

Burgos, Alexander N

Subject: FW: 08 NCAC 10B .0101

From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Thursday, August 25, 2022 9:25 AM

To: Cox, Paul <paul.cox@ncsbe.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Love, Katelyn <Katelyn.Love@ncsbe.gov>; Wakely, Lindsey <Lindsey.Wakely@ncsbe.gov>

Subject: RE: 08 NCAC 10B .0101

Thank you for your email.

“Other than this email, do we need to document acceptance of this change in any other way?”

Yes, you would need to timely submit a new draft of the rule that includes the language the agency wants to change.

William W. Peaslee

Rules Review Commission Counsel / Legislative Liaison

Office of Administrative Hearings

1711 New Hope Church Road

Raleigh NC, 27609

(984) 236-1939

Bill.Peaslee@oah.nc.gov

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

From: Cox, Paul <paul.cox@ncsbe.gov>

Sent: Wednesday, August 24, 2022 3:46 PM

To: Peaslee, William W <bill.peaslee@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Love, Katelyn <Katelyn.Love@ncsbe.gov>; Wakely, Lindsey <Lindsey.Wakely@ncsbe.gov>

Subject: RE: 08 NCAC 10B .0101

Good afternoon Bill,

Having reviewed your opinion regarding 08 NCAC 10B .0101(h)(8) and the inclusion of Numbered Memos where the adopted language referenced “policies,” we’re okay with removing the proposed change to “Numbered Memos” and deleting the reference to policies in the original text. With this deletion (h)(8) would read “Failing to abide by the election rules and laws applicable to precinct officials.”

Other than this email, do we need to document acceptance of this change in any other way?

Also, on both staff opinions, you've indicated "Failure to comply with the APA." We assume that this language is designed to track with GS 150B-21.9(a)(4), that the rule "was adopted in accordance with Part 2 of this Article." However, we're not seeing any objections as to the agency's rulemaking procedures, which is what Part 2 speaks to. Are there procedural objections? Or is this language on the staff opinion intended to indicate something different?

Thanks,

Paul Cox | Associate General Counsel
NORTH CAROLINA STATE BOARD OF ELECTIONS
430 N SALISBURY STREET
RALEIGH, NC 27611
919.814.0700
www.ncsbe.gov

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Burgos, Alexander N

From: Cox, Paul
Sent: Wednesday, August 24, 2022 5:19 PM
To: Rules, Oah; Burgos, Alexander N; Peaslee, William W
Cc: Wakely, Lindsey; Love, Katelyn
Subject: Request for Waiver - re Special Meeting Aug. 25
Attachments: RE: 08 NCAC 10B .0101

Rules Review Commission,

By this message, the State Board of Elections is requesting a waiver, to the extent one is required, on the limitations in 26 NCAC 05 .0108 on technical changes to rules submitted to the Commission for review.

RRC staff, in its [Staff Opinion](#) regarding temporary rule 08 NCAC 10B .0101, objected to the reference to poll workers' adherence to State Board of Elections Numbered Memos. That addition was included in response to an initial objection raised by RRC staff in its Request for Changes to the purported ambiguity of the use of the word "policies" in reference to the things poll workers must adhere to. Agency staff were unaware that RRC staff would object to this replacement until it saw the Staff Opinion. Within hours of receiving the opinion, agency staff wrote back to suggest striking the language pertaining to Numbered Memos. RRC staff then responded that the time for submitting changes to the Rule under 26 NCAC 05 .0108 had expired and that a waiver would be required under 26 NCAC 05 .0112. Please see the attached email for background.

As an initial matter, agency staff is unsure which provision of 26 NCAC 05 .0108 bars the submission of this change, which was submitted within 48 hours of receiving the RRC staff's Request for Changes and on the same day the agency staff received RRC Staff Opinion. Nonetheless, the agency respectfully requests a waiver, pursuant to 26 NCAC 05 .0112, to be permitted to include this change in the Rule the Commission considers at the Special Meeting tomorrow, for the following reasons, addressing the factors in the waiver rule:

- The waiver is necessary to address a purported deficiency in the Rule raised by RRC Staff.
- The agency is providing this notice as soon as possible, given the objection raised in the Staff Opinion issued earlier today.
- The language requiring revision was prompted by an earlier RRC staff request for change, which perhaps the agency misunderstood. The period in which the agency had to respond to the Request for Changes was abbreviated, and therefore there was limited opportunity to engage with staff regarding the requests.
- The agency has not made any previous waiver requests.
- The undersigned has some experience with the rulemaking process, but has no experience regarding the application of 26 NCAC 05 .0108 to this situation, and submits that the rule does not clearly apply to forbid this amendment.
- The circumstances requiring the need for this waiver are fairly context specific, so the precedential value of the waiver is limited.
- The agency would be harmed without the waiver to the extent the Commission rejects the poll worker rule for the relevant reason raised in the Staff Opinion. The general election is fast approaching and the State Board, under its supervisory authority over the conduct of elections, has unanimously concluded that additional guidance through rule needs to be provided regarding the conduct of poll workers.

- The last factor is inapplicable because the agency is applying for the waiver.

We appreciate the Commission's consideration of this waiver application.

Paul Cox | Associate General Counsel
NORTH CAROLINA STATE BOARD OF ELECTIONS
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RALEIGH, NC 27611
919.814.0700
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Burgos, Alexander N

Subject: FW: 08 NCAC 10B .0101

From: Burgos, Alexander N

Sent: Wednesday, August 24, 2022 5:04 PM

To: Cox, Paul <paul.cox@ncsbe.gov>; Peaslee, William W <bill.peaslee@oah.nc.gov>

Cc: Love, Katelyn <Katelyn.Love@ncsbe.gov>; Wakely, Lindsey <Lindsey.Wakely@ncsbe.gov>

Subject: RE: 08 NCAC 10B .0101

Mr. Cox, please see the requests to speak at tomorrow's meeting:

- [Request to Speak](#)

Alexander Burgos

Paralegal

Office of Administrative Hearings

1711 New Hope Church Road

Raleigh NC, 27609

(984) 236-1940

Alexander.burgos@oah.nc.gov

Burgos, Alexander N

Subject: FW: 08 NCAC 10B .0101

From: Cox, Paul <paul.cox@ncsbe.gov>

Sent: Wednesday, August 24, 2022 4:27 PM

To: Peaslee, William W <bill.peaslee@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Love, Katelyn <Katelyn.Love@ncsbe.gov>; Wakely, Lindsey <Lindsey.Wakely@ncsbe.gov>

Subject: RE: 08 NCAC 10B .0101

Hi Bill,

We're having a hard time determining what provision of 26 NCAC 05 .0108 bars the agency from submitting this change without a waiver. Can you help us out here?

