

Note from the Codifier: The OAH website includes notices and the text of proposed temporary rules as required by G.S. 150B-21.1(a)(1). For questions, you may contact the Office of Administrative Hearings at 984-236-1850 or email oah.postmaster@oah.nc.gov.

TITLE 08 – STATE BOARD OF ELECTIONS

Notice is hereby given in accordance with G.S. 150B-21.1(a3) that the State Board of Elections intends to amend the rule cited as 08 NCAC 10B .0101.

Codifier of Rules received for publication the following notice and proposed temporary rule(s) on: July 15, 2022.

Public Hearing:

Date: July 28, 2022

Time: 10:00 a.m.

Location: Webex - <https://ncgov.webex.com/ncgov/onstage/g.php?MTID=e0f64ed219ade80b9fd456a76fd33ee62>

Reason for Proposed Temporary Action: To implement provisions of state or federal law for which the State Board of Elections has been authorized to adopt rules, and the need for the rule to become effective immediately in order to preserve the integrity of upcoming elections and the elections process. The amendments clarify what conduct is prohibited from precinct officials working the polls, and require precinct officials to inform county boards of elections if they become ineligible to serve. Temporary adoption is required for the rules to be in effect ahead of the upcoming statewide general election on November 8, 2022.

Comment Procedures: Comments from the public shall be directed to: Rulemaking Coordinator, NC State Board of Elections, 6400 Mail Service Center, Raleigh, NC 27603-1362; email rulemaking.sboe@ncsbe.gov. The comment period begins July 22, 2022 and ends August 8, 2022.

CHAPTER 10 - BALLOT ROTATION RULES FOR PRIMARY ELECTION BALLOTS

SUBCHAPTER 10B – VOTING, VOTING PLACES AND PRECINCT OFFICIALS' DUTIES AND TASKS

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

(a) For purposes of this Chapter, unless otherwise noted, the term "precinct officials" shall mean chief judge, precinct judge, assistants, emergency election-day assistants, and ballot counters.

(b) Tasks of Precinct Chief Judge - Precinct Chief Judges, in accordance with election statutes, within the Rules of the State Board of Elections, and under the supervision of the county board of elections, shall have the following tasks to perform as to each primary or election:

- (1) attend an instructional meeting presented by the county board of elections prior to each primary or election as required by G.S. 163-46;
- (2) upon learning that any parent, spouse, child, or sibling of the Precinct Chief Judge has filed for elective office, inform the county board of elections so that the county board of elections may disqualify the Precinct Chief Judge under G.S. 163-41.1(b) for the specific primary or election involved;
- (3) upon learning that any parent, parent-in-law, spouse, child, child-in-law, sibling, or sibling-in-law of the Precinct Chief Judge has been appointed to serve in the same precinct, inform the county board of elections so that the county board of elections may appoint an emergency election-day assistant;
- (4) receive and review the signed list of the appointed observers as provided in G.S. 163-45;
- (5) receive and post a sample ballot in the voting place as provided in G.S. 163-165.2;
- (6) notify the county board of elections of any sickness, emergency, or other circumstances that will or might prevent the person from performing as precinct chief judge on a primary or election day;
- (7) receive, prior to the day of the primary or election, from the county board of elections any security keys or codes as to any voting systems or units that are to be operated at the precinct;
- (8) prior to the opening of the polls, administer to any precinct official, not previously sworn, the oath of office as set out in G.S. 163-41;
- (9) prior to the opening of the polls, ensure the technology and connectivity requirements of 08 NCAC 10B .0109(b) are met;
- (10) if at the time of opening the voting place, a judge has not appeared, appoint another person to act as precinct judge until the chair of the county board of elections appoints a replacement as set out in G.S. 163-41;
- (11) be present at the voting place at 6:00 a.m., and ensure the opening of the polls at 6:30 a.m. as mandated by G.S. ~~463-466~~ 163-166.01 and 08 NCAC 10B .0102;
- (12) respond to any voter's request to have assistance to vote as set out in the provisions of G.S. 163-166.8(b);
- (13) ensure the continued arrangement of the voting enclosure as required in G.S. 163-166.2;
- (14) supervise the closing of the voting place at 7:30 p.m. in compliance with procedures set out in G.S. 163-166.10 and 08 NCAC 10B .0105;
- (15) handle challenges made on election or primary day in accordance with G.S. 163-87, and conduct the hearing upon said challenge in accordance with G.S. 163-88;

