

Burgos, Alexander N

Subject: FW: SBE RFC - August 2026

From: Steele, Adam <adam.steele@ncsbe.gov>

Sent: Friday, August 28, 2026 3:38 PM

To: Liebman, Brian R <brian.liebman@oah.nc.gov>; Ascher, Seth M <seth.ascher@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>

Cc: SBOE_Grp - Legal <Legal@ncsbe.gov>; LiVecchi, Brian P <brian.livecchi@ncsbe.gov>

Subject: RE: SBE RFC - August 2026

Thanks so much!

Adam Steele | Deputy General Counsel

North Carolina State Board of Elections

[430 N Salisbury Street](#)

[Raleigh, NC 27611](#)

Main Line: [919.814.0700](#)

Direct: [919.814.0654](#)

From: Liebman, Brian R <brian.liebman@oah.nc.gov>

Sent: Friday, August 28, 2026 3:10 PM

To: Steele, Adam <adam.steele@ncsbe.gov>; Ascher, Seth M <seth.ascher@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>

Cc: SBOE_Grp - Legal <Legal@ncsbe.gov>; LiVecchi, Brian P <brian.livecchi@ncsbe.gov>

Subject: Re: SBE RFC - August 2026

Hi all,

I'm including OAH rules on this just so Julie is aware that unless it gets 10 letters, rule 08 NCAC 09 .0110 should go into effect on September 1.

Thanks,

Brian

Brian Liebman

Codifier of Rules

Office of Administrative Hearings

[\(984\)236-1941](tel:(984)236-1941)

brian.liebman@oah.nc.gov

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law N.C.G.S. Chapter 132 and may be disclosed to third parties.

From: Steele, Adam <adam.steele@ncsbe.gov>

Sent: Friday, August 28, 2026 2:51 PM

To: Ascher, Seth M <seth.ascher@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>;

Liebman, Brian R <brian.liebman@oah.nc.gov>

Cc: SBOE_Grp - Legal <Legal@ncsbe.gov>; LiVecchi, Brian P <brian.livecchi@ncsbe.gov>

Subject: RE: SBE RFC - August 2026

Thanks, Seth. If you or Brian need any final confirmation from us on Monday, please let me know. Have a great weekend.

Thanks,

Adam Steele | Deputy General Counsel

North Carolina State Board of Elections

430 N Salisbury Street

Raleigh, NC 27611

Main Line: 919.814.0700

Direct: 919.814.0654

From: Ascher, Seth M <seth.ascher@oah.nc.gov>

Sent: Friday, August 28, 2026 2:34 PM

To: Steele, Adam <adam.steele@ncsbe.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Liebman, Brian R <brian.liebman@oah.nc.gov>

Cc: SBOE_Grp - Legal <Legal@ncsbe.gov>; LiVecchi, Brian P <brian.livecchi@ncsbe.gov>

Subject: Re: SBE RFC - August 2026

Adam,

I am including Brian Liebman in this email as he will ultimately have to implement the effective dates.

Seth Ascher

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

(984) 236-1934

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: Steele, Adam <adam.steele@ncsbe.gov>

Sent: Friday, August 28, 2026 2:32 PM

To: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Ascher, Seth M <seth.ascher@oah.nc.gov>

Cc: SBOE_Grp - Legal <Legal@ncsbe.gov>; LiVecchi, Brian P <brian.livecchi@ncsbe.gov>

Subject: RE: SBE RFC - August 2026

Seth,

I see the only rule left without 10 objection letters is 08 NCAC 09 .0110. If that one does not reach 10 letters by the 5pm deadline today, then we would want that rule to still be effective on September 1.