Thanks,

Paul Cox | Associate General Counsel

NORTH CAROLINA STATE BOARD OF ELECTIONS

430 N SALISBURY STREET

RALEIGH, NC 27611

919.814.0700

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From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Wednesday, August 24, 2022 4:19 PM

To: Cox, Paul <paul.cox@ncsbe.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Love, Katelyn <Katelyn.Love@ncsbe.gov>; Wakely, Lindsey <Lindsey.Wakely@ncsbe.gov>

Subject: RE: 08 NCAC 10B .0101

Good afternoon Paul,

Pursuant to 26 NCAC 05 .0108, the time for submitting changes to rules has lapsed. You can request a waiver pursuant 20 NCAC 05. 0112 from the Commission tomorrow.

William W. Peaslee

Rules Review Commission Counsel / Legislative Liaison

Office of Administrative Hearings

1711 New Hope Church Road

Raleigh NC, 27609

(984) 236-1939

Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

Subject: FW: 08 NCAC 10B .0101

From: Cox, Paul <paul.cox@ncsbe.gov>

Sent: Wednesday, August 24, 2022 3:46 PM

To: Peaslee, William W <bill.peaslee@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Love, Katelyn <Katelyn.Love@ncsbe.gov>; Wakely, Lindsey <Lindsey.Wakely@ncsbe.gov>

Subject: RE: 08 NCAC 10B .0101

Good afternoon Bill,

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Also, on both staff opinions, you’ve indicated “Failure to comply with the APA.” We assume that this language is designed to track with GS 150B-21.9(a)(4), that the rule “was adopted in accordance with Part 2 of this Article.” However, we’re not seeing any objections as to the agency’s rulemaking procedures, which is what Part 2 speaks to. Are there procedural objections? Or is this language on the staff opinion intended to indicate something different?

Thanks,

Paul Cox | Associate General Counsel

NORTH CAROLINA STATE BOARD OF ELECTIONS

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Burgos, Alexander N

Subject: FW: 08 NCAC 10B .0101

From: Burgos, Alexander N
Sent: Wednesday, August 24, 2022 1:38 PM
To: Cox, Paul <paul.cox@ncsbe.gov>; Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Love, Katelyn <Katelyn.Love@ncsbe.gov>; Wakely, Lindsey <Lindsey.Wakely@ncsbe.gov>
Subject: RE: 08 NCAC 10B .0101

Good afternoon Mr. Cox,

Please feel free to bring any staff you require to the meeting.

We have shared all your responses with the RRC that are contained in our online agenda under "Agency Communication".

<https://www.oah.nc.gov/news/events/rrc-special-meeting-august-2022>

If you need anything else, please feel free to let us know.

Thank you,
Alex

Alexander Burgos
Paralegal
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1940
Alexander.burgos@oah.nc.gov

From: Cox, Paul <paul.cox@ncsbe.gov>
Sent: Wednesday, August 24, 2022 1:30 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Love, Katelyn <Katelyn.Love@ncsbe.gov>; Wakely, Lindsey <Lindsey.Wakely@ncsbe.gov>
Subject: RE: 08 NCAC 10B .0101

Thank you, Bill.

Two questions:

- Has staff shared with the Commission the agency's responses to the objections raised by staff?
- I saw Alex's email this morning noting that presenting agencies are asked to bring only two representatives. Since we are the only presenting agency tomorrow, would this apply? We were

planning to arrive as three people: myself, our GC Katelyn Love, and my fellow rulemaking coordinator Lindsey Wakely

Best,

Paul

Burgos, Alexander N

From: Peaslee, William W
Sent: Wednesday, August 24, 2022 1:19 PM
To: Cox, Paul
Cc: Burgos, Alexander N; Love, Katelyn; Wakely, Lindsey
Subject: RE: 08 NCAC 10B .0101
Attachments: 08.2022 Special Meeting Staff Opinion 08 NCAC 10B .0101.pdf

Good afternoon,

Attached please find the staff opinion regarding the above captioned rule.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

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From: Cox, Paul <paul.cox@ncsbe.gov>
Sent: Tuesday, August 23, 2022 11:47 AM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Love, Katelyn <Katelyn.Love@ncsbe.gov>; Wakely, Lindsey <Lindsey.Wakely@ncsbe.gov>
Subject: RE: 08 NCAC 10B .0101

Bill,

Please see the attached version of the temporary amendment to Rule 08 NCAC 10B .0101 with changes conforming to your suggestions, and the Change Request document with our responses interspersed in teal lettering. In that latter document, we've highlighted items that led to changes in the temporary rule.

Best regards,

Paul Cox | Associate General Counsel
NORTH CAROLINA STATE BOARD OF ELECTIONS
430 N SALISBURY STREET
RALEIGH, NC 27611
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From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Monday, August 22, 2022 4:46 PM
To: Cox, Paul <paul.cox@ncsbe.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Love, Katelyn <Katelyn.Love@ncsbe.gov>; Wakely, Lindsey <Lindsey.Wakely@ncsbe.gov>
Subject: RE: 08 NCAC 10B .0101

Thank you for your email.

Notwithstanding the permissive language of G.S. 150B-21.8(c) concerning permanent rules, G.S. 150B-21.1 states when an agency adopts a temporary rule, the rule, not the amendment, is subject to review.

As always if you have any questions or concerns please do not hesitate to contact me.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

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From: Cox, Paul <paul.cox@ncsbe.gov>
Sent: Monday, August 22, 2022 4:10 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Love, Katelyn <Katelyn.Love@ncsbe.gov>; Wakely, Lindsey <Lindsey.Wakely@ncsbe.gov>
Subject: RE: 08 NCAC 10B .0101

Thank you, William. We are looking at these now and appreciate your prompt feedback.

Could we get one clarification? Some of the suggested revisions/concerns address parts of the permanent rules that the State Board of Elections has not proposed for temporary amendment. We had the understanding that Commission review of temporary amendments was limited in scope to the amendments, and not the entirety of the permanent rule, under G.S. 150B-21.8(c). Is the Commission's interpretation different? This has implications, as well, for an agency's authority to make changes to parts of the permanent rule that had not been proposed for temporary amendment, in this interim post-submission period.

Thank you for this clarification.

Best,

Paul Cox | Associate General Counsel
NORTH CAROLINA STATE BOARD OF ELECTIONS
430 N SALISBURY STREET
RALEIGH, NC 27611
919.814.0700
www.ncsbe.gov

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Monday, August 22, 2022 3:58 PM
To: Cox, Paul <paul.cox@ncsbe.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: 08 NCAC 10B .0101

Good afternoon, Mr. Cox,

I'm the attorney who reviewed the Rule submitted by the State Board of Elections for the August 2022 Special RRC meeting. The RRC will formally review this Rule at its meeting on Thursday, August 25, 2022, at 10:30 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an evite should be sent to you as we get closer to the meeting. If there are any other representatives from your agency who will want to attend virtually, let me know prior to the meeting, and we will get evites out to them as well.

