTION 5.5. Of the funds appropriated in this Part to the State Board of Elections (Budget Code 18025) from the General Fund, the sum of one million six hundred ten thousand two hundred fifty-two dollars (\$1,610,252) for the 2019-2020 fiscal year and the sum of four hundred ninety-nine thousand one hundred seventy-one dollars (\$499,171) for the 2020-2021 fiscal year shall be used as follows:

- (1) User Support Assistance (Fund Code 1300). – One hundred ten thousand thirteen dollars (\$110,013) on a recurring basis in the 2019-2020 fiscal year and one hundred sixty-five thousand twenty dollars (\$165,020) on a recurring basis in the 2020-2021 fiscal year to establish two User Support Specialist positions. These positions are effective November 1, 2019.
- (2) Voter Identification (ID) (Fund Code 1400). – One million one hundred sixty-six thousand eighty-eight dollars (\$1,166,088) on a nonrecurring basis in the 2019-2020 fiscal year to implement the voter ID requirements pursuant to S.L. 2018-144, Implementation of Voter ID Constitutional Amendment.
- (3) Salary Reserve (Fund Code Multiple). – Twenty-two thousand two hundred twenty dollars (\$22,220) on a recurring basis for each year of the 2019-2021 fiscal biennium to adjust the salary of an existing position that will be designated as the Board's General Counsel.
- (4) Base Budget Adjustment (Fund Code Multiple). – Three hundred eleven thousand nine hundred thirty-one dollars (\$311,931) on a recurring basis for each year of the 2019-2021 fiscal biennium to correct the base budget to reflect actual agency composition.

ELECTIONS GENERAL FUND REDUCTIONS

SECTION 5.6. Of the funds appropriated in this Part to the State Board of Elections (Budget Code 18025), the sum of four hundred fifty-four thousand two hundred forty-eight dollars (\$454,248) for each year of the 2019-2021 fiscal biennium shall be reduced as follows:

- (1) Vacant Position Elimination (Fund Code 1300). – One hundred thirty-three thousand four hundred fifty-five dollars (\$133,455) on a recurring basis in the 2019-2020 fiscal year to eliminate a vacant General Counsel (60088198) position.
- (2) Personal Services Reduction (Fund Code Multiple). – Three hundred twenty thousand seven hundred ninety-three dollars (\$320,793) on a recurring basis in the 2019-2020 fiscal year to reduce the personal services budget for positions.

ELECTIONS SPECIAL FUND

SECTION 5.7. The funds appropriated in this Part to the State Board of Elections Special Fund (28025) are adjusted as follows:

- (1) HAVA Election Security Funds (Fund Code 2401). – Three million dollars (\$3,000,000) on a nonrecurring basis in each year of the 2019-2021 fiscal

biennium to modernize the Statewide Elections Information Management System.

ELECTIONS MODIFICATIONS

VACANT POSITION ELIMINATION FLEXIBILITY AND REPORT

SECTION 5.8. Notwithstanding any provision of this act to the contrary, the State Board of Elections shall meet the personal services reduction required by this act by eliminating positions, either vacant or filled, for each year of the 2019-2021 fiscal biennium. By December 1, 2019, and December 1, 2020, the Board shall submit a report to the Joint Legislative Oversight Committee on General Government, the House of Representatives Appropriations Subcommittee on General Government, the Senate Appropriations Committee on General Government and Information Technology, and the Fiscal Research Division on the actions taken to achieve the budgeted reduction for vacant position eliminations for the fiscal year. The report shall include a list of each alternative position eliminated, along with its position number, title, and the amount of salary and fringe benefits associated with each position.

ELECTIONS/DESIGNATE EXISTING POSITION AS AGENCY GENERAL COUNSEL

SECTION 5.9. The State Board of Elections shall designate one of its current full-time employee positions as "Agency General Counsel." The State Board of Elections shall consult with the Office of State Human Resources and the Office of State Budget and Management to ensure that the designation authorized by this section is made in accordance with State policies and procedures.

STATE BUDGET ACT APPLIES

SECTION 5.10.(a) The provisions of the State Budget Act, Chapter 143C of the General Statutes, are reenacted and shall remain in full force and effect and are incorporated in this Part by reference.

SECTION 5.10.(b) The budget enacted by the General Assembly is for the maintenance of the State Board of Elections for the 2019-2021 biennial budget as provided in G.S. 143C-3-5. This budget includes the appropriations of State funds as defined in G.S. 143C-1-1(d)(25).