Thanks,

Adam Steele | Deputy General Counsel

North Carolina State Board of Elections

430 N Salisbury Street

Raleigh, NC 27611

Main Line: 919.814.0700

Direct: 919.814.0654

From: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Sent: Thursday, August 27, 2026 6:17 PM

To: Steele, Adam <adam.steele@ncsbe.gov>; Ascher, Seth M <seth.ascher@oah.nc.gov>

Cc: SBOE_Grp - Legal <Legal@ncsbe.gov>; LiVecchi, Brian P <brian.livecchi@ncsbe.gov>

Subject: RE: SBE RFC - August 2026

Sure thing Adam, I will send you an update again tomorrow.

Alexander Burgos

Paralegal

Office of Administrative Hearings

1711 New Hope Church Road

Raleigh NC, 27609

(984) 236-1940

Alexander.burgos@oah.nc.gov

From: Steele, Adam <adam.steele@ncsbe.gov>

Sent: Thursday, August 27, 2026 6:09 PM

To: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Ascher, Seth M <seth.ascher@oah.nc.gov>

Cc: SBOE_Grp - Legal <Legal@ncsbe.gov>; LiVecchi, Brian P <brian.livecchi@ncsbe.gov>

Subject: RE: SBE RFC - August 2026

Thanks, Alex. Just to confirm, my read of 150B-21.3 is that the objections are due by 5pm tomorrow for them to be timely. If that's right, would it be possible to get another update in the middle of the day?

Thanks,

Adam Steele | Deputy General Counsel

North Carolina State Board of Elections

430 N Salisbury Street

Raleigh, NC 27611

Main Line: 919.814.0700

Direct: 919.814.0654

From: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Sent: Thursday, August 27, 2026 5:43 PM

To: Steele, Adam <adam.steele@ncsbe.gov>; Ascher, Seth M <seth.ascher@oah.nc.gov>

Cc: SBOE_Grp - Legal <Legal@ncsbe.gov>; LiVecchi, Brian P <brian.livecchi@ncsbe.gov>

Subject: RE: SBE RFC - August 2026

Adam, here is the final link to the letters:

[Letters requesting legislative review](#) Updated 8/27/2026

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: SBE RFC - August 2026

From: Steele, Adam <adam.steele@ncsbe.gov>
Sent: Thursday, August 20, 2026 5:16 PM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; SBOE_Grp - Legal <Legal@ncsbe.gov>; LiVecchi, Brian P <brian.livecchi@ncsbe.gov>
Subject: RE: SBE RFC - August 2026

Thank you, Seth.

I will be in attendance at the RRC meeting on August 27 and while I do not plan to make a statement in support of the agency's rules, I would request the opportunity to respond to comments offered at the meeting. I will also be happy to answer any questions from the Commissioners.

Thanks,

Adam Steele | Deputy General Counsel
North Carolina State Board of Elections
[430 N Salisbury Street](#)
[Raleigh, NC 27611](#)
Main Line: [919.814.0700](#)
Direct: [919.814.0654](#)

From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Thursday, August 20, 2026 4:58 PM
To: Steele, Adam <adam.steele@ncsbe.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; SBOE_Grp - Legal <Legal@ncsbe.gov>
Subject: Re: SBE RFC - August 2026

Adam,

I have reviewed your updates and responses, and in my opinion you have addressed the concerns I raised. At this point, I anticipate recommending approval of the final revised version of these rules. However, as I am sure you know, we are receiving a large volume of comments on these rules. I will be continuing to review those comments and will let you know if I have any further questions as a result.

If you believe that any written comments merit a response in writing, please feel free to provide one.

Seth Ascher
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984) 236-1934

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.

Burgos, Alexander N

Subject: FW: SBE RFC - August 2026

From: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Sent: Wednesday, August 19, 2026 8:08 AM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>; Steele, Adam <adam.steele@ncsbe.gov>
Cc: SBOE_Grp - Legal <Legal@ncsbe.gov>
Subject: RE: SBE RFC - August 2026

Good morning, Adam,

I just want to update you that 08 NCAC 10C .0104 now has 12 letters requesting legislative review. I will keep you posted on the others as we move along. We also received several more comments yesterday and a request to speak which you were copied.