Please submit the revised Rule and forms to me via email, no later than 5:00 p.m. on August 23, 2022.

In the meantime, please let me know if you have any questions or concerns.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

Subject: FW: Temporary Rule Findings of Need Form
Attachments: Form 500 - 08 NCAC 10B .0101 - Circosta.pdf; Form 500 - 08 NCAC 20 .0101 - Circosta.pdf

From: Cox, Paul <paul.cox@ncsbe.gov>
Sent: Tuesday, August 23, 2022 11:53 AM
To: Snyder, Ashley B <ashley.snyder@oah.nc.gov>; Wakely, Lindsey <Lindsey.Wakely@ncsbe.gov>
Cc: Peaslee, William W <bill.peaslee@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; McGhee, Dana <dana.McGhee@oah.nc.gov>
Subject: RE: Temporary Rule Findings of Need Form

Thank you for reaching out on this, Ashley.

Per your request, I'm resubmitting the agency's findings of need forms for the proposed temporary rules with the Chair of the State Board of Elections' signature.

Best regards,

Paul Cox | Associate General Counsel
NORTH CAROLINA STATE BOARD OF ELECTIONS
430 N SALISBURY STREET
RALEIGH, NC 27611
919.814.0700
www.ncsbe.gov

From: Snyder, Ashley B <ashley.snyder@oah.nc.gov>
Sent: Tuesday, August 23, 2022 10:13 AM
To: Wakely, Lindsey <Lindsey.Wakely@ncsbe.gov>; Cox, Paul <paul.cox@ncsbe.gov>
Cc: Peaslee, William W <bill.peaslee@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; McGhee, Dana <dana.McGhee@oah.nc.gov>
Subject: Temporary Rule Findings of Need Form

Good morning, Lindsey and Paul,

It has come to my attention that the findings of need forms for the State Board of Elections' proposed temporary rules have not been signed by the head of the agency. G.S. 150B-21.1 requires temporary rules to be signed by the head of the agency and G.S. 150B-21.19 mandates the signature prior to inclusion in the Code. The head of the agency is the head of the board. If RRC approves your temporary rules, please be aware that I need a signature from the head of the board prior to entry in the Code. Thank you for your attention to this matter.

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

...

(a4) An agency must also prepare a written statement of its findings of need for a temporary rule stating why adherence to the notice and hearing requirements in G.S. 150B-21.2 would be contrary to the public interest and why the immediate adoption of the rule is required. If the temporary rule establishes a new fee or increases an existing fee, the agency shall include in the written statement that it has complied with the requirements of G.S. 12-3.1. **The statement must be signed by the head of the agency adopting the temporary rule.**

§ 150B-21.19. Requirements for including rule in Code.

To be acceptable for inclusion in the North Carolina Administrative Code, a rule must:

- (1) Cite the law under which the rule is adopted.
- (2) **Be signed by the head of the agency or the rule-making coordinator for the agency that adopted the rule.**
- (3) Be in the physical form specified by the Codifier of Rules.
- (4) Have been approved by the Commission, if the rule is a permanent rule.
- (5) Have complied with the provisions of G.S. 12-3.1, if the rule establishes a new fee or increases an existing fee.

§ 150B-2. Definitions.

As used in this Chapter, the following definitions apply:

- (1b) Agency. - An agency or an officer in the executive branch of the government of this State. The term includes the Council of State, the Governor's Office, a board, a commission, a department, a division, a council, and any other unit of government in the executive branch. A local unit of government is not an agency.

Ashley Snyder

Codifier of Rules

Office of Administrative Hearings

(984) 236-1941

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TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: State Board of Elections
2. Rule citation & name: 08 NCAC 10B. 0101, TASKS AND DUTIES OF PRECINCT OFFICIALS AT VOTING PLACES
3. Action: <input type="checkbox"/> Adoption <input checked="" type="checkbox"/> Amendment <input type="checkbox"/> Repeal
4. Was this an Emergency Rule: <input type="checkbox"/> Yes Effective date: <input checked="" type="checkbox"/> No
5. Provide dates for the following actions as applicable: a. Proposed Temporary Rule submitted to OAH: 7/15/2022 b. Proposed Temporary Rule published on the OAH website: 7/21/2022 c. Public Hearing date: 7/28/2022 and 8/11/2022 d. Comment Period: 7/22/2022 through 8/12/2022 e. Notice pursuant to G.S. 150B-21.1(a3)(2): 7/22/2022 (partial - distribution error) and 8/2/2022 (full) f. Adoption by agency on: 8/16/2022 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]: As soon as possible h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]: n/a
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review. <input type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare. <input type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: Effective date: <input type="checkbox"/> A recent change in federal or state budgetary policy. Effective date of change: <input type="checkbox"/> A recent federal regulation. Cite: Effective date: <input type="checkbox"/> A recent court order. Cite order: <input type="checkbox"/> State Medical Facilities Plan. <input checked="" type="checkbox"/> Other: To preserve the integrity of upcoming elections and the elections process. GS 150B-21.1(a)(11)c.
Explain: The State Board of Elections, in a public meeting, found unanimously that (1) adherence to the notice and hearing requirements of the permanent rulemaking process would be contrary to the public interest in this instance, and (2) the temporary rulemaking procedures and the notice and comment period provided for in the process for this rule amendment was necessary, because the rule amendment needs to become effective before the next general election in order to preserve the integrity of upcoming elections and the elections process. The rule amendment is based on input from county directors of elections who experienced new issues at the voting place with county-appointed precinct officials in the May 2022 primary. Many of these directors want to ensure that there are clearly defined rules governing poll worker conduct, and those rules are needed before the upcoming general election in which thousands of poll workers will be serving the public. It would not have been possible to have this rule amendment in place before the start of in-person voting on October 20, 2022, if the permanent rulemaking procedures were used. According to the OAH rulemaking calendar, a permanent rule would have to have been drafted, voted on, and noticed to the public by May 24, 2022, at the latest, for a permanent rule to possibly go into effect before in-person voting in the general election. County boards were canvassing the primary at that time, immediately followed by State Board canvass. It would not have been possible to gather sufficient county input on these issues in the immediate days after the primary, to propose well-considered rule amendments.

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

As noted above and as found unanimously by the State Board, the rule amendment needs to become effective before the next general election in order to preserve the integrity of upcoming elections and the elections process.

The need for this rule amendment became apparent based on feedback from county directors following the May primary, mostly through conversations with directors and inquiries to State Board staff. Precinct officials are county poll workers, directly under county board of elections supervision, who take an oath to conduct elections impartially. The amendment proposes adding a list of prohibited conduct by precinct officials. Examples include tampering with voting equipment, making statements about personal political views while on duty, failing to abide by elections laws, rules, and policies applicable to precinct officials, and illegally discriminating against voters. Other changes to the rule would require poll workers to inform the county board if they become disqualified to serve based on being a candidate, holding an elective office, or holding office in a political party. These additions would apply to one-stop early voting workers and Election Day workers.

