ELECTION AND RELATED LAWS OF NORTH CAROLINA

Chapter 163

Elections and Election Laws

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Legislation affecting individual counties and, consequently, the state at large may be subject to Section 5 of the federal Voting Rights Act of 1965. For information concerning the receipt of preclearance consult the North Carolina Register or the appropriate agency as provided for in Chapter 120, Article 6A, § 120–30.9A et seq.

SUBCHAPTER I. TIME OF PRIMARIES AND ELECTIONS

Article 1

Time of Primaries and Elections

Section

163–1. Time of regular elections and primaries.
163–2. Repealed.
163–3 to 163–7. Reserved.

§ 163–1. Time of regular elections and primaries

(a) Unless otherwise provided by law, elections for the officers listed in the tabulation contained in this section shall be conducted in all election precincts of the territorial units specified in the column headed ''Jurisdiction'' on the dates indicated in the column headed ''Date of Election.'' Unless otherwise provided by law, officers shall serve for the terms specified in the column headed ''Term of Office.''

(b) On Tuesday next after the first Monday in May preceding each general election to be held in November for the officers referred to in subsection (a) of this section, there shall be held in all election precincts within the territory for which the officers are to be elected a primary election for the purpose of nominating candidates for each political party in the State for those offices, and nonpartisan candidates as to offices elected under the provisions of Article 25 of this Chapter.

(c) On Tuesday next after the first Monday in November in the year 1968, and every four years thereafter, or on such days as the Congress of the United States shall direct, an election shall be held in all of the election precincts of the State for the election of electors of President and Vice–President of the United States. The number of electors to be chosen shall be equal to the number of Senators and Representatives in Congress to which this State may be entitled. Presidential electors shall not be nominated by primary election; instead, they shall be nominated in a State convention of each political party as defined in G.S. 163–96 unless otherwise provided by the plan of organization of the political

party; provided, that in the case of a candidate for President of the United States who has qualified to have his name printed on the general election ballot as an unaffiliated candidate under G.S. 163–122, that candidate shall nominate presidential electors. One presidential elector shall be nominated from each congressional district and two from the state-at-large, and in addition, the State convention of each party and the unaffiliated candidate shall each nominate first and second alternate electors who shall serve if their slate is elected as provided by G.S. 163–209 and if there is a vacancy as provided by G.S. 163–210.

OFFICE	JURISDICTION	DATE OF ELECTION	TERM OF OFFICE
Governor	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Lieutenant Governor	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Secretary of State	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Auditor	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Treasurer	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Superintendent of Public Instruction	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Attorney General	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Commissioner of Agriculture	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election

OFFICE	JURISDICTION	DATE OF ELECTION	TERM OF OFFICE
Commissioner of Labor	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Commissioner of Insurance	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
All other State officers whose terms last for four years	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
All other State officers whose terms are not specified by law	State	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years, from first day of January next after election
State Senator	Senatorial district	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years
Member of State House of Representatives	Representative district	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years
Justices and Judges of the Appellate Division	State	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Eight years, from first day of January next after election
Judges of the superior courts	Superior Court District	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Eight years, from first day of January after next election
Judges of the district courts	District court district	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Four years, from the first day in January next after election
District Attorney	District Attorney district	At the regular election for mem-	Four years, from first day of Janu-

OFFICE	JURISDICTION	DATE OF ELECTION	TERM OF OFFICE
		bers of the General Assembly immediately preceding the termination of each regular term	ary next after election
Members of House of Representatives of the Congress of the United States	Congressional district, except as modified by G.S. 163-104	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years
United States Senators	State	At the regular election immediately preceding the termination of each regular term	Six years
County commissioners	County	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Two years, from the first Monday in December next after election
Clerk of superior court	County	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Four years, from the first Monday in December next after election
Register of deeds	County	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Four years, from the first Monday in December next after election
Sheriff	County	At the regular election for members of the General Assembly immediately preceding the termination of each regular term	Four years, from the first Monday in December next after election
Coroner	County	At the regular election for members of the General Assembly immediately preceding the termination of a regular term	Four years, from the first Monday in December next after election
County treasurer (in counties in which elected)	County	Tuesday next after the first Monday in November 1968 and every	Two years, from the first Monday in December next after elec-

OFFICE	JURISDICTION	DATE OF ELECTION	TERM OF OFFICE
		two years thereafter	tion
All other county officers to be elected by the people	County	Tuesday next after the first Monday in November 1968 and every two years thereafter	Two years, from the first Monday in December next after election

(d) If primaries for the State Senate or State House of Representatives are temporarily moved from the date provided in subsection (b) of this section for any election year, all primaries shall be held on the same day.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1967, c. 1264; Laws 1967, c. 1271; Laws 1969, c. 44, § 80; Laws 1971, c. 170; Laws 1973, c. 793, § 93; Laws 1975, c. 844, § 1; Laws 1977, c. 265, § 1; Laws 1977, c. 661, § 1; Laws 1981, c. 504, §§ 11 to 13; Laws 1985, c. 768, § 16 to 17.1; Laws 1991 (Reg. Sess., 1992), c. 782, § 1; Laws 1993 (Reg. Sess., 1994), c. 738, § 2, eff. July 13, 1994; Laws 1996 (2nd Ex. Sess.), c. 9, § 2; S.L. 2003–434 (Ex. Sess.), § 6, eff. Nov. 25, 2003; S.L. 2004–127, § 12, eff. July 26, 2004; S.L. 2005–425, § 3.2, eff. Sept. 22, 2005.

Historical and Statutory Notes

Laws 1996, 2 Ex. Sess., c. 9, § 23, provides:

''Part 1 of this act becomes effective only if Parts 1 and 2 of this act are both effective under section 5 of the Voting Rights Act of 1965.''

Laws 1996, 2 Ex. Sess., c. 9, § 24, provides, in part:

''Part 1 of this act is effective upon ratification, and applies beginning with the 1996 elections, except that Sections 1 and 2 of this act shall be applied to the 1994 general election and the results of that election validated and confirmed under those sections. . . .''

The U.S. Department of Justice precleared Parts 1 and 2 of Laws 1996, 2 Ex. Sess., c. 9, in a letter dated Oct. 1, 1996.

2002 Legislation

S.L. 2002–21 (Ex. Sess.), §§ 1(a) to 2, eff. July 16, 2002, provide:

''Section 1.(a) Notwithstanding G.S. 163–1(b), the date of the primary election in 2002 shall be September 10, 2002.

''Section 1.(b) In order to accommodate the scheduling of the 2002 primary on September 10, 2002, and in order to comply with the requirements of Section 5 of the Voting Rights Act of 1965 and any court orders, and in order to comply with any objections interposed under Section 5, the State Board of Elections may issue temporary orders that may change, modify, delete, amend, or add to any statute contained in Chapter 163 of the General Statutes, any rules contained in Title 8 of the North Carolina Administrative Code, or any other election regulation or guideline that may affect the 2002 primaries and general elections. These temporary orders are only effective for the 2002 primary and 2002 general election. These orders shall include a primary election schedule.

''Section 1.(c) Notwithstanding G.S. 163–111 or any local act, in 2002 only, the result of the primary shall be determined by a plurality and no second primary shall be held. Any runoff election for local office that might by local act have been held on the date of the second primary shall instead be held on the date of the general election. If there is a tie in a primary in 2002, the result shall be determined in accordance with G.S. 163–111(f) under the same rule as if there had been a tie in a second primary.

''Section 1.(d) The authority to adopt orders also extends to any elections originally scheduled to be held on May 7, 2002, any elections ordered by the State Board of Elections to be held on the date of a county primary that were originally scheduled to be held on May 7, 2002, or any elections to be held on

the date of the second primary. If any municipality had its election scheduled under G.S. 160A–23.1(d)(2) to be on the date of the second primary in 2002, the election shall instead be held on the date of the general election in 2002.

''Section 1.(e) The orders shall provide for candidate filing for member of the State Senate and State House of Representatives to open as soon as practicable.

''Section 1.(f) The State Board of Elections may set a period of time for unaffiliated candidates who wish to obtain ballot access by petition, under the provisions of G.S. 163–122, for legislative races in districts used in new legislative filings, to obtain and submit signed petitions for such purpose. Any unaffiliated candidate for a legislative seat, in a district used under a previously approved legislative redistricting plan, who had submitted a petition in a timely manner under the provisions of G.S. 163–122, shall have the right under any State Board plan to have any valid voter signatures contained in the previously approved petition, that meet the residency requirements of the new district, to be considered a part of any new petition to obtain ballot access for a legislative seat in that new district.

''Section 1.(g) The authority granted by this section shall be exercised only when needed to ensure the orderly and timely operations of the electoral process, the public good, and any valid interest of voters, candidates, and officeholders in order to accommodate the compressed schedule necessitated by holding the primary elections at such a late date. All orders of the State Board issued under this section shall be presumed to be reasonable and to serve the public interest.

''Section 1.(h) Orders issued under this section are not rules subject to the provisions of Chapter 150B of the General Statutes. Orders issued under this section shall, however, be published in the North Carolina Register as quickly as possible.

''Section 1.(i) The times to publish notice of a bond referendum required by G.S. 159–61(c) shall not apply to any bond referendum held on the date of the 2002 statewide primary. The local government unit holding the bond referendum on that date shall comply with the times to publish notice of the election prescribed by the State Board of Elections pursuant to this section.

''Section 1.(j) The provisions of G.S. 159–61(b) that provide that a bond referendum may not be held within 30 days before or 10 days after a statewide primary, election, or referendum shall not apply to any bond referendum previously called to be conducted on a date that is within 30 days before or 10 days after the date selected as the date for the 2002 statewide primary.

''Section 1.(k) As used in this section, ''order'' also includes guidelines and directives.

''Section 1.(*l*) Any orders issued under this section become void 10 days after the final certification of all elections that were originally scheduled to be held in 2002.

''This section expires 10 days after the final certification of all elections that were originally scheduled to be held in 2002.

''Section 1.1. Notwithstanding G.S. 163–106(h), any person who filed a notice of candidacy under G.S. 163–106(c) during the filing period in 2002 for an office other than member of the State Senate or member of the State House of Representatives and did not withdraw that notice of candidacy before the filing deadline may not file a notice of candidacy as a member of the State Senate or member of the State House of Representatives unless either of the following applies:

''(1) If that person was declared the nominee of the party under G.S. 163–110, that person resigns the nomination (in which case the vacancy in nomination shall be filled in accordance with G.S. 163–114).

''(2) If that person is in a contested primary, that person withdraws the notice of candidacy. That notice of candidacy may be withdrawn notwithstanding the requirements of G.S. 163–106(e) that it be withdrawn prior to the filing deadline for that office. In the case of any such withdrawal, the appropriate board of election shall reopen filing for three days under the usual procedures of G.S. 163–112 notwithstanding the time of and reason for the withdrawal.

''Section 2. If any members of any county board of education are elected at the primary election and take office under a local act in July after the primary, in 2002 only, they shall instead take office on the same day in December after the primary, and the terms of any such member which would otherwise expire in July of 2002 are extended accordingly.''

2003 Legislation

S.L. 2003–434 (Ex. Sess.), § 6, eff. Nov. 25, 2003, added subsec. (d).

S.L. 2003–434 (Ex. Sess.), § 16, provides:

''Sections 1, 2, 3, 4, and 5 of this act are effective when it becomes law. The remainder of this act is effective when it becomes law and applies to any case pending on or filed after that date, to any case regardless of when the case was filed, and to any action of a court affecting the validity of an act apportioning or redistricting State legislative or congressional districts.''

2004 Legislation

S.L. 2004–127, § 12, eff. July 26, 2004, in subsec. (b), inserted '', and nonpartisan candidates as to offices elected under the provisions of Article 25 of this Chapter''.

2005 Legislation

S.L. 2005–425, §3.2, eff. Sept. 22, 2005, substituted ''day in January next'' for ''Monday in December next'' in the chart entry for ''Judges of the district court.''

S.L. 2005–425, § 4, provides:

''Sections 1.1 and 1.2 of this act become effective January 1, 2006, and apply to fees assessed or collected on or after that date. Section 2 becomes effective January 1, 2006, and applies to cases filed on or after that date. Sections 3.1 and 3.2 of this act are effective when they become law. Judges elected in 2006 and thereafter take office accordingly, and as provided by Section 10 of Article VI of the North Carolina Constitution and G.S. 128–7, those in office on the first Monday in December of 2006 or 2008 shall continue until their successors' terms begin and are duly qualified.''

Cross References

Election and terms of office of sanitary district boards, see § 130A–50.

Notes of Decisions

Construction and application 2
Election of judges 3
Validity 1

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1. Validity

Political party could bring action challenging North Carolina's method of electing state trial court judges under equal protection clause of Fourteenth Amendment, even though judges were not representatives in sense that they represented interests of their constituents; political party raised vote dilution, rather than one-person, one-vote, issue, electorate undoubtedly considered broad philosophical views of judicial candidates when voting, and very real possibility existed that party affiliation reflected judicial philosophy and ultimately outcome of judicial decisions. Republican Party of North Carolina v. Martin, 1992, 980 F.2d 943, rehearing denied 991 F.2d 1202, certiorari denied 114 S.Ct. 93, 510 U.S. 828, 126 L.Ed.2d 60, on remand 841 F.Supp. 722. Constitutional Law ⚷ 923

For purposes of action challenging method of electing North Carolina state trial court judges as political gerrymandering in violation of equal protection clause of Fourteenth Amendment, political party constituted ''identifiable political group,'' even though political party included some members of opposing party as plaintiffs, where complaint stated that those plaintiffs had and would continue to vote for political party's candidates for state trial court judgeships. Republican Party of North Carolina v. Martin, 1992, 980 F.2d 943, rehearing denied 991 F.2d 1202, certiorari denied 114 S.Ct. 93, 510 U.S. 828, 126 L.Ed.2d 60, on remand 841 F.Supp. 722. Constitutional Law ⚷ 923

Political party could not bring action challenging North Carolina's method of electing state trial court judges under First Amendment's free speech provisions where there was no indication that North Carolina laws subjected party members to threat of civil or criminal penalties for engaging in political expression. Republican Party of North Carolina v. Martin, 1992, 980 F.2d 943, rehearing denied 991 F.2d 1202, certiorari denied 114 S.Ct. 93, 510 U.S. 828, 126 L.Ed.2d 60, on remand 841 F.Supp. 722. Constitutional Law ⚷ 863; Constitutional Law ⚷ 859

Political party failed to state claim that North Carolina's method of electing state trial court judges violated First Amendment rights of free speech and association where political party alleged no direct, state-imposed impediments on judicial elections or that its members

were prevented from participating, as individuals or as a group, in election of state trial court judges; First Amendment protects right to cast effective vote by prohibiting restrictions on ballot access that impair ability of citizens to express their political references, or that limit opportunity for citizens to unite in support of candidate of their choice, but does not insure equal weighing of votes. Republican Party of North Carolina v. Martin, 1992, 980 F.2d 943, rehearing denied 991 F.2d 1202, certiorari denied 114 S.Ct. 93, 510 U.S. 828, 126 L.Ed.2d 60, on remand 841 F.Supp. 722. Constitutional Law ⚷ 2054; Constitutional Law ⚷ 1477

2. Construction and application

The provisions of election law setting up machinery to be followed in ascertaining and declaring successful candidate in an election are applicable to all municipal elections. Ledwell v. Proctor, 1942, 19 S.E.2d 234, 221 N.C. 161. Elections ⚷ 236

Const. Art. 7, § 3, providing that the first division of counties into townships shall be by the county commissioners, does not authorize them to make any subsequent division or alteration. The subsequent creation or alteration of townships is left with the legislature. Grady v. Lenoir County Com'rs, 1876, 74 N.C. 101. Towns ⚷ 6

3. Election of judges

Method of electing state trial court judges in North Carolina did not require political party's judicial candidates to choose between accepting public employment and taking action contrary to their chosen political affiliation, even though method of electing judges allegedly prevented political party's judicial candidates from being elected; although political party affiliation may be appropriate consideration if government, as hiring authority, requires affiliation with particular political party as qualification for performance of position, state trial court judges were elected public officials, rather than employees hired by government. Republican Party of North Carolina v. Martin, 1992, 980 F.2d 943, rehearing denied 991 F.2d 1202, certiorari denied 114 S.Ct. 93, 510 U.S. 828, 126 L.Ed.2d 60, on remand 841 F.Supp. 722. Judges ⚷ 3

Political party sufficiently alleged actual discriminatory effect of North Carolina's method of electing state trial court judges where political party's complaint set forth data revealing that, in 1984 and 1986 general elections, of 40 judgeships up for election, only four were contested by political party's candidates and that, since 1968, of approximately 220 judgeships up for election, political party offered candidate in only ten, and complaint asserted that method of electing state trial court judges diminished campaign contributions for those elections because potential contributors were unwilling to donate money or other resources to candidate who was perceived to be almost certain loser. Republican Party of North Carolina v. Martin, 1992, 980 F.2d 943, rehearing denied 991 F.2d 1202, certiorari denied 114 S.Ct. 93, 510 U.S. 828, 126 L.Ed.2d 60, on remand 841 F.Supp. 722. Civil Rights ⚷ 1395(1)

Political party stated prima facie case of vote dilution brought about by political gerrymandering with respect to North Carolina's method of electing state trial court judges in state-wide, rather than judicial district-wide, elections where political party's complaint alleged that repeated efforts to change from state-wide to district-wide elections were rejected by opposition-controlled state general assembly, that only one candidate for state trial court judge running on political party's ticket had been elected since turn of century, that state trial court judges rarely, if ever, performed judicial duties outside the respective districts, and that majority of voters voted for judicial candidates from other parts of state without knowing anything about candidates other than party affiliation as indicated on ballot. Republican Party of North Carolina v. Martin, 1992, 980 F.2d 943, rehearing denied 991 F.2d 1202, certiorari denied 114 S.Ct. 93, 510 U.S. 828, 126 L.Ed.2d 60, on remand 841 F.Supp. 722. Constitutional Law ⚷ 3658(5)

§ 163–2. Repealed by S.L. 2001–460, § 2, eff. Jan. 1, 2002

Historical and Statutory Notes

See, now, § 163–166.

§§ 163–3 to 163–7. Reserved

Article 2

Time of Elections to Fill Vacancies

Section

163–8. Filling vacancies in State executive offices.
163–9. Filling vacancies in State and district judicial offices.
163–10. Filling vacancy in office of district attorney.
163–11. Filling vacancies in the General Assembly.
163–12. Filling vacancy in United States Senate.
163–13. Filling vacancy in United States House of Representatives.
163–14 to 163–18. Reserved.

§ 163–8. Filling vacancies in State executive offices

If the office of Governor or Lieutenant Governor shall become vacant, the provisions of G.S. 147-11.1 shall apply. If the office of any of the following officers shall be vacated by death, resignation, or otherwise than by expiration of term, it shall be the duty of the Governor to appoint another to serve until his successor is elected and qualified: Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Attorney General, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance. Each such vacancy shall be filled by election at the first election for members of the General Assembly that occurs more than 60 days after the vacancy has taken place, and the person chosen shall hold the office for the remainder of the unexpired four-year term: Provided, that when a vacancy occurs in any of the offices named in this section and the term expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill the vacancy for the unexpired term of the office.

Upon the occurrence of a vacancy in the office of any one of these officers for any of the causes stated in the preceding paragraph, the Governor may appoint an acting officer to perform the duties of that office until a person is appointed or elected pursuant to this section and Article III, Section 7 of the State Constitution, to fill the vacancy and is qualified.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1981, c. 504, § 14; Laws 1983, c. 324, § 1; Laws 1985 (Reg. Sess., 1986), c. 920, § 5.