The Director of the Budget submitted a recommended budget to the General Assembly in the Governor's Recommended Budget and in the Budget Support Document for the State Board of Elections for the 2019-2021 fiscal biennium, dated March 2019. The adjustments to the recommended budget for the State Board of Elections made by the General Assembly are set out in this act.

SECTION 5.10.(c) The budget enacted by the General Assembly for the State Board of Elections shall also be interpreted in accordance with the provisions of this Part and other appropriate legislation. In the event that there is a conflict between the line-item budget certified by the Director of the Budget for the State Board of Elections and the budget enacted by the General Assembly for the State Board of Elections, the budget enacted by the General Assembly for the State Board of Elections shall prevail.

APPROPRIATIONS LIMITATIONS AND DIRECTIONS APPLY

SECTION 5.11.(a) If House Bill 966, 2019 Regular Session, becomes law, then Section 25.1 and Section 25.2 of that act are repealed.

SECTION 5.11.(b) Except where expressly repealed or amended, S.L. 2019-209, and any other enactments affecting the State budget during the 2019 Regular Session of the General Assembly, shall remain in effect.

MOST TEXT APPLIES ONLY TO THE 2019-2021 FISCAL BIENNIUM

SECTION 5.12. Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 2019-2021 fiscal biennium, the textual provisions of this Part apply only to funds appropriated for, and activities occurring during, the 2019-2021 fiscal biennium.

EFFECT OF HEADINGS

SECTION 5.13. The headings to the Parts, subparts, and sections of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act, except for effective dates referring to a Part or subpart.

SEVERABILITY CLAUSE

SECTION 5.14. If any section or provision of this Part is declared unconstitutional or invalid by the courts, it does not affect the validity of this Part as a whole or any part other than the part so declared to be unconstitutional or invalid.

EFFECTIVE DATE

SECTION 5.15. Except as otherwise provided, this Part becomes effective July 1, 2019.

PART VI. REPORT ON POST-ELECTION AUDITS

SECTION 6.(a) Article 15A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-182.12A. Post-election audits.

After conducting a post-election audit, the State Board shall produce a report which summarizes the audit, including the rationale for and the findings of the audit. The report shall be submitted to the Joint Legislative Elections Oversight Committee and the Joint Legislative Oversight Committee on General Government within 10 business days of the date the audit is completed."

SECTION 6.(b) This section is effective when it becomes law and applies to post-election audits conducted on or after that date.

PART VII. EFFECTIVE DATE

SECTION 7. Except as otherwise provided, this act becomes effective January 1, 2020, and applies to elections conducted on or after that date.

In the General Assembly read three times and ratified this the 30th day of October, 2019.

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

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 2:14 p.m. this 6th day of November, 2019

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: 08 NCAC 17 .0109

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:

At its August 2019 meeting, the RRC approved the adoption of multiple temporary rules submitted by the Board of Elections, including this Rule. The temporary rules went into effect on August 23, 2019. Session Law 2019-239 was signed into law on November 6, 2019. The Act becomes effective January 1, 2020 and applies to elections conducted on or after that date. This Session Law amended several general statutes, including G.S. 163-230.1. This temporary rulemaking addresses the changes made by the Session Law.

The Board began the temporary rulemaking process set forth in G.S. 150B-21.1 by submitting the temporary rules to the Codifier on November 27, 2019. The agency held a public hearing on December 12, 2019. The Board closed the comment period on December 12, 2019. Therefore, the agency had a 10-business day comment period, rather than the 15-business day comment period set forth in G.S. 150B-21.1. In addition, the agency adopted on December 12, 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). Instead, the Board provided 10 business days for both.

Amanda J. Reeder
Commission Counsel
Issued December 16, 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. The RRC agreed with staff's interpretation of the law when it approved this temporary rule in August 2019, as the Board operated under a truncated timeframe for that temporary rulemaking, as well.

Staff further notes that S.L. 2019-239, section (1.6) authorized the Board to adopt emergency rules to implement the Session Law. However, staff notes that emergency rules are only effective for about 60 days, so they would not remain effective through the primary season if implemented through that rulemaking process. The express exemption in G.S. 150B-1.1(a)(11) from the timeframes in G.S. 150B-21.1 allowed the Board to act nearly as quickly to implement temporary rules and those rules can remain in effect for up to 270 day. Therefore, staff believes the Board has authority to implement this rule change via temporary rulemaking.