<https://www.oah.nc.gov/august-elections-request-legislative-review-0/open>

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

From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Tuesday, August 18, 2026 4:52 PM
To: Steele, Adam <adam.steele@ncsbe.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; SBOE_Grp - Legal <Legal@ncsbe.gov>
Subject: Re: SBE RFC - August 2026

Adam,

Thank you for your timely response. I will review these and get back to you soon, aiming for Thursday.

Seth Ascher
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984) 236-1934

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.

Burgos, Alexander N

Subject: FW: SBE RFC - August 2026
Attachments: 08 NCAC 09 .0106.docx; 08 NCAC 10C .0103.docx; State Board of Elections RFC August 2026.docx

From: Steele, Adam <adam.steele@ncsbe.gov>
Sent: Tuesday, August 18, 2026 4:23 PM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; SBOE_Grp - Legal <Legal@ncsbe.gov>
Subject: RE: SBE RFC - August 2026

Seth,

Attached please find our responses to your comments and questions. I have also attached two rules with proposed changes based on your comments noted in green highlight. If I need to update how I formatted those please let me know.

Thanks,

Adam Steele | Deputy General Counsel

North Carolina State Board of Elections

430 N Salisbury Street

Raleigh, NC 27611

Main Line: 919.814.0700

Direct: 919.814.0654

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

AGENCY: State Board of Elections

RULE CITATION: All rules

DEADLINE FOR RECEIPT: August 18, 2026

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:

It appears that these rules are intended to go into effect for the 2026 election. Is this correct?

I am aware of some legal principles that limit how close to an election certain election changes can be made (i.e., changing voter rolls within 90 days of election, the Purcell principle limiting court's from making changes "too close" to an election). Are there timing limitations that the State Board of Elections considered in relation to these rules?

To the extent this question is not "relating to the quality or efficacy of the rule[s]" before the RRC for the August 27 meeting, the State Board has taken timing considerations into account, but those are largely limited to implementation and training, rather than legal limitations. To address the specific timing concerns mentioned here, neither the National Voter Registration Act (NVRA) 90-day quiet period before an election nor the *Purcell* principle are applicable to these rules.

The NVRA's 90-day quiet period is specifically in regard to voter registration list maintenance. See 52 USC § 20507(c)(2)(A) ("A State shall complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters."). None of the rules before the RRC for the August 27 meeting pertain to voter list maintenance programs. Instead, these are about voting procedures (the voting site rules, the photo ID rules, and the absentee deficiency rules) or recount procedures (the recount rules).

Furthermore, the *Purcell* principle, as you note, is a principle where *courts* are cautioned to exercise judicial restraint from changing the rules for an election when that election is near at hand. See *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam); see also *Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J., concurring) ("Late judicial tinkering with election laws can lead to disruption and to unanticipated and unfair consequences for candidates, political parties, and voters, among others.")

Seth Ascher

Commission Counsel

Date submitted to agency: August 6, 2026

(emphasis added)). The *Purcell* principle applies only to federal courts, and while there is a state court corollary, see e.g., *Pender County v. Bartlett*, 361 N.C. 491 (2007), it is similarly only applicable to *court* actions.

The RRC has already received several comments suggesting that the envelope provisions (particularly the irregularities and deficiencies in 08 NCAC 18 .0502 - .0505) would create burdens for the overseas active military. I am aware that the federal UOCAVA sets standards in this area and plan to review this issue further before the RRC meeting. Is it the State Board of Elections position that these rules meet the conditions required by the relevant federal law?

The absentee deficiency rules only apply to domestic civilian absentee voting by mail, which is why they only reference statutes in Article 20 for the authority and more specifically in the definitions. See 08 NCAC 18 .0201(8) and (9). The rules do not apply to voting procedures governed by federal law (i.e., UOCAVA).

Many of these rules have potentially confusing terminology about “bipartisan teams” or something similar. Sometimes that is defined within the rule as a team with equal members from the two largest political parties in the state, but sometimes it isn’t. Is there an overarching definition somewhere for this? If not, I would consider whether that might be better handled in a definition rule rather than in a rule by rule basis.