The issues raised by county directors suggest that poll workers, many of whom are new and inexperienced, need to be clearly informed of prohibited conduct before each election, starting now, to ensure that elections are conducted professionally and impartially.

The State Board of Elections has multiple responsibilities when it comes to managing the conduct of in-person voting. Specifically, General Statute 163-166.7 empowers the Board to draft rules that "shall emphasize the appearance as well as the reality of dignity, good order, impartiality, and the convenience and privacy of the voter." That statute also requires the Board to ensure the security of voting equipment and voting materials. The Board determined that fulfilling these duties with this proposed amendment should not await the passage of another general election.

Further elaboration of the reasons for immediate adoption, as stated in response to Question 6, are hereby incorporated by reference.

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

Yes

Agency submitted request for consultation on:
Consultation not required. Cite authority:

No

9. Rule-making Coordinator:

Paul Cox

Phone:

919-814-0717

E-Mail:

paul.cox@ncsbe.gov

Agency contact, if any:

Phone:

E-Mail:

10. Signature of Agency Head*:



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

Typed Name:

Damon Circosta

Title:

Chair

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

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

Date returned to agency:

Print

Save

Reset

Burgos, Alexander N

Subject: FW: 08 NCAC 10B .0101
Attachments: 08 NCAC 10B .0101 - conforming changes.docx; 08.2022 Spec Meeting Request for Changes BOE 08 NCAC 10B .0101 - SBE notes.docx

From: Cox, Paul <paul.cox@ncsbe.gov>
Sent: Tuesday, August 23, 2022 11:47 AM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Love, Katelyn <Katelyn.Love@ncsbe.gov>; Wakely, Lindsey <Lindsey.Wakely@ncsbe.gov>
Subject: RE: 08 NCAC 10B .0101

Bill,

Please see the attached version of the temporary amendment to Rule 08 NCAC 10B .0101 with changes conforming to your suggestions, and the Change Request document with our responses interspersed in teal lettering. In that latter document, we've highlighted items that led to changes in the temporary rule.

Best regards,

Paul Cox | Associate General Counsel
NORTH CAROLINA STATE BOARD OF ELECTIONS
430 N SALISBURY STREET
RALEIGH, NC 27611
919.814.0700
www.ncsbe.gov

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina State Board of Elections

RULE CITATION: 08 NCAC 10B .0101

DEADLINE FOR RECEIPT: Tuesday, August 23, 2022, by 5:00 P.M.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

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

In reviewing this Rule, the staff recommends the following changes be made:

Page 1, Line 13, (b)(1): As G.S. 163-46 requires attendance at the instructional meeting, why is this part necessary pursuant G.S. 150B- 21.9(a)(3)? *This is language in the permanent rule that the agency has not proposed to be temporarily amended. The public has had no notice that any change to this language was being considered in this temporary amendment process.*

Page 1, Line 20, (b)(3): Consider striking “so that the county board may appoint an emergency election-day assistant.” *This is language in the permanent rule that the agency has not proposed to be temporarily amended. The public has had no notice that any change to this language was being considered in this temporary amendment process.*

Page 1, Line 24, (b)(6): “election day” should be “Election Day”. *This is language in the permanent rule that the agency has not proposed to be temporarily amended. The public has had no notice that any change to this language was being considered in this temporary amendment process.*

Page 1, Line 27-28, (b)(8): Why is this part necessary pursuant to G.S. 150B- 21.9(a)(3)? Does G.S. 163-41 not address this? *This is language in the permanent rule that the agency has not proposed to be temporarily amended. The public has had no notice that any change to this language was being considered in this temporary amendment process.*

Page 1, Lines 31-33(b)(10): Why is this part necessary pursuant to G.S. 150B- 21.9(a)(3)? Does not G.S. 163-41(d) not address this? *This is language in the permanent rule that the agency has not proposed to be temporarily amended. The public has had no notice that any change to this language was being considered in this temporary amendment process.*

Page 1, Line 34-35, (b)(11): If 08 NCAC 10B .0102 already prescribes when precinct officials must be present, why is this part necessary pursuant to G.S. 150B- 21.9(a)(3)? *This is language in the permanent rule that the agency has not proposed to be temporarily amended. The public*

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has had no notice that any change to this language was being considered in this temporary amendment process.

Page 2, Lines 6-7, (b)(16): Why is this part necessary pursuant to G.S. 150B- 21.9(a)(3)? Does G.S. 163-182.3 not address this? This is language in the permanent rule that the agency has not proposed to be temporarily amended. The public has had no notice that any change to this language was being considered in this temporary amendment process.

Page 2, Lines 12-21(b)(19): Why is this part necessary pursuant to G.S. 150B- 21.9(a)(3)? Does G.S. 163-48 not address this? This is language in the permanent rule that the agency has not proposed to be temporarily amended. The public has had no notice that any change to this language was being considered in this temporary amendment process.

Page 2, Lines 22-23 (20): Why is this part necessary pursuant to G.S. 150B- 21.9(a)(3)? Does 08 NCAC 10B .0101 not address this? This is language in the permanent rule that the agency has not proposed to be temporarily amended. The public has had no notice that any change to this language was being considered in this temporary amendment process.

Page 2, Lines 25-29: Why is this part necessary pursuant to G.S. 150B- 21.9(a)(3)? Does G.S. 163-43 not address this? This is language in the permanent rule that the agency has not proposed to be temporarily amended. The public has had no notice that any change to this language was being considered in this temporary amendment process.

Page 2, Lines 32-34: Why is this part necessary pursuant to G.S. 150B- 21.9(a)(3)? Does G.S. 163-275 not already prohibit this? This is language in the permanent rule that the agency has not proposed to be temporarily amended. The public has had no notice that any change to this language was being considered in this temporary amendment process.

Page 3, Lines 1-2: Why is this part necessary pursuant to G.S. 150B- 21.9(a)(3)? This is language in the permanent rule that the agency has not proposed to be temporarily amended. The public has had no notice that any change to this language was being considered in this temporary amendment process.

Page 3, Lines 3-4: Why is the language “in accordance with election statutes, within rules of the State Board of Elections, and under the supervision of the county board of elections” necessary pursuant to G.S. 150B- 21.9(a)(3)? Are these statutes and rules not otherwise applicable? This is language in the permanent rule that the agency has not proposed to be temporarily amended. The public has had no notice that any change to this language was being considered in this temporary amendment process.

Page 3, Lines 6-7,(c)(1): As G.S. 163-46 requires attendance at the instructional meeting, why is this part necessary pursuant to G.S. 150B- 21.9(a)(3)? This is language in the permanent rule that the agency has not proposed to be temporarily amended. The public has had no notice that any change to this language was being considered in this temporary amendment process.