Staff recommends approval of the Rule submitted for inclusion in the NC Administrative Code as a temporary rule.

TEMPORARY RULES
REQUEST FOR TECHNICAL CHANGE

AGENCY: State Board of Elections

RULE CITATION: 08 NCAC 17 .0109

DEADLINE FOR RECEIPT: Tuesday, December 17, 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:

On the Temporary Rulemaking Findings of Need Form:

In Box (3), I realize this is an odd situation, but it appears this is a temporary adoption that is replacing a temporary adoption. Please check that Box.

In Box 5(b), please insert the date the rule was posted to the OAH website. It appears that this date was December 5, 2019.

In Box 5(g), shouldn't the effective date be January 1, 2020, since that is when the law goes into effect?

In Box 6, I take it you are relying upon Section 1.2(b) of the Session Law? Or maybe Section 1? Please state what part of the law you are relying upon here.

Also, since the law becomes effective January 1, 2020, please state that for effective date. However, if you'd like, you can state "January 1, 2020 (signed into law November 6, 2019)."

In the explanation, I do not think you need to retain the sentence about the 210-day deadline, as you have met that deadline.

In the Rule, Paragraphs (c) and (e), I take it that G.S. 163-82.4 is still applicable following the decision in NAACP v. McCrory?

In Paragraph (d), Page 4, line 19, consider stating "G.S. 163, Article 21A, Part 1 is not required..."

In Paragraph (g), Page 5, line 18, why isn't "Original Form of Identification" capitalized like the other introductory sentences?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: December 16, 2019

In Paragraph (h), line 24, you appear to be relying G.S. 163-82.10(a2) to state that this is not a public record. However, what do you mean it cannot be "retained"? Did you mean to use the language in the statute, which is "copied"? If you mean retained, retained by whom? The county board?

In the History Note, line 29, please state "Temporary Adoption January 1, 2020; August 23, 2019."

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

08 NCAC 17 .0109 is proposed for amendment 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 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(e)(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 the 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:~~

~~(A) notifies the county board of elections in writing that the voter no longer holds a religious objection to being photographed;~~

~~(B) provides photo identification in a future election; or~~

~~(C) 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-1295(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~~

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

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

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

~~(d) Delivery of Absentee Ballots and Certification Form. If a 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), even if the voter does not provide the identification required by G.S. 163A-1309(a)(4) and this Rule with the request. However, the voter shall provide identification or claim an exception under G.S. 163A-1145.1(d) prior to the counting of the voter's absentee ballot. If the voter provides the identification required by this Rule or claims an exception under G.S. 163A-1145.1(d) with the absentee ballot request form, the voter is not required to attach additional documentation to the container return envelope.~~

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

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

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

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

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

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

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

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

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

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

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

(A) ~~At any point between the submission of the absentee ballot request form and 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(e), 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 (e)(1) of this Rule. 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 a 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 of 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) 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 ends this exemption pursuant to the methods listed in Parts (e)(1)(A) through (C).~~

(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 photographic copy of the original document. It does not include displaying an image on an electronic device.

(3) "Verifiable legal guardian" has the same meaning as in G.S. 163-226(e).

(4) "Near relative" has the same meaning as in G.S. 163-226(f).

1 (b) Identification Requirement for Absentee by Mail Ballots. Each container-return envelope returned to the county
2 board of elections with application and voted ballots shall include a copy of the identification required by G.S. 163-
3 166.16(a) or an affidavit as described in G.S. 163-166.16(d)(1), (d)(2), or (d)(3). The copy of identification must be
4 readable and must display a name that is the same or substantially equivalent to the name contained in the registration
5 record as provided in 08 NCAC 17 .0101(c)(4). It is not required that the address on the identification match the
6 residential address provided on the request form or the address on the registration record.

7 (c) Incomplete Application for a Photo Identification-Related Reason. If the county board of elections receives an
8 absentee application and voted ballots prior to the deadline provided in G.S. 163-231(b), its staff shall make an initial
9 assessment of whether the voter provided a copy of photo identification and if not, whether the voter completed an
10 alternative affidavit. If, after this initial assessment, the copy of the photo identification is not readable, the voter did
11 not provide a copy of photo identification or an alternative affidavit, or the alternative affidavit is not signed or is
12 otherwise not complete, the county board of elections staff shall notify the voter in writing that the voter, the voter's
13 verifiable legal guardian, or the voter's near relative may mail or bring in person the voter's acceptable photo
14 identification under G.S. 163-166.16(a), a readable copy of the voter's acceptable photo identification, or a completed
15 alternative affidavit, to the county board of elections by the deadline specified in G.S. 163-82.4(f).