There are three instances where bipartisan teams are mentioned in the recount rules 08 NCAC 09 .0106 and .0107. Although the agency does generally strive to use definition rules for ease of reference, each instance of a bipartisan team in the recount rules is describing a different kind of team that would not fit into a single definition. First, 08 NCAC 09 .0106 describes a bipartisan team of four officials who conduct a hand-to-eye recount. Second, the same rule refers to a bipartisan team of county board members who can oversee recounts. Finally, 08 NCAC 09 .0107 describes a bipartisan team of two officials or supervisors utilized when conducting a machine recount. The agency believes that the rules make clear what kind of bipartisan team is being referenced with citations to the appropriate paragraph or corresponding rule.

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

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

AGENCY: State Board of Elections

RULE CITATION: 08 NCAC 09 .0106

DEADLINE FOR RECEIPT: August 18, 2026

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:

Regarding paragraph (d), it is unclear to me how assigning a member from a third party (someone from a party other than the two with the largest number of registered voters) to the team will work.

When a county board adds a third party member (lines 22-25) are they replacing an existing member? Or increasing the size of the team to five?

If there is a third party member, how does that impact the requirements in line 15 through 20? I.e. lines 18 through 20 are explicit that officials from each of the two largest parties will be recording and saying tally.

Because it is unclear to me how the Board imagines this working, I don't have specific suggestions to make. But as written, I tend to think there is a clarity problem in this paragraph.

For the hand-to-eye recounts that require bipartisan teams, the county board is appointing teams of four officials. The general rule is that the four persons appointed will be, using the current voter registration numbers, two officials from the Democratic Party and two officials from the Republican Party. That team of four is then split into the two, bipartisan two-person teams to carry out their assigned task. The exception to that general rule is that an unaffiliated voter, or voter affiliated with another recognized party (currently the Green Party or Libertarian Party), can fill one of those four slots. The limitations are that (1) the county board can only use up to two officials who are unaffiliated or from another recognized party; and (2) there must always be at least one official from both of the two largest parties.

The agency would be fine making clarifying edits to lines 22-29 that would make this more clear and would propose the following (proposed edits in green highlight):

The county board by a majority vote of its members, including at least one board member of each political party represented on the board, may ~~appoint~~ assign to the bipartisan team of four an

Seth Ascher

Commission Counsel

Date submitted to agency: August 6, 2026

unaffiliated voter or voter affiliated with one of the other political ~~parties~~. parties recognized in the State under G.S. 163-96. G.S. 163-96 instead of an official who is from one of the two parties in the State with the largest number of registered voters. In no instance shall the county board ~~appoint~~ assign more than two ~~members~~ officials to a bipartisan team of four who are unaffiliated or affiliated with one of the other political ~~parties~~. ~~parties, and a bipartisan team of four shall include at least one official from each of the two parties in the State with the largest number of registered voters.~~

On p. 2, line 2, the phrase “if the apparent winner is the apparent loser after the discretionary recount” is somewhat difficult to parse, since I believe you mean the apparent winner of the original count and the apparent loser of the machine recount. Could you change this to something like “if the machine recount changed the apparent outcome of the election”?

The agency will agree to this change, albeit with slightly different wording. The proposed change is as follows (proposed edits in green highlight):

A candidate shall have the right to call for a ~~hand-eye~~ hand-to-eye recount within 24 hours after the board of elections having jurisdiction over the ballot item under G.S. 163-182.7 declares the completion of a discretionary machine recount ~~in~~ that is ordered pursuant to G.S. 163-182.7(a) or by noon on the next business day of the ~~county~~ board of elections office, whichever is later, if the ~~apparent winner is the apparent loser after the discretionary recount.~~ discretionary recount changed the apparent outcome of the election.

On p. 2., line 10, you reference “the bipartisan team of two county board members overseeing the recount”. Is there a rule or statute that creates this team? If not, there needs to be more information about it in this rule.

