

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

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:

Phone:

E-Mail:

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:

Title:

E-Mail:

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

Date returned to agency:

§ 163-27.1. Emergency powers.

(a) The Executive Director, as chief State elections official, may exercise emergency powers to conduct an election in a district where the normal schedule for the election is disrupted by any of the following:

- (1) A natural disaster.
- (2) Extremely inclement weather.
- (3) An armed conflict involving Armed Forces of the United States, or mobilization of those forces, including North Carolina National Guard and reserve components of the Armed Forces of the United States.

In exercising those emergency powers, the Executive Director shall avoid unnecessary conflict with the provisions of this Chapter. The Executive Director shall adopt rules describing the emergency powers and the situations in which the emergency powers will be exercised.

(b) Nothing in this Chapter shall grant authority to the State Board of Elections to alter, amend, correct, impose, or substitute any plan apportioning or redistricting State legislative or congressional districts other than a plan imposed by a court under G.S. 120-2.4 or a plan enacted by the General Assembly.

(c) Nothing in this Chapter shall grant authority to the State Board of Elections to alter, amend, correct, impose, or substitute any plan apportioning or redistricting districts for a unit of local government other than a plan imposed by a court, a plan enacted by the General Assembly, or a plan adopted by the appropriate unit of local government under statutory or local act authority. (1999-455, s. 23; 2001-319, s. 11; 2011-183, s. 110; 2016-125, 4th Ex. Sess., s. 20(d); 2017-6, s. 3; 2018-146, s. 3.1(a), (b))

TEMPORARY RULES
REQUEST FOR TECHNICAL CHANGE

AGENCY: Executive Director of the Board of Elections

RULE CITATION: 08 NCAC 01 .0106

DEADLINE FOR RECEIPT: Wednesday, May 13, 2020

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 call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On the Temporary Rulemaking Findings of Need Form, Box 5(a), you state that you submitted the rule to OAH on March 13; however, the OAH website states that it was March 12. Which is correct?

In the Rule:

In (b)(1)(H), line 22, what is "impossible or extremely hazardous"? How will that be determined?

On line 24, what is a "significant risk"? Who determines it?

On line 25, is the "reasonable person"? Is this a known standard? If so, what is it?

I note that all of Paragraph (d) was added after publication of the temporary rule. Was this in response to public comments? I note that the notice only referred to amending the definition in (b)(1)(H). What notice was provided that this language was being added?

Also in Paragraph (d), what is your authority to waive the statutory deadlines set forth here?

In (d), Page 2, line 8, delete "include, but are not limited to," with "include"

In (d)(5), line 20, what is "temporarily" here?

On line 26, where in G.S. 163-27.1 are "emergency powers" defined?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 7, 2020

1 08 NCAC 01 .0106 is proposed for amendment under temporary procedures as follows:

2
3 **08 NCAC 01 .0106 EMERGENCY POWERS OF EXECUTIVE DIRECTOR**

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

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

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

10 (A) Hurricane;

11 (B) Tornado;

12 (C) Storm or snowstorm;

13 (D) Flood;

14 (E) Tidal wave or tsunami;

15 (F) Earthquake or volcanic eruption;

16 (G) Landslide or mudslide; or

17 (H) Catastrophe arising from natural causes ~~resulted and resulting~~ in a disaster declaration by
18 the President of the United States or the ~~Governor~~ Governor, a national emergency
19 declaration by the President of the United States, or a state of emergency declaration issued
20 under G.S. 166A-19.3(19). "Catastrophe arising from natural causes" includes a disease
21 epidemic or other public health incident. The disease epidemic or other public health
22 incident must make ~~[that makes]~~ it impossible or extremely hazardous for elections
23 officials or voters to reach or otherwise access the voting ~~[place or that creates]~~ place,
24 create a significant risk of physical harm to persons in the voting place, or ~~[that]~~ would
25 otherwise convince a reasonable person to avoid traveling to or being in a voting place.
26 Emergency powers exercised under this Part shall only be exercised for the duration of the
27 disaster declaration, national emergency declaration, or state of emergency declaration.

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

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

34 (1) Geographic scope of disruption;

35 (2) Effects on contests spanning affected and non-affected areas;

36 (3) Length of forewarning and foreseeability of disruption;

37 (4) Availability of alternative registration or voting opportunities;

- 1 (5) Duration of disruption;
- 2 (6) Displacement of voters or election workers;
- 3 (7) Access to secure voting locations;
- 4 (8) Sufficiency of time remaining for the General Assembly and the Governor to adopt emergency
- 5 legislation addressing the disruption;
- 6 (9) Detrimental effects on election integrity and ballot security; and
- 7 (10) Aggregate effects on important Federal and State certification deadlines.

8 (d) Emergency powers exercised pursuant G.S. 163-27.1 may include, but are not limited to, the following:

- 9 (1) Delaying the hearing of quasi-judicial proceedings including candidate challenges conducted under
- 10 Article 11B of Chapter 163, election protests and election protest appeals conducted under Article
- 11 15A of Chapter 163 and Chapter 02 of Title 08 of the NC Administrative Code;
- 12 (2) Delaying or modifying statutory and administrative deadlines at the county and State level,
- 13 including the dates set for the county and State canvass under G.S. 163-182.5, the deadline to
- 14 complete and report the sorting of ballots by precinct as required by G.S. 163-132.5G, the voter
- 15 registration deadline under G.S. 163-82.6(d), and the deadline for receipt of postmarked absentee
- 16 by-mail ballots under G.S. 163-231(b);
- 17 (3) Moving election dates that are not prescribed by Federal law;
- 18 (4) Suspending the requirements of G.S. 163-128 regarding the temporary transfer of voters to an
- 19 adjacent precinct;
- 20 (5) Temporarily allowing county boards of elections to appoint nonresidents of the precinct to a
- 21 majority of the three positions of chief judge and judges in a precinct, so long as the chief judge and
- 22 judges are registered voters of the county; and
- 23 (6) Extending one-stop hours beyond the uniform hour and date requirements that county boards can
- 24 adopt in G.S. 163-227.6(c) in response to a disruption of more than 15 minutes of early voting,
- 25 provided that any extension is equal to the number of minutes of the disruption.

26 Emergency powers defined in G.S. 163-27.1 and this Rule shall not include suspending or delaying requirements

27 provided in Federal law or eliminating the option to vote in-person or absentee by-mail.

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29 *History Note: Authority G.S. ~~163A-750~~; 163-27.1;*

30 *Eff. October 1, 2018;*

31 *Emergency Amendment Eff. March 20, 2020;*

32 *Temporary Amendment Eff. June 1, 2020.*