- (16) be responsible, as mandated by G.S. 163-182.3, for adherence to all rules pertaining to counting, reporting, and transmitting official ballots under 08 NCAC 10B .0105 and .0106;
- (17) ensure the maintenance of and appearance of efficient, impartial, and honest election administration at the precinct as required by G.S. 163-166.5(3);
- (18) monitor the grounds around the voting place to ensure compliance with the limitation on activity in the buffer zone under G.S. 163-166.4(a);
- (19) ensure peace and good order at the voting place as required by G.S. 163-48. Examples of peace and good order include:
 - (A) keeping open and unobstructed the place at which voters or persons seeking to register or vote have access to the place of registration and voting;
 - (B) preventing and stopping attempts to obstruct, intimidate, or interfere with any person in registering or voting;
 - (C) protecting challengers and witnesses against molestation and violence in the performance of their duties; and
 - (D) ejecting from the place of registration or voting any challenger or witness for violation of any provisions of the election laws or rules.
- (20) ensure that voters are able to cast their votes in dignity, good order, impartiality, convenience, and privacy as required in G.S. 163-166.7(c) and 08 NCAC 10B .0101;
- (21) if needed, check or assist in checking the registration of voters at the voting place;
- (22) if ballot counters are authorized by the county board of elections under G.S. 163-43, receive the list of counters from the county board, or appoint counters if authorized to do so by the county board. Prior to a ballot counter performing duties and tasks, administer the oath required by G.S. 163-43. Report to the county board of elections the names and addresses of any ballot counters to the county board at the county canvass as set out in G.S. 163-43.
- (23) perform the required legal duties of chief precinct judge/judge or face criminal consequences as set out in G.S. 163-274 (1); ~~and~~
- (24) not accept money from candidates, commit fraud, false statements, or false writings in performing election duties, or face the criminal consequences set out in G.S. ~~163-275(3)(8)(9) and (12).~~ 163-275(3), (8), (9), (12), (14), and (18); and
- (25) prior to performing duties and tasks after being duly appointed, take the oath required by G.S. 163-41.

Where the precinct chief judge does not have the exclusive statutory mandate to perform a task or duty, a precinct judge may be designated to perform such task or duty.

(c) Tasks of Precinct Judge - Precinct Judges, in accordance with election statutes, within rules of the State Board of Elections, and under the supervision of the county board of elections, shall have the following tasks to perform as to each primary or election:

- (1) attend an instructional meeting presented by the county board of elections prior to each primary or election as required by G.S. 163-46;
- (2) upon learning that any parent, spouse, child, or sibling of the Precinct Judge has filed for elective office, inform the county board of elections so that the county board of elections may disqualify the Precinct Judge under G.S. 163-41.1(b) for the specific primary or election involved;
- (3) upon learning that any parent, parent in-law, spouse, child, child in-law, sibling, sibling in-law or first cousin of the Precinct Judge has been appointed to serve in the same precinct, inform the county board of elections so that the county board of elections may appoint an emergency election-day assistant;
- (4) if the chief judge fails to appear at the opening of poll, appoint, with the other precinct judge, a person to act as chief judge until the chairman of the county board appoints a new chief judge as per G.S. 163-41;
- (5) notify the county board of elections of any sickness, emergency, or other circumstances that will or might prevent the person from performing as precinct chief judge on a primary or election day;
- (6) be present at the voting place at 6:00 a.m., and ensure the prompt opening of the polls at 6:30 a.m. as mandated by G.S. 163- ~~466~~ 166.01 and any rules promulgated under 08 NCAC 10B .0102;
- (7) perform the required legal duties of chief precinct judge/judge or face criminal consequences as set out in G.S. 163-274(1);
- (8) not accept money from candidates, commit fraud, false statements, or false writings in performing election duties, or face the criminal consequences set out in G.S. ~~163-275(3)(8)(9) and (12).~~ 163-275(3), (8), (9), (12), (14), and (18);
- (9) aid and cooperate with the precinct chief judge, as requested or needed, as to those duties noted in Subparagraphs (12) through (21) of Paragraph (b) of this ~~Rule.~~ Rule; and
- (10) prior to performing duties and tasks after being duly appointed, take the oath required by G.S. 163-41.