Paragraph (h) of this rule provides for the delegation of overseeing a recount by a county board to two of its members. The agency would be agreeable to the following clarifying changes in paragraph (f) and (h) to make this more clear, if needed (proposed edits in green):

Paragraph (f):

For machine recounts of ballot items under the jurisdiction of a county board of elections, the declaration of the completion of the recount may be delegated by the county board to the bipartisan team of two county board members ~~overseeing the recount.~~ chosen to oversee the recount pursuant to Paragraph (h) of this Rule.

Paragraph (h):

Recounts shall be performed in the presence of a quorum of county board members or in the presence of a bipartisan team of two county board ~~members.~~ members chosen by the county board to oversee the recount.

On p. 2., line 19, you have the phrase “each political party”. What does this mean in this context? Each political party with members on the board, each political party with members in the state, each of the two political parties with the most membership, something else?

County boards of elections are five-member boards made up of two members of one of the two largest political parties in the state, two members of the other of the two largest parties, and one chair appointed by the State Auditor. *See* G.S. 163-30. The intent of this existing rule language is that there be a bipartisan presence of county board members (e.g., at least one Republican Party member and at least one Democratic Party member). The agency would be agreeable to simpler language to clarify this requirement in the rule, and would propose the following (proposed edits in green highlight):

Determinations of voter intent shall be made by a quorum of the county board that includes at least one board member of each political party represented on the board. ~~board and at least one board member of each political party shall be represented.~~

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

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

AGENCY: State Board of Elections

RULE CITATION: 08 NCAC 09 .0107

DEADLINE FOR RECEIPT: August 18, 2026

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:

Is the bipartisan team describe in paragraph b the same as the bipartisan team in 08 NCAC 09 .0106? If so these contradict, as 09 .0106 (pg. 2 line 10) has board members on the team and this rule (line 17) prevents board members from being on the team.

This bipartisan team is not the same as the one in 08 NCAC 09 .0106. See page 3 of this document for an explanation on the different bipartisan teams. Additionally, the bipartisan team of four officials provided for in rule .0106(d) also does not allow county board members to be on the team of four. See lines 29-30 of 08 NCAC 09 .0106. The bipartisan team of board members you refer to on page 2, line 10 of rule .0106 is a team of two county board members who oversee a recount generally, not who specifically make up the team of four or two officials.

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

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

AGENCY: State Board of Elections

RULE CITATION: 08 NCAC 10C .0101

DEADLINE FOR RECEIPT: August 18, 2026

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:

I don't understand the interplay between the definitions of voting place and voting enclosure. In particular, on line 19 "Voting place" includes the part of a building used for voting, but on line 18 "Voting enclosure" means the room or designated area that is used for voting. It seems to me rooms and designated areas are parts of buildings, so these definitions would merge.

If it helps, illustrate my confusion:

One of the places I've voted is in the multipurpose room at a local library. The check in table, the voting booths, and the ballot deposit were all in that room and people lined up outside. If I understand correctly, the entire library property (parking lot, stacks, etc.) would be the "voting site", but the multipurpose room seems like it would be both a voting place and a voting enclosure under these definitions.

As an initial matter, these definitions track the definitions for these terms in N.C.G.S. § 163-165(9) and (10) ("Voting enclosure" means the room within the voting place that is used for voting. "Voting place" means the building or area of the building that contains the voting enclosure."). In general, the voting place is the building (or part of the building that is leased/controlled by the county board for voting), and the voting enclosure is the actual room where the voting takes place. Sometimes that may be the same building and room, such as when the voting site is a small building with a single room. But other times, as your example shows, there may not be perfect overlap of the voting place and voting enclosure.

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

Seth Ascher
Commission Counsel

Date submitted to agency: August 6, 2026

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

AGENCY: State Board of Elections

RULE CITATION: 08 NCAC 10C .0103

DEADLINE FOR RECEIPT: August 18, 2026

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:

On line 17, I'm not sure why you include "or caused to be marked". I think "The zone shall be marked with..." is sufficient.

