



NORTH CAROLINA

State Board of Elections & Ethics Enforcement

EMERGENCY ORDER – Updated 11/5/2018
G.S. § 163A-750; 08 NCAC 01.0106

1. Hurricane Florence (“Florence”) made landfall on or about September 14, 2018, severely damaging persons and property across eastern North Carolina. The President of the United States declared a Major Disaster and the Governor of North Carolina declared a State of Emergency and called a special session of the General Assembly that convened October 2, 2018.
2. Session Law 2018-134 enacted a process by which county boards of elections could relocate voting sites affected by Florence, allocated funding for a public information campaign to highlight registration and voting options, and extended the voter registration deadline in the following thirty-four (34) counties (the “Affected Counties”):

Beaufort	Johnston	Sampson
Bladen	Jones	Scotland
Brunswick	Lee	Wayne
Carteret	Lenoir	Wilson
Columbus	Moore	
Craven	New Hanover	<i>Anson</i>
Cumberland	Onslow	<i>Chatham</i>
Duplin	Pamlico	<i>Durham</i>
Greene	Pender	<i>Guilford</i>
Harnett	Pitt	<i>Orange</i>
Hoke	Richmond	<i>Union</i>
Hyde	Robeson	

3. The State Board of Elections & Ethics Enforcement (“State Board”) staff continue to monitor the effect of Florence across the State and remain in communication with disaster response teams, the U.S. Postal Service, and county elections administrators.
4. The State Board convened in open session on October 17, 2018. During that meeting, members of the State Board and the Executive Director discussed the effects of Florence on voting populations and the November 6, 2018 general election.
5. Statute provides that the Executive Director, as chief State elections official, may exercise emergency powers to conduct an election in districts where the normal schedule has been disrupted by a natural disaster. G.S. § 163A-750(a)(1). The

exercise of such powers must avoid unnecessary conflict with existing law. G.S. § 163A-750(a).

6. Administrative rules authorized by the State Board, adopted by the Executive Director, and approved by the Rules Review Commission provide standards for the exercise of emergency powers. *See* 08 NCAC 01.0106. Pursuant thereto, the Executive Director finds the following:
 - a. 08 NCAC 01.0106(a): Florence and its aftermath have disrupted the normal schedule for the election and impaired critical components of election administration by displacing persons, damaging property, and affecting mail delivery, which have cumulatively impaired voting opportunities in Affected Counties and absentee voting processes more broadly.
 - b. 08 NCAC 01.0106(b)(1)(A): Hurricane Florence is a qualifying natural disaster permitting the Executive Director to assess the propriety of emergency action.
 - c. 08 NCAC 01.0106(c): The Executive Director has shaped the exercise of emergency power having considered the following:
 - 08 NCAC 01.0106(c)(1): The geographic scope of disruption is limited to the Affected Counties identified by the President of the United States as within a Major Disaster area and targeted specifically by Session Law 2018-134. Remedial action as to absentee ballot delivery, however, cannot be limited to the recipient Affected County, because mail transit routes and/or delays may affect the delivery of ballots sent from any location to either an Affected County or a non-affected county.
 - 08 NCAC 01.0106(c)(2): Select contests span both affected and non-affected areas and include statewide ballot items. The considered exercise of power works to preserve the rights of candidates and voters participating in contests that span affected and non-affected areas.
 - 08 NCAC 01.0106(c)(3): More than one month has passed since Florence made landfall, and the disruption in advance of Election Day is highly foreseeable. The State Board has also invested heavily in advertising campaigns communicating the registration and voting options available this election. Nevertheless, the types of disruptions addressed by the exercise of emergency power contained in this Order are not adequately remedied by increased public awareness.
 - 08 NCAC 01.0106(c)(4): Alternative registration options were made available in Affected Counties by special enactments that extended the voter registration deadline. S.L. 2018-134, § 5.3.(a). The General Assembly additionally directed procedures by which county boards may relocate early voting sites and Election Day precinct locations. Early voting has not been suspended based

upon the disruption, and same-day registration remains available to individuals who appear during the early voting period. Registrants may present proof of residency using an electronic document. Voters displaced outside of their county of registration are able to request an absentee ballot sent to the address of their choosing. Accordingly, registration and voting opportunities remain available.