§ 163–9. Filling vacancies in State and district judicial offices

(a) Vacancies occurring in the offices of Justice of the Supreme Court, judge of the Court of Appeals, and judge of the superior court for causes other than expiration of term shall be filled by appointment of the Governor. An appointee to the office of Justice of the Supreme Court or judge of the Court of Appeals shall hold office until January 1 next following the election for members of

the General Assembly that is held more than 60 days after the vacancy occurs, at which time an election shall be held for an eight-year term and until a successor is elected and qualified.

(b) Except for judges specified in the next paragraph of this subsection, an appointee to the office of judge of superior court shall hold his place until the next election for members of the General Assembly that is held more than 60 days after the vacancy occurs, at which time an election shall be held to fill the unexpired term of the office.

Appointees for judges of the superior court from any district:

(1) With only one resident judge; or

(2) In which no county is subject to section 5 of the Voting Rights Act of 1965,

shall hold the office until the next election of members of the General Assembly that is held more than 60 days after the vacancy occurs, at which time an election shall be held to fill an eight-year term.

(c) When the unexpired term of the office in which the vacancy has occurred expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill that vacancy for the unexpired term of the office.

(d) Vacancies in the office of district judge which occur before the expiration of a term shall not be filled by election. Vacancies in the office of district judge shall be filled in accordance with G.S. 7A–142.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1969, c. 44, § 81; Laws 1979, c. 494; Laws 1981, c. 504, § 15; Laws 1981, c. 763, § 3; Laws 1985 (Reg. Sess., 1986), c. 920, § 6; Laws 1995, c. 98, § 1, eff. May 23, 1995; Laws 1996 (2nd Ex. Sess.),c. 9, § 21.

Historical and Statutory Notes

Laws 1995, c. 98, §§ 2 and 3, provide:

''Section 2. The terms of office of all duly elected judges of the Supreme Court and Judges of the Court of Appeals who are not already serving full eight-year terms of office are as follows:

''(1) For the Court of Appeals seat now occupied by Joseph R. John, Sr., no election shall be held in 1998 for a full term, and the holder of that seat shall serve until a successor is elected in 2000 and qualifies. The succeeding term begins January 1, 2001.

''(2) For the Court of Appeals seat now occupied by Ralph A. Walker, no election shall be held in 1998 for a full term, and the holder of that seat shall serve until a successor is elected in 2002 and qualifies. The succeeding term begins January 1, 2003.

''(3) For the Court of Appeals seat now occupied by Mark D. Martin, no election shall be held in 1998 for a full term, and the holder of that seat shall serve until a successor is elected in 2002 and qualifies. The succeeding term begins January 1, 2003.

''Section 3. If any provision of this act is held invalid by a court of competent jurisdiction, such holding shall invalidate the remaining provisions of this act, so that its provisions are inseparable.''

Laws 1996, 2 Ex. Sess., c. 9, § 21, provides, in part, that this section ''is

effective upon ratification and applies to vacancies to be filled by elections conducted on or after that date''.

Notes of Decisions

Validity 1

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1. Validity

General Assembly's creation of three additional Court of Appeals judgeships, effective upon appointment by governor, with initial appointive terms of approximately four years, exceeded limitations of state constitutional provisions that required judicial appointees to run at next general election for members of General Assembly, and that judges serve eight-year terms following elections, even though creation of judgeships themselves was not unconstitutional, and legislature indicated that office of judge of Court of Appeals would not be created until appointment of judge so as to sidestep requirement that elections be held, given that office had to exist before it could be filled, and legislature could not delay effective date of judgeships so as to circumvent constitutional requirements. Pope v. Easley, 2001, 354 N.C. 544, 556 S.E.2d 265. Judges ⚷ 2; Judges ⚷ 7

Section of statute creating three additional judgeships on Court of Appeals was severable from unconstitutional section that delayed effective date of judgeships and failed to require elections as mandated by state constitution, given that legislature specifically stated that sections of statute were severable, which evinced clear intent to allow enforcement of section that created judgeships, even in absence of sections that dealt with appointments and terms. Pope v. Easley, 2001, 354 N.C. 544, 556 S.E.2d 265. Statutes ⚷ 64(3)

Statute providing that person elected to fill vacancy on superior court, Court of Appeals, or Supreme Court serves only unexpired portion of vacated term did not violate provision of North Carolina Constitution providing that judges ''shall hold office for terms of eight years.'' Brannon v. North Carolina State Bd. of Elections, 1992, 416 S.E.2d 390, 331 N.C. 335. Judges ⚷ 8

Securing uniformity in beginning of terms of office for superior court judges was adequate public purpose to sustain under State Constitution statute providing for that uniformity by delaying election for nine superior court judges. State ex rel. Martin v. Preston, 1989, 385 S.E.2d 473, 325 N.C. 438. Judges ⚷ 7

Statute which postponed election date for eight superior court judges for two years and for ninth judge for four years did not violate provision of Constitution stating that superior court judges shall hold office for term of eight years and until their successors are elected and qualified; legislature merely eliminated staggered terms within multi-seat judicial districts by creating one-time interim or hiatus between certain terms of office. State ex rel. Martin v. Preston, 1989, 385 S.E.2d 473, 325 N.C. 438. Judges ⚷ 7

One-time delay in certain judicial elections created by statute postponing election of certain superior court judges so as to eliminate staggered terms did not violate right of citizens to vote guaranteed by State Constitution. State ex rel. Martin v. Preston, 1989, 385 S.E.2d 473, 325 N.C. 438. Elections ⚷ 10.5; Judges ⚷ 3

Where terms of incumbent superior court judges end without successors having been elected and qualified, new terms of office have not begun, and Constitution's ''hold over'' provision operates and allows incumbents to continue serving interim; thus, by allowing nine judges to hold over in office beyond their terms' expiration, legislature did not unconstitutionally use authority of governor to make judicial appointments for vacancies in judicial offices. State ex rel. Martin v. Preston, 1989, 385 S.E.2d 473, 325 N.C. 438. Constitutional Law ⚷ 2391; Judges ⚷ 9

Delaying election of superior court judges in certain judicial districts did not confer separate emolument upon incumbents in violation of State Constitution; any benefit to incumbent judges was incidental and subordinate to legitimate public benefits obtained by delaying elections. State ex rel. Martin v. Preston, 1989, 385 S.E.2d 473, 325 N.C. 438. Judges ⚷ 22(6)

§ 163–10. Filling vacancy in office of district attorney

Any vacancy occurring in the office of district attorney for causes other than expiration of term shall be filled by appointment of the Governor. An appointee shall hold his place until the next election for members of the General Assembly that is held more than 60 days after the vacancy occurs, at which time an election shall be held to fill the unexpired term of the office: Provided, that when the unexpired term of the office in which the vacancy has occurred expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill that vacancy for the unexpired term of the office.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1973, c. 47, § 2; Laws 1977, c. 265, § 2; Laws 1981, c. 504, § 16; Laws 1985 (Reg. Sess., 1986), c. 920, § 7.

§ 163–11. Filling vacancies in the General Assembly

(a) If a vacancy shall occur in the General Assembly by death, resignation, or otherwise than by expiration of term, the Governor shall immediately appoint for the unexpired part of the term the person recommended by the political party executive committee provided by this section. The Governor shall make the appointment within seven days of receiving the recommendation of the appropriate committee. If the Governor fails to make the appointment within the required period, he shall be presumed to have made the appointment and the legislative body to which the appointee was recommended is directed to seat the appointee as a member in good standing for the duration of the unexpired term.

(b) If the district consists solely of one county and includes all of that county, the Governor shall appoint the person recommended by the county executive committee of the political party with which the vacating member was affiliated when elected, it being the party executive committee of the county which the vacating member was resident.

(c) If the district consists solely of one county but includes less than all of the county, the Governor shall appoint the person recommended by the county executive committee of the political party with which the vacating member was affiliated when elected, it being the county executive committee of the county which the vacating member was resident, provided that in voting only those county executive committee members who reside in the district shall be eligible to vote.

(d) If the district consists of more than one county, the Governor shall appoint for the unexpired portion of the term the person recommended by the State House of Representatives district committee or the Senatorial district committee of the political party

with which the vacating member was affiliated when elected. In the case where all of a county is included within a district, the county convention or county executive committee of that political party shall elect or appoint at least one member from that county to serve on the State House of Representatives district executive committee or State Senatorial district executive committee. In the case where only part of a county is included within a district, the county convention or county executive committee of that political party shall elect or appoint at least one member from that county to serve on the State House of Representatives district committee or the State Senatorial district committee, but only the delegates to the county convention or the members of the county executive committee who reside in the district may vote in electing the district committee member. When the State House of Representatives district committee or the State Senatorial district committee meets, a member shall be entitled to cast for his county (or the part of his county within the district) one vote for each 300 persons or major fraction thereof residing within that county, or in the case where less than the whole county is in the district one vote for each 300 persons or major fraction thereof residing in that part of the district within the county.

A county convention or county executive committee may elect more than one member to the district committee but in the event that more than one member is selected from that county, then each member shall cast an equal share of the votes allotted to the county.

(e) No person is eligible for appointment to fill a vacancy in the Senate or the House of Representatives under this section, unless that person would have been qualified to vote as an elector for that office if an election were to be held on the date of appointment. This section is intended to implement the provisions of Section 8 of Article VI of the Constitution.

Added by Laws Laws 1967, c. 775, § 1. Amended by Laws 1973, c. 35; Laws 1981, c. 504, § 17; Laws 1981 (Reg. Sess., 1992), c. 1265, § 3; S.L. 2007–391, § 27(b), eff. Aug. 19, 2007.

Historical and Statutory Notes

2007 Legislation

S.L. 2007–391, § 27(b), added subsec. (e).

S.L. 2007–391, § 27(c), provides:

''This section is effective when it becomes law and applies only to appointments made on or after that date.''

§ 163–12. Filling vacancy in United States Senate

Whenever there shall be a vacancy in the office of United States Senator from this State, whether caused by death, resignation, or otherwise than by expiration of term, the Governor shall appoint to fill the vacancy until an election shall be held to fill the office. The Governor shall issue his writ for the election of a Senator to

be held at the time of the first election for members of the General Assembly that is held more than 60 days after the vacancy occurs. The person elected shall hold the office for the remainder of the unexpired term. The election shall take effect from the date of the canvassing of the returns.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1981, c. 504, § 18; Laws 1985, c. 759, § 2; Laws 1985, c. 768, § 18.

§ 163–13. Filling vacancy in United States House of Representatives

(a) Special Election.—If at any time after expiration of any Congress and before another election, or if at any time after an election, there shall be a vacancy in this State's representation in the House of Representatives of the United States Congress, the Governor shall issue a writ of election, and by proclamation fix the date on which an election to fill the vacancy shall be held in the appropriate congressional district.

(b) Nominating Procedures.—If a congressional vacancy occurs beginning on the tenth day before the filing period ends under G.S. 163-106(c) preceding the next succeeding general election, candidates for the special election to fill the vacancy shall not be nominated in primaries. Instead, nominations may be made by the political party congressional district executive committees in the district in which the vacancy occurs. The chairman and secretary of each political party congressional district executive committee nominating a candidate shall immediately certify his name and party affiliation to the State Board of Elections so that it may be printed on the special election ballots.

If the congressional vacancy occurs before the tenth day before the filing period ends under G.S. 163-106(c) prior to the next succeeding general election, the Governor shall call a special primary for the purpose of nominating candidates to be voted on in a special election called by the Governor in accordance with the provisions of subsection (a) of this section. Such a primary election shall be conducted in accordance with the general laws governing primaries, except that the opening and closing dates for filing notices of candidacy with the State Board of Elections shall be fixed by the Governor in his call for the special primary. The Governor may also fix the absentee voting period for the special election and for the special first primary, but such period shall not be less than 30 days.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1985, c. 759, §§ 3 to 5.

Cross References

Special provisions for vacancies in certain offices, see § 163–115.

§§ 163–14 to 163–18. Reserved

SUBCHAPTER II. ELECTION OFFICERS

Article 3

State Board of Elections

Section

163–19. State Board of Elections; appointment; term of office; vacancies; oath of office.
163–20. Meetings of Board; quorum; minutes.
163–21. Compensation of Board members.
163–22. Powers and duties of State Board of Elections.
163–22.1. Repealed.
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163–23. Powers of chairman in execution of Board duties.
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163–28. State Board of Elections independent agency.
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§ 163–19. State Board of Elections; appointment; term of office; vacancies; oath of office

All of the terms of office of the present members of the State Board of Elections shall expire on May 1, 1969, or when their successors in office are appointed and qualified.

The State Board of Elections shall consist of five registered voters whose terms of office shall begin on May 1, 1969, and shall continue for four years, and until their successors are appointed and qualified. The Governor shall appoint the members of this Board and likewise shall appoint their successors every four years at the expiration of each four-year term. Not more than three members of the Board shall be members of the same political party. The Governor shall appoint the members from a list of nominees submitted to him by the State party chairman of each of the two political parties having the highest number of registered affiliates as reflected by the latest registration statistics published by the State Board of Elections. Each party chairman shall submit a list of five nominees who are affiliated with that political party.

Any vacancy occurring in the Board shall be filled by the Governor, and the person so appointed shall fill the unexpired term. The Governor shall fill the vacancy from a list of three nominees submitted to him by the State party chairman of the political party that nominated the vacating member as provided by

the preceding paragraph. The three nominees must be affiliated with that political party.

At the first meeting held after new appointments are made, the members of the State Board of Elections shall take the following oath:

''I, ..., do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution of said State, and that I will well and truly execute the duties of the office of member of the State Board of Elections according to the best of my knowledge and ability, according to law, so help me, God.''

After taking the prescribed oath, the Board shall organize by electing one of its members chairman and another secretary.

No person shall be eligible to serve as a member of the State Board of Elections who holds any elective or appointive office under the government of the United States, or of the State of North Carolina or any political subdivision thereof. No person who holds any office in a political party, or organization, or who is a candidate for nomination or election to any office, or who is a campaign manager or treasurer of any candidate in a primary or election shall be eligible to serve as a member of the State Board of Elections.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1975, c. 286; Laws 1985, c. 62, §§ 1, 1.1; S.L. 2005–276, § 23A.3, eff. July 1, 2005; S.L. 2006–262, § 4.2, eff. Aug. 27, 2006.

Historical and Statutory Notes

2005 Legislation

S.L. 2005–276, § 23A.3, eff. July 1, 2005, substituted ''shall'' for ''may'' after ''The Governor'' in the second sentence.

2006 Legislation

S.L. 2006–262, § 4.2, eff. Aug. 27, 2006, repealed the changes made by S.L. 2005–276, § 23A.3, eff. July 1, 2005.

§ 163–20. Meetings of Board; quorum; minutes

(a) Call of Meeting.—The State Board of Elections shall meet at the call of the chairman whenever necessary to discharge the duties and functions imposed upon it by this Chapter. The chairman shall call a meeting of the Board upon the written application or applications of any two members thereof. If there is no chairman, or if the chairman does not call a meeting within three days after receiving a written request or requests from two members, any three members of the Board shall have power to call a meeting of the Board, and any duties imposed or powers conferred on the Board by this Chapter may be performed or exercised at

that meeting, although the time for performing or exercising the same prescribed by this Chapter may have expired.

(b) Place of Meeting.—Except as provided in subsection (c), below, the State Board of Elections shall meet in its offices in the City of Raleigh, or at another place in Raleigh to be designated by the chairman. However, subject to the limitation imposed by subsection (c), below, upon the prior written request of any four members, the State Board of Elections shall meet at any other place in the State designated by the four members.

(c) Meetings to Investigate Alleged Violations of This Chapter.—When called upon to investigate or hear sworn alleged violations of this Chapter, the State Board of Elections shall meet and hear the matter in the county in which the violations are alleged to have occurred.

(d) Quorum.—A majority of the members constitutes a quorum for the transaction of business by the State Board of Elections. If any member of the Board fails to attend a meeting, and by reason thereof there is no quorum, the members present shall adjourn from day to day for not more than three days, by the end of which time, if there is no quorum, the Governor may summarily remove any member failing to attend and appoint his successor.

(e) Minutes.—The State Board of Elections shall keep minutes recording all proceedings and findings at each of its meetings. The minutes shall be recorded in a book which shall be kept in the office of the Board in Raleigh.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1973, c. 793, § 3; Laws 1973, c. 1223, § 1.

Notes of Decisions

Construction and application 1
Venue 2

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1. Construction and application

Action challenging method of electing North Carolina Superior Court judges would be dismissed as against county boards of elections; county boards had no power to independently place candidate on ballot in election, boards could not remove candidate from election ballot, and boards were merely acting in ministerial capacity and could only carry out duties as detailed by statute and State Board of Elections. Republican Party of North Carolina v. Martin, 1988, 682 F.Supp. 834. Federal Civil Procedure ⚷ 1695

2. Venue

For venue purposes, where public official is a party to action in his official capacity, he resides in judicial district where he maintains his official residence, that is, where he performs his official duties. Republican Party of North Carolina v. Martin, 1988, 682 F.Supp. 834. Federal Courts ⚷ 283

Venue in action challenging constitutionality of statutory method for electing North Carolina Superior Court judges did not lie in Middle District of North Carolina but did lie in the Eastern District of North Carolina which was where legislature passed law establishing election system and where state board responsible for enforcing and implementing statute was located. Republican Party of North Carolina v. Martin, 1988, 682 F.Supp. 834. Federal Courts ⚷ 92

§ 163–21. Compensation of Board members

The members of the State Board of Elections shall be compensated for the time they are actually engaged in the discharge of their duties and for their traveling and other expenses necessary and incidental to the discharge of their duties in accordance with the provisions of Chapter 138 of the General Statutes.

Added by Laws 1967, c. 775, § 1.

§ 163–22. Powers and duties of State Board of Elections

(a) The State Board of Elections shall have general supervision over the primaries and elections in the State, and it shall have authority to make such reasonable rules and regulations with respect to the conduct of primaries and elections as it may deem advisable so long as they do not conflict with any provisions of this Chapter.

(b) From time to time, the Board shall publish and furnish to the county and municipal boards of elections and other election officials a sufficient number of indexed copies of all election laws and Board rules and regulations then in force. It shall also publish, issue, and distribute to the electorate such materials explanatory of primary and election laws and procedures as the Board shall deem necessary.

(c) The State Board of Elections shall appoint, in the manner provided by law, all members of the county boards of elections and advise them and municipal elections board members as to the proper methods of conducting primaries and elections. The Board shall require such reports from the county and municipal boards and election officers as are provided by law, or as are deemed necessary by the Board, and shall compel observance of the requirements of the election laws by county and municipal boards of elections and other election officers. In performing these duties, the Board shall have the right to hear and act on complaints arising by petition or otherwise, on the failure or neglect of a county or municipal board of elections to comply with any part of the election laws imposing duties upon such a board. The State Board of Elections shall have power to remove from office any member of a county or municipal board of elections for incompetency, neglect or failure to perform duties, fraud, or for any other satisfactory cause. Before exercising this power, the State Board shall notify the county or municipal board member affected and give him an opportunity to be heard. When any county board member shall be removed by the State Board of Elections, the vacancy occurring shall be filled by the State Board of Elections. When any municipal board member shall be removed by the State Board of Elections, the vacancy occurring

shall be filled by the city council of the city appointing members of that board.

(d) The State Board of Elections shall investigate when necessary or advisable, the administration of election laws, frauds and irregularities in elections in any county and municipality and special district, and shall report violations of the election laws to the Attorney General or district attorney or prosecutor of the district for further investigation and prosecution.

(e) The State Board of Elections shall determine, in the manner provided by law, the form and content of ballots, instruction sheets, pollbooks, tally sheets, abstract and return forms, certificates of election, and other forms to be used in primaries and elections. The Board shall furnish to the county boards of elections the registration application forms required pursuant to G.S. 163–82.3. The State Board of Elections shall direct the county boards of elections to purchase a sufficient quantity of all forms attendant to the registration and elections process. In addition, the State Board shall provide a source of supply from which the county boards of elections may purchase the quantity of pollbooks needed for the execution of its responsibilities. In the preparation of ballots, pollbooks, abstract and return forms, and all other forms, the State Board of Elections may call to its aid the Attorney General of the State, and it shall be the duty of the Attorney General to advise and aid in the preparation of these books, ballots and forms.