We agree that "or caused to be marked" is extraneous, and believe that may have been a drafting error. The agency will **delete** that language so the sentence reads as follows (proposed edit in green highlight):

The zone shall be marked **or caused to be marked** with signage, cones, rope, tape, or some other visible marker that the chief judge determines is appropriate for ensuring peace and good order at the voting place in accordance with 08 NCAC 10B .0101(b)(18) and (19) when taking into account the physical layout, dimensions, and parking areas of the voting site.

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

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

AGENCY: State Board of Elections

RULE CITATION: 08 NCAC 18 .0503

DEADLINE FOR RECEIPT: August 18, 2026

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:

Item (a)(9), lines 24-26, seems like it could be written more clearly. Could this just be "A witness or assistant signed the application but did not include all required information."

The scenarios your suggested edit would cover are those in subparagraphs (a)(6) and (7), which would apply even if there was a failure of the witness or assistant to sign.

Although the agency does not believe this part of the rule needs to be revised, it could be agreeable to a revision to item (a)(9) that reads as follows: "A witness or assistant signed the application on the wrong line and did not include all required information."

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

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

AGENCY: State Board of Elections

RULE CITATION: 08 NCAC 18 .0504

DEADLINE FOR RECEIPT: August 18, 2026

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:

Am I understanding correctly that this rule requires boards to keep track of these outer return envelope issues, but not to spoil votes because of them?

You are correct. These are issues that mean the return of the ballot was not “perfect” (i.e., done exactly as instructed), even if they do not mean the application is defective. Specifically for subparagraph (a)(1), the outer return envelope is to be sealed to protect the confidentiality of the voter’s photo identification document, but the failure to seal that outer return envelope does not invalidate the application so long as the inner envelope containing the ballot is sealed. Specifically for subparagraph (a)(2), the situation being addressed is one in which all steps for transmittal of the ballot have yet to be completed (i.e., sealing the ballot in the envelope), and the voter is completing that step in front of an election official.

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

08 NCAC 09 .0106 is amended with changes as published in 40:22 NCR 1789-1790 as follows:

08 NCAC 09 .0106 GENERAL GUIDELINES

(a) Prior to each recount under G.S. 163-182.7, the county board of elections or State Board shall inform the political parties and candidates of the recount and describe to them the process of conducting recounts. A county board of elections shall notice the recount at least 48 hours prior to the start of the recount. The county board shall send notice by email to the county board's regular notice list, county party chairs, and the candidates in the contest subject to the recount.

(b) In the case of tie votes, the winner shall be determined by lot only in the case set out in G.S. 163-182.8(2). Where there are 5,000 or fewer votes cast, there shall be only one determination by lot for each tied election. There shall be no determination by lot until the time has expired for the affected candidate(s) to request a recount, unless all of the affected candidate(s) waive their right in writing to request a recount.

(c) During the conduct of recounts, ballots shall be counted in accordance with the principles in G.S. 163-182.1(a).

(d) In conducting ~~hand-to-eye recounts~~ hand-to-eye recounts pursuant to G.S. 163-182.7A and Rule .0110 of this Chapter, or recounts of paper ballots, a bipartisan team of four officials shall be ~~used~~ assigned; two officials (one from each of the two parties in the State with the largest number of registered voters) to relay the results of each ballot with one person reading the ballot and the other official observing the ballot and the person reading the results of the ballot, and two officials (one from each of the two parties in the State with the largest number of registered voters) each separately recording the tally of votes for each candidate on paper while stating aloud after each choice is read on the fifth tally for a particular candidate, the word "tally." ~~If, after diligently seeking to fill the positions with voters affiliated with each of the two parties in the State with the largest number of registered voters, the county board still has an insufficient number of officials for the recount, the~~ The county board by a majority vote of its members, including at least one board member of each political party represented on the board, may ~~appoint~~ assign to the bipartisan team of four an unaffiliated voter or voter affiliated with one of the other political ~~parties~~ parties recognized in the State under G.S. 163-96. G.S. 163-96 instead of an official who is from one of the two parties in the State with the largest number of registered voters. In no instance shall the county board ~~appoint~~ assign more than two ~~members~~ officials to a bipartisan team of four who are unaffiliated or affiliated with one of the other political ~~parties~~ parties, and a bipartisan team of four shall include at least one official from each of the two parties in the State with the largest number of registered voters. Bipartisan team ~~members~~ officials shall be registered voters in the ~~State~~ State and shall wear identification during the recount to make observers aware of the official's role in the recount. County board members shall not serve on the bipartisan team.