- 08 NCAC 01.0106(c)(5) and 01.0106(c)(6): The duration of disruption is ongoing and residents and voters remain displaced. Media reports indicate thousands remain displaced due to Florence. *See* Jason DeBruyn, “FEMA Brings Trailers to NC For Temporary Housing”, *WUNC* (October 18, 2018). Additionally, FEMA has announced temporary housing services. FEMA, “Direct Temporary Housing for North Carolina Disaster Survivors”, Release DR-4393-NC, (October 15, 2018). Displaced persons staying with family or friends may not be included in the count of those utilizing federal housing assistance. Some election workers cannot be reached or are no longer available to serve due to disruption, and in some precincts an insufficient number of elections officials are available to fill the positions of judge and chief judge.
- 08 NCAC 01.0106(c)(7): The General Assembly has approved processes that ensure secure voting locations. While access to some voting locations was a point of initial concern, the State Board staff remain in ongoing contact with county administrators who are best positioned to recommend any relocations to their respective county boards.
- 08 NCAC 01.0106(c)(8): The Executive Director transmitted correspondence to the Governor, President Pro Tempore of the Senate, and Speaker of the House on September 26, 2018, detailing current legal deadlines and administrative processes affecting voter registration, voting by mail, election workers, voting sites, and displaced voters. The letter also cited the administrative rule requiring consideration of the time remaining for the political branches to address disruptions. In the month since Florence made landfall, the General Assembly and the Governor have approved emergency legislation on three occasions: Session Laws 2018-134 (ratified October 2), 2018-135 (ratified October 2), and 2018-136 (ratified October 15).
- 08 NCAC 01.0106(c)(9): Emergency remedial measures contained in this Order do not erode election integrity and ballot security. All changes to absentee balloting involve administrative handling of absentee ballots while suspending no security requirements contained in current law.

NORTH CAROLINA

State Board of Elections & Ethics Enforcement

- 08 NCAC 01.0106(c)(10): Emergency remedial measures are calculated to have minimal effect on certification deadlines in that no deadline extends beyond the deadline by which certain ballots from overseas and military voters must be accepted under current law.

7. In evaluating the disruption and establishing remedial effects, every effort has been made to treat similarly situated persons equally, while appropriately tailoring relief to offset the nature and scope of the disruption as required by law.

Based upon the foregoing findings and conclusions, and in exercise of G.S. § 163A-750 and 08 NCAC 01.0106, the Executive Director hereby **ORDERS**:

- A. Civilian absentee ballots delivered by mail or commercial courier service to the appropriate county board of elections office in any of the twenty-eight Affected Counties shall be counted if received no later than 5 p.m. Thursday, November 15, 2018, if the container return envelope was postmarked on or before Election Day, November 6. This directive modifies the deadlines contained in G.S. § 163A-1310(b)(2) only, and in no other respect.
- B. Any voter or other person authorized by law may deliver an absentee ballot in person to any early voting site or county board of elections office in the state; the absentee ballot must be delivered during the site or office's hours of operation and shall be considered timely if delivered by 5 p.m. on Election Day, November 6. County boards of elections must ensure delivery to the appropriate county board of elections office prior to canvass on November 16, 2018. This directive modifies restrictions as to the location of delivery in G.S. § 163A-1310 only, and in no other respect.
- C. In any precinct in an Affected County where, due to the effects of Florence, the county board finds that an insufficient number of precinct officials are available to fill the majority of the three positions of chief judge and judge with residents of that precinct, the county board may appoint nonresidents of the precinct to a majority of the positions provided that the officials otherwise meet all requirements.

This the fifth day of November, 2018.



Kim Westbrook Strach
Executive Director
State Board of Elections & Ethics Enforcement