(f) The State Board of Elections shall prepare, print, distribute to the county and municipal boards of elections all ballots for use in any primary or election held in the State which the law provides shall be printed and furnished by the State to the counties. The Board shall instruct the county boards of elections as to the printing of county and local ballots.

(g) The State Board of Elections shall certify to the appropriate county boards of elections the names of candidates for district offices who have filed notice of candidacy with the Board and whose names are required to be printed on county ballots.

(h) It shall be the duty of the State Board of Elections to tabulate the primary and election returns, to declare the results, and to prepare abstracts of the votes cast in each county in the State for offices which, according to law, shall be tabulated by the Board.

(i) The State Board of Elections shall make recommendations to the Governor and legislature relative to the conduct and administration of the primaries and elections in the State as it may deem advisable.

(j) Notwithstanding the provisions of any other section of this Chapter, the State Board of Elections is empowered to have access

to any ballot boxes and their contents, any voting machines and their contents, any registration records, pollbooks, voter authorization cards or voter lists, any lists of absentee voters, any lists of presidential registrants under the Voting Rights Act of 1965 as amended, and any other voting equipment or similar records, books or lists in any precinct, county, municipality or electoral district over whose elections it has jurisdiction or for whose elections it has responsibility.

Text of subsec. (k) eff. until Jan. 1, 2010.

(k) Notwithstanding the provisions contained in Article 20 or Article 21 of Chapter 163 the State Board of Elections shall be authorized, by resolution adopted prior to the printing of the primary ballots, to reduce the time by which absentee ballots are required to be printed and distributed for the primary election from 50 days to 45 days. This authority shall not be authorized for absentee ballots to be voted in the general election.

Text of subsec. (k) eff. Jan. 1, 2010.

(k) Notwithstanding the provisions contained in Article 20 or Article 21 of Chapter 163 the State Board of Elections shall be authorized, by resolution adopted prior to the printing of the primary ballots, to reduce the time by which absentee ballots are required to be printed and distributed for the primary election from 50 days to 45 days. This authority shall not be authorized for absentee ballots to be voted in the general election, except if the law requires ballots to be available for mailing 60 days before the general election, and they are not ready by that date, the State Board of Elections shall allow the counties to mail them out as soon as they are available.

(*l*) Notwithstanding any other provision of law, in order to obtain judicial review of any decision of the State Board of Elections rendered in the performance of its duties or in the exercise of its powers under this Chapter, the person seeking review must file his petition in the Superior Court of Wake County.

(m) Repealed by S.L. 2001–398, § 4, eff. Jan. 1, 2002.

(n) The State Board of Elections shall provide specific training to county boards of elections regarding rules for registering students.

(*o*) The State Board of Elections shall promulgate minimum requirements for the number of pollbooks, voting machines and curbside ballots to be available at each precinct, such that more of such will be available at general elections and a sufficient number will be available to allow voting without excessive delay. The State Board of Elections shall provide for a training and screening program for chief judges and judges. The State Board of Elec-

tions shall provide additional testing of voting machines to ensure that they operate properly even with complicated ballots.

(p) The State Board of Elections shall require counties with voting systems to have sufficient personnel available on election day with technical expertise to make repairs in such equipment, to investigate election day problems, and assist in curbside voting.

(q) The State Board of Elections may assign responsibility for enumerated administrative matters to the Executive Director by resolution, if that resolution provides a process for the State Board to review any administrative decision made by the Executive Director.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1973, c. 47, § 2; Laws 1973, c. 793, § 2; Laws 1975, c. 19, § 65; Laws 1977, c. 661, § 6; Laws 1979, c. 411, § 1; Laws 1981, c. 556; Laws 1985 (Reg. Sess., 1986), c. 986, §§ 2, 3; Laws 1985 (Reg. Sess., 1986), c. 987, § 3; Laws 1987, c. 485, §§ 2, 5; Laws 1987, c. 509, § 9; Laws 1987, c. 642, § 3; Laws 1989, c. 635, § 5; Laws 1991, c. 727, §§ 5.2, 7; Laws 1993 (Reg. Sess., 1994), c. 762, §§ 5, 12, eff. Jan. 1, 1995; Laws 1995, c. 509, § 114, eff. July 29, 1995; S.L. 1999–424, § 7(a), eff. Aug. 5, 1999; S.L. 2001–398, § 4, eff. Jan. 1, 2002; S.L. 2009–537, § 10, eff. Jan. 1, 2010; S.L. 2009–541, § 1, eff. Aug. 28, 2009.

Historical and Statutory Notes

Laws 1993, c. 762, §§ 5 and 73, provide:

''Section 5. Wherever the term 'registrar' appears in Chapter 163 of the General Statutes, the term shall be changed to read 'chief judge'.''

''Section 73. Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.'' [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

2001 Legislation

S.L. 2001–398, § 4, eff. Jan. 1, 2002, repealed subsec. (m).

2009 Legislation

S.L. 2009–537, § 10, in the second sentence, added '', except if the law requires ballots to be available for mailing 60 days before the general election, and they are not ready by that date, the State Board of Elections shall allow the counties to mail them out as soon as they are available.''

S.L. 2009–537, § 11, provides:

"This act becomes effective January 1, 2010, and applies with respect to elections held on or after that date."

S.L. 2009–541, § 1, designated the second paragraph of subsec. (*o*) as subsec. (p), and added subsec. (q).

Cross References

Grounds for removal; political activities by boards of election members, see § 163–40.

Administrative Code References

Approval and operation of voting systems, see 8 NCAC 4.0301 et seq.
Ballots, see 8 NCAC 6B.0101 et seq.
Conduct of vote recounts, see 8 NCAC 9.0106 et seq.

County board of elections, voting procedures and duties, 8 NCAC 12.0101 et seq.
Election protests, see 8 NCAC 2.0110 et seq.
Filing of notice of candidacy for office of superior court judge, see 8 NCAC 7.0003 et seq.
Investigation and reports of criminal violation, see 8 NCAC 3.0301 et seq.
Members of county board of elections, see 8 NCAC 3.0101 et seq.
Precinct election officials, see 8 NCAC 3.0201 et seq.
Voter registration, see 8 NCAC 7B.0101 et seq.
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1. Validity

Notice of, and opportunity for, hearing on petition for creation of new political party are necessary to meet constitutional requirement of ''due process of law,'' which hears before it condemns, proceeds on inquiry, and renders judgment only after trial. States' Rights Democratic Party v. State Bd. of Elections, 1948, 49 S.E.2d 379, 229 N.C. 179. Constitutional Law ⚷ 4475

The statutory power of State Board of Elections to make reasonable rules for carrying into effect law governing creation of new political parties is subject to restriction that such rules must not conflict with any provisions of such law, even if such restriction were not specifically annexed by statute, to grant of such power, as constitution forbids legislature to delegate power to make law to any other body. States' Rights Democratic Party v. State Bd. of Elections, 1948, 49 S.E.2d 379, 229 N.C. 179. Administrative Law And Procedure ⚷ 387; Elections ⚷ 54

Regulations of State Board of Elections, requiring that voters petitioning for creation of new political party attach to and file with petition certificates from chairman of county boards of elections that registration and poll books disclose that requisite number of signers of petition are registered voters who have not voted in primary election of any existing party during year in which petition is signed, cannot be sustained as proper exercise of state board's rule making power for mere purpose of establishing expeditious procedure to determine whether petition is signed by requisite number of registered voters. States' Rights Democratic Party v. State Bd. of Elections, 1948, 49 S.E.2d 379, 229 N.C. 179. Administrative Law And Procedure ⚷ 390.1; Elections ⚷ 54

2. Construction and application

A statute authorizing state board of elections to canvass returns and determine who was nominated or elected was not a denial or negation of the board's supervisory powers which were to be exercised prior to final acceptance of the returns. Burgin v. North Carolina State Board of Elections, 1938, 198 S.E. 592, 214 N.C. 140. Elections ⚷ 54

3. Federal Voting Rights Act

Even if Executive Secretary of State Board of Elections of North Carolina personally delivered amendment to voting law to assistant United States Attorney General, where state did not request Attorney General's consideration of change pursuant to statute rendering inoperative any change of standard, practice or procedure as to voting in areas covered by Voting Rights Act, unless change receives prior judicial approval or has been submitted to Attorney General who has not interposed objections, delivery did not constitute ''submission'' within the Act. Clayton v. North Carolina State Bd. of Elections, 1970, 317 F.Supp. 915. Elections ⚷ 24

Section of Voting Rights Act rendering inoperative any standard, practice or procedure as to voting different from that in force or effect on November 1, 1964, unless it has received judicial approval or has been submitted to attorney general who has not objected with-

in 60 days is applicable to any change in such standard, practice or procedure and not just those which have a discernible racial discriminatory purpose. Clayton v. North Carolina State Bd. of Elections, 1970, 317 F.Supp. 915. Elections ⚷ 10

4. Determination of election results

Declaration of election as contained in the certificate conclusively settles prima facie the right of the person so ascertained and declared to be elected to be inducted into and exercise the duties of the office. In re Election Protest of Fletcher, 2006, 175 N.C.App. 755, 625 S.E.2d 564. Elections ⚷ 267

Where only protest before state board of elections involving returns from multiple county senatorial districts related to one county, when amended returns from that county were certified in accordance with findings of fact and conclusions of law of state board, it would have legal duty to declare results of primary election and to certify nominee. Ponder v. Joslin, 1964, 138 S.E.2d 143, 262 N.C. 496. Elections ⚷ 153

While returns certified to state board of elections or county board of elections, nothing else appearing, will be deemed prima facie correct, such certification is not conclusive and returns certified by county board may be collaterally attacked. Ponder v. Joslin, 1964, 138 S.E.2d 143, 262 N.C. 496. Elections ⚷ 267

County board of elections is proper agency to canvass returns in primary for selection of party nominees for county offices as well as general election to fill such offices. Ponder v. Joslin, 1964, 138 S.E.2d 143, 262 N.C. 496. Elections ⚷ 126(7)

State board of elections is appropriate agency to canvass and judicially declare results of primary for nomination of candidate in senatorial district composed of more than one county. Ponder v. Joslin, 1964, 138 S.E.2d 143, 262 N.C. 496. Elections ⚷ 126(7)

County board of elections in multiple county senatorial district has no power to canvass election returns and determine judicially nominee in such district but such power is vested exclusively in state board. Ponder v. Joslin, 1964, 138 S.E.2d 143, 262 N.C. 496. Elections ⚷ 126(7)

5. Correction or amendment of election returns

Primary election returns which were amended by county board of elections pursuant to directions of state board of elections, made in good faith, could not be declared void as a matter of law, where amended returns appeared regular on their face and they were impeached only by an affidavit of the county board chairman who participated in a meeting which was duly called and held for the purpose of passing on the amended returns, and who certified to their correctness. Burgin v. North Carolina State Board of Elections, 1938, 198 S.E. 592, 214 N.C. 140. Elections ⚷ 254

Amendments to primary election returns pursuant to direction of state board of elections were void as a matter of law, where the returns were amended by two members of the county election boards without knowledge or consent of third member. Burgin v. North Carolina State Board of Elections, 1938, 198 S.E. 592, 214 N.C. 140. Elections ⚷ 254

A county board of elections cannot change or amend its returns to the state board of elections without some official action on the part of the county board. Burgin v. North Carolina State Board of Elections, 1938, 198 S.E. 592, 214 N.C. 140. Elections ⚷ 254

6. Investigations—In general

Authority of State Board of Elections to conduct election investigation and to enter order calling for new election is not dependent upon filing of timely protest to election. Appeal of Judicial Review by Republican Candidates for Election in Clay County, 1980, 264 S.E.2d 338, 45 N.C.App. 556, review denied 267 S.E.2d 672, 299 N.C. 736. Elections ⚷ 271

State Board of Elections was not without jurisdiction and authority to declare portions of county general election void and to order new election for some of county officers on its own motion without election contest having been filed with Board. Appeal of Judicial Review by Republican Candidates for Election in Clay County, 1980, 264 S.E.2d 338, 45 N.C.App. 556, review denied 267 S.E.2d 672, 299 N.C. 736. Elections ⚷ 271

Notice, which was provided by State Board of Elections of a public hearing on county general election notifying public generally, county board of elec-

tions, and each candidate for county office whose name was on ballot that inquiry had been launched into conduct of election and particularly processes involving absentee ballots, was sufficient notice of charges even though Board failed to comply strictly with statutory notice requirements for election protests, as there was no action against any specific candidate and there was no specific charge against any candidate. Appeal of Judicial Review by Republican Candidates for Election in Clay County, 1980, 264 S.E.2d 338, 45 N.C.App. 556, review denied 267 S.E.2d 672, 299 N.C. 736. Elections ⚷ 280

Authority of State Board of Elections to conduct investigation and to order a new election of town commissioners was not dependent upon filing of timely protest. Sharpley v. State Bd. of Elections, 1974, 209 S.E.2d 513, 23 N.C.App. 650. Elections ⚷ 271

When protest has been filed challenging legality of returns certified by county board of elections, state board of elections can go behind returns as certified and its duty is not restricted to computation and tabulation of returns as certified by various county boards. Ponder v. Joslin, 1964, 138 S.E.2d 143, 262 N.C. 496. Elections ⚷ 259

State board of elections is not limited merely to investigating frauds and irregularities in any county for sole purpose of making report of such frauds and irregularities to attorney general or solicitor for further investigation and prosecution. Ponder v. Joslin, 1964, 138 S.E.2d 143, 262 N.C. 496. Elections ⚷ 259

State board of elections is quasi-judicial agency and may, in primary or election in multiple county district, investigate alleged frauds and irregularities in any county upon appeal from county board or upon protest filed in apt time with state board and may take such action as findings of fact may justify, and may direct county board to amend returns in accordance therewith. Ponder v. Joslin, 1964, 138 S.E.2d 143, 262 N.C. 496. Elections ⚷ 153; Elections ⚷ 259

Whenever protest is filed before county board of elections in multiple county senatorial district, charging fraud and misconduct in connection with primary or election, and there is appeal from board or upon protest filed in apt time with state board, state board has right and duty to investigate charges and determine actual total of valid ballots cast and to require county board to amend returns accordingly, and, based upon its findings and amended returns, to determine which candidate is entitled to be certified as nominee in multiple county senatorial district. Ponder v. Joslin, 1964, 138 S.E.2d 143, 262 N.C. 496. Elections ⚷ 126(7); Elections ⚷ 259; Elections ⚷ 260

7. —— Trial or hearing, investigations

Alleged denial of cross-examination of witnesses at preliminary inquiry into county general election was not unlawful and unconstitutional where chairman of hearing indicated that if preliminary proceedings were such as to require further proceedings, any successful candidate who contested order for new election would have right to recall any witness for cross-examination, at least two witnesses were recalled and made available for cross-examination, and though successful candidates were so advised, they did not ask that any witness not recalled be recalled and be made available for cross-examination. Appeal of Judicial Review by Republican Candidates for Election in Clay County, 1980, 264 S.E.2d 338, 45 N.C.App. 556, review denied 267 S.E.2d 672, 299 N.C. 736. Elections ⚷ 300

Decision of State Board of Elections, which was made after Board retired into executive session at conclusion of testimony in election inquiry hearing, was not made on unlawful procedures and did not result in any prejudice to successful candidates. Appeal of Judicial Review by Republican Candidates for Election in Clay County, 1980, 264 S.E.2d 338, 45 N.C.App. 556, review denied 267 S.E.2d 672, 299 N.C. 736. Elections ⚷ 300

8. —— Judicial review, investigations

Findings of fact and conclusions of law made by state board of elections may be reviewed in action instituted in Superior Court of Wake county under statute; and in such an action appellant is not entitled to a jury trial. Ponder v. Joslin, 1964, 138 S.E.2d 143, 262 N.C. 496. Elections ⚷ 269; Jury ⚷ 19(1)

When state board of elections obtains jurisdiction of election protest on appeal from single county in multiple county senatorial district, or by filing in apt time of protest directly with state board, its decision can be reviewed only as provided in statute, and superior

court has no original jurisdiction to hear and determine the controversy. Ponder v. Joslin, 1964, 138 S.E.2d 143, 262 N.C. 496. Elections ⚷ 275

Superior Court of Madison county was without jurisdiction to review order of state board of elections. Ponder v. Joslin, 1964, 138 S.E.2d 143, 262 N.C. 496. Elections ⚷ 275

The courts will not undertake to control the state board of elections in the exercise of its duty of general supervision over primaries and elections, so long as such supervision conforms to the rudiments of fair play and the statutes on the subject. Burgin v. North Carolina State Board of Elections, 1938, 198 S.E. 592, 214 N.C. 140. Constitutional Law ⚷ 2547

9. New political parties

The duty to determine whether petition for organization of new political party is in accordance with statutory requirements devolves in first instance on State Board of Elections, which must ascertain whether petition is signed by required number of qualified registered voters. States' Rights Democratic Party v. State Bd. of Elections, 1948, 49 S.E.2d 379, 229 N.C. 179. Elections ⚷ 153

The State Board of Elections has authority to determine registration or nonregistration of signers of petition for creation of new political party by examination of registration books through agency of county election boards as matter of administrative routine before calling on signers to prove signature of petition by requisite number of qualified voters. States' Rights Democratic Party v. State Bd. of Elections, 1948, 49 S.E.2d 379, 229 N.C. 179. Elections ⚷ 153

The statute governing creation of new political parties imposes no duty on State Board of Elections to determine sufficiency of petition for organization of new party at time of its filing, but purpose of statutory provision for filing of petition with board at least 90 days before general election is to afford board approximately 60 days time in which to determine sufficiency of petition and print ballots bearing names of new party's nominees. States' Rights Democratic Party v. State Bd. of Elections, 1948, 49 S.E.2d 379, 229 N.C. 179. Elections ⚷ 153

Regulations of State Board of Elections, requiring voters desiring to create new political party to attach to and file with petition therefor certificates from chairmen of county boards of elections that registration and poll books disclose that required number of signers of petition are registered voters, who have not voted in primary election of any existing party during year in which petition is signed, are invalid as legislating rather than regulating. States' Rights Democratic Party v. State Bd. of Elections, 1948, 49 S.E.2d 379, 229 N.C. 179. Constitutional Law ⚷ 2621

The statute providing for creation of new political parties confers on any qualified voter legal right to sign petition therefor, irrespective of whether he has participated in primary election of existing political party during year in which petition is signed. States' Rights Democratic Party v. State Bd. of Elections, 1948, 49 S.E.2d 379, 229 N.C. 179. Elections ⚷ 121(1)

The primary election laws do not modify statute giving any qualified voter legal right to sign petition for creation of new political party, regardless of whether he has voted in primary election of existing party during year in which petition is signed and filed, as such laws are inapplicable to new parties created by such petitions, but apply only to existing political parties. States' Rights Democratic Party v. State Bd. of Elections, 1948, 49 S.E.2d 379, 229 N.C. 179. Elections ⚷ 121(1)

The Supreme Court cannot determine whether primary election laws impose on qualified voters, participating in primary elections of existing political parties, moral obligation to such party to refrain from signing statutory petition for creation of new political party during year in which such elections are held, but must decide whether participation in such elections legally disables qualified electors to sign such a petition during that year. States' Rights Democratic Party v. State Bd. of Elections, 1948, 49 S.E.2d 379, 229 N.C. 179. Elections ⚷ 154(1)

10. Injunction

Contestant claiming to be entitled to be certified as party nominee for state senator in multiple county district was not entitled to have state board of elections restrained in order to keep board from completing investigation of protest filed, finding facts with respect thereto, and making conclusions of law based thereon. Ponder v. Joslin, 1964, 138 S.E.2d 143, 262 N.C. 496. Injunction ⚷ 80

The unsuccessful candidate for Democratic nominee for Congress was entitled to an order staying the state board of elections from certifying his opponent as the nominee pending state board's receipt of final returns from county boards whose original returns were void as a matter of law for having been amended by two members of county election boards without knowledge or consent of third member. Burgin v. North Carolina State Board of Elections, 1938, 198 S.E. 592, 214 N.C. 140. Injunction ⚷ 80

11. Judicial action

Venue in action challenging constitutionality of statutory method for electing North Carolina Superior Court judges did not lie in Middle District of North Carolina but did lie in the Eastern District of North Carolina which was where legislature passed law establishing election system and where state board responsible for enforcing and implementing statute was located. Republican Party of North Carolina v. Martin, 1988, 682 F.Supp. 834. Federal Courts ⚷ 92

Action challenging method of electing North Carolina Superior Court judges would be dismissed as against county boards of elections; county boards had no power to independently place candidate on ballot in election, boards could not remove candidate from election ballot, and boards were merely acting in ministerial capacity and could only carry out duties as detailed by statute and State Board of Elections. Republican Party of North Carolina v. Martin, 1988, 682 F.Supp. 834. Federal Civil Procedure ⚷ 1695

Where petition for creation of new political party was shown beyond doubt to have been signed by at least 10,000 qualified voters and otherwise met every statutory requirement, Superior Court properly granted writ of mandamus, ordering State Board of Elections to cause names of new party's nominees for President and Vice-President of the United States to be printed on official ballots for general election. States' Rights Democratic Party v. State Bd. of Elections, 1948, 49 S.E.2d 379, 229 N.C. 179. Mandamus ⚷ 74(3)

§ 163–22.1. Repealed by S.L. 2001–398, § 2, eff. Jan. 1, 2002

Historical and Statutory Notes

The repealed section, which related to power of the State Board to order new elections, was derived from:

Laws 1973, c. 793, § 5.
Laws 1982, c. 1265, § 2.
Laws 1983, c. 210.
Laws 1995 (Reg. Sess., 1996), c. 694, § 2.
S.L. 1999–424, § 1.

