

TITLE 08 – STATE BOARD OF ELECTIONS

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Elections intends to amend the rules cited as 08 NCAC 09 .0106, .0107, and .0110.

Link to agency website pursuant to G.S. 150B-19.1(c): <https://www.ncsbe.gov/about-elections/legal-resources/rulemaking>

Proposed Effective Date: September 1, 2026

Public Hearing:

Date: June 8, 2026

Time: 10:00 A.M.

Location: State Board of Elections, Dobbs Building, 430 N. Salisbury St., Raleigh, NC 27603

Reason for Proposed Action: Under N.C.G.S. 163-182.7 and 163-182.7A, the State Board of Elections is required to adopt rules for the conduct of recounts following an election. Boards of elections may conduct discretionary recounts to complete the canvass of the election, or candidates in an election can demand a mandatory recount under certain circumstances. The State Board is proposing amendments to three existing rules pertaining to the conduct of a recount. In rule 08 NCAC 09 .0106, the proposed amendments make changes to how a bipartisan team of four is chosen and establish when a recount is officially considered to be completed. In rule 08 NCAC 09 .0107, the proposed amendments establish how personnel conducting a machine recount are chosen and assigned and establish two options for how ballots rejected by a tabulator in the recount are to be recounted. In rule 08 NCAC 09 .0110, the proposed amendment changes the deadline for when a county board of elections must begin a hand-to-eye recount.

Comments may be submitted to: Adam Steele, P.O. Box 27255, Raleigh, NC 27611; email rulemaking.sboe@ncsbe.gov (Comments may be submitted online during the comment period at <https://www.ncsbe.gov/about-elections/legal-resources/rulemaking>)

Comment period ends: July 14, 2026

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit a written objection to the Rules Review Commission. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive letters via U.S. Mail, private courier service, or hand delivery to 1711 New Hope Church Road, Raleigh, North Carolina, or via email to oah.rules@oah.nc.gov. If you have any further questions concerning the submission of objections to the Commission, please review 26 NCAC 05 .0110 or call a Commission staff attorney at 984-236-1850.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- State funds affected
 Local funds affected
 Substantial economic impact (\geq \$1,000,000)
 Approved by OSBM
 No fiscal note required

CHAPTER 09 - CONDUCT OF VOTE RECOUNTS BY COUNTY BOARDS OF ELECTIONS

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 an unaffiliated voter or voter affiliated with one of the other political ~~parties~~. parties recognized in the State under G.S. 163-96. In no instance shall the county board ~~appoint~~ assign more than two ~~members~~ officials to a bipartisan team 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. 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. 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. 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. Determinations of voter intent shall be made by a quorum of the 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 09 .0107 FIRST RECOUNT

(a) In the first recount conducted by the county board of elections in accordance with G.S. 163-182.7, all ballots that were originally counted shall be recounted by machine, notwithstanding the method by which the ballots were originally counted.

(b) In conducting the machine recount, the county board of elections shall assign a bipartisan team of two officials for each tabulator, consisting of a tabulator attendant to feed ballots into the tabulator and a tabulator observer to provide individual ballots to the tabulator attendant. The county board shall assign at least one additional official to manage the distribution of the voted ballots that are subject to the recount. Trained personnel, county board of elections staff, or precinct officials appointed pursuant to G.S. 163-41, G.S. 163-42, or G.S. 163-166.35(b), shall be assigned by the county board to operate the tabulator in place of the bipartisan team only when those personnel are overseen by a bipartisan team of supervisors. A bipartisan team of supervisors shall consist of two officials and shall be assigned to oversee the operation of no more than four tabulators. For the purpose of this Rule, "bipartisan team" or "bipartisan team of supervisors" refers to a team of two officials assigned by the county board of elections with one official each being registered as affiliated with one of the two parties in the State with the largest number of registered voters. County board members shall not serve on the bipartisan team or bipartisan team of supervisors.

(c) All ballots that are rejected for tabulation purposes by the machines during the recount shall be recounted ~~by hand by a bi-partisan team of four in accordance with 08 NCAC 09 .0106(d).~~ using one of the following methods:

- (1) By hand. The hand count shall be done by a bipartisan team of four in accordance with Rule .0106(d) of this Chapter, and any questions regarding voter intent in the hand recount of those ballots shall be resolved in accordance with Rule .0109 of this Chapter.
- (2) By ballot duplication. The ballot duplication shall be performed by a bipartisan team assigned under Paragraph (b) of this Rule. The bipartisan team shall replicate the voter's selections in all contests on the rejected ballot onto a blank ballot that is reviewed by the county board members in attendance and then fed into the tabulator. Any questions regarding voter intent in the selections on the ballot shall be resolved in accordance with Rule .0109 of this Chapter prior to replicating the selections onto the blank ballot. The duplicated ballot shall be marked by the bipartisan team with an identifier that it is a duplicated ballot, and the duplicated ballot shall be securely stored with the rejected ballot after it has been successfully read by the machine.

Ballots accepted by the machines during the recount shall not be counted by hand, regardless of whether the ballot is marked, contains overvotes, or is blank.

(d) The board of elections having jurisdiction over the ballot item shall schedule the first recount to begin within three business days of the demand for a mandatory recount or the decision to conduct a discretionary recount under G.S. 163-182.7, except any mandatory recount shall begin no earlier than the conclusion of the county canvass meeting pursuant to G.S. 163-182.5.

History Note: Authority G.S. 163-22; 163-182.7;
Temporary Adoption Eff. April 15, 2002;
Eff. August 1, 2004;
Readopted Eff. June 1, 2019;
Amended Eff. September 1, 2021;
Temporary Amendment Eff. August 8, 2024;
Temporary Amendment Exp. May 31, 2025;
Amended Eff. August 1, ~~2025~~, 2025;
Amended Eff. September 1, 2026.

08 NCAC 09 .0110 SECONDARY RECOUNTS

For any hand-to-eye recount conducted under G.S. 163-182.7A, each county board of elections involved in the recount shall provide notice at least 24 hours in advance of the recount by email to the county board's notice list under G.S. 143-318.12(b)(2), county party chairs, and the candidates in the contest subject to the recount. No separate notice of a hand-to-eye recount is required if the hand-to-eye recount occurs on the same day as and following the conclusion of the first recount under 08 NCAC 09 .0107 and the notice of the first recount stated that a hand-to-eye recount, if required, could take place upon the conclusion of the first recount. The board of elections having jurisdiction over the ballot item under G.S. 163-182.7 shall schedule any hand-to-eye recount to begin within ~~two~~ three business days of the demand for a hand-to-eye recount, whether that recount is a sample recount or a full recount.

History Note: Authority G.S. 163-22; 163-182.7; 163-182.7A;
Temporary Adoption Eff. August 8, 2024;
Temporary Adoption Exp. May 31, 2025;
Adoption Eff. August 1, ~~2025~~, 2025;
Amended Eff. September 1, 2026.