

Note from the Codifier: The OAH website includes notices and the text of proposed temporary rules as required by G.S. 150B-21.1(a1). Prior to the agency adopting the temporary rule, the agency must hold a public hearing no less than five days after the rule and notice have been published and must accept comments for at least 15 business days. For questions, you may contact the Office of Administrative Hearings at 919.431.3000 or email oah.postmaster@oah.nc.gov.

TITLE 08 – STATE BOARD OF ELECTIONS

Notice is hereby given in accordance with G.S. 150B-21.1 that the Executive Director of the State Board of Elections intends to amend the rule cited as 08 NCAC 01 .0106.

Codifier of Rules approved this rule as an emergency rule effective March 20, 2020 and received for publication the following notice and proposed temporary rule on March 12, 2020.

Public Hearing:

Date: April 20, 2020

Time: 1:00 p.m.

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

Reason for Proposed Temporary Action: A serious and unforeseen threat to the public health, safety or welfare.

G.S. 163-27.1 authorizes the Executive Director of the State Board of Elections to exercise emergency powers to conduct an election in a district where the normal schedule for the election is disrupted by a natural disaster, extremely inclement weather, or armed conflict. The serious and unforeseen threat to the public health or safety is the coronavirus outbreak that has now reached North Carolina. A state of emergency was declared by Governor Cooper on March 10, 2020. As a result, the Executive Director of the State Board of Elections seeks to amend her emergency powers to include catastrophic conditions, including a disease epidemic, so that any necessary modifications to the normal schedule or operations of the November 2020 election can be addressed as soon as possible.

Comment Procedures: Comments from the public shall be directed to: Kelly Tornow, Rulemaking Coordinator, P.O. Box 27255, Raleigh, NC 27611-7255; email rules@ncsbe.gov. The comment period begins March 19, 2020 and ends April 20, 2020.

CHAPTER 01 - DEPARTMENTAL RULES

08 NCAC 01 .0106 EMERGENCY POWERS OF EXECUTIVE DIRECTOR

(a) In exercising his or her emergency powers and determining whether the "normal schedule" for the election has been disrupted in accordance with G.S. ~~163A-750~~, 163-27.1, the Executive Director shall consider whether one or more components of election administration has been impaired. The Executive Director shall consult with State Board members when exercising his or her emergency powers if feasible given the circumstances set forth in this Rule.

(b) For the purposes of G.S. ~~163A-750~~, 163-27.1, the following shall apply:

(1) A natural disaster or extremely inclement weather include ~~any of the following~~:

- (A) Hurricane;
- (B) Tornado;
- (C) Storm or snowstorm;
- (D) Flood;
- (E) Tidal wave or tsunami;
- (F) Earthquake or volcanic eruption;
- (G) Landslide or mudslide; or
- (H) Catastrophe arising from natural causes ~~resulted~~ resulting in a disaster declaration by the President of the United States or the ~~Governor~~, Governor, a national emergency declaration by the President of the United States, or a state of emergency declaration issued under G.S. 166A-19.3(19). "Catastrophe arising from natural causes" includes a disease epidemic or other public health incident that makes it impossible or extremely hazardous for elections officials or voters to reach or otherwise access the voting place or that creates a significant risk of physical harm to persons in the voting place, or that would otherwise convince a reasonable person to avoid traveling to or being in a voting place.

(2) An armed conflict includes mobilization, pre-deployment, or deployment of active or reserve members of the United States armed forces or National Guard during a national emergency or time of war.

(c) The Executive Director acting under G.S. ~~163A-750~~ 163-27.1 to conduct an election in a district where the normal schedule for the election is disrupted must ensure that remedial measures are calculated to offset the nature and scope of the disruption(s). In doing so, the Executive Director shall consider the following factors:

- (1) Geographic scope of disruption;
- (2) Effects on contests spanning affected and non-affected areas;
- (3) Length of forewarning and foreseeability of disruption;
- (4) Availability of alternative registration or voting opportunities;
- (5) Duration of disruption;
- (6) Displacement of voters or election workers;
- (7) Access to secure voting locations;

- (8) Sufficiency of time remaining for the General Assembly and the Governor to adopt emergency legislation addressing the disruption;
- (9) Detrimental effects on election integrity and ballot security; and
- (10) Aggregate effects on important Federal and State certification deadlines.

Authority G.S. ~~163A-750~~; 163-27.1.