§ 163–22.2. Power of State Board to promulgate temporary rules and regulations

In the event any portion of Chapter 163 of the General Statutes or any State election law or form of election of any county board of commissioners, local board of education, or city officer is held unconstitutional or invalid by a State or federal court or is unenforceable because of objection interposed by the United States Justice Department under the Voting Rights Act of 1965 and such ruling adversely affects the conduct and holding of any pending primary or election, the State Board of Elections shall have authority to make reasonable interim rules and regulations with respect to the pending primary or election as it deems advisable so long as they do not conflict with any provisions of Chapter 163 of the General Statutes and such rules and regulations shall become null and void 60 days after the convening of the next regular session of the General Assembly. The State Board of Elections shall also be authorized, upon recommendation of the Attorney

General, to enter into agreement with the courts in lieu of protracted litigation until such time as the General Assembly convenes.

Added by Laws 1981, c. 741. Amended by Laws 1982 (2nd Ex. Sess.), c. 3, § 19.1; Laws 1985, c. 563, § 15; Laws 1986 (1st Ex. Sess.), c. 3, § 1.

Administrative Code References

Filing of notice of candidacy for office of superior court judge, see 8 NCAC 7.0003 et seq.

Notes of Decisions

Construction and application 1
Special elections 2

1. Construction and application

Remedial statute, such as one giving State Board of Elections authority to make reasonable interim rules and regulations with respect to pending primary or election if objection is interposed by United States Justice Department under Voting Rights Act of 1965, must be construed liberally in light of evil sought to be eliminated, remedies intended to be applied, and legislative objective. Newsome v. North Carolina State Bd. of Elections, 1992, 415 S.E.2d 201, 105 N.C.App. 499. Statutes ⚷ 236

Statute granting State Board of Elections authority to make reasonable interim rules and regulations with respect to pending primary or election which became null and void 60 days after convening of next regular session of General Assembly exempted Board from rulemaking procedures of Administrative Procedure Act (APA); APA states that it applies to every agency except to the extent and in the particulars that any statute makes specific provisions to the contrary and election statute contained specific provisions to the contrary. Newsome v. North Carolina State Bd. of Elections, 1992, 415 S.E.2d 201, 105 N.C.App. 499. Administrative Law And Procedure ⚷ 384; Elections ⚷ 54

2. Special elections

Effect of improper submission to United States Attorney General for preclearance of special election to incorporate a town was tantamount to objection by Attorney General and sufficient to authorize State Board of Elections to proceed under statute giving Board authority to make reasonable interim rules and regulations with respect to pending primary or election when objection is interposed by Justice Department under Voting Rights Act. Newsome v. North Carolina State Bd. of Elections, 1992, 415 S.E.2d 201, 105 N.C.App. 499. Municipal Corporations ⚷ 12(8)

Action of State Board of Elections in ordering special municipal election did not become null and void 60 days after its promulgation under statute giving Board authority to make reasonable interim rules and regulations with respect to pending primary or election which would become null and void 60 days after convening of next regular session of General Assembly when objection is interposed by United States Justice Department under Voting Rights Act; when state ordered special election in even-numbered year, there was no ''regular'' session of the General Assembly but, rather, session of General Assembly held in 1990 was a continuation of 1989 ''regular'' session. Newsome v. North Carolina State Bd. of Elections, 1992, 415 S.E.2d 201, 105 N.C.App. 499. Municipal Corporations ⚷ 12(8)

§ 163–22.3. State Board of Elections littering notification

At the time an individual files with the State Board of Elections a notice of candidacy pursuant to G.S. 163–106, 163–112, 163–291, 163–294.2, or 163–323, is certified to the State Board of Elections by a political party executive committee to fill a nomination vacancy pursuant to G.S. 163–114, is certified to the State Board of Elections by a new political party as that party's nominee

pursuant to G.S. 163–98, qualifies with the State Board of Elections as an unaffiliated or write-in candidate pursuant to Article 11 of this Chapter, or formally initiates a candidacy with the State Board of Elections pursuant to any statute or local act, the State Board of Elections shall notify the candidate of the provisions concerning campaign signs in G.S. 136–32 and G.S. 14–156, and the rules adopted by the Department of Transportation pursuant to G.S. 136–18.

Added by S.L. 2001–512, § 7, eff. Jan. 4, 2002.

§ 163–23. Powers of chairman in execution of Board duties

In the performance of the duties enumerated in this Chapter, the chairman of the State Board of Elections shall have power to administer oaths, issue subpoenas, summon witnesses, and compel the production of papers, books, records and other evidence. Upon the written request or requests of two or more members of the State Board of Elections, he shall issue subpoenas for designated witnesses or identified papers, books, records and other evidence. In the absence of the chairman or upon his refusal to act, any two members of the State Board of Elections may issue subpoenas, summon witnesses, and compel the production of papers, books, records and other evidence. In the absence of the chairman or upon his refusal to act, any member of the Board may administer oaths.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1973, c. 793, § 4.

§ 163–24. Power of State Board of Elections to maintain order

The State Board of Elections shall possess full power and authority to maintain order, and to enforce obedience to its lawful commands during its sessions, and shall be constituted an inferior court for that purpose. If any person shall refuse to obey the lawful commands of the State Board of Elections or its chairman, or by disorderly conduct in its hearing or presence shall interrupt or disturb its proceedings, it may, by an order in writing, signed by its chairman, and attested by its secretary, commit the person so offending to the common jail of the county for a period not exceeding 30 days. Such order shall be executed by any sheriff to whom the same shall be delivered, or if a sheriff shall not be present, or shall refuse to act, by any other person who shall be deputed by the State Board of Elections in writing, and the keeper of the jail shall receive the person so committed and safely keep him for such time as shall be mentioned in the commitment: Provided, that any person committed under the provisions of this section shall have the right to post a two hundred dollar ($200.00)

bond with the clerk of the superior court and appeal to the superior court for a trial on the merits of his commitment.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1995, c. 379, § 14(e), eff. July 6, 1995.

Historical and Statutory Notes

Laws 1995, c. 379, § 20, provides that this act ''does not affect pending litigation''.

§ 163–25. Authority of State Board to assist in litigation

The State Board of Elections shall possess authority to assist any county or municipal board of elections in any matter in which litigation is contemplated or has been initiated, provided, the county or municipal board of elections in such county petitions, by majority resolution, for such assistance from the State Board of Elections and, provided further, that the State Board of Elections determines, in its sole discretion by majority vote, to assist in any such matter. It is further stipulated that the State Board of Elections shall not be authorized under this provision to enter into any litigation in assistance to counties, except in those instances where the uniform administration of Chapter 163 of the General Statutes of North Carolina has been, or would be threatened.

The Attorney General shall provide the State Board of Elections with legal assistance in execution of its authority under this section or, in his discretion, recommend that private counsel be employed.

If the Attorney General recommends employment of private counsel, the State Board may employ counsel with the approval of the Governor.

Added by Laws 1969, c. 408, § 1. Amended by Laws 1973, c. 793, § 6; Laws 1983, c. 324, § 2.

§ 163–26. Executive Director of State Board of Elections

There is hereby created the position of Executive Director of the State Board of Elections, who shall perform all duties imposed upon him by statute and such duties as might be assigned to him by the State Board of Election.[1]

Added by Laws 1973, c. 1272, § 4. Amended by S.L. 2001–319, § 11, eff. July 28, 2001.

[1] So in original.

Historical and Statutory Notes

2001 Legislation

S.L. 2001–319, § 11, eff. July 28, 2001, substituted ''Executive Director'' for ''Executive Secretary-Director'' and ''State Executive Secretary-Director'' throughout this section.

§ 163–27. Executive Director to be appointed by Board

The appointment of the Executive Director of the State Board of Elections is extended to May 15, 1989, unless removed for proper cause, and thereafter the Board shall appoint an Executive Director for a term of four years with compensation to be determined by the Department of Personnel. He shall serve, unless removed for cause, until his successor is appointed. Such Executive Director shall be responsible for staffing, administration, execution of the Board's decisions and orders and shall perform such other responsibilities as may be assigned by the Board. In the event of a vacancy, the vacancy shall be filled for the remainder of the term.

Added by Laws 1973, c. 1409, § 3. Amended by Laws 1985, c. 62, § 2; S.L. 2001–319, § 11, eff. July 28, 2001.

Historical and Statutory Notes

2001 Legislation

S.L. 2001–319, § 11, eff. July 28, 2001, substituted ''Executive Director'' for ''Executive Secretary-Director'' and ''State Executive Secretary-Director'' throughout this section.

§ 163–27.1. Emergency powers

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 United States Armed Forces, or mobilization of those forces, including State National Guard and reserve components.

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.

Added by S.L. 1999–455, § 23. Amended by S.L. 2001–319, § 11, eff. July 28, 2001.

Historical and Statutory Notes

S.L. 1999–455, § 24 provides:

''This act applies to elections held on or after January 1, 2000, except that the State Board of Elections may issue rules required or permitted by this act prior to that date.''

2001 Legislation

S.L. 2001–319, § 11, eff. July 28, 2001, substituted ''Executive Director'' for ''Executive Secretary-Director'' and ''State Executive Secretary-Director'' throughout this section.

§ 163–28. State Board of Elections independent agency

The State Board of Elections shall be and remain an independent regulatory and quasi-judicial agency and shall not be placed

within any principal administrative department. The State Board of Elections shall exercise its statutory powers, duties, functions, authority, and shall have all powers and duties conferred upon the heads of principal departments under G.S. 143B-10.

Added by Laws 1973, c. 1409, § 2.

§ 163–29. Reserved

Article 4

County Boards of Elections

Section

163–30. County boards of elections; appointments; terms of office; qualifications; vacancies; oath of office; instructional meetings.
163–31. Meetings of county boards of elections; quorum; minutes.
163–32. Compensation of members of county boards of elections.
163–33. Powers and duties of county boards of elections.
163–33.1. Power of chairman to administer oaths.
163–33.2. Chairman and county board to examine voting machines.
163–33.3. County board of elections littering notification.
163–34. Power of county board of elections to maintain order.
163–35. Director of elections to county board of elections; appointment; compensation; duties; dismissal.
163–36. Modified full-time offices.
163–37. Duty of county board of commissioners.

§ 163–30. County boards of elections; appointments; terms of office; qualifications; vacancies; oath of office; instructional meetings

In every county of the State there shall be a county board of elections, to consist of three persons of good moral character who are registered voters in the county in which they are to act. Members of county boards of elections shall be appointed by the State Board of Elections on the last Tuesday in June 1985, and every two years thereafter, and their terms of office shall continue for two years from the specified date of appointment and until their successors are appointed and qualified. Not more than two members of the county board of elections shall belong to the same political party.

No person shall be eligible to serve as a member of a county board of elections who holds any elective office under the government of the United States, or of the State of North Carolina or any political subdivision thereof.

No person who holds any office in a state, congressional district, county or precinct political party or organization, or who is a campaign manager or treasurer of any candidate or political party in a primary or election, shall be eligible to serve as a member of a county board of elections, provided however that the position of

delegate to a political party convention shall not be considered an office for the purpose of this section.

No person shall be eligible to serve as a member of a county board of elections who is a candidate for nomination or election.

No person shall be eligible to serve as a member of a county board of elections who is the wife, husband, son, son-in-law, daughter, daughter-in-law, mother, mother-in-law, father, father-in-law, sister, sister-in-law, brother, brother-in-law, aunt, uncle, niece, or nephew of any candidate for nomination or election. Upon any member of the board of elections becoming ineligible, that member's seat shall be declared vacant. This paragraph only applies if the county board of elections is conducting the election for which the relative is a candidate.

The State chairman of each political party shall have the right to recommend to the State Board of Elections three registered voters in each county for appointment to the board of elections for that county. If such recommendations are received by the Board 15 or more days before the last Tuesday in June 1985, and each two years thereafter, it shall be the duty of the State Board of Elections to appoint the county boards from the names thus recommended.

Whenever a vacancy occurs in the membership of a county board of elections for any cause the State chairman of the political party of the vacating member shall have the right to recommend two registered voters of the affected county for such office, and it shall be the duty of the State Board of Elections to fill the vacancy from the names thus recommended.

At the meeting of the county board of elections required by G.S. 163–31 to be held on Tuesday following the third Monday in July in the year of their appointment the members shall take the following oath of office:

> ''I, ..., do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution of said State, not inconsistent with the Constitution of the United States; and that I will well and truly execute the duties of the office of member of the ..... County Board of Elections to the best of my knowledge and ability, according to law; so help me God.''

Each member of the county board of elections shall attend each instructional meeting held pursuant to G.S. 163–46, unless excused for good cause by the chairman of the board, and shall be

paid the sum of twenty-five dollars ($25.00) per day for attending each of those meetings.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1969, c. 208, § 1; Laws 1973, c. 793, § 7; Laws 1973, c. 1094; Laws 1973, c. 1344, § 4; Laws 1975, c. 19, § 66; Laws 1975, c. 159, § 1; Laws 1981, c. 954, § 1; Laws 1983, c. 617, §§ 1, 2; Laws 1985, c. 472, § 4; S.L. 1997–211, § 1, eff. June 19, 1997.

Historical and Statutory Notes

S.L. 1997–211, § 2, provides:

"This act is effective when it becomes law and applies to appointments to county boards of elections for terms commencing on or after June 24, 1997."

§ 163–31. Meetings of county boards of elections; quorum; minutes

In each county of the State the members of the county board of elections shall meet at the courthouse or board office at noon on the Tuesday following the third Monday in July in the year of their appointment by the State Board of Elections and, after taking the oath of office provided in G.S. 163–30, they shall organize by electing one member chairman and another member secretary of the county board of elections. On the Tuesday following the third Monday in August of the year in which they are appointed the county board of elections shall meet and appoint precinct chief judges and judges of elections. The board may hold other meetings at such times as the chairman of the board, or any two members thereof, may direct, for the performance of duties prescribed by law. A majority of the members shall constitute a quorum for the transaction of board business. The chairman shall notify, or cause to be notified, all members regarding every meeting to be held by the board.

The county board of elections shall keep minutes recording all proceedings and findings at each of its meetings. The minutes shall be recorded in a book which shall be kept in the board office and it shall be the responsibility of the secretary, elected by the board, to keep the required minute book current and accurate. The secretary of the board may designate the director of elections to record and maintain the minutes under his supervision.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1969,c. 208, § 2; Laws 1975, c. 159, § 2; Laws 1977, c. 626, § 1; Laws 1983, c. 617, § 3; Laws 1993 (Reg. Sess., 1994), c. 762, § 13, eff. Jan. 1, 1995; Laws 1995, c. 243, § 1, eff. Jan. 1, 1996.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

"Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses oc-

curring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.'' [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

Laws 1995, c. 243, § 1, provides:

''Wherever the term 'supervisor' appears in the General Statutes of North Carolina or in any local act in reference to the county supervisor of elections as provided in G.S. 163–35, the term is changed to read 'director.' ''

Cross References

Precinct chief judges, see § 163–41.

§ 163–32. Compensation of members of county boards of elections

In full compensation of their services, members of the county board of elections (including the chairman) shall be paid by the county twenty-five dollars ($25.00) per meeting for the time they are actually engaged in the discharge of their duties, together with reimbursement of expenditures necessary and incidental to the discharge of their duties; provided that members are not entitled to be compensated for more than one meeting held in any one 24–hour period. In its discretion, the board of county commissioners of any county may pay the chairman and members of the county board of elections compensation in addition to the per meeting and expense allowance provided in this paragraph.

In all counties the board of elections shall pay its clerk, assistant clerks, and other employees such compensation as it shall fix within budget appropriations. Counties which adopt full-time and permanent registration shall have authority to pay directors of elections whatever compensation they may fix within budget appropriations.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1971, c. 1166, § 1; Laws 1973, c. 793, § 8; Laws 1973, c. 1344, § 5; Laws 1977, c. 626, § 1; Laws 1991, c. 338, § 1; Laws 1993 (Reg. Sess., 1994),c. 762, § 14, eff. Jan. 1, 1995; Laws 1995, c. 243, § 1, eff. Jan. 1, 1996.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

''Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.'' [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

Laws 1995, c. 243, § 1, provides:

''Wherever the term 'supervisor' appears in the General Statutes of North Carolina or in any local act in reference to the county supervisor of elections as provided in G.S. 163–35, the term is changed to read 'director.' ''

§ 163–33. Powers and duties of county boards of elections

The county boards of elections within their respective jurisdictions shall exercise all powers granted to such boards in this Chapter, and they shall perform all the duties imposed upon them by law, which shall include the following:

(1) To make and issue such rules, regulations, and instructions, not inconsistent with law, with directives promulgated under the provisions of G.S. 163–132.4, or with the rules, orders, and directives established by the State Board of Elections, as it may deem necessary for the guidance of election officers and voters.

(2) To appoint all chief judges, judges, assistants, and other officers of elections, and designate the precinct in which each shall serve; and, after notice and hearing, to remove any chief judge, judge of elections, assistant, or other officer of election appointed by it for incompetency, failure to discharge the duties of office, failure to qualify within the time prescribed by law, fraud, or for any other satisfactory cause. In exercising the powers and duties of this subdivision, the board may act only when a majority of its members are present at any meeting at which such powers or duties are exercised.

(3) To investigate irregularities, nonperformance of duties, and violations of laws by election officers and other persons, and to report violations to the State Board of Elections. In exercising the powers and duties of this subdivision, the board may act only when a majority of its members are present at any meeting at which such powers or duties are exercised. Provided that in any hearing on an irregularity no board of elections shall consider as evidence the testimony of a voter who cast a ballot, which ballot that voter was not eligible to cast, as to how that voter voted on that ballot.