(e) The county board of elections shall conduct recounts only as follows:

- (1) the recount is mandatory under G.S. 163-182.7(b) or (c) or G.S. 163-182.7A; or
- (2) ~~the recount is not mandatory but~~ the county board of elections or the State Board of Elections determines, using its authority in G.S. 163-182.7(a), that in order to complete the canvass a recount is necessary.

(f) A candidate shall have the right to call for a ~~hand-eye~~ hand-to-eye recount within 24 hours after the board of elections having jurisdiction over the ballot item under G.S. 163-182.7 declares the completion of a discretionary machine recount in that is ordered pursuant to G.S. 163-182.7(a) or by noon on the next business day of the county board of elections office, whichever is later, if the apparent winner is the apparent loser after the discretionary recount. discretionary recount changed the apparent outcome of the election. A candidate shall have the right to call for a ~~hand-eye~~ hand-to-eye sample ~~recount~~ recount, pursuant to G.S. 163-182.7A, within 24 hours after the board of elections having jurisdiction over the ballot item under G.S. 163-182.7 declares the completion of a mandatory machine recount, pursuant to G.S. 163-182.7A. recount. A machine recount shall not be declared completed until the results have been reported to the State Board. The county board shall provide written notice to the candidates of the date and time that the recount was declared completed, and that notice shall be provided by email or hand-delivery within one hour of the declaration being made. For machine recounts of ballot items under the jurisdiction of a county board of elections, the declaration of the completion of the recount may be delegated by the county board to the bipartisan team of two county board members overseeing the recount. chosen to oversee the recount pursuant to Paragraph (h) of this Rule. For machine recounts of ballot items under the jurisdiction of the State Board, the declaration of the completion of the recount may be delegated by the State Board to the Executive Director of the State Board.

(g) Any candidate in the contest subject to a recount shall have the right to file an election protest within 24 hours after a recount is declared completed or by noon of the next business day of the county board office, whichever is later, if the protest relates to the conduct of the recount. Allegations unrelated to the recount may not be included in the protest.

(h) Recounts shall be performed in the presence of a quorum of county board members or in the presence of a bipartisan team of two county board ~~members.~~ members chosen by the county board to oversee the recount. Determinations of voter intent shall be made by a quorum of the county board that includes at least one board member of each political party represented on the board. ~~board and at least one board member of each political party shall be represented.~~

*History Note: Authority G.S. 163-22; 163-182.1; 163-182.7; 163-182.7A;
Temporary Adoption Eff. April 15, 2002;
Eff. August 1, 2004;
Readopted Eff. June 1, 2019;
Amended Eff. September 1, ~~2021.~~ 2021;
Amended Eff. September 1, 2026.*

08 NCAC 10C .0103 is adopted with changes as published in 40:22 NCR 1792 as follows:

08 NCAC 10C .0103 VOTING SITE ELECTIONEERING ZONE

(a) Before each election, the county board of elections shall ~~adopt a resolution establishing~~ designate an electioneering zone at each voting site in the county in accordance with G.S. 163-166.4(b) that shares a physical border with the voting place buffer zone. When ~~adopting a resolution establishing~~ designating an electioneering zone, the county board shall take into account the physical layout and dimensions of the voting site, parking and vehicle access areas at the voting site, walkways voters will use to access the voting place at the voting site, and the voting and buffer zones established under Rule ~~.0103~~ .0102 of this Subchapter. The county board shall ~~establish~~ designate additional electioneering zones at a voting site that do not share a border with the voting place buffer zone if the county board determines that the physical layout of the voting site will result in an insufficient amount of space for electioneers to engage in the election-related activity permitted under G.S. 163-166.4(b) as a result of there being only a single electioneering zone. Notice of the ~~resolution~~ designation shall be given to the public in accordance with G.S. 163-166.4.