A precinct judge may be designated to perform tasks and duties of a chief precinct judge, where those duties are not statutorily made exclusive to the chief precinct judge.

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

- (1) check the registration of voters at the voting place as per G.S. 163-166.7(a);
- (2) guide voters to voting units or provide voters ballots as per G.S. 163-166.7(b);
- (3) prior to performing duties and tasks after being duly appointed, take the oath required by G.S. 163-41;
- (4) notify the county board of elections of any sickness, emergency, or other circumstances that will or might prevent the person from performing as an election assistant on a primary or election day;
- (5) upon learning that any parent, spouse, child, or sibling of the Election Assistant has filed for elective office, inform the county board of elections so that the county board of elections may disqualify the Election Assistant under G.S. 163-41.1(b) for the specific primary or election involved;

- (6) upon learning that any parent, parent in-law, spouse, child, child in-law, sibling, sibling in-law or first cousin of the Election Assistant has been appointed to serve in the same precinct, inform the county board of elections so that the county board of elections may appoint an emergency election-day assistant; and
 - (7) aid the chief judge and other precinct judges in the performances of their tasks and duties as needed or directed.
- (e) Tasks of Emergency Election – Day Assistant - Emergency Election-Day Assistants, in accordance with election statutes, within the rules of the State Board of Elections, and under the supervision of the county board of elections, shall have the following tasks to perform as to each primary or election:
- (1) be prepared prior to and on the day of a primary or election to serve, on notice given by the county board of elections, to travel to and work at any voting place within the county;
 - (2) perform all the tasks and duties of an election assistant as set out in Paragraph (d) of this Rule;
 - (3) notify the county board of elections of any sickness, emergency, or other circumstances that will or might prevent the person from performing as an election assistant on a primary or election day;
 - (4) upon learning that any parent, spouse, child, or sibling of the emergency election-day assistant has filed for elective office, to inform the county board of elections so that the county board of elections may disqualify the emergency election-day assistant under G.S. 163-41.1(b) for the specific primary or election involved; and
 - (5) upon learning that any parent, parent in-law, spouse, child, child in-law, sibling, sibling in-law or first cousin of the emergency election-day assistant has been appointed to serve in the same precinct, inform the county board of elections.
- (f) Tasks of Ballot Counters - All ballot counters, in accordance with election statutes, with the rules of the State Board of Elections and under supervision of the county board of elections, shall perform all the following:
- (1) after appointment, appear at the poll at close of the polls and to be prepared to count ballots under the direction and control of the chief and other precinct judges;
 - (2) prior to a ballot counter performing duties and tasks, take the oath required by G.S. 163-43;
 - (3) upon learning that any parent, spouse, child, or sibling of the ballot counter has filed for elective office, inform the county board of elections so that the county board of elections may disqualify the ballot counter under G.S. 163-41.1(b) for the specific primary or election involved; and
 - (4) upon learning that any parent, parent in-law, spouse, child, child in-law, sibling, sibling in-law or first cousin of the ballot counter has been appointed to serve in the same precinct, inform the county board of elections.

There is no requirement to have ballot counters appointed or used by a county board of elections. The county board of elections of any county may authorize the use of precinct ballot counters to aid the chief judges and judges of election in the counting of ballots in any precinct or precincts within the county. The county board of elections shall appoint the ballot counters it authorizes for each precinct or, in its discretion, the board may delegate authority to make such appointments to the precinct chief judge, specifying the number of ballot counters to be appointed for each precinct.