(4) As provided in G.S. 163–128, to establish, define, provide, rearrange, discontinue, and combine election precincts as it may deem expedient, and to fix and provide for places of registration and for holding primaries and elections.

(5) To review, examine, and certify the sufficiency and validity of petitions and nomination papers.

(6) To advertise and contract for the printing of ballots and other supplies used in registration and elections; and to provide for the delivery of ballots, pollbooks, and other required papers and materials to the voting places.

(7) To provide for the purchase, preservation, and maintenance of voting booths, ballot boxes, registration and poll-

books, maps, flags, cards of instruction, and other forms, papers, and equipment used in registration, nominations, and elections; and to cause the voting places to be suitably provided with voting booths and other supplies required by law.

(8) To provide for the issuance of all notices, advertisements, and publications concerning elections required by law. If the election is on a State bond issue, an amendment to the Constitution, or approval of an act submitted to the voters of the State, the State Board of Elections shall reimburse the county boards of elections for their reasonable additional costs in placing such notices, advertisements, and publications. In addition, the county board of elections shall give notice at least 20 days prior to the date on which the registration books or records are closed that there will be a primary, general or special election, the date on which it will be held, and the hours the voting places will be open for voting in that election. The notice also shall describe the nature and type of election, and the issues, if any, to be submitted to the voters at that election. Notice shall be given by advertisement at least once weekly during the 20–day period in a newspaper having general circulation in the county and by posting a copy of the notice at the courthouse door. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice. This subdivision shall not apply in the case of bond elections called under the provisions of Chapter 159.

(9) To receive the returns of primaries and elections, canvass the returns, make abstracts thereof, transmit such abstracts to the proper authorities, and to issue certificates of election to county officers and members of the General Assembly except those elected in districts composed of more than one county.

(10) To appoint and remove the board's clerk, assistant clerks, and other employees; and to appoint and remove precinct transfer assistants as provided in G.S. 163–82.15(g).

(11) To prepare and submit to the proper appropriating officers a budget estimating the cost of elections for the ensuing fiscal year.

(12) To perform such other duties as may be prescribed by this Chapter, by directives promulgated pursuant to G.S. 163–132.4, or by the rules, orders, and directives of the State Board of Elections.

(13) Notwithstanding the provisions of any other section of this Chapter, to have access to any ballot boxes and their contents, any voting machines and their contents, any registration records, pollbooks, voter authorization cards or voter lists, any lists of absentee voters, any lists of presidential registrants under the Voting Rights Act of 1965 as amended, and any other voting equipment or similar records, books or lists in any precinct or municipality over whose elections it has jurisdiction or for whose elections it has responsibility.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1973, c. 793, §§ 9 to 11; Laws 1983, c. 392, § 1; Laws 1989, c. 93, § 1; Laws 1993 (Reg. Sess., 1994), c. 762, §§ 5, 15, eff. Jan. 1, 1995; Laws 1995 (Reg. Sess., 1996), c. 694, § 1, eff. June 21, 1996; S.L. 1997–510, § 1, eff. Sept. 17, 1997; S.L. 1999–424, § 7(b), eff. Aug. 5, 1999; S.L. 2009–541, § 2, eff. Aug. 28, 2009.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

''Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.'' [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

Laws 1995, c. 694, § 3, provides:

''This act is effective upon ratification and applies to all votes cast on or after that date.''

2009 Legislation

S.L. 2009–541, § 2, in subd. (1), substituted ''law, with directives promulgated under the provisions of G.S. 163–132.4, or with the rules, orders, and directives'' for ''law or the rules''; and in subd. (12), substituted ''Chapter, by directives promulgated pursuant to G.S. 163–132.4, or by the rules, orders, and directives'' for ''Chapter or the rules''.

Local Modifications

Town of Calabash: Laws 1989, c. 593, § 3; S.L. 1998–75, §§ 1, 5.

Town of Carolina Shores: S.L. 1998–75, § 5.

Town of Hazelwood: Laws 1987, c. 383, § 8.

Town of Spruce Pine: S.L. 1998–152, § 2.

Town of Waynesville: Laws 1987, c. 338, § 8.

Alamance County Board of Elections: S.L. 1998–151, § 9.6.

Anson County Board of Commissioners: Laws 1991 (Reg. Sess., 1992), c. 781, § 8.

Union County Board of Elections: S.L. 1998–151, § 9.6.

Cross References

Metropolitan water districts; procedure for inclusion of additional political subdivision or unincorporated area; notice and hearing; elections; actions questioning validity of elections, see § 162A–35.

Rules governing elections, school tax supplements, see § 115C–507.

Notes of Decisions

Amendment of election returns 1
Review of Board actions 2

1. Amendment of election returns

Primary election returns which were amended by county board of elections pursuant to directions of state board of elections, made in good faith, could not be declared void as a matter of law, where amended returns appeared regular on their face and they were impeached only by an affidavit of the county board chairman who participated in a meeting which was duly called and held for the purpose of passing on the amended returns, and who certified to their correctness. Burgin v. North Carolina State Board of Elections, 1938, 198 S.E. 592, 214 N.C. 140. Elections ⚷ 254

Amendments to primary election returns pursuant to direction of state board of elections were void as a matter of law, where the returns were amended by two members of the county election boards without knowledge or consent of third member. Burgin v. North Carolina State Board of Elections, 1938, 198 S.E. 592, 214 N.C. 140. Elections ⚷ 254

A county board of elections cannot change or amend its returns to the state board of elections without some official action on the part of the county board. Burgin v. North Carolina State Board of Elections, 1938, 198 S.E. 592, 214 N.C. 140. Elections ⚷ 254

2. Review of Board actions

Action challenging method of electing North Carolina Superior Court judges would be dismissed as against county boards of elections; county boards had no power to independently place candidate on ballot in election, boards could not remove candidate from election ballot, and boards were merely acting in ministerial capacity and could only carry out duties as detailed by statute and State Board of Elections. Republican Party of North Carolina v. Martin, 1988, 682 F.Supp. 834. Federal Civil Procedure ⚷ 1695

The unsuccessful candidate for Democratic nominee for Congress was entitled to an order staying the state board of elections from certifying his opponent as the nominee pending state board's receipt of final returns from county boards whose original returns were void as a matter of law for having been amended by two members of county election boards without knowledge or consent of third member. Burgin v. North Carolina State Board of Elections, 1938, 198 S.E. 592, 214 N.C. 140. Injunction ⚷ 80

§ 163–33.1. Power of chairman to administer oaths

The chairman of the county board of elections is authorized to administer to election officials specified in Articles 4, 5, and 20 of this Chapter the required oath, and may also administer the required oath to witnesses appearing before the county board at a duly called public hearing.

Added by Laws 1981, c. 154. Amended by S.L. 2007–391, § 5, eff. Aug. 19, 2007.

Historical and Statutory Notes

2007 Legislation

S.L. 2007–391, § 5, substituted ''Articles 4, 5, and 20 of this Chapter'' for ''G.S. 163–80''.

§ 163–33.2. Chairman and county board to examine voting machines

Prior to each primary and general election the chairman and members of the county board of elections, in counties where

voting machines are used, shall test vote, in a reasonable number of combinations, no less than ten percent (10%) of all voting machines programmed for each primary or election, such machines to be selected at random by the board after programming has been completed, and further, the board shall record the serial numbers of the machines test voted in the official minutes of the board. In the alternative, the board may cause the test voting required herein to be performed by persons qualified to program and test voting equipment.

Added by Laws 1981, c. 303.

§ 163–33.3. County board of elections littering notification

At the time an individual files with a county board of elections a notice of candidacy pursuant to G.S. 163–106, 163–112, 163–291, or 163–294.2, is certified to a county board of elections by a political party executive committee to fill a nomination vacancy pursuant to G.S. 163–114, qualifies with a county board of elections as an unaffiliated or write-in candidate pursuant to Article 11 of this Chapter, or formally initiates with a county board of elections a candidacy pursuant to any statute or local act, the county board of elections shall notify the candidate of the provisions concerning campaign signs in G.S. 136–32 and G.S. 14–156 and the rules adopted by the Department of Transportation pursuant to G.S. 136–18.

Added by S.L. 2001–512, § 8, eff. Jan. 4, 2002.

§ 163–34. Power of county board of elections to maintain order

Each county board of elections shall possess full power to maintain order, and to enforce obedience to its lawful commands during its sessions, and shall be constituted an inferior court for that purpose. If any person shall refuse to obey the lawful commands of any county board of elections, or by disorderly conduct in its hearing or presence shall interrupt or disturb its proceedings, it may, by an order in writing, signed by its chairman, and attested by its secretary, commit the person so offending to the common jail of the county for a period not exceeding 30 days. Such order shall be executed by any sheriff to whom the same shall be delivered, or if a sheriff shall not be present, or shall refuse to act, by any other person who shall be deputed by the county board of elections in writing, and the keeper of the jail shall receive the person so committed and safely keep him for such time as shall be mentioned in the commitment: Provided, that any person committed under the provisions of this section shall have the right to post a two hundred dollar ($200.00) bond with the

clerk of the superior court and appeal to the superior court for a trial on the merits of his commitment.

Added by Laws 1967, c. 775, § 1. Amended by S.L. 2004–203, § 57, eff. Aug. 17, 2004.

§ 163–35. Director of elections to county board of elections; appointment; compensation; duties; dismissal

(a) In the event a vacancy occurs in the office of county director of elections in any of the county boards of elections in this State, the county board of elections shall submit the name of the person it recommends to fill the vacancy, in accordance with provisions specified in this section, to the Executive Director of the State Board of Elections who shall issue a letter of appointment. A person shall not serve as a director of elections if he:

(1) Holds any elective public office;

(2) Is a candidate for any office in a primary or election;

(3) Holds any office in a political party or committee thereof;

(4) Is a campaign chairman or finance chairman for any candidate for public office or serves on any campaign committee for any candidate;

(5) Has been convicted of a felony in any court unless his rights of citizenship have been restored pursuant to the provisions of Chapter 13 of the General Statutes of North Carolina;

(6) Has been removed at any time by the State Board of Elections following a public hearing; or

(7) Is a member or a spouse, child, spouse of child, parent, sister, or brother of a member of the county board of elections by whom he would be employed.

(b) Appointment, Duties; Termination.—Upon receipt of a nomination from the county board of elections stating that the nominee for director of elections is submitted for appointment upon majority selection by the county board of elections the Executive Director shall issue a letter of appointment of such nominee to the chairman of the county board of elections within 10 days after receipt of the nomination. Thereafter, the county board of elections shall enter in its official minutes the specified duties, responsibilities and designated authority assigned to the director by the county board of elections. The specified duties and responsibilities shall include adherence to the duties delegated to the county board of elections pursuant to G.S. 163–33. A copy of the specified duties, responsibilities and designated authority assigned to the director shall be filed with the State Board of Elections.

The county board of elections may, by petition signed by a majority of the board, recommend to the Executive Director of the State Board of Elections the termination of the employment of the

county board's director of elections. The petition shall clearly state the reasons for termination. Upon receipt of the petition, the Executive Director shall forward a copy of the petition by certified mail, return receipt requested, to the county director of elections involved. The county director of elections may reply to the petition within 15 days of receipt thereof. Within 20 days of receipt of the county director of elections' reply or the expiration of the time period allowed for the filing of the reply, the State Executive Director shall render a decision as to the termination or retention of the county director of elections. The decision of the Executive Director of the State Board of Elections shall be final unless the decision is, within 20 days from the official date on which it was made, deferred by the State Board of Elections. If the State Board defers the decision, then the State Board shall make a final decision on the termination after giving the county director of elections an opportunity to be heard and to present witnesses and information to the State Board, and then notify the Executive Director of its decision in writing. Any one or more members of the State Board designated by the remaining members of the State Board may conduct the hearing and make a final determination on the termination. For the purposes of this subsection, the member(s) designated by the remaining members of the State Board shall possess the same authority conferred upon the chairman pursuant to G.S. 163–23. If the decision, rendered after the hearing, results in concurrence with the decision entered by the Executive Director, the decision becomes final. If the decision rendered after the hearing is contrary to that entered by the Executive Director, then the Executive Director shall, within 15 days from the written notification, enter an amended decision consistent with the results of the decision by the State Board of Elections or its designated member(s).

Upon majority vote on the recommendation of the Executive Director, the State Board of Elections may initiate proceedings for the termination of a county director of elections for just cause. If the State Board votes to initiate proceedings for termination, the State Board shall state the reasons for the termination in writing and send a copy by certified mail, return receipt requested, to the county director of elections. The director has 15 days to reply in writing to the notice. The State Board of Elections shall also notify the chair of the county board of elections and the chair of the county board of commissioners that the State Board has initiated termination proceedings. The State Board shall make a final decision on the termination after giving the county director of elections an opportunity to be heard, present witnesses, and provide information to the State Board. Any one or more members of the State Board designated by the remaining members of the State Board may conduct the hearing and make a final decision. For the purposes of this subsection, the member(s) designated by the

remaining members of the State Board shall possess the same authority conferred upon the chairman pursuant to G.S. 163–23.

A county director of elections may be suspended, with pay, without warning for causes relating to personal conduct detrimental to service to the county or to the State Board of Elections, pending the giving of written reasons, in order to avoid the undue disruption of work or to protect the safety of persons or property or for other serious reasons. Any suspension may be initiated by the Executive Director but may not be for more than five days. Upon placing a county director of elections on suspension, the Executive Director shall, as soon as possible, reduce to writing the reasons for the suspension and forward copies to the county director of elections, the members of the county board of elections, the chair of the county board of commissioners, and the State Board of Elections. If no action for termination has been taken within five days, the county director of elections shall be fully reinstated.

Termination of any county director of elections shall comply with this subsection.

(c) Compensation of Directors of Elections.—Compensation paid to directors of elections in all counties maintaining full-time registration (five days per week) shall be in the form of a salary in an amount recommended by the county board of elections and approved by the Board of County Commissioners and shall be commensurate with the salary paid to directors in counties similarly situated and similar in population and number of registered voters.

The Board of County Commissioners in each county, whether or not the county maintains full-time or modified full-time registration, shall compensate the director of elections at a minimum rate of twelve dollars ($12.00) per hour for hours worked in attendance to his or her duties as prescribed by law, including rules and regulations adopted by the State Board of Elections. In addition, the county shall pay to the director an hourly wage of at least twelve dollars ($12.00) per hour for all hours worked in excess of those prescribed in rules and regulations adopted by the State Board of Elections, when such additional hours have been approved by the county board of elections and such approval has been recorded in the official minutes of the county board of elections.

In addition to the compensation provided for herein, the director of elections to the county board of elections shall be granted the same vacation leave, sick leave, and petty leave as granted to all other county employees. It shall also be the responsibility of the Board of County Commissioners to appropriate sufficient funds to compensate a replacement for the director of elections when authorized leave is taken.

(d) Duties.—The director of elections may be empowered by the county board of elections to perform such administrative duties as might be assigned by the board and the chairman. In addition, the director of elections may be authorized by the chairman to execute the responsibilities devolving upon the chairman provided such authorization by any chairman shall in no way transfer the responsibility for compliance with the law. The chairman shall remain liable for proper execution of all matters specifically assigned to him by law.

The county board of elections shall have authority, by resolution adopted by majority vote, to delegate to its director of elections so much of the administrative detail of the election functions, duties, and work of the board, its officers and members, as is now, or may hereafter be vested in the board or its members as the county board of elections may see fit: Provided, that the board shall not delegate to a director of elections any of its quasi-judicial or policy-making duties and authority. Such a resolution shall require adherence to the duties delegated to the county board of elections pursuant to G.S. 163–33. Within the limitations imposed upon the director of elections by the resolution of the county board of elections the acts of a properly appointed director of elections shall be deemed to be the acts of the county board of elections, its officers and members.

(e) Training and Certification. –The State Board of Elections shall conduct a training program consisting of four weeks for each new county director of elections. The director shall complete that program. Each director appointed after May 1995 shall successfully complete a certification program as provided in G.S. 163–82.24(b) within three years after appointment or by January 1, 2003, whichever occurs later.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1971, c. 1166, § 2; Laws 1973, c. 859, § 1; Laws 1975, c. 211, §§ 1, 2; Laws 1975, c. 713; Laws 1977, c. 265, § 21; Laws 1977, c. 626, § 1; Laws 1977, c. 1129, § 1; Laws 1981, c. 84; Laws 1981, c. 221; Laws 1983, c. 697; Laws 1985, c. 763, § 1; Laws 1991, c. 338, § 2; Laws 1993 (Reg. Sess., 1994), c. 762, §§ 5, 16, eff. Jan. 1, 1995; Laws 1995, c. 243, § 1, eff. Jan. 1, 1996; S.L. 1999–426, § 7(a), eff. July 1, 2000; S.L. 2001–319, §§ 1(a), 1(b), eff. Jan. 1, 2002; S.L. 2001–319, § 11, eff. July 28, 2001; S.L. 2004–203, § 58, eff. Aug. 17, 2004; S.L. 2009–541, § 3, 4(a), eff. Aug. 28, 2009.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

"Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those

prosecutions or sentences.'' [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

Laws 1995, c. 243, § 1, provides:

''Wherever the term 'supervisor' appears in the General Statutes of North Carolina or in any local act in reference to the county supervisor of elections as provided in G.S. 163–35, the term is changed to read 'director.' ''

2001 Legislation

S.L. 2001–319, § 1(a), eff. Jan. 1, 2002, rewrote subsec. (b), which prior thereto read:

''(b) Appointment, Duties; Termination.--Upon receipt of a nomination from the county board of elections stating that the nominee for director of elections is submitted for appointment upon majority selection by the county board of elections the Executive Secretary-Director shall issue a letter of appointment of such nominee to the chairman of the county board of elections within 10 days after receipt of the nomination. Thereafter, the county board of elections shall enter in its official minutes the specified duties, responsibilities and designated authority assigned to the director by the county board of elections. A copy of the specified duties, responsibilities and designated authority assigned to the director shall be filed with the State Board of Elections.

''The county board of elections may, by petition signed by a majority of the board, recommend to the Executive Secretary-Director of the State Board of Elections the termination of the employment of the county board's director of elections. The petition shall clearly state the reasons for termination. Upon receipt of the petition, the Executive Secretary-Director shall forward a copy of same by certified mail, return receipt requested, to the county director of elections involved. The county director of elections may reply to said petition within 15 days of receipt thereof. Within 20 days of receipt of the county director of elections' reply or the expiration of the time period allowed for the filing of said reply, the State Executive Secretary-Director shall render a decision as to the termination or retention of the county director of elections. The decision of the Executive Secretary-Director of the State Board of Elections shall be final unless such decision shall, within 20 days from the official date on which it was made, be deferred by the State Board of Elections, in which event a public hearing shall be conducted by said State Board or any single member designated by the remaining four members, in the county seat of the county involved. Following the conduct of such public hearing and a decision by the State Board of Elections, the chairman of said Board shall notify the Executive Secretary-Director of the State Board of Elections, in writing, of the decision resulting from the public hearing. If the decision, rendered by the State Board of Elections, results in concurrence with the decision entered by the Executive Secretary-Director, the decision becomes final. If the decision rendered by the Board is contrary to that entered by the Executive Secretary-Director, then the Executive Secretary- Director shall, within 15 days from the written notification, enter an amended decision consistent with the results of the decision by the State Board of Elections. The employment of any director of elections presently employed or hereafter employed shall not be terminated except in compliance with the procedures herein prescribed. For the purposes of this subsection the individual designated by the remaining four members of the State Board shall possess the same authority conferred upon the chairman pursuant to G.S. 163–23.''

S.L. 2001–319, § 1(b), eff. Jan. 1, 2002, added subsec. (e).

S.L. 2001–319, § 11, eff. July 28, 2001, substituted ''Executive Director'' for ''Executive Secretary-Director'' and ''State Executive Secretary-Director'' throughout this section.