16 (d) Exceptions. The exceptions provided in G.S. 163-166.16(d) for voters voting in person shall apply to absentee by
17 mail voters. The reasonable impediment exception under G.S. 163-166.16(d)(2) shall include lack of access to a
18 method to attach a physical copy of the identification card to the request. A covered voter who is casting a ballot
19 pursuant to Part 1 of Article 21A of Chapter 163 of the General Statutes is not required to submit a copy of acceptable
20 photo identification under Paragraph (b) of this Rule or claim an exception under G.S. 163-166.16(d).

21 (e) Counting of Absentee Ballots. The county board of elections shall, at the first meeting held after the ballot is
22 received pursuant to G.S. 163-230.1(f) to pass upon applications for absentee ballots, consider whether the voter has
23 complied with the photo identification requirements as follows:

24 (1) Review of photo identification. The county board of elections shall review the photo identification
25 submitted and shall determine the following:

26 (A) That the photo identification is readable as defined in Subparagraph (a)(1);

27 (B) That the photo identification meets the expiration date requirements provided in G.S. 163-
28 166.16(a); and

29 (C) That the name appearing on the photo identification is the same or substantially equivalent
30 to the name contained in the registration record pursuant to 08 NCAC 17 .0101(c)(4). If
31 the name on the identification is substantially equivalent to the name listed on the
32 registration record, the county board of elections shall presume that the person depicted in
33 the photograph on the identification provided is the voter.

34 In making its determination under this Subparagraph, the county board of elections shall not require any
35 additional evidence outside the four corners of the photo identification and shall make the
36 determination based on the totality of the circumstances, construing all evidence in the light most
37 favorable to the voter. A decision that the absentee ballot is not approved because the name listed

1 on the photo identification is not the same as or substantially equivalent to the name on the
2 registration record shall require a unanimous vote by the county board of elections.

3 (2) Review of alternative affidavit. Absent any other reason provided by law for disapproving absentee
4 ballots, if the voter has completed the required affidavit in G.S. 163-166.16(d), the county board of
5 elections shall find that the absentee ballot is valid unless the county board has grounds to believe
6 the affidavit is false. A decision that the absentee ballot is not approved because the affidavit
7 provided under G.S. 163-166.16(d) is false shall require a unanimous vote by the county board of
8 elections.

9 If the voter fails to submit in the container-return envelope a copy of acceptable photo identification pursuant to G.S.
10 163-166.16(a) or an alternative affidavit under G.S. 163-166.16(d), the copy of the photo identification is not readable,
11 or the alternative affidavit is not signed or is otherwise not complete, the mailed ballot shall be treated in the same
12 manner as a mail-in absentee ballot under G.S. 163-166.12(e). The voter, the voter's verifiable legal guardian, or the
13 voter's near relative may mail or bring in person the voter's acceptable photo identification under G.S. 163-166.16(a),
14 a readable copy of the voter's acceptable photo identification, or a completed alternative affidavit, to the county board
15 of elections by the deadline specified in G.S. 163-82.4(f).

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

18 (g) Return of original form of identification. If a voter sends his or her original form of photo identification in the
19 container-return envelope, the county board of elections shall make a photocopy of the identification and mail the
20 identification back to the voter.

21 (h) Retention of Copies of Photo Identification and Alternative Affidavits. Copies of photo identification and
22 alternative affidavits shall be retained according to the same schedule for absentee ballot applications under G.S. 163-
23 233. Copies of photo identification associated with the absentee ballot are not public record. The alternative affidavit
24 is a public record, but the voter's signature may only be viewed in the county board of elections office and cannot be
25 retained or traced.

27 *History Note: Authority G.S. 163A-1145.1; 163A-1307; 163A-1309(f); 163A-1319; 163-166.16; 163-230.1; 163-*
28 *233; S.L. 2018-144, s. 1.2.(e), (i); S.L. 2019-239.*

29 *Temporary Adoption Eff. August 23, 2019.*

30 *Temporary Amendment Eff. January 6, 2020.*