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Generally, to paragraphs (c), (d), and (e): If a statute or rule prescribes requirements or prohibits actions, the restatement of the prescriptions or prohibitions in a rule (or another rule) is not reasonably necessary pursuant to G.S. 150B-21.9(3). This is language in the permanent rule that the agency has not proposed to be temporarily amended. The public has had no notice that any change to this language was being considered in this temporary amendment process.

Page 4, Lines 31-33, (f) (1) and (2): Why is this language necessary pursuant to G.S. 150B-21.9? What, if anything, is addressed in this language that isn't already prescribed by G.S. 163-43? This is language in the permanent rule that the agency has not proposed to be temporarily amended. The public has had no notice that any change to this language was being considered in this temporary amendment process.

Page 5, Lines 4-9, (f): What, if anything, is addressed in this language that isn't already prescribed by G.S. 163-43? Why is this language necessary pursuant to G.S. 150B-21.9? This is language in the permanent rule that the agency has not proposed to be temporarily amended. The public has had no notice that any change to this language was being considered in this temporary amendment process.

Page 5, Line 10-12, (g): Why is the language "in accordance with election statutes, within rules of the State Board of Elections, and under the supervision of the county board of elections" necessary pursuant to G.S. 150B- 21.9(a)(3)? Are these statutes and rules not otherwise applicable? This is language in the permanent rule that the agency has not proposed to be temporarily amended. The public has had no notice that any change to this language was being considered in this temporary amendment process.

Page 5, Lines 13-17, (g)(1)-(4): What if any additional requirements is the agency placing upon the precinct officials that is not already required in G.S. 163-182.2? This is language in the permanent rule that the agency has not proposed to be temporarily amended. The public has had no notice that any change to this language was being considered in this temporary amendment process.

Page 5, Line 32, (g)(12): Define "registration records". Isn't some of the information available to the public? This is language in the permanent rule that the agency has not proposed to be temporarily amended. The public has had no notice that any change to this language was being considered in this temporary amendment process.

Page 6, Line 2, (g)(15): Should "can not" be "cannot"? This is language in the permanent rule that the agency has not proposed to be temporarily amended. The public has had no notice that any change to this language was being considered in this temporary amendment process.

Page 6, Line 4, (g)(16): "election day" should be "Election Day". This is language in the permanent rule that the agency has not proposed to be temporarily amended. The public has had no notice that any change to this language was being considered in this temporary amendment process.

Page 6, Line 13, (g)(20): Is “voting place” defined by rule or statute? This is language in the permanent rule that the agency has not proposed to be temporarily amended. The public has had no notice that any change to this language was being considered in this temporary amendment process.

Page 6, Line 26, (h)(1): Define or delete “tampering”. Consider “Altering, adjusting or manipulating voting equipment without the explicit instructions of the Chief Judge or the election official designated to act in the absence of the Chief Judge.” This change has been made.

Page 6, Line 28, (h)(3): As written, an election official conducting an inquiry with reasonable suspicion of a lawful voter would have violated the rule. Is that what the agency intended? Consider “Intentionally interfering with, delaying, or preventing a voter from lawfully casting a ballot without lawful cause.” “Lawfully” indicates that the voter is eligible to vote their ballot. A voter who is not eligible to vote would not be “lawfully casting their ballot. We have clarified that a voter challenge would be permitted the lawful manner for a precinct official to contest a voter’s eligibility.

Page 6, Line 29, (h)(4): Define “personal political views”. Define “on duty”. “Personal political views” has been changed to personal views about candidates, referenda, or political issues pertaining to contests on the ballot, and it is clarified that they may provide technical information about voting, including marking the ballot. It has been clarified to indicate that “on duty” refers to while on duty as a precinct official.

Page 6, Line 30, (h)(5): CBOE training pursuant to what authority? G.S. 163-82.24? 08 NCAC 04 .0305? Yes, or this rule.

Page 6, Line 31, (h)(6): Are not chief judges “precinct officials”? As written, a chief judge, being a precinct official, would violate the rule if he or she failed to follow the orders of a precinct judge. Is that what the agency intended? “As applicable” has been added since the “chief judge” language would not apply if the chief judge was the one doing the disobeying.

Page 6, Line 35, (7): How will the inaccuracy of the information be determined? We believe the changes address this concern about determining inaccuracy. The rule now indicates that the information must be false, AND that it must be contrary to training or information provided to the precinct official OR that it must be false information about the occurrence of an incident at the voting place.

Page 6, Line 34 (8): To what policies is the agency referring? If the “policies” met the definition of a “Rule” pursuant to G.S.150B-2(8a), the policy must be adopted as a rule pursuant to Article 2A of Chapter 150B. The agency cannot bootstrap a policy into a rule. Delete “policies”. This has been clarified to change “policy” to “Numbered Memos.”

Page 6, Line 35, (h)(9): Define “incidents”. A definition has been added.

Page 6, Line 35, (h)(9): How are the precinct official being “instructed”? If the instructions met the definition of a “Rule” pursuant to G.S.150B-2(8a), the instruction must be adopted as a rule

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pursuant to Article 2A of Chapter 150B. The agency cannot bootstrap an instruction into a rule.
This has been removed.

Page 7, Line 1, (10): Define or delete “confidential voter information” or cite a definition. Define “confidential information”? Consider adding “or as required by law.” The definition of confidential voter information has been added. It has been clarified that providing security features of voting systems is prohibited altogether, so the word “confidential” has been removed.

Page 7, Line 6, (12): Define or delete “political activities”. G.S. 163-41(e) does not prohibit any political activities. Rather it requires an oath which contains a promise not to “request or seek to persuade or induce any voter”. The language has been changed to mirror the statute.

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

1 **INTRODUCTORY STATEMENT**

2 The following temporary rule amendment to 08 NCAC 10B .0101 was adopted by the State Board of Elections on
3 August 16, 2022 with changes. Notice of the proposed temporary amendment was published on the Office of
4 Administrative Hearings website on July 21, 2022, in accordance with G.S. 150B-21.1(a3).