2004 Legislation

S.L. 2004–203, § 58, eff. Aug. 17, 2004, rewrote subsec. (b), which prior thereto read:

''(b) Appointment, Duties; Termination. –Upon receipt of a nomination from the county board of elections stating that the nominee for director of elections is submitted for appointment upon majority selection by the county board of elections the Executive Director shall issue a letter of appointment of such nominee to the chairman of the county board of elections within 10 days after receipt of the nomination. Thereafter, the county board of elections shall enter in its official minutes the specified duties, responsibilities and designated authority assigned to the director by the county board of elections. A copy of the specified duties, responsibilities and designated authority as-

signed to the director shall be filed with the State Board of Elections.

''The county board of elections may, by petition signed by a majority of the board, recommend to the Executive Director of the State Board of Elections the termination of the employment of the county board's director of elections. The petition shall clearly state the reasons for termination. Upon receipt of the petition, the Executive Director shall forward a copy of the petition by certified mail, return receipt requested, to the county director of elections involved. The county director of elections may reply to the petition within 15 days of receipt thereof. Within 20 days of receipt of the county director of elections' reply or the expiration of the time period allowed for the filing of the reply, the Executive Director shall render a decision as to the termination or retention of the county director of elections. The decision of the Executive Director of the State Board of Elections shall be final unless the decision is, within 20 days from the official date on which it was made, deferred by the State Board of Elections. If the State Board defers the decision, then the State Board shall make a final decision on the termination after giving the county director of elections an opportunity to be heard and to present witnesses and information to the State Board, and then notify the Executive Director of its decision in writing. If the decision, rendered by the State Board of Elections, results in concurrence with the decision entered by the Executive Director, the decision becomes final. If the decision rendered by the Board is contrary to that entered by the Executive Director, then the Executive Director shall, within 15 days from the written notification, enter an amended decision consistent with the results of the decision by the State Board of Elections.

''Upon majority vote on the recommendation of the Executive Director, the State Board of Elections may initiate proceedings for the termination of a county director of elections for just cause. If the State Board votes to initiate proceedings for termination, the State Board shall state the reasons for the termination in writing and send a copy by certified mail, return receipt requested, to the county director of elections. The director has 15 days to reply in writing to the notice. The State Board shall make a final decision on the termination after giving the county director of elections an opportunity to be heard, present witnesses, and provide information to the State Board. The State Board of Elections shall notify the chair of the county board of elections and the chair of the county board of commissioners that the State Board has initiated termination proceedings.

''A county director of elections may be suspended, with pay, without warning for causes relating to personal conduct detrimental to service to the county or to the State Board of Elections, pending the giving of written reasons, in order to avoid the undue disruption of work or to protect the safety of persons or property or for other serious reasons. Any suspension may be initiated by the Executive Director but may not be for more than five days. Upon placing a county director of elections on suspension, the Executive Director shall, as soon as possible, reduce to writing the reasons for the suspension and forward copies to the county director of elections, the members of the county board of elections, the chair of the county board of commissioners, and the State Board of Elections. If no action for termination has been taken within five days, the county director of elections shall be fully reinstated.

''Termination of any county director of elections shall comply with this subsection. For the purposes of this subsection, the individual designated by the remaining four members of the State Board shall possess the same authority conferred upon the chairman pursuant to G.S. 163–23.''

2009 Legislation

S.L. 2009–541, § 3, in subsec. (b), added the third sentence of the first paragraph.

S.L. 2009–541, § 4(a), in subsec. (d), added the second sentence of the second paragraph; and in the third sentence of the second paragraph, substituted ''the director of elections'' for ''him''.

S.L. 2009–541, § 4(b), provides:

"This section is effective when it becomes law, and every county board of elections shall amend or adopt the resolution of duties and responsibilities required by this act on or before January 1, 2010."

Notes of Decisions

Compensation of board members 2
Construction and application 1

1. Construction and application

County and state Boards of Elections were not required to follow statutory procedures in terminating employment of former county supervisor of elections, who had retired from her position and was never re-appointed to position under procedure mandated by statute governing office of county director of elections. Revels v. Robeson County Bd. of Elections, 2004, 167 N.C.App. 358, 605 S.E.2d 219. Elections ⚷ 51

Arguments as to whether executive secretary of county board of elections was to be classified as department head or employee under county personnel resolution were immaterial to her appeal from an adverse judgment in her action to recover sums allegedly owed for overtime work during 1976, especially since it was undisputed that neither county manager nor board of commissioners approved overtime work as required. Goodman v. Wilkes County Bd. of Com'rs, 1978, 245 S.E.2d 590, 37 N.C.App. 226. Appeal And Error ⚷ 843(2)

2. Compensation of board members

Statute which outlines duties as well as manner of appointment, dismissal and compensation of executive secretaries of county boards of elections, and which does not specifically provide for compensation for overtime work, requires that, once minimum payment of $20 per day is attained, additional compensation or employment benefits, if any, be determined by respective boards of county commissioners. Goodman v. Wilkes County Bd. of Com'rs, 1978, 245 S.E.2d 590, 37 N.C.App. 226. Elections ⚷ 53

Where executive secretary of county board of elections received more than $20 per day statutory minimum, authority to determine level of compensation above that statutory minimum was in board of county commissioners and not board of elections, which determined necessity for amount of time and work required of its executive secretary but which had only power to recommend compensation, and thus county board of commissioners was not liable for sums allegedly owed but not approved by it for secretary's overtime work during 1976. Goodman v. Wilkes County Bd. of Com'rs, 1978, 245 S.E.2d 590, 37 N.C.App. 226. Elections ⚷ 53

§ 163–36. Modified full-time offices

The State Board of Elections shall promulgate rules permitting counties that have fewer than 6,501 registered voters to operate a modified full-time elections office to the extent that the operation of a full-time office is not necessary. Nothing in this section shall preclude any county from keeping an elections office open at hours consistent with the hours observed by other county offices.

Added by Laws 1993 (Reg. Sess., 1994), c. 762, § 6, eff. Jan. 1, 1995. Amended by S.L. 1999–426, § 8(a), eff. July 1, 2000.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

"Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences." [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

§ 163–37. Duty of county board of commissioners

The respective boards of county commissioners shall appropriate reasonable and adequate funds necessary for the legal functions of the county board of elections, including reasonable and just compensation of the director of elections.

Added by S.L. 1999–424, § 3(a), eff. Aug. 5, 1999.

Article 4A

Political Activities by Board of Elections Members and Employees

Section

163–38. Applicability of Article.
163–39. Limitation on political activities.
163–40. Violation may be ground for removal.
163–40.1. Definitions.

§ 163–38. Applicability of Article

This Article applies to members and employees of the State Board of Elections and of each county and municipal board of elections. With regard to prohibitions in this Article concerning candidates, referenda, and committees, the prohibitions do not apply if the candidate or referendum will not be on the ballot in an area within the jurisdiction of the board, or if the political committee or referendum committee is not involved with an election or referendum that will be on the ballot in an area within the jurisdiction of the board.

Added by S.L. 2000–114, § 1, eff. Jan. 1, 2001. Amended by S.L. 2007–391, § 14(a), eff. Jan. 1, 2008.

Historical and Statutory Notes

2007 Legislation

S.L. 2007–391, § 14(a), in the first sentence, inserted ''and employees''.

S.L. 2007–391, § 14(b), provides:

''This section becomes effective January 1, 2008.''

§ 163–39. Limitation on political activities

No individual subject to this Article shall:

(1) Make written or oral statements intended for general distribution or dissemination to the public at large supporting or opposing the nomination or election of one or more clearly identified candidates for public office.

(2) Make written or oral statements intended for general distribution or dissemination to the public at large supporting or opposing the passage of one or more clearly identified referendum proposals.

(3) Solicit contributions for a candidate, political committee, or referendum committee.

Individual expressions of opinion, support, or opposition not intended for general public distribution shall not be deemed a violation of this Article. Nothing in this Article shall be deemed to prohibit participation in a political party convention as a delegate. Nothing in this Article shall be deemed to prohibit a board member or board employee from making a contribution to a candidate, political committee, or referendum committee. Nothing in this Article shall be deemed to prohibit a board member or board employee from advising other government entities as to technical matters related to election administration or revision of electoral district boundaries.

Added by S.L. 2000–114, § 1, eff. Jan. 1, 2001. Amended by S.L. 2007–391, § 14(a), eff. Jan. 1, 2008.

Historical and Statutory Notes

2007 Legislation

S.L. 2007–391, § 14(a), in the undesignated paragraph following subd. (3), in the third sentence, inserted ''or board employee'' and added the fourth sentence relating to advising other government entities.

S.L. 2007–391, § 14(b), provides:

''This section becomes effective January 1, 2008.''

§ 163–40. Violation may be ground for removal

A violation of this Article may be a ground to remove a State Board of Elections member under G.S. 143B–16, a county board of elections member under G.S. 163–22(c), or a municipal board of elections member under G.S. 163–280(i). A violation of this Article may be a ground for dismissal of an employee of the State Board of Elections or of a county board of elections. No criminal penalty shall be imposed for a violation of this Article.

Added by S.L. 2000–114, § 1, eff. Jan. 1, 2001. Amended by S.L. 2007–391, § 14(a), eff. Jan. 1, 2008.

Historical and Statutory Notes

2007 Legislation

S.L. 2007–391, § 14(a), inserted the second sentence relating to violation as ground for dismissal.

S.L. 2007–391, § 14(b), provides:

''This section becomes effective January 1, 2008.''

§ 163–40.1. Definitions

The provisions of Article 22A of this Chapter apply to the definition and proof of terms used in this Article.

Added by S.L. 2000–114, § 1, eff. Jan. 1, 2001. Amended by S.L. 2007–391, § 14(a), eff. Jan. 1, 2008.

Historical and Statutory Notes

2007 Legislation

S.L. 2007–391, § 14(a), reenacted this section without change in text.

S.L. 2007–391, § 14(b), provides:

''This section becomes effective January 1, 2008.''

Article 5

Precinct Election Officials

Section

163–41. Precinct chief judges and judges of election; appointment; terms of office; qualifications; vacancies; oaths of office.
163–41.1. Certain relatives prohibited from serving together.
163–41.2. Discharge of precinct official unlawful.
163–42. Assistants at polls; appointment; term of office; qualifications; oath of office.
163–42.1. Student election assistants.
163–43. Ballot counters; appointment; qualifications; oath of office.
163–44. Repealed.
163–45. Observers; appointment.
163–46. Compensation of precinct officials and assistants.
163–47. Powers and duties of chief judges and judges of election.
163–48. Maintenance of order at place of registration and voting.
163–49 to 163–53. Reserved.

§ 163–41. Precinct chief judges and judges of election; appointment; terms of office; qualifications; vacancies; oaths of office

(a) Appointment of Chief Judge and Judges.—At the meeting required by G.S. 163–31 to be held on the Tuesday following the third Monday in August of the year in which they are appointed, the county board of elections shall appoint one person to act as chief judge and two other persons to act as judges of election for each precinct in the county. Their terms of office shall continue for two years from the specified date of appointment and until their successors are appointed and qualified, except that if a nonresident of the precinct is appointed as chief judge or judge for a precinct, that person's term of office shall end if the board of elections appoints a qualified resident of the precinct of the same party to replace the nonresident chief judge or judge. It shall be their duty to conduct the primaries and elections within their respective precincts. Persons appointed to these offices must be registered voters and residents of the county in which the precinct is located, of good repute, and able to read and write. Not more than one judge in each precinct shall belong to the same political party as the chief judge.

The term ''precinct official'' shall mean chief judges and judges appointed pursuant to this section, and all assistants appointed pursuant to G.S. 163–42, unless the context of a statute clearly indicates a more restrictive meaning.

No person shall be eligible to serve as a precinct official, as that term is defined above, who holds any elective office under the government of the United States, or of the State of North Carolina or any political subdivision thereof.

No person shall be eligible to serve as a precinct official who is a candidate for nomination or election.

No person shall be eligible to serve as a precinct official who holds any office in a state, congressional district, county, or precinct political party or political organization, or who is a manager or treasurer for any candidate or political party, provided however that the position of delegate to a political party convention shall not be considered an office for the purpose of this subsection.

The chairman of each political party in the county where possible shall recommend two registered voters in each precinct who are otherwise qualified, are residents of the precinct, have good moral character, and are able to read and write, for appointment as chief judge in the precinct, and he shall also recommend where possible the same number of similarly qualified voters for appointment as judges of election in that precinct. If such recommendations are received by the county board of elections no later than the fifth day preceding the date on which appointments are to be made, it must make precinct appointments from the names of those recommended. Provided that if only one name is submitted by the fifth day preceding the date on which appointments are to be made, by a party for judge of election by the chairman of one of the two political parties in the county having the greatest numbers of registered voters in the State, the county board of elections must appoint that person.

If the recommendations of the party chairs for chief judge or judge in a precinct are insufficient, the county board of elections by unanimous vote of all of its members may name to serve as chief judge or judge in that precinct registered voters in that precinct who were not recommended by the party chairs. If, after diligently seeking to fill the positions with registered voters of the precinct, the county board still has an insufficient number of officials for the precinct, the county board by unanimous vote of all of its members may appoint to the positions registered voters in other precincts in the same county who meet the qualifications other than residence to be precinct officials in the precinct, provided that where possible the county board shall seek and adopt the recommendation of the county chairman of the political party affected. In making its appointments, the county board shall assure, wherever possible, that no precinct has a chief judge and judges all of whom are registered with the same party. In no instance shall the county board appoint nonresidents of the precinct to a majority of the three positions of chief judge and judge in a precinct.

If, at any time other than on the day of a primary or election, a chief judge or judge of election shall be removed from office, or shall die or resign, or if for any other cause there be a vacancy in a

precinct election office, the chairman of the county board of elections shall appoint another in his place, promptly notifying him of his appointment. If at all possible, the chairman of the county board of elections shall consult with the county chairman of the political party of the vacating official, and if the chairman of the county political party nominates a qualified voter of that precinct to fill the vacancy, the chairman of the county board of elections shall appoint that person. In filling such a vacancy, the chairman shall appoint a person who belongs to the same political party as that to which the vacating member belonged when appointed. If the chairman of the county board of elections did not appoint a person upon recommendation of the chairman of the party to fill such a vacancy, then the term of office of the person appointed to fill the vacancy shall expire upon the conclusion of the next canvass held by the county board of elections under this Chapter, and any successor must be a person nominated by the chairman of the party of the vacating officer.

If any person appointed chief judge shall fail to be present at the voting place at the hour of opening the polls on primary or election day, or if a vacancy in that office shall occur on primary or election day for any reason whatever, the precinct judges of election shall appoint another to act as chief judge until such time as the chairman of the county board of elections shall appoint to fill the vacancy. If such appointment by the chairman of the county board of elections is not a person nominated by the county chairman of the political party of the vacating officer, then the term of office of the person appointed to fill the vacancy shall expire upon the conclusion of the next canvass held by the county board of elections under this Chapter. If a judge of election shall fail to be present at the voting place at the hour of opening the polls on primary or election day, or if a vacancy in that office shall occur on primary or election day for any reason whatever, the chief judge shall appoint another to act as judge until such time as the chairman of the county board of elections shall appoint to fill the vacancy. Persons appointed to fill vacancies shall, whenever possible, be chosen from the same political party as the person whose vacancy is being filled, and all such appointees shall be sworn before acting.

As soon as practicable, following their training as prescribed in G.S. 163–82.24, each chief judge and judge of election shall take and subscribe the following oath of office to be administered by an officer authorized to administer oaths and file it with the county board of elections:

''I, ..., do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be estab-

lished for the government thereof; that I will endeavor to support, maintain and defend the Constitution of said State not inconsistent with the Constitution of the United States; that I will administer the duties of my office as chief judge of (judge of election in) ..... precinct, ... County, without fear or favor; that I will not in any manner request or seek to persuade or induce any voter to vote for or against any particular candidate or proposition; and that I will not keep or make any memorandum of anything occurring within a voting booth, unless I am called upon to testify in a judicial proceeding for a violation of the election laws of this State; so help me, God.''

Notwithstanding the previous paragraph, a person appointed chief judge by the judges of election under this section, or appointed judge of election by the chief judge under this section may take the oath of office immediately upon appointment.

Before the opening of the polls on the morning of the primary or election, the chief judge shall administer the oath set out in the preceding paragraph to each assistant, and any judge of election not previously sworn, substituting for the words ''chief judge of'' the words ''assistant in'' or ''judge of election in'' whichever is appropriate.

(b) Special Registration Commissioners Abolished; Optional Training.—The office of special registration commissioner is abolished. The State Board of Elections and county boards of elections may provide training to persons assisting in voter registration.

(b1) Repealed by Laws 1985, c. 387, § 1.1.

(c) Publication of Names of Precinct Officials.—Immediately after appointing chief judges and judges as herein provided, the county board of elections shall publish the names of the persons appointed in some newspaper having general circulation in the county or, in lieu thereof, at the courthouse door, and shall notify each person appointed of his appointment, either by letter or by having a notice served upon him by the sheriff. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1973, c. 435; Laws 1973, c. 1223, § 2; Laws 1975, c. 159, §§ 3, 4; Laws 1975, c. 711; Laws 1975, c. 807, § 1; Laws 1979, c. 766, § 1; Laws 1979, c. 782; Laws 1981, c. 628, §§ 1, 2; Laws 1981, c. 954, §§ 2, 4; Laws 1981 (Reg. Sess., 1982), c. 1265, § 7; Laws 1983, c. 617, § 5; Laws 1985, c. 387, §§ 1, 1.1, 1.2; Laws 1985, c. 563, §§ 9, 10; Laws 1985, c. 600, § 7.1; Laws 1985, c. 759, § 7 to 8; Laws 1987, c. 80; Laws 1987, c. 491, § 4.1; Laws 1987 (Reg. Sess., 1988), c. 1028, § 12; Laws 1989, c. 93, § 2; Laws 1993 (Reg. Sess., 1994), c. 762, §§ 3, 5; eff. Jan. 1, 1995; Laws 1995 (Reg. Sess., 1996), c. 734, § 1, eff. June 21, 1996.

Historical and Statutory Notes

Laws 1993, c. 762, §§ 61 and 73, provides:

"Section 61. Any person who on December 31, 1994, was a registrar under G.S. 163–41 shall be a chief judge under G.S. 163–41."

"Section 73. Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences." [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

Cross References

Challenges allowed on day of primary or election, see § 163–87.