- (g) General duties of all Precinct Officials - All precinct officials, in accordance with election statutes, with the rules of the State Board of Elections and under the supervision of the county board of elections, shall perform all of the following:
- (1) count votes when votes are required to be counted at the voting place, G.S. 163-182.2;
 - (2) make an unofficial report of returns to the county board of elections, G.S. 163-182.2;
 - (3) certify the integrity of the vote and the security of the official ballots at the voting place, G.S. 163-182.2;
 - (4) return official ballots and equipment to the county board of elections, G.S. 163-182.2;
 - (5) ensure that the voting system cannot be tampered with throughout the period voting is being conducted;
 - (6) ensure that only properly voted official ballots are introduced into the voting system;
 - (7) ensure that, except as provided by G.S. 163-166.9, no official ballots leave the voting enclosure during the time voting is being conducted there;
 - (8) ensure that all improperly voted official ballots are returned to the precinct officials and marked as spoiled;
 - (9) ensure that voters leave the voting place after voting;
 - (10) ensure that voters not eligible to vote in the precinct but who seek to vote there are given assistance in voting a provisional official ballot or guidance to another voting place where they are eligible to vote;
 - (11) ensure that information gleaned through the voting process that would be helpful to the accurate maintenance of the voter registration records, including any updates to a voter's voter registration, is recorded and delivered to the county board of elections;
 - (12) ensure that registration records can only be accessed by precinct officials;
 - (13) ensure that party observers are given access as provided by G.S. 163-45 to current information about which voters have voted;
 - (14) aid any voter, as needed, in curbside voting as provided for in G.S. 163-166.9;
 - (15) provide Spanish ballot instructions when such instructions are required by Section 203 of the Voting Rights Act of 1965, and direct all language needs that can not be handled at the precinct to the county board office;
 - (16) register and help, at the voting place, those persons eligible to register and vote on election day as allowed by G.S. 163-258.28 and G.S. 163-82.6(d);
 - (17) report to the county board of elections, any physical or mental ailment, impairment, or deterioration that may adversely affect the performance of an election related task or duty. Report any such conditions known in any other precinct officials to the county board;
 - (18) report any violation of election laws or regulations to the chief judge, or report such violation to the county board of elections if the chief precinct judge is involved in the violation;
 - (19) provide any person who requests it any information on how to contact the county director of elections, the county board of elections, or the office of the State Board of Elections; ~~and~~

- (20) work and stay at the voting place, at all times during the voting day, until closure. By prior agreement with the county board of elections and pursuant to G.S. 163-42, election assistants and emergency election-day assistants may work less than the entire voting ~~day~~; day; and
- (21) Upon learning that any of the following statements are true, inform the county board of elections so that the county board of elections may disqualify the precinct official under G.S. 163-41:
- (A) The precinct official holds any elective office under the government of the United States, or of the State of North Carolina or any political subdivision thereof;
 - (B) The precinct official is a candidate for nomination or election; or
 - (C) The precinct official holds any office in a state, congressional district, county, or precinct political party or political organization, or is a manager or treasurer for any candidate or political party, provided however that the position of delegate to a political party convention shall not be considered an office for the purpose of this subsection.

(h) Prohibited acts by precinct officials. Prohibited acts by precinct officials include:

- (1) Tampering with voting equipment;
- (2) Permitting unauthorized access to voting facilities or equipment;
- (3) Intentionally interfering with, delaying, or preventing a voter from lawfully casting their ballot;
- (4) Making statements about personal political views while on duty;
- (5) Failing to attend trainings required by the county board of elections;
- (6) Failing to follow lawful instructions of the county board, county board staff, chief judge, judges, or one-stop site manager;
- (7) Intentionally providing inaccurate information about the administration of the election;
- (8) Failing to abide by the election rules, laws, and policies applicable to precinct officials;
- (9) Intentionally failing to report incidents occurring at the voting place to the chief judge, one-stop site manager, or county board of elections, as instructed;
- (10) Providing confidential voter information, vote tallies before the close of the polls, or confidential information on security features of voting equipment or voting facilities to non-elections officials;
- (11) Discriminating against voters on the basis of race, color, ethnicity, religion, sex, national origin, age, disability, or political affiliation (except for the purposes of lawfully determining eligibility to participate in partisan primaries); and
- (12) Engage in any political activities as prohibited in G.S. 163-41(e) between the start of one-stop early voting and 11:59 p.m. on Election Day during the election in which a precinct official is serving.

For the purpose of this Paragraph, "precinct officials" includes one-stop workers.

Authority G.S. 163-22; 163-41; 163-42; 163-47; 163-166.6; 163-273; 163-274.