

08 NCAC 04 .0402 PROCEDURES FOR CERTIFICATION OF ELECTRONIC POLL BOOKS

(a) Before certifying an electronic poll book for use in North Carolina, the State Board shall do the following:

- (1) Evaluate the electronic poll book for compliance with North Carolina laws and rules related to electronic poll books.
- (2) Examine an electronic poll book's system functions, operational procedures, user guides and maintenance manuals, certification reports from other states, reviews from product users, and any other documentation provided by the vendor.
- (3) Test the electronic poll book for its ability to meet the requirements in Rule .0401 of this Chapter.
- (4) Obtain from the proposed vendor a current financial statement and the manufacturer's contact information.

(b) Changes to Certified Electronic Poll Books. A vendor shall submit in writing for the review of the Executive Director of the State Board of Elections any change to a certified electronic poll book, including changes to its software, firmware, or hardware, prior to implementation in a certified electronic poll book in use in any county's elections. Following the review, the Executive Director shall determine whether the change is a modification or minor change of the certified electronic poll book. "Minor change" shall have the same meaning as that term is defined in Section 3.5 of Version 3.0 of the United States Election Assistance Commission's Voting System Testing & Certification Program Manual, not including subsequent amendments and editions. Minor changes can include manufacturer enhancements. A copy of the Manual is available for inspection in the offices of the State Board of Elections. A copy of the Manual may be obtained at no cost by accessing the website of the Election Assistance Commission at <https://www.eac.gov/voting-equipment/manuals-and-forms>. A "modification" is a change to a certified electronic poll book that is not a minor change. Based on this determination, the Executive Director shall proceed as follows:

- (1) If it is determined to be a modification, the vendor shall submit the electronic poll book as modified to the State Board of Elections for full review of its ability to meet the requirements in Rule .0401 of this Chapter.
- (2) A vendor that proposes to implement a minor change to a certified electronic poll book shall, when submitting the proposal to the Executive Director for review and approval, identify whether the proposed minor change has been submitted to an independent testing authority accredited by or partnered with a federal agency for review and endorsement. If the State Board is unable to determine the nature and extent of a proposed minor change on the certified electronic poll book, the State Board may require the vendor to obtain review and endorsement by an independent testing authority accredited by or partnered with a federal agency before approving the minor change. The Executive Director shall make a written recommendation for administrative decision on the proposed minor change to the State Board. The State Board will then act on the recommendation as follows:
 - (A) If, after two calendar days following the transmission of the recommendation, no State Board member has raised an oral or written objection to the Executive Director's recommendation, the recommendation will become effective.
 - (B) If a State Board member raises an oral or written objection to the Executive Director's recommendation within two calendar days following the transmission of the recommendation, the State Board shall hear the matter or require the change to be reviewed as a modification.

A county board of elections using an electronic poll book certified by the State Board shall not implement a change to the electronic poll book until that change has been approved in accordance with this Paragraph.

(c) Decertification of Electronic Poll Book. The State Board of Elections shall hear and act on complaints, arising by petition or otherwise, that may result in the decertification of an electronic poll book in use in North Carolina. The State Board shall base its decision to decertify an electronic poll book on any of the following grounds:

- (1) The failure or neglect of an electronic poll book or its vendor to comply with any part of the election laws of the State of North Carolina, including a failure to adhere to and fulfill the requirements of Rule .0401 of this Chapter.
- (2) The implementation by a vendor of a change to a certified electronic poll book prior to State Board review and approval pursuant to Paragraph (b) of this Rule.
- (3) The failure or neglect of a vendor to update and maintain the operability and security of the electronic poll book.
- (4) The failure of the electronic poll book to satisfy all performance standards in Rule .0401 of this Chapter in examination and testing, or in an election setting.

- (5) The failure of the vendor to comply with the requirement in Rule .0401(d)(7) of this Chapter to provide electronic notice to the State Board of an incident or anomaly affecting the electronic poll book in any jurisdiction. As used in this Chapter, an "incident" is an event related to the security or functioning of the electronic poll book that contributed to, caused, or may have caused any of the following:
- (A) An interruption to the voter check-in process, reporting process, or both processes.
 - (B) An unauthorized disclosure of voter information.
 - (C) An unauthorized access to the electronic poll book.
 - (D) The software or data of the electronic poll book to become unreliable or corrupt.
As used in this Chapter, an "anomaly" is an unexpected functioning of the electronic poll book in its operation.
- (6) The failure of the vendor to report in writing to the State Board a change in the vendor's corporate information provided with the certification application. The vendor shall make the report within 30 calendar days of the change.
- (7) The electronic poll book reaching its end-of-service-life date.

Before exercising its power to decertify an electronic poll book, the State Board shall notify the electronic poll book vendor and any affected county boards of elections, and shall give the opportunity for the vendor and county boards to be heard at a hearing to be set by the State Board. The State Board's written decision to decertify an electronic poll book shall be considered a final decision for purposes of seeking judicial review. An electronic poll book that has been decertified by the State Board cannot be used for elections held in the State of North Carolina and cannot be purchased by a county board of elections. Upon decertification of an electronic poll book, the memory of those units in the possession of a county board of elections shall be sanitized by the county board of elections in accordance with the applicable North Carolina Department of Information Technology information security standard for media sanitization, including subsequent amendments and editions, prior to disposition.

(d) **Suspension of Electronic Poll Book.** The Executive Director of the State Board shall, in the event of a threat to the integrity of an election or the privacy of voter information, issue a written order to a county board of elections to suspend the use of a certified electronic poll book system, or individual unit, for a term not to exceed one month. The Executive Director shall give written notice of the suspension to the electronic poll book vendor.

(e) In accordance with G.S. 163-165.7, this Rule shall not apply to an electronic poll book which is developed or maintained by the State Board of Elections.

History Note: Authority G.S. 163-22; 163-165.7; 163-165.9A; 163-166.7; Eff. April 1, 2024.