Notes of Decisions

Construction and application 1
Qualifications of registrars 2
Removal of registrars 3

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1. Construction and application

It is duty of registrar to administer oath prescribed by law to electors before registering them, but his failure to perform his duty in that respect will not deprive elector of his right to vote or render his vote void after it has been cast. McPherson v. City Council of City of Burlington, 1959, 107 S.E.2d 147, 249 N.C. 569. Elections ⚷ 106; Elections ⚷ 115; Elections ⚷ 116

When registrar and election judges counted ballots cast and declared results of election by certificate to County Board of Elections, such declaration was prima facie evidence of the correctness of count until rebutted by proper and competent evidence. McPherson v. City Council of City of Burlington, 1959, 107 S.E.2d 147, 249 N.C. 569. Elections ⚷ 267

Acts 1897, c. 185, § 7, providing that the county board shall appoint one member of each political party to act as registrars of election in each precinct, does not require three members for each precinct; and, where there are but two parties in the precinct, more than one member cannot be appointed from the same party. Mullen v. Morrow, 1898, 31 S.E. 1003, 123 N.C. 773. Elections ⚷ 101

The state chairmen or county chairmen of the parties have no right to designate the persons to be appointed. Mullen v. Morrow, 1898, 31 S.E. 1003, 123 N.C. 773. Elections ⚷ 101

2. Qualifications of registrars

Even though registrars did not reside in area in which annexation election was held, they were at least de facto registrars during time they served as such and, in absence of any evidence that result of annexation election was affected thereby, their appointments would be deemed irregularities insufficient to void election. McPherson v. City Council of City of Burlington, 1959, 107 S.E.2d 147, 249 N.C. 569. Municipal Corporations ⚷ 34

A person who cannot read or write, except to write his name, is not qualified to act as registrar of election, under Acts 1897, c. 185, § 7, which requires that such registrar "shall be able to read and write the English language." Mullen v. Morrow, 1898, 31 S.E. 1003, 123 N.C. 773. Elections ⚷ 100

Acts 1897, c. 185, § 7, provides that, when a registrar of election appointed by the county board refuses to serve, the clerk shall appoint a member in his place. Held that, where the board reappoints a member instead, the appointment will be ratified, if there are no objections to the member so appointed. Mullen v. Morrow, 1898, 31 S.E. 1003, 123 N.C. 773. Elections ⚷ 100

3. Removal of registrars

In a proceeding for the removal of a registrar of election, one affidavit was to the effect that he was an inebriate, while there were several others to the effect that, while he occasionally became intoxicated, he was industrious and supported his family. Held that he was qualified. Mullen v. Morrow, 1898,

31 S.E. 1003, 123 N.C. 773. Elections ⚷ 100

In filling vacancies in the office of registrars of election caused by the removal of some of the appointees, the court is not bound by the recommendation of the chairmen of the parties from which the appointments are to be made. Mullen v. Morrow, 1898, 31 S.E. 1003, 123 N.C. 773. Elections ⚷ 101

One affidavit stated that a registrar of election had voted and acted with the party from which he was appointed. Another stated when he was served with the notice of his appointment he said that he was not a member of that party. Held, that he would be removed. Mullen v. Morrow, 1898, 31 S.E. 1003, 123 N.C. 773. Elections ⚷ 101

Where the only evidence that a registrar of election is a member of the political party from which he was appointed is that he was a registrar from that party at a previous election, and that since that time he has stated that he was a member of a different party, he will be removed. Mullen v. Morrow, 1898, 31 S.E. 1003, 123 N.C. 773. Elections ⚷ 101

In a proceeding against a county board to show cause why registrars of election appointed by them (one from each political party) should not be removed, the burden is on petitioners to show that an appointee is not a member of the party from which he is appointed, or is otherwise disqualified. Mullen v. Morrow, 1898, 31 S.E. 1003, 123 N.C. 773. Elections ⚷ 101

When a registrar of election offers no evidence that he is a member of the political party from which he was appointed, and there is evidence that he had been a delegate to a county convention of another party, he will be removed. Mullen v. Morrow, 1898, 31 S.E. 1003, 123 N.C. 773. Elections ⚷ 101

§ 163–41.1. Certain relatives prohibited from serving together

(a) The following categories of relatives are prohibited from serving as precinct officials of the same precinct: spouse, child, spouse of a child, sister or brother.

(b) No precinct official who is the wife, husband, mother, father, son, daughter, brother or sister of any candidate for nomination or election may serve as precinct official during any primary or election in which such candidate participates. The county board of elections shall temporarily disqualify any such official for the specific primary or election involved and shall have authority to appoint a substitute official, from the same political party, to serve only during the primary or election at which such conflict exists.

Added by Laws 1975, c. 745. Amended by Laws 1979, c. 411, § 2.

§ 163–41.2. Discharge of precinct official unlawful

(a) No employer may discharge or demote any employee because the employee has been appointed as a precinct official and is serving as a precinct official on election day or canvass day.

(b) An employee discharged or demoted in violation of this section shall be entitled to be reinstated to that employee's former position. The burden of proof shall be upon the employee.

(c) The statute of limitations for actions under this section shall be one year pursuant to G.S. 1–54.

(d) This section does not apply unless the employee provides the employer with not less than 30 days written notice, before the date

the leave is to begin, of the employee's intention to take leave to serve as a precinct official.

(e) As used in this section, ''precinct official'' has the same meaning as in G.S. 163–41(a).

Added by S.L. 2001–169, § 1, eff. June 7, 2001.

§ 163–42. Assistants at polls; appointment; term of office; qualifications; oath of office

Each county and municipal board of elections is authorized, in its discretion, to appoint two or more assistants for each precinct to aid the chief judge and judges. Not more than two assistants shall be appointed in precincts having 500 or less registered voters. Assistants shall be qualified voters of the county in which the precinct is located. When the board of elections determines that assistants are needed in a precinct an equal number shall be appointed from different political parties, unless the requirement as to party affiliation cannot be met because of an insufficient number of voters of different political parties within the county.

In the discretion of the county board of elections, a precinct assistant may serve less than the full day prescribed for chief judges and judges in G.S. 163–47(a).

The chairman of each political party in the county shall have the right to recommend from three to 10 registered voters in each precinct for appointment as precinct assistants in that precinct. If the recommendations are received by it no later than the thirtieth day prior to the primary or election, the board shall make appointments of the precinct assistants for each precinct from the names thus recommended. If the recommendations of the party chairs for precinct assistant in a precinct are insufficient, the county board of elections by unanimous vote of all of its members may name to serve as precinct assistant in that precinct registered voters in that precinct who were not recommended by the party chairs. If, after diligently seeking to fill the positions with registered voters of the precinct, the county board still has an insufficient number of precinct assistants for the precinct, the county board by unanimous vote of all of its members may appoint to the positions registered voters in other precincts in the same county who meet the qualifications other than residence to be precinct officials in the precinct. In making its appointments, the county board shall assure, wherever possible, that no precinct has precinct officials all of whom are registered with the same party. In no instance shall the county board appoint nonresidents of the precinct to a majority of the positions as precinct assistant in a precinct.

In addition, a county board of elections by unanimous vote of all of its members may appoint any registered voter in the county as

emergency election-day assistant, as long as that voter is otherwise qualified to be a precinct official. The State Board of Elections shall determine for each election the number of emergency election-day assistants each county may have, based on population, expected turnout, and complexity of election duties. The county board by unanimous vote of all of its members may assign emergency election-day assistants on the day of the election to any precinct in the county where the number of precinct officials is insufficient because of an emergency occurring within 48 hours of the opening of the polls that prevents an appointed precinct official from serving. A person appointed to serve as emergency election-day assistant shall be trained and paid like other precinct assistants in accordance with G.S. 163–46. A county board of elections shall apportion the appointments as emergency election-day assistant among registrants of each political party so as to make possible the staffing of each precinct with officials of more than one party, and the county board shall make assignments so that no precinct has precinct officials all of whom are registered with the same party.

Before entering upon the duties of the office, each assistant shall take the oath prescribed in G.S. 163–41(a) to be administered by the chief judge of the precinct for which the assistant is appointed. Assistants serve for the particular primary or election for which they are appointed, unless the county board of elections appoints them for a term to expire on the date appointments are to be made pursuant to G.S. 163–41.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1973, c. 793, § 95; Laws 1973, c. 1359, §§ 1 to 3; Laws 1975, c. 19, § 67; Laws 1977, c. 95, §§ 1, 2; Laws 1981, c. 954, § 3; Laws 1983, c. 617, § 4; Laws 1985, c. 563, §§ 8, 8.1; Laws 1993 (Reg. Sess., 1994), c. 762, §§ 5, 17, eff. Jan. 1, 1995; Laws 1995 (Reg. Sess., 1996), c. 554, § 1, eff. June 6, 1996; Laws 1995 (Reg. Sess., 1996), c. 734, § 2, eff. June 21, 1996.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

"Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences." [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

Cross References

Challenges allowed on day of primary or election, see § 163–87.

§ 163–42.1. Student election assistants

A student of at least 17 years of age at the time of any election or primary in which the student works shall be eligible to be appoint-

ed as a student election assistant. To be eligible a student must have all the following qualifications:

(1) Be a United States citizen.

(2) Be a resident of the county in which the student is appointed.

(3) Be enrolled in a secondary educational institution, including a home school as defined in G.S. 115C–563(a), with an exemplary academic record as determined by that institution.

(4) Be recommended by the principal or director of the secondary educational institution in which the student is enrolled.

(5) Have the consent of a parent, legal custodian, or guardian.

The county board of elections may appoint student election assistants, following guidelines which shall be issued by the State Board of Elections. No more than two student election assistants shall be assigned to any voting place. Every student election assistant shall work under the direct supervision of the election judges. The student election assistants shall attend the same training as a precinct assistant, shall be sworn in the same manner as a precinct assistant, and shall be compensated in the same manner as precinct assistants. The county board of elections shall prescribe the duties of a student election assistant, following guidelines which shall be issued by the State Board of Elections. Under no circumstances may students ineligible to register to vote be appointed and act as precinct judges or observers in any election. The date of birth of a student election assistant shall be kept confidential.

Added by S.L. 2003–278, § 1, eff. Jan. 1, 2004. Amended by S.L. 2004–127, § 17(e), eff. June 1, 2005.

Historical and Statutory Notes

2004 Legislation

S.L. 2004–127, § 17(e), eff. June 1, 2005, in the second paragraph, added the seventh sentence.

§ 163–43. Ballot counters; appointment; qualifications; oath of office

The county board of elections of any county may authorize the use of precinct ballot counters to aid the chief judges and judges of election in the counting of ballots in any precinct or precincts within the county. The county board of elections shall appoint the ballot counters it authorizes for each precinct or, in its discretion, the board may delegate authority to make such appointments to the precinct chief judge, specifying the number of ballot counters to be appointed for each precinct. A ballot counter must be a resident of the county in which the precinct is located.

No person shall be eligible to serve as a ballot counter, who holds any elective office under the government of the United States, or of the State of North Carolina or any political subdivision thereof.

No person shall be eligible to serve as a ballot counter, who serves as chairman of a state, congressional district, county, or precinct political party or political organization.

No person who is the wife, husband, mother, father, son, daughter, brother or sister of any candidate for nomination or election may serve as ballot counter during any primary or election in which such candidate qualifies.

No person shall be eligible to serve as a ballot counter who is a candidate for nomination or election.

Upon acceptance of appointment, each ballot counter shall appear before the precinct chief judge at the voting place immediately at the close of the polls on the day of the primary or election and take the following oath to be administered by the chief judge:

''I, ... , do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution of said State not inconsistent with the Constitution of the United States; that I will honestly discharge the duties of ballot counter in . . . . . precinct, ... County for primary (or election) held this day, and that I will fairly and honestly tabulate the votes cast in said primary (or election); so help me, God.'' The names and addresses of all ballot counters serving in any precinct, whether appointed by the county board of elections or by the chief judge, shall be reported by the chief judge to the county board of elections at the county canvass following the primary or election.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1981, c. 954, § 5; Laws 1985, c. 563, § 10.1; Laws 1993 (Reg. Sess., 1994), c. 762, §§ 5, 18, eff. Jan. 1, 1995; Laws 1995 (Reg. Sess., 1996), c. 734, § 3, eff. June 21, 1996.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

''Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.'' [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

§ 163–44. Repealed by Laws 1973, c. 793, § 13

Historical and Statutory Notes

The repealed section provided for markers for general elections.

§ 163–45. Observers; appointment

The chair of each political party in the county shall have the right to designate two observers to attend each voting place at each primary and election and such observers may, at the option of the designating party chair, be relieved during the day of the primary or election after serving no less than four hours and provided the list required by this section to be filed by each chair contains the names of all persons authorized to represent such chair's political party. Not more than two observers from the same political party shall be permitted in the voting enclosure at any time. This right shall not extend to the chair of a political party during a primary unless that party is participating in the primary. In any election in which an unaffiliated candidate is named on the ballot, the candidate or the candidate's campaign manager shall have the right to appoint two observers for each voting place consistent with the provisions specified herein. Persons appointed as observers must be registered voters of the county for which appointed and must have good moral character. No person who is a candidate on the ballot in a primary or election may serve as an observer or runner in that primary or election. Observers shall take no oath of office.

Individuals authorized to appoint observers must submit in writing to the chief judge of each precinct a signed list of the observers appointed for that precinct. Individuals authorized to appoint observers must, prior to 10:00 A.M. on the fifth day prior to any primary or general election, submit in writing to the chair of the county board of elections two signed copies of a list of observers appointed by them, designating the precinct for which each observer is appointed. Before the opening of the voting place on the day of a primary or general election, the chair shall deliver one copy of the list to the chief judge for each affected precinct. The chair shall retain the other copy. The chair, or the chief judge and judges for each affected precinct, may for good cause reject any appointee and require that another be appointed. The names of any persons appointed in place of those persons rejected shall be furnished in writing to the chief judge of each affected precinct no later than the time for opening the voting place on the day of any primary or general election, either by the chair of the county board of elections or the person making the substitute appointment.

If party chairs appoint observers at one-stop sites under G.S. 163–227.2, those party chairs shall provide a list of the observers appointed before 10:00 A.M. on the fifth day before the observer is to observe.

An observer shall do no electioneering at the voting place, and shall in no manner impede the voting process or interfere or communicate with or observe any voter in casting a ballot, but, subject to these restrictions, the chief judge and judges of elections shall permit the observer to make such observation and take such notes as the observer may desire.

Whether or not the observer attends to the polls for the requisite time provided by this section, each observer shall be entitled to obtain at times specified by the State Board of Elections, but not less than three times during election day with the spacing not less than one hour apart, a list of the persons who have voted in the precinct so far in that election day. Counties that use an ''authorization to vote document'' instead of poll books may comply with the requirement in the previous sentence by permitting each observer to inspect election records so that the observer may create a list of persons who have voted in the precinct so far that election day; each observer shall be entitled to make the inspection at times specified by the State Board of Elections, but not less than three times during election day with the spacing not less than one hour apart.

Instead of having an observer receive the voting list, the county party chair may send a runner to do so, even if an observer has not been appointed for that precinct. The runner may be the precinct party chair or any person named by the county party chair. Each county party chair using runners in an election shall provide to the county board of elections before 10:00 A.M. on the fifth day before election day a list of the runners to be used. That party chair must notify the chair of the county board of elections or the board chair's designee of the names of all runners to be used in each precinct before the runner goes to the precinct. The runner may receive a voter list from the precinct on the same schedule as an observer. Whether obtained by observer or runner, each party is entitled to only one voter list at each of the scheduled times. No runner may enter the voting enclosure except when necessary to announce that runner's presence and to receive the list. The runner must leave immediately after being provided with the list.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1973, c. 793, §§ 14, 94; Laws 1977, c. 453; Laws 1991, c. 727, § 3; Laws 1993 (Reg. Sess., 1994), c. 762, §§ 5, 19, eff. Jan. 1, 1995; Laws 1995 (Reg. Sess., 1996), c. 688, § 1, eff. July 1, 1996; Laws 1995 (Reg. Sess., 1996), c. 734, § 4.1, eff. June 21, 1996; S.L. 2005–428, § 1(a), eff. Jan. 1, 2006; S.L. 2007–391, § 22, eff. Aug. 19, 2007.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

''Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.'' [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

Laws 1995, c. 688, § 3, provides, in part, that § 1 applies to all primaries and elections occurring on or after July 1, 1996.

2005 Legislation

S.L. 2005–428, § 1(a), eff. Jan. 1, 2006, amended section by substituting ''chair'' or ''chair's'' for ''chairman'' or ''chairman's'' in ten places, inserted ''No person who is a candidate on the ballot in a primary or election may serve as an observer or runner in that primary or election.'', substituted ''the chair'' for ''he'' in one place, substituted ''a'' for ''his'' in the third paragraph before ''ballot'', substituted ''the observer'' for both ''him'' and ''he'', and added the last seven sentences of section.

S.L. 2005–428, § 18, provides:

''Sections 2, 6, 7, 8, 10, 12, 13, 14, 15, and 16 of this act are effective when this act becomes law and apply to all primaries and elections held on or after that date. The remainder of this act becomes effective January 1, 2006, and applies to all primaries and elections held on or after that date.''

2007 Legislation

S.L. 2007–391, § 22, inserted the third paragraph relating to observers at one-stop sites; and in the fifth paragraph, in the first sentence, inserted '', even if an observer has not been appointed for that precinct'' and inserted the third sentence relating to providing a list of runners.

Notes of Decisions

Construction and application 1

1. Construction and application

Videotaping of voters by election observers would be outside their permissible activities under applicable statutes and inconsistent with the constitutional and statutory principles insuring unfettered elections for voters; however, there are not the same legal concerns with the use of cellular telephones. Op. Atty.Gen., Hunt, Oct. 29, 1998.

§ 163–46. Compensation of precinct officials and assistants

The precinct chief judge shall be paid the state minimum wage for his services on the day of a primary, special or general election. Judges of election shall each be paid the state minimum wage for their services on the day of a primary, special or general election. Assistants, appointed pursuant to G.S. 163–42, shall each be paid the state minimum wage for their services on the day of a primary, special or general election. Ballot counters appointed pursuant to G.S. 163–43 shall be paid a minimum of five dollars ($5.00) for their services on the day of a primary, general or special election. If an election official is being paid an hourly wage or daily fee on an election day and the official is performing additional election duties away from the assigned precinct voting place, the official shall not be entitled to any additional monies for those services, except for reimbursable expenses in performing the services.

If the county board of elections requests the presence of a chief judge or judge at the county canvass, the chief judge shall be paid the sum of twenty dollars ($20.00) per day and judges shall be paid the sum of fifteen dollars ($15.00) per day. If the county board of elections requests a precinct official, including chief judge or judge, to personally deliver official ballots or other official materials to the county board of elections, the precinct official shall be paid the sum of twenty dollars ($20.00) per day and judges shall be paid the sum of fifteen dollars ($15.00) per day.

The chairman of the county board of elections, along with the director of elections, shall conduct an instructional meeting prior to each primary and general election which shall be attended by each chief judge and judge of election, unless excused by the chairman, and such precinct election officials shall be paid the sum of fifteen dollars ($15.00) for attending the instructional meetings required by this section.

In its discretion, the board of county commissioners of any county may provide funds with which the county board of elections may pay chief judges, judges, assistants, and ballot counters in addition to the amounts specified in this section. Observers shall be paid no compensation for their services.

A person appointed to serve as chief judge, or judge of election when a previously appointed chief judge or judge fails to appear at the voting place or leaves his post on the day of an election or primary shall be paid the same compensation as the chief judge or judge appointed prior to that date.

For the purpose of this section, the phrase the State minimum wage, means the amount set by G.S. 95–25.3(a). For the purpose of this section, no other provision of Article 2A of Chapter 95 of the General Statutes shall apply.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1969, c. 24; Laws 1971, c. 604; Laws 1973, c. 793, §§ 15, 16, 94; Laws 1977, c. 626, § 1; Laws 1979, c. 403; Laws 1981, c. 796, §§ 1, 2; Laws 1993 (Reg. Sess., 1994), c. 762, § 20, eff. Jan. 1, 1995; Laws 1995, c. 243, § 1, eff. Jan. 1, 1996; S.L. 2001–398, § 5, eff. Jan. 1, 2002; S.L. 2003–278, § 3, eff. June 27, 2003.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

''Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.'' [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

Laws 1995, c. 243, § 1, provides:

''Wherever the term 'supervisor' appears in the General Statutes of North Carolina or in any local act in reference

to the county supervisor of elections as provided in G.S. 163–35, the term is changed to read 'director.' ''

2001 Legislation

S.L. 2001–398, § 5, eff. Jan. 1, 2002, rewrote the second paragraph, which prior thereto read:

''Chief judges shall be paid the sum of twenty dollars ($20.00) per day and judges shall be paid the sum of fifteen dollars ($15.00) per day for attendance at the county canvass, pursuant to G.S. 163–173.''

2003 Legislation

S.L. 2003–278, § 3, eff. June 27, 2003, in the first paragraph, added the fifth sentence.

Local Modifications

Richmond County: Laws 1969, c. 507.