5
6 **08 NCAC 10B .0101 TASKS AND DUTIES OF PRECINCT OFFICIALS AT VOTING PLACES**

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

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

- 12 (1) attend an instructional meeting presented by the county board of elections prior to each primary or
13 election as required by G.S. 163-46;
- 14 (2) upon learning that any parent, spouse, child, or sibling of the Precinct Chief Judge has filed for
15 elective office, inform the county board of elections so that the county board of elections may
16 disqualify the Precinct Chief Judge under G.S. 163-41.1(b) for the specific primary or election
17 involved;
- 18 (3) upon learning that any parent, parent in-law, spouse, child, child in-law, sibling, or sibling in-law of
19 the Precinct Chief Judge has been appointed to serve in the same precinct, inform the county board
20 of elections so that the county board of elections may appoint an emergency election-day assistant;
- 21 (4) receive and review the signed list of the appointed observers as provided in G.S. 163-45;
- 22 (5) receive and post a sample ballot in the voting place as provided in G.S. 163-165.2;
- 23 (6) notify the county board of elections of any sickness, emergency, or other circumstances that will or
24 might prevent the person from performing as precinct chief judge on a primary or election day;
- 25 (7) receive, prior to the day of the primary or election, from the county board of elections any security
26 keys or codes as to any voting systems or units that are to be operated at the precinct;
- 27 (8) prior to the opening of the polls, administer to any precinct official, not previously sworn, the oath
28 of office as set out in G.S. 163-41;
- 29 (9) prior to the opening of the polls, ensure the technology and connectivity requirements of 08 NCAC
30 10B .0109(b) are met;
- 31 (10) if at the time of opening the voting place, a judge has not appeared, appoint another person to act as
32 precinct judge until the chair of the county board of elections appoints a replacement as set out in
33 G.S. 163-41;
- 34 (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
35 mandated by G.S. ~~163-166~~ 163-166.01 and 08 NCAC 10B .0102;
- 36 (12) respond to any voter's request to have assistance to vote as set out in the provisions of G.S. 163-
37 166.8(b);

- 1 (13) ensure the continued arrangement of the voting enclosure as required in G.S. 163-166.2;
- 2 (14) supervise the closing of the voting place at 7:30 p.m. in compliance with procedures set out in G.S.
- 3 163-166.10 and 08 NCAC 10B .0105;
- 4 (15) handle challenges made on election or primary day in accordance with G.S. 163-87, and conduct
- 5 the hearing upon said challenge in accordance with G.S. 163-88;
- 6 (16) be responsible, as mandated by G.S. 163-182.3, for adherence to all rules pertaining to counting,
- 7 reporting, and transmitting official ballots under 08 NCAC 10B .0105 and .0106;
- 8 (17) ensure the maintenance of and appearance of efficient, impartial, and honest election administration
- 9 at the precinct as required by G.S. 163-166.5(3);
- 10 (18) monitor the grounds around the voting place to ensure compliance with the limitation on activity in
- 11 the buffer zone under G.S. 163-166.4(a);
- 12 (19) ensure peace and good order at the voting place as required by G.S. 163-48. Examples of peace and
- 13 good order include:
- 14 (A) keeping open and unobstructed the place at which voters or persons seeking to register or
- 15 vote have access to the place of registration and voting;
- 16 (B) preventing and stopping attempts to obstruct, intimidate, or interfere with any person in
- 17 registering or voting;
- 18 (C) protecting challengers and witnesses against molestation and violence in the performance
- 19 of their duties; and
- 20 (D) ejecting from the place of registration or voting any challenger or witness for violation of
- 21 any provisions of the election laws or rules.
- 22 (20) ensure that voters are able to cast their votes in dignity, good order, impartiality, convenience, and
- 23 privacy as required in G.S. 163-166.7(c) and 08 NCAC 10B .0101;
- 24 (21) if needed, check or assist in checking the registration of voters at the voting place;
- 25 (22) if ballot counters are authorized by the county board of elections under G.S. 163-43, receive the list
- 26 of counters from the county board, or appoint counters if authorized to do so by the county board.
- 27 Prior to a ballot counter performing duties and tasks, administer the oath required by G.S. 163-43.
- 28 Report to the county board of elections the names and addresses of any ballot counters to the county
- 29 board at the county canvass as set out in G.S. 163-43.
- 30 (23) perform the required legal duties of chief precinct judge/judge or face criminal consequences as set
- 31 out in G.S. 163-274 (1); ~~and~~
- 32 (24) not accept money from candidates, commit fraud, false statements, or false writings in performing
- 33 election duties, or face the criminal consequences set out in G.S. ~~163-275(3),(8),(9) and (12).~~ 163-
- 34 275(3), (8), (9), (12), (14), and (18); and
- 35 (25) prior to performing duties and tasks after being duly appointed, take the oath required by G.S. 163-
- 36 41.

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

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

- 6 (1) attend an instructional meeting presented by the county board of elections prior to each primary or
7 election as required by G.S. 163-46;
- 8 (2) upon learning that any parent, spouse, child, or sibling of the Precinct Judge has filed for elective
9 office, inform the county board of elections so that the county board of elections may disqualify the
10 Precinct Judge under G.S. 163-41.1(b) for the specific primary or election involved;
- 11 (3) upon learning that any parent, parent in-law, spouse, child, child in-law, sibling, sibling in-law or
12 first cousin of the Precinct Judge has been appointed to serve in the same precinct, inform the county
13 board of elections so that the county board of elections may appoint an emergency election-day
14 assistant;
- 15 (4) if the chief judge fails to appear at the opening of poll, appoint, with the other precinct judge, a
16 person to act as chief judge until the chairman of the county board appoints a new chief judge as per
17 G.S. 163-41;
- 18 (5) notify the county board of elections of any sickness, emergency, or other circumstances that will or
19 might prevent the person from performing as precinct ~~chief~~ judge on a primary or election day;
- 20 (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.
21 as mandated by G.S. 163- ~~166~~ 166.01 and any rules promulgated under 08 NCAC 10B .0102;
- 22 (7) perform the required legal duties of chief precinct judge/judge or face criminal consequences as set
23 out in G.S. 163-274(1);
- 24 (8) not accept money from candidates, commit fraud, false statements, or false writings in performing
25 election duties, or face the criminal consequences set out in G.S. ~~163-275(3)(8)(9) and (12).~~ 163-
26 275(3), (8), (9), (12), (14), and (18);
- 27 (9) aid and cooperate with the precinct chief judge, as requested or needed, as to those duties noted in
28 Subparagraphs (12) through (21) of Paragraph (b) of this ~~Rule.~~ Rule; and
- 29 (10) prior to performing duties and tasks after being duly appointed, take the oath required by G.S. 163-
30 41.

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

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

- 36 (1) check the registration of voters at the voting place as per G.S. 163-166.7(a);
- 37 (2) guide voters to voting units or provide voters ballots as per G.S. 163-166.7(b);

- 1 (3) prior to performing duties and tasks after being duly appointed, take the oath required by G.S. 163-
2 41;
- 3 (4) notify the county board of elections of any sickness, emergency, or other circumstances that will or
4 might prevent the person from performing as an election assistant on a primary or election day;
- 5 (5) upon learning that any parent, spouse, child, or sibling of the Election Assistant has filed for elective
6 office, inform the county board of elections so that the county board of elections may disqualify the
7 Election Assistant under G.S. 163-41.1(b) for the specific primary or election involved;
- 8 (6) upon learning that any parent, parent in-law, spouse, child, child in-law, sibling, sibling in-law or
9 first cousin of the Election Assistant has been appointed to serve in the same precinct, inform the
10 county board of elections so that the county board of elections may appoint an emergency election-
11 day assistant; and
- 12 (7) aid the chief judge and other precinct judges in the performances of their tasks and duties as needed
13 or directed.

