

The 2024 Election After Hurricane Helene: North Carolina

After making landfall on September 27, Hurricane Helene caused catastrophic damage across western North Carolina and other communities in its path. This resource explains the legal authority that North Carolina officials have to respond to a natural disaster like Helene. It also provides examples of steps that officials in North Carolina and elsewhere have taken after previous natural disasters.

In short, the State Board of Elections and other officials have broad authority to make sure that all eligible voters are able to vote safely and securely this year. The measures needed to achieve that goal will become clearer in coming days and weeks as the recovery effort proceeds.

Background

The State Board of Elections is already preparing for the challenges of administering this year's election under these extraordinary circumstances. The President has issued a Federal Major Disaster Declaration for 25 of North Carolina's 100 counties and the Eastern Band of Cherokee Indians.¹ There are nearly 1.3 million registered voters in the affected counties—approximately 17% of all North Carolina voters. The affected voters include approximately 480,000 registered Republicans, 290,000 registered Democrats, and 490,000 unaffiliated voters.² Nearly 40,000 of those voters had already requested absentee ballots,³ and many more (including displaced voters) are likely to submit requests by the October 29 deadline.

State officials have broad authority to make sure this year's election is safe, secure, and accessible to all eligible voters.

The emergency powers of the State Board of Elections

The State Board "may exercise emergency powers to conduct an election in a district where the normal schedule for the election is disrupted by," among other things, "a natural disaster."⁴

¹ The affected counties are: Alexander, Alleghany, Ashe, Avery, Buncombe, Burke, Caldwell, Catawba, Clay, Cleveland, Gaston, Haywood, Henderson, Jackson, Lincoln, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Transylvania, Watauga, Wilkes, and Yancey.

² <https://www.ncsbe.gov/voting/upcoming-election/helene-recovery-and-voting#numbers>.

³ <https://www.ncsbe.gov/voting/upcoming-election/helene-recovery-and-voting#numbers>.

⁴ N.C. Gen. Stat. § 163-27.1(a). The State Board also has specific statutory authority to prescribe an emergency rule in the event of "an international, national, or local emergency or other situation arises that makes substantial compliance" with the Uniform Military and Overseas Voters Act "impossible or unreasonable." N.C. Gen. Stat. § 163-258.31.

Under the governing administrative rules, the State Board “must ensure that remedial measures are calculated to offset the nature and scope of the disruption(s).”⁵ The State Board must consider ten specific factors in crafting any emergency order:

- The geographic scope of the disruption;
- The effects on contests spanning affected and non-affected areas;
- The length of forewarning and foreseeability of disruption;
- The availability of alternative registration or voting opportunities;
- The duration of the disruption;
- The displacement of voters or election workers;
- The ability to access secure voting locations;
- The sufficiency of time remaining for the General Assembly and the Governor to adopt emergency legislation addressing the disruption;
- Any detrimental effects on election integrity and ballot security;
- Any aggregate effects on important Federal and State certification deadlines.

Limits on the State Board’s emergency powers

North Carolina law also imposes express limitations on the State Board’s ability to make changes in response to natural disasters:

- The State Board must issue emergency orders by a majority vote at an **open meeting**.⁶
- The State Board’s emergency orders “**shall avoid unnecessary conflict**” with other provisions of North Carolina’s election law.⁷
- The State Board **cannot** (i) deliver absentee ballots to voters who did not submit a valid request or (ii) order an election to be conducted entirely by absentee ballot.⁸
- The State Board **cannot** delegate its emergency powers to the Executive Director or any other individual.⁹
- The State Board **cannot** alter redistricting plans under its emergency powers.¹⁰

Other relevant provisions of North Carolina law

In addition to the emergency powers provisions, there are a number of other provisions of North Carolina’s election laws that could be relevant in planning for this year’s elections.

- A county board of elections, by a unanimous vote of its members, may establish a voting place for a precinct that is located **outside the precinct**. Any proposal must be approved by the Executive Director of the State Board, and the county board must show, among other things, that there are no adequate facilities that can serve as a voting place in the precinct.¹¹
- A county board of elections, by a unanimous vote, may establish a plan for elderly or disabled voters in the precinct to vote at **satellite voting places** (i.e., designated sites other

⁵ § N.C.A.C. 01.0106.

⁶ N.C. Gen. Stat. § 163-271(a).

⁷ N.C. Gen. Stat. § 163-271(a).

⁸ N.C. Gen. Stat. § 163-271(d)(1)-(2).

⁹ N.C. Gen. Stat. § 163-271(d)(3).