§ 163–47. Powers and duties of chief judges and judges of election

(a) The chief judges and judges of election shall conduct the primaries and elections within their respective precincts fairly and impartially, and they shall enforce peace and good order in and about the place of registration and voting. On the day of each primary and general and special election, the precinct chief judge and judges shall remain at the voting place from the time fixed by law for the commencement of their duties there until they have completed all those duties, and they shall not separate nor shall any one of them leave the voting place except for unavoidable necessity.

(b) On the day of an election or primary, the chief judge shall have charge of the registration list for the purpose of passing on the registration of persons who present themselves at the polls to vote.

(c) The chief judge and judges shall hear challenges of the right of registered voters to vote as provided by law.

(d) The chief judge and judges shall count the votes cast in their precincts and make such returns of the same as is provided by law.

(e) The chief judge and judges shall make such an accounting to the chairman of the county board of elections for ballots and for election supplies as is required by law.

(f) The chief judge and judges of election shall act by a majority vote on all matters not assigned specifically by law to the chief judge or to a judge.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1973, c. 793, § 17; Laws 1993 (Reg. Sess., 1994), c. 762, §§ 4, 5, eff. Jan. 1, 1995.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

''Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those

prosecutions or sentences.'' [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

Local Modifications

Orange County: S.L. 1999–255, § 6.

Notes of Decisions

Construction and application 1

1. Construction and application

The disqualifications of electors will not affect the validity of the officer elected. Wilson v. Peterson, 1873, 69 N.C. 113. Elections ⚷ 229

§ 163–48. Maintenance of order at place of registration and voting

The chief judge and judges of election shall enforce peace and good order in and about the place of registration and voting. They shall especially keep open and unobstructed the place at which voters or persons seeking to register or vote have access to the place of registration and voting. They shall prevent and stop improper practices and attempts to obstruct, intimidate, or interfere with any person in registering or voting. They shall protect challenger and witnesses against molestation and violence in the performance of their duties, and they may eject from the place of registration or voting any challenger or witness for violation of any provisions of the election laws. They shall prevent riots, violence, tumult, or disorder.

In the discharge of the duties prescribed in the preceding paragraph of this section, the chief judge and judges may call upon the sheriff, the police, or other peace officers to aid them in enforcing the law. They may order the arrest of any person violating any provision of the election laws, but such arrest shall not prevent the person arrested from registering or voting if he is entitled to do so. The sheriff, police officers, and other officers of the peace shall immediately obey and aid in the enforcement of any lawful order made by the precinct election officials in the enforcement of the election laws. The chief judge and judges of election of any precinct, or any two of such election officials, shall have the authority to deputize any person or persons as police officers to aid in maintaining order at the place of registration or voting.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1993 (Reg. Sess., 1994), c. 762, §§ 5, 21, eff. Jan. 1, 1995.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

''Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses oc-

curring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.'' [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

§§ 163–49 to 163–53. Reserved

SUBCHAPTER III. QUALIFYING TO VOTE

Article 6

Qualifications of Voters

Section

163–54. Registration a prerequisite to voting.
163–55. Qualifications to vote; exclusion from electoral franchise.
163–56. Repealed.
163–57. Residence defined for registration and voting.
163–58. Repealed.
163–59. Right to participate or vote in party primary.
163–60 to 163–64. Reserved.

§ 163–54. Registration a prerequisite to voting

Only such persons as are legally registered shall be entitled to vote in any primary or election held under this Chapter.

Added by Laws 1967, c. 775, § 1.

Notes of Decisions

Construction and application 1
Oath 3
Registration to vote, generally 2
Validity of votes or election 4

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1. Construction and application

C.S. § 5960, requiring that physical inability to vote in person appear by affidavit or physician's certificate is mandatory, and, without substantial compliance therewith, a voter in the county cannot vote, especially in view of Pub.Laws 1923, c. 111, § 5, though C.S. § 5968, requires that the election laws be liberally construed in favor of the elector's right to vote. Davis v. Board of Education of Beaufort County, 1923, 119 S.E. 372, 186 N.C. 227. Elections ⚷ 213

2. Registration to vote, generally

Const. Art. 6, §§ 1, 3, 4, provide the qualifications of voters and declare that every person shall be able to read and write, unless registered under another clause, before being entitled "to register," as required by section 3, and that before he shall be entitled to "vote" he shall have paid his poll tax for the previous year. Pace v. City of Raleigh, 1905, 52 S.E. 277, 140 N.C. 65. Intoxicating Liquors ⚷ 34(1)

The aldermen of a city, being entitled to purge the registration lists in determining the persons entitled to vote at a municipal election by striking off those voters who have died or become disqualified by removal or otherwise, could also strike off such as were not entitled to vote because of the constitutional disqualification of not having paid their poll tax. Pace v. City of Raleigh, 1905, 52 S.E. 277, 140 N.C. 65. Elections ⚷ 108

The charter of Wilmington (St. 1876–77, c. 192, § 3) provides that before the first election of aldermen on the fourth Thursday in March, 1877, and biennially thereafter before every such election, there shall be a registration in each of the wards of persons qualified to vote. The last registration was made in March, 1887, at which 2,735 persons registered. On July 5, 1887, the city authorities ordered an election on August 11, 1887, to vote on a proposition to subscribe to the stock of the W.O. & E.C. Ry. Co., and at the same time ordered a new registration of voters, at which 1,676 persons registered. At the election 1,049 votes were for subscription. The charter of said company (Acts 1885, c. 233, § 14) provides for such subscription, if a majority of the qualified voters of the city favor it. Held, under section 3, the city authorities had no power to order a new registration, but should have taken the registration of March previous, and made necessary corrections and addi-

tions, and that the election was void. Smith v. City of Wilmington, 1887, 4 S.E. 489, 98 N.C. 343. Municipal Corporations ⚷ 878

3. Oath

Where the register testifies that the oath was not administered upon the Bible, but does not state how it was administered, it will be presumed, in the absence of direct evidence, that the oath was taken with uplifted hand, as specified in Code, § 3310, for persons who have conscientious scruples against swearing upon the ''holy evangelists,'' as specified in the preceding section; and whether such scruples in fact existed or not is immaterial, that form of oath being sanctioned by the statute. State v. Nicholson, 1889, 9 S.E. 545, 102 N.C. 465. Elections ⚷ 106

Const. art. 6, § 2, requiring that the oath administered to persons offering themselves for registration as voters shall bind them to support the constitution ''and laws of the United States,'' and the constitution and laws of the state not inconsistent therewith, is satisfied by an oath to support the constitution of the United States and that of the state. All valid laws, whether state or national, are included by implication. State v. Nicholson, 1889, 9 S.E. 545, 102 N.C. 465. Elections ⚷ 106

4. Validity of votes or election

The fact that the registration book had been lost does not invalidate an election, where it appears that all who voted had been duly registered, as required by law. Hampton v. Waldrop, 1889, 10 S.E. 694, 104 N.C. 453. Elections ⚷ 212

The fact that the registration book was not kept open for the prescribed time on the Saturday before the election cannot be allowed to vitiate the election, where it appears that the book was kept open until 2 o'clock p.m., and that no one was denied an opportunity to examine it, or sought it afterwards. State v. Nicholson, 1889, 9 S.E. 545, 102 N.C. 465. Elections ⚷ 116

A disregard of constitutional or statutory directions relating to the registration of electors, which does not affect the result as an expression of popular will, does not warrant a rejection of the vote cast. If none are incompetent to vote who are put on the list, the registration must be accepted as the act of a public officer, and entitles the electors to vote, notwithstanding irregularities as to administering the oath, the registrar's appointment, etc. State v. Nicholson, 1889, 9 S.E. 545, 102 N.C. 465. Elections ⚷ 116

§ 163–55. Qualifications to vote; exclusion from electoral franchise

(a) Residence Period for State Elections.—Every person born in the United States, and every person who has been naturalized, and who shall have resided in the State of North Carolina and in the precinct, ward, or other election district in which the person offers to vote for 30 days next preceding an election, shall, if otherwise qualified as prescribed in this Chapter, be qualified to vote in any election held in this State. Removal from one precinct, ward, or other election district to another in this State shall not operate to deprive any person of the right to vote in the precinct, ward, or other election district from which he has removed until 30 days after the person's removal.

Except as otherwise provided in this Chapter, the following classes of persons shall not be allowed to vote in this State:

(1) Persons under 18 years of age.

(2) Any person adjudged guilty of a felony against this State or the United States, or adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, unless that person shall be first restored to the rights of citizenship in the manner prescribed by law.

(b) Precincts and Election Districts. — For purposes of qualification to vote in an election, a person's residence in a precinct, ward, or election district shall be determined in accordance with G.S. 163–57. When an election district encompasses more than one precinct, then for purposes of those offices to be elected from that election district a person shall also be deemed to be resident in the election district which includes the precinct in which that person resides. An election district may include a portion of a county, an entire county, a portion of the State, or the entire State. When a precinct has been divided among two or more election districts for purposes of elections to certain offices, then with respect to elections to those offices a person shall be deemed to be resident in only that election district which includes the area of the precinct in which that person resides. Qualification to vote in referenda shall be treated the same as qualification for elections to fill offices.

(c) Elections.—For purposes of the 30–day residence requirement to vote in an election in subsection (a) of this section, the term ''election'' means the day of the primary, second primary, general election, special election, or referendum.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1971, c. 1231, § 1; Laws 1973, c. 793, § 18; S.L. 2005–2, § 2, eff. March 22, 2005; S.L. 2008–150, § 5(a), eff. Aug. 2, 2008; S.L. 2009–541, § 5, eff. Aug. 28, 2009.

Historical and Statutory Notes

2005 Legislation

S.L. 2005–2, § 2, eff. March 2, 2005 rewrote the section, which prior thereto read:

''Every person born in the United States, and every person who has been naturalized, and who shall have resided in the State of North Carolina and in the precinct in which he offers to register and vote for 30 days next preceding the ensuing election, shall, if otherwise qualified as prescribed in this Chapter, be qualified to register and vote in the precinct in which he resides: Provided, that removal from one precinct to another in this State shall not operate to deprive any person of the right to vote in the precinct from which he has removed until 30 days after his removal.

''The following classes of persons shall not be allowed to register or vote in this State:

''(1) Persons under 18 years of age.

''(2) Any person adjudged guilty of a felony against this State or the United States, or adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, unless that person shall be first restored to the rights of citizenship in the manner prescribed by law.''

S.L. 2005–2, § 7, provides:

''This act is effective when it becomes law and, being declaratory of existing law, applies to all elections held after January 1, 2004, the effective date of G.S. 163–166.11.''

2008 Legislation

S.L. 2008–150, § 5(b), added subsec. (c).

2009 Legislation

S.L. 2009–541, § 5, in subsec. (a), in the first sentence of the second paragraph, substituted ''Except as otherwise provided in this Chapter'' for ''Except as provided in G.S. 163–59''.

Cross References

Challenge procedure not on Election Day, see § 163–85.
Initial counting of official ballots, see § 163–182.2.

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1. Validity

One-year residency requirement contained in North Carolina Constitution and statute was unconstitutional when applied to the right to vote in local elections. Andrews v. Cody, 1971, 327 F.Supp. 793, affirmed 92 S.Ct. 1306, 405 U.S. 1034, 31 L.Ed.2d 576. Elections ⚷ 18

Method of making the classification between potential voters as residents entitled to vote and nonresidents not entitled to vote should be upheld if they are reasonable; such methods are not subject to the compelling state interest test. Lloyd v. Babb, 1979, 251 S.E.2d 843, 296 N.C. 416. Elections ⚷ 18

Since the general assembly has no power to change the qualifications of voters in state, county, township, city, or town elections, so much of the act amending the charter of the city of Wilmington, ratified on February 3, 1875, as requires of voters a residence of 90 days, instead of 30, is unconstitutional, and consequently void. People ex rel. Van Bokkelen v. Canaday, 1875, 73 N.C. 198, 21 Am.Rep. 465. Elections ⚷ 60

So much of the act of February, 1875, amending the charter of the city of Wilmington and regulating the election of aldermen, as gives to each of the first and second wards, having 400 voters each, a representation of 3 aldermen, and to a third ward, having 2,800 voters, the same number of aldermen, violates the fundamental principle of the state constitution that representation shall be apportioned to the popular vote as nearly as possible. People ex rel. Van Bokkelen v. Canaday, 1875, 73 N.C. 198, 21 Am.Rep. 465. Municipal Corporations ⚷ 124(1)

2. Civil rights

Fact that inconsistent results as to whether students were residents of the county and entitled to register to vote might follow from the use of questions designed to determine the student's residencies would not give rise to a violation of due process. Lloyd v. Babb, 1979, 251 S.E.2d 843, 296 N.C. 416. Constitutional Law ⚷ 4232

It would not be a denial of equal protection to make certain inquiries of students who sought to register to vote as to their residency which were not made of other would-be registrants. Lloyd v. Babb, 1979, 251 S.E.2d 843, 296 N.C. 416. Constitutional Law ⚷ 3367

There is no denial of equal protection in the use of a rebuttable presumption that a student who leaves his parents' home to go to college is not domiciled in the place where the college was located for voting purposes. Lloyd v. Babb, 1979, 251 S.E.2d 843, 296 N.C. 416. Constitutional Law ⚷ 3367

3. Power to prescribe qualifications

Any state law which tends to effect the right to vote by way of making classifications must be scrutinized for conformity with the equal protection clause. Lloyd v. Babb, 1979, 251 S.E.2d 843, 296 N.C. 416. Constitutional Law ⚷ 3635; Elections ⚷ 18

State laws which have the effect of denying certain classes the right to vote must have a compelling justification. Lloyd v. Babb, 1979, 251 S.E.2d 843, 296 N.C. 416. Elections ⚷ 18

Fact that students seeking to register to vote in the community in which they went to college might be asked certain questions about their financial affairs, such as whether they had an automobile, and where their banking and business connections lay would not impermissibly make voting classifications on the basis of wealth or property ownership. Lloyd v. Babb, 1979, 251 S.E.2d 843, 296 N.C. 416. Elections ⚷ 18

Use by registrars of a questionnaire to obtain necessary facts to determine whether a student is entitled to vote in a particular locality is permissible. Lloyd

v. Babb, 1979, 251 S.E.2d 843, 296 N.C. 416. Elections ⚷ 18

The general assembly has no power to change the qualifications of voters in state, county, township, city, or town elections. People ex rel. Van Bokkelen v. Canaday, 1875, 73 N.C. 198, 21 Am. Rep. 465. Elections ⚷ 18

4. Eligibility, generally

State Board of Elections improperly counted provisional ballots cast outside voters' precincts of residence, and thus, ballots could not be counted in final election tallies; plain meaning of statutory section setting forth qualifications to vote was that voters were required to cast ballots on election day in their precincts of residence, according to Board's own rules, voter was eligible to cast an "official provisional ballot" only if he resided in precinct, and thus, state law did not permit out-of-precinct provisional ballots to be counted in elections. James v. Bartlett, 2005, 359 N.C. 260, 607 S.E.2d 638, reconsideration denied 359 N.C. 633, 613 S.E.2d 691. Elections ⚷ 239

Vote of citizen of Syria for office of mayor held illegal (C.S. §§ 2654, 5936, 5937). Gower v. Carter, 1928, 143 S.E. 513, 195 N.C. 697. Elections ⚷ 70

Qualifications for voting in municipal election are same as in general election (C.S. §§ 2654, 2655; Const. Art. 6, §§ 2, 3). Gower v. Carter, 1927, 139 S.E. 604, 194 N.C. 293. Elections ⚷ 59

Cities and towns, like counties and townships, are parts and parcels of the state, organized for the convenience of local self-government; and the qualifications of voters are the same, to wit, citizenship, 21 years of age, 12 months' residence in the state, and 30 days in the city or town. People ex rel. Van Bokkelen v. Canaday, 1875, 73 N.C. 198, 21 Am.Rep. 465. Elections ⚷ 59

5. Qualifications to vote, generally

Provision of North Carolina Constitution that a convicted felon, whose rights of citizenship have not been restored, shall not be permitted to vote and provisions of similar statute do not constitute cruel and unusual punishment. Fincher v. Scott, 1972, 352 F.Supp. 117, affirmed 93 S.Ct. 2151, 411 U.S. 961, 36 L.Ed.2d 681. Sentencing And Punishment ⚷ 1581

Vote of married woman under 21 years of age for office of mayor held illegal (C.S. §§ 2654, 5936, 5937). Gower v. Carter, 1928, 143 S.E. 513, 195 N.C. 697. Elections ⚷ 66

C.S. § 5960, requiring that physical inability to vote in person appear by affidavit or physician's certificate is mandatory, and, without substantial compliance therewith, a voter in the county cannot vote, especially in view of Pub.Laws 1923, c. 111, § 5, though C.S. § 5968, requires that the election laws be liberally construed in favor of the elector's right to vote. Davis v. Board of Education of Beaufort County, 1923, 119 S.E. 372, 186 N.C. 227. Elections ⚷ 213

Under Revisal, § 2949, voters at municipal elections must have the same qualifications as those at general elections, and hence must have paid a poll tax. Echerd v. Viele, 1913, 80 S.E. 408, 164 N.C. 122. Elections ⚷ 83

Code, § 2681, providing that, if an elector has previously registered in any precinct in the county in which he resides, he cannot again register in any other precinct in the county until he produces a certificate of the registrar of the former precinct that he has removed, and his name been stricken from the registration books, applies to bona fide residents who neglect to obtain such certificate. People v. Teague, 1890, 11 S.E. 665, 106 N.C. 576. Elections ⚷ 98

6. Residency—In general

Appropriately defined and uniformly applied bona fide residence requirements for voting are permissible. Lloyd v. Babb, 1979, 251 S.E.2d 843, 296 N.C. 416. Elections ⚷ 18

State has the authority to determine whether a person is a bona fide resident for voting purposes. Lloyd v. Babb, 1979, 251 S.E.2d 843, 296 N.C. 416. Elections ⚷ 18

Otherwise eligible persons who reside in a community and are subject to its laws must be permitted to vote there even though their interests may differ from the majority of the community's residents. Lloyd v. Babb, 1979, 251 S.E.2d 843, 296 N.C. 416. Elections ⚷ 72

Any test of domicile used for voting purposes must exclude only those whose exclusion is necessary to preserve the basic conception of a political community. Lloyd v. Babb, 1979, 251 S.E.2d 843, 296 N.C. 416. Elections ⚷ 72

Term "residence," when used in election law, means domicile. Hall v. Wake County Bd. of Elections, 1972, 187 S.E.2d 52, 280 N.C. 600. Elections ⚷ 72

Voter residing in town only three months before election, whose name was registered by one of candidates, held not qualified elector (C.S. §§ 2654, 5937). Gower v. Carter, 1928, 143 S.E. 513, 195 N.C. 697. Elections ⚷ 72

School teachers voting for office of mayor must have established legal residence to be qualified electors (Const. Art. 6, § 2). Gower v. Carter, 1928, 143 S.E. 513, 195 N.C. 697. Elections ⚷ 74

A vote cast in a mayoralty election by a person living outside of the town limits was properly disallowed. Echerd v. Viele, 1913, 80 S.E. 408, 164 N.C. 122. Elections ⚷ 71.1

7. —— Change in domicile, residency

Requisites for "domicile" for voting purpose are legal capacity, physical presence, and the intent to acquire domicile; intent to acquire domicile requires both an intent to abandon one's prior domicile and an intent to remain at the new domicile; abandonment of one's prior domicile and adoption of a new domicile may be shown both by declarations of the registrant and by objective facts; the latter should be obtained by appropriate inquiries directed to the registrant by the registrar. Lloyd v. Babb, 1979, 251 S.E.2d 843, 296 N.C. 416. Elections ⚷ 73

Residence for a specific purpose, as at summer or winter resorts, or to acquire an education, or some art or skill in which