(b) Prior to the start of voting at the voting site, the chief judge or a judge designated by the chief judge shall mark the boundary of the electioneering zone consistent with the county board of election's ~~resolution-adopted~~ designation made under this Rule. The zone shall be marked ~~or caused to be marked~~ with signage, cones, rope, tape, or some other visible marker that the chief judge determines is appropriate for ensuring peace and good order at the voting place in accordance with 08 NCAC 10B .0101(b)(18) and (19) when taking into account the physical layout, dimensions, and parking areas of the voting site.

(c) This Rule does not apply to a voting site that has been granted approval to not permit election-related activities at the voting site under G.S. 163-166.4(c).

(d) This rule shall not prevent the chief judge of the voting site from changing a boundary or location of a zone designated under this Rule when that change is required because of circumstances at the voting site that make it impractical to maintain the zone's designated boundary or location. Circumstances that may require a change in a zone's boundary or location under this Paragraph include, but are not limited to, changes in the physical layout or topography of the voting site, construction activities at the voting site, adverse weather, disruptions in access to the voting place and voting site, the number of persons in the designated electioneering zone, and the safety of persons at the voting site. Notice of the change in a zone's boundary or location at a voting site shall be given to the public in the same manner as the original designation within one business day of the change.

History Note: Authority G.S. 163-22; 163-48; 163-129; 163-166.4; 163-166.5; 163-166.6; 163-166.7;
Eff. September 1, 2026.

Burgos, Alexander N

From: Burgos, Alexander N
Sent: Monday, August 17, 2026 2:44 PM
To: Steele, Adam; Ascher, Seth M
Subject: RE: SBE RFC - August 2026

Adam,

We have been receiving public comments and letters requesting legislative review daily. Instead of flooding your inbox with the ones you were not copied in, I am updating them on the agenda. Let me know if that works better for you when you return to the office.

1. State Board of Elections (Ascher)
 - o [Request for Changes Pursuant to G.S. 150B-21.10](#)
[Communication with agency](#)
[Public Comments](#)
[Letters requesting legislative review](#)
[Original rules for RRC review](#)

Alexander Burgos

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

From: Steele, Adam <adam.steele@ncsbe.gov>
Sent: Thursday, August 6, 2026 1:18 PM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: SBE RFC - August 2026

Thanks, Seth. Confirming receipt and that we will provide any needed responses and documents by the deadline.

Thanks,

Adam Steele | Deputy General Counsel

North Carolina State Board of Elections
[430 N Salisbury Street](#)
[Raleigh, NC 27611](#)
Main Line: [919.814.0700](#)
Direct: [919.814.0654](#)

From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Thursday, August 6, 2026 12:56 PM
To: Steele, Adam <adam.steele@ncsbe.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: SBE RFC - August 2026

Good afternoon,

I'm the attorney who reviewed the Rules submitted by the State Board of Elections for the August 2026 RRC meeting. The RRC will formally review these Rules at its meeting on Thursday, August 27, 2026, at 10:00 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 close to the meeting. If there are any other representatives from your agency who want to attend virtually, let me know prior to the meeting, and we will get evites out to them as well.

Attached is my initial Request for Changes Pursuant to G.S. 150B-21.10. Please submit your responses, the revised Rules, and forms to me via email, no later than 5 p.m. on August 18, 2026.

Seth Ascher
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984) 236-1934

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.