¹⁰ N.C. Gen. Stat. § 163-271(b)-(c).

¹¹ N.C. Gen. Stat. § 163-130.1.

than the regular voting place for that precinct). Any proposal must be approved by the State Board.¹²

- A county board of elections, by a unanimous vote of its members, may propose to designate **two voting places** to be used temporarily for the same precinct. Any proposal must be approved by the Executive Director of the State Board.¹³

There is also an important exception to North Carolina's **voter identification provision** for victims of natural disasters. If a registered voter is unable to produce an acceptable form of identification due to a declared natural disaster that occurred within 100 days of the election, the voter may complete an affidavit at the polling place and cast a provisional ballot.¹⁴ This exception also applies to absentee ballot voters who may include a photo ID exception affidavit along with their voted ballot rather than a photocopy of their identification.¹⁵ These provisional ballots will be counted unless the county board of elections has grounds to believe the affidavit is false.

Finally, as the State Board's rules acknowledge, the **Governor** and the **General Assembly** also can take action in response to natural disasters. The Governor directs the State Emergency Management Program and can make use of the "services, equipment, supplies, and facilities" of all state and local agencies.¹⁶ The Governor also may reallocate funds among the various state agencies in certain circumstances.¹⁷ And with the concurrence of the Council of State, the Governor has the authority to "waive a provision of any regulation or ordinance of a State agency or a political subdivision which restricts the immediate relief of human suffering."¹⁸

Important considerations in determining appropriate emergency measures.

We do not yet know the full extent of the devastation Helene has caused, and those on the ground will have the greatest understanding of measures necessary to facilitate voting access in affected areas and by those displaced by the storm. As state and county officials take steps in the coming days and weeks, the following considerations are worth highlighting:

- **Historical trends in voting methods:** North Carolina historically has **low rates of absentee voting**.¹⁹ In the 2022 election, for example, only **5%** of voters cast absentee ballots. Even in the 2020 election at the height of the COVID-19 pandemic, only 18% of voters cast absentee ballots. These numbers reflect, in part, the fact that North Carolina's rules governing absentee ballots are both strict and more complicated than those in place in many other states.

¹² N.C. Gen. Stat. § 163-130.

¹³ N.C. Gen. Stat. § 163-130.2.

¹⁴ N.C. Gen. Stat. § 163-166.16(d)(3), (f).

¹⁵ N.C. Gen. Stat. § 163-230.1(f1).

¹⁶ N.C. Gen. Stat. §§ 166A-19.10(b)(7).

¹⁷ N.C. Gen. Stat. §§ 166A-19.40.

¹⁸ N.C. Gen. Stat. §§ 166A-19.30(b)(4).

¹⁹ <https://www.ncsbe.gov/results-data/voter-turnout>.

- **Potential impact on voter turnout:** Researchers have studied the impact of previous emergency election measures on voter turnout. For example, after Hurricane Michael in 2018, Florida Governor Ron DeSantis issued an executive order making several changes, including expanded early voting periods and consolidated polling places in eight counties. Researchers later found the consolidation of physical polling places appreciably depressed turnout, as voters who would have otherwise voted in person at their normal polling place (and presumably would have done so had alternate sites been established closer to their homes) chose not to due to the increased distance. The expansion of early and mail-in voting did not offset this depreciation.²⁰
- **Certification deadlines:** The State Board's regulations require it to consider the effects of any emergency measures on state and federal certification deadlines. That consideration is particularly important for this year's presidential election. The recently enacted Electoral Count Reform Act (ECRA) requires the Governor to certify North Carolina's slate of presidential electors by December 11, 2024.²¹ Even short delays in the post-election canvass and certification processes could jeopardize North Carolina's ability to meet the ECRA deadline. Accordingly, any emergency measures should be aimed at ensuring that all eligible voters can vote while minimizing the risk of delays in the post-election process.

²⁰ <https://www.brennancenter.org/media/10168/download>

²¹ 3 U.S.C. §§ 5(a)(1), 7.

Appendix

North Carolina has previously taken steps to facilitate voting by those affected by natural disasters.

After Hurricane Florence in 2018, the General Assembly and the Executive Director of the State Board of Elections authorized a number of changes to the election laws to ensure that voters could cast their ballots. Specifically, the General Assembly passed a recovery bill that included the following election relief provisions:

- Extending the **voter registration deadline** in affected counties to October 15, 2018.
- Allowing county boards of elections to designate **substitute one-stop sites** at which voters could apply for and cast absentee ballots, where the county's original one-stop site was damaged or made otherwise inaccessible or impractical for use due to hurricane damage.
- Allowing county boards of elections to adopt **resolutions altering voting places**, where voting places had been damaged or made otherwise inaccessible or impractical for use due to hurricane damage.
- Reiterating that county boards could adopt other changes to voting places under the statutes that govern **out-of-precinct voting places, satellite voting places** for elderly and disabled voters, and the temporary use of **two voting places** in a given precinct.