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

- 17 (1) be prepared prior to and on the day of a primary or election to serve, on notice given by the county
18 board of elections, to travel to and work at any voting place within the county;
- 19 (2) perform all the tasks and duties of an election assistant as set out in Paragraph (d) of this Rule;
- 20 (3) notify the county board of elections of any sickness, emergency, or other circumstances that will or
21 might prevent the person from performing as an election assistant on a primary or election day;
- 22 (4) upon learning that any parent, spouse, child, or sibling of the emergency election-day assistant has
23 filed for elective office, to inform the county board of elections so that the county board of elections
24 may disqualify the emergency election-day assistant under G.S. 163-41.1(b) for the specific primary
25 or election involved; and
- 26 (5) upon learning that any parent, parent in-law, spouse, child, child in-law, sibling, sibling in-law or
27 first cousin of the emergency election-day assistant has been appointed to serve in the same precinct,
28 inform the county board of elections.

29 (f) Tasks of Ballot Counters - All ballot counters, in accordance with election statutes, with the rules of the State
30 Board of Elections and under supervision of the county board of elections, shall perform all the following:

- 31 (1) after appointment, appear at the poll at close of the polls and to be prepared to count ballots under
32 the direction and control of the chief and other precinct judges;
- 33 (2) prior to a ballot counter performing duties and tasks, take the oath required by G.S. 163-43;
- 34 (3) upon learning that any parent, spouse, child, or sibling of the ballot counter has filed for elective
35 office, inform the county board of elections so that the county board of elections may disqualify the
36 ballot counter under G.S. 163-41.1(b) for the specific primary or election involved; and

- 1 (4) upon learning that any parent, parent in-law, spouse, child, child in-law, sibling, sibling in-law or
2 first cousin of the ballot counter has been appointed to serve in the same precinct, inform the county
3 board of elections.

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

10 (g) General duties of all Precinct Officials - All precinct officials, in accordance with election statutes, with the rules
11 of the State Board of Elections and under the supervision of the county board of elections, shall perform all of the
12 following:

- 13 (1) count votes when votes are required to be counted at the voting place, G.S. 163-182.2;
14 (2) make an unofficial report of returns to the county board of elections, G.S. 163-182.2;
15 (3) certify the integrity of the vote and the security of the official ballots at the voting place, G.S. 163-
16 182.2;
17 (4) return official ballots and equipment to the county board of elections, G.S. 163-182.2;
18 (5) ensure that the voting system cannot be tampered with throughout the period voting is being
19 conducted;
20 (6) ensure that only properly voted official ballots are introduced into the voting system;
21 (7) ensure that, except as provided by G.S. 163-166.9, no official ballots leave the voting enclosure
22 during the time voting is being conducted there;
23 (8) ensure that all improperly voted official ballots are returned to the precinct officials and marked as
24 spoiled;
25 (9) ensure that voters leave the voting place after voting;
26 (10) ensure that voters not eligible to vote in the precinct but who seek to vote there are given assistance
27 in voting a provisional official ballot or guidance to another voting place where they are eligible to
28 vote;
29 (11) ensure that information gleaned through the voting process that would be helpful to the accurate
30 maintenance of the voter registration records, including any updates to a voter's voter registration,
31 is recorded and delivered to the county board of elections;
32 (12) ensure that registration records can only be accessed by precinct officials;
33 (13) ensure that party observers are given access as provided by G.S. 163-45 to current information about
34 which voters have voted;
35 (14) aid any voter, as needed, in curbside voting as provided for in G.S. 163-166.9;

- 1 (15) provide Spanish ballot instructions when such instructions are required by Section 203 of the Voting
2 Rights Act of 1965, and direct all language needs that can not be handled at the precinct to the
3 county board office;
- 4 (16) register and help, at the voting place, those persons eligible to register and vote on election day as
5 allowed by G.S. 163-258.28 and G.S. 163-82.6(d);
- 6 (17) report to the county board of elections, any physical or mental ailment, impairment, or deterioration
7 that may adversely affect the performance of an election related task or duty. Report any such
8 conditions known in any other precinct officials to the county board;
- 9 (18) report any violation of election laws or regulations to the chief judge, or report such violation to the
10 county board of elections if the chief precinct judge is involved in the violation;
- 11 (19) provide any person who requests it any information on how to contact the county director of
12 elections, the county board of elections, or the office of the State Board of Elections; ~~and~~
- 13 (20) work and stay at the voting place, at all times during the voting day, until closure. By prior agreement
14 with the county board of elections and pursuant to G.S. 163-42, election assistants and emergency
15 election-day assistants may work less than the entire voting ~~day, day; and~~
- 16 (21) Upon learning that any of the following statements are true, inform the county board of elections so
17 that the county board of elections may disqualify the precinct official under G.S. 163-41:
 - 18 (A) The precinct official holds any elective office under the government of the United States,
19 or of the State of North Carolina or any political subdivision thereof;
 - 20 (B) The precinct official is a candidate for nomination or election; or
 - 21 (C) The precinct official holds any office in a state, congressional district, county, or precinct
22 political party or political organization, or is a manager or treasurer for any candidate or
23 political party, provided however that the position of delegate to a political party
24 convention shall not be considered an office for the purpose of this subsection.

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

- 26 (1) [Tampering with voting equipment;]Altering, adjusting or manipulating voting equipment without
27 the explicit instructions of the Chief Judge or the election official designated to act in the absence
28 of the Chief Judge;
- 29 (2) Permitting unauthorized access to voting facilities or equipment;
- 30 (3) Intentionally interfering with, delaying, or preventing a voter from lawfully casting [their ballot;]a
31 ballot unless done pursuant to a voter challenge under Article 8 of Chapter 163;
- 32 (4) Making statements about personal [political-]views about candidates, political issues pertaining to
33 the contests on the ballot, or referenda while on [duty;]duty as a precinct official; however,
34 providing technical information about voting, including how to mark a ballot, is permitted;
- 35 (5) Failing to attend trainings required by the county board of elections pursuant to G.S. 163-82.24, 08
36 NCAC 04 .0305, or Paragraph (b)(1) or (c)(1) of this Rule;

- 1 (6) Failing to follow lawful instructions of the county board, county board staff, chief judge, judges, or
2 one-stop site ~~manager;~~ manager, as applicable;
- 3 (7) ~~Intentionally providing inaccurate~~ Providing false information about the administration of the
4 ~~election;~~ election or the voting process, contrary to training or instruction provided by the county
5 board of elections, chief judge, judges, or one-stop site manager, as applicable, or providing false
6 information about the occurrence of an incident at the voting place;
- 7 (8) Failing to abide by the election rules, laws, and ~~policies;~~ Numbered Memos, which are posted on
8 the State Board of Elections' website, applicable to precinct officials;
- 9 (9) ~~Intentionally;~~ Knowingly failing to report incidents occurring at the voting place to the chief judge,
10 one-stop site manager, or county board of elections. ~~elections, as instructed;~~ For the purpose of
11 this Subparagraph, "incident" includes the occurrence of an irregularity such as a legal violation,
12 accident, emergency, equipment malfunction, or other situation that is documented on an Incident
13 Report form;
- 14 (10) Providing confidential voter information, vote tallies before the close of the polls, or ~~confidential~~
15 information on security features of voting equipment or voting facilities to non-elections officials;
16 "Confidential voter information" includes a voter's date of birth, the identity of the public agency
17 where they registered to vote, email address, full or partial Social Security number, driver's license
18 number, an image or copy of the voter's signature, and retrievable ballot identification number
19 assigned for official use by the county board (e.g., CIV, OS, MIL, or OVR numbers);
- 20 (11) Discriminating against voters on the basis of race, color, ethnicity, religion, sex, national origin, age,
21 disability, or political affiliation (except for the purposes of lawfully determining eligibility to
22 participate in partisan primaries); and
- 23 (12) ~~Engage in any political activities;~~ Requesting or seeking to persuade or induce any voter to vote
24 for or against any particular candidate or proposition between the start of one-stop early voting and
25 11:59 p.m. on Election Day during the election in which a precinct official is serving.

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

27
28 *History Note: Authority G.S. 163-22; 163-41; 163-42; 163-47; 163-166.6; 163-166.7; 163-273; 163-274;*
29 *Temporary Adoption Eff. April 15, 2002;*
30 *Eff. August 1, 2004;*
31 *Readopted Eff. September 1, 2019; Temporary Amendment Eff.*

Burgos, Alexander N

Subject: FW: Temporary Rule Findings of Need Form

From: Snyder, Ashley B <ashley.snyder@oah.nc.gov>

Sent: Tuesday, August 23, 2022 10:13 AM

To: Wakely, Lindsey <Lindsey.Wakely@ncsbe.gov>; Cox, Paul <paul.cox@ncsbe.gov>

Cc: Peaslee, William W <bill.peaslee@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; McGhee, Dana <dana.McGhee@oah.nc.gov>

Subject: Temporary Rule Findings of Need Form

Good morning, Lindsey and Paul,

It has come to my attention that the findings of need forms for the State Board of Elections' proposed temporary rules have not been signed by the head of the agency. G.S. 150B-21.1 requires temporary rules to be signed by the head of the agency and G.S. 150B-21.19 mandates the signature prior to inclusion in the Code. The head of the agency is the head of the board. If RRC approves your temporary rules, please be aware that I need a signature from the head of the board prior to entry in the Code. Thank you for your attention to this matter.

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

...

(a4) An agency must also prepare a written statement of its findings of need for a temporary rule stating why adherence to the notice and hearing requirements in G.S. 150B-21.2 would be contrary to the public interest and why the immediate adoption of the rule is required. If the temporary rule establishes a new fee or increases an existing fee, the agency shall include in the written statement that it has complied with the requirements of G.S. 12-3.1. **The statement must be signed by the head of the agency adopting the temporary rule.**

§ 150B-21.19. Requirements for including rule in Code.

To be acceptable for inclusion in the North Carolina Administrative Code, a rule must:

- (1) Cite the law under which the rule is adopted.
- (2) **Be signed by the head of the agency or the rule-making coordinator for the agency that adopted the rule.**
- (3) Be in the physical form specified by the Codifier of Rules.
- (4) Have been approved by the Commission, if the rule is a permanent rule.
- (5) Have complied with the provisions of G.S. 12-3.1, if the rule establishes a new fee or increases an existing fee.

§ 150B-2. Definitions.

As used in this Chapter, the following definitions apply:

- (1b) Agency. - An agency or an officer in the executive branch of the government of this State. The term includes the Council of State, the Governor's Office, a board, a commission, a department, a division, a council, and any other unit of government in the executive branch. A local unit of government is not an agency.

Ashley Snyder

Codifier of Rules

Office of Administrative Hearings

(984) 236-1941

Burgos, Alexander N

From: Peaslee, William W
Sent: Monday, August 22, 2022 4:46 PM
To: Cox, Paul
Cc: Burgos, Alexander N; Love, Katelyn; Wakely, Lindsey
Subject: RE: 08 NCAC 10B .0101

Thank you for your email.

Notwithstanding the permissive language of G.S. 150B-21.8(c) concerning permanent rules, G.S. 150B-21.1 states when an agency adopts a temporary rule, the rule, not the amendment, is subject to review.

As always if you have any questions or concerns please do not hesitate to contact me.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

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From: Cox, Paul <paul.cox@ncsbe.gov>
Sent: Monday, August 22, 2022 4:10 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Love, Katelyn <Katelyn.Love@ncsbe.gov>; Wakely, Lindsey <Lindsey.Wakely@ncsbe.gov>
Subject: RE: 08 NCAC 10B .0101

Thank you, William. We are looking at these now and appreciate your prompt feedback.

Could we get one clarification? Some of the suggested revisions/concerns address parts of the permanent rules that the State Board of Elections has not proposed for temporary amendment. We had the understanding that Commission review of temporary amendments was limited in scope to the amendments, and not the entirety of the permanent rule, under G.S. 150B-21.8(c). Is the Commission's interpretation different? This has implications, as well, for an agency's authority to make changes to parts of the permanent rule that had not been proposed for temporary amendment, in this interim post-submission period.

Thank you for this clarification.

Best,

Paul Cox | Associate General Counsel

NORTH CAROLINA STATE BOARD OF ELECTIONS
430 N SALISBURY STREET
RALEIGH, NC 27611
919.814.0700
www.ncsbe.gov

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Monday, August 22, 2022 3:58 PM
To: Cox, Paul <paul.cox@ncsbe.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: 08 NCAC 10B .0101

Good afternoon, Mr. Cox,

I'm the attorney who reviewed the Rule submitted by the State Board of Elections for the August 2022 Special RRC meeting. The RRC will formally review this Rule at its meeting on Thursday, August 25, 2022, at 10:30 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an evite should be sent to you as we get closer to the meeting. If there are any other representatives from your agency who will want to attend virtually, let me know prior to the meeting, and we will get evites out to them as well.

Please submit the revised Rule and forms to me via email, no later than 5:00 p.m. on August 23, 2022.

In the meantime, please let me know if you have any questions or concerns.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

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