The Executive Director of the State Board of Elections ordered additional emergency measures:

- Extending the **deadline for receiving absentee ballots** to 5 p.m. on November 15 (*i.e.*, nine days after Election Day), so long as the envelope was postmarked on or before Election Day.
- Authorizing voters to deliver absentee ballots in person to **any early voting site or county board office in the state** by 5 p.m. on November 6. County boards were then required to ensure delivery to the appropriate county board office prior to the county canvass meetings on November 16.
- Authorizing the county board to appoint **nonresident precinct officials** in any precinct in an affected county that had an insufficient number of precinct officials available due to the effects of the hurricane.²²

Consistent with then-governing law, this emergency order was issued by the Executive Director of the State Board rather than by a majority vote of the full Board, as is required today. We are not aware of any legal challenges to the Executive Director's exercise of this authority.

²² https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/Orders/Executive%20Director%20Orders/Order_2018-10-19.pdf

State and local election officials across the country have ordered similar changes in response to natural disasters.

There are several examples from recent history where state and local officials responded to natural disasters by making voting more accessible:

**Hurricane Ian
Florida (2022)** Hurricane Ian hammered the State of Florida late in the 2022 election cycle, raising concerns that in-person and absentee voting alike would be impacted by the storm. Election officials rallied to ensure that mail-in ballots were sent out to voters in time, and that voters inaccessible by the postal service were able to pick up ballots from alternate sites in advance of the election.²³ Once it became clear that full precinct voting would not be possible in three counties, Governor Ron DeSantis relaxed the restrictions on early voting and allowed affected voters to cast ballots at alternate sites, as well as request to have absentee ballots sent to different addresses than those on file if they had been displaced by the storm.²⁴

**Hurricanes Laura,
Delta, and Zeta
Louisiana (2020)** The state of Louisiana reeled from a trio of storms that made landfall in 2020, complicating an election season that was already grappling with the COVID-19 pandemic. In response, the state consolidated polling places into so-called “mega-precincts,”²⁵ and circulated mailers to affected voters encouraging them to cast provisional ballots if they had been displaced from their registered polling places.²⁶ With the last of the three storms, Zeta, touching down days before Election Day, officials in Southeast Louisiana scrambled to deliver generators and light towers to minimize the number of polling places that needed to be closed.²⁷

**Hurricane Sandy
New York
New Jersey
(2012)** Sandy made landfall in the United States on October 29, 2012, merely eight days prior to Election Day. 24 states were impacted in some way, with New York and New Jersey suffering particularly intense damage. Under their respective governors, Andrew Cuomo and Chris Christie, both states made allowances for displaced voters to cast provisional ballots at any polling place they could access. New York extended the deadline for absentee ballots to be received and counted to thirteen days after Election Day, and New Jersey voters were allowed to email or fax in their ballots. The process was not without its share of issues, with technological breakdowns, shortages, and long lines, but neither allowed the crisis to stand as a barrier to voting.²⁸

²³ <https://www.npr.org/2022/10/06/1127309311/florida-officials-are-scrambling-to-limit-hurricane-ians-impact-on-the-election>

²⁴ <https://www.npr.org/2022/10/13/1128771511/florida-governor-eases-voting-rules-in-counties-slammed-by-hurricane-ian>

²⁵ https://www.sos.la.gov/OurOffice/PublishedDocuments/SWLA_VotingLocationsFlyer2020_rev.pdf

²⁶ <https://www.sos.la.gov/OurOffice/PublishedDocuments/DisplacedVoterFlyer2020.pdf>

²⁷ https://www.theadvocate.com/baton_rouge/news/politics/elections/louisiana-gets-nearly-all-polling-places-running-for-election-day-after-hurricane-zeta-see-changes/article_8da78972-1d2e-11eb-887a-cb33eb031bbb.html

²⁸ <https://www.nytimes.com/2012/11/03/us/politics/hurricane-sandy-threatens-to-disrupt-voting-on-election-day.html>;

<https://www.nytimes.com/2013/11/13/nyregion/lessons-from-hurricane-sandy-being-applied-to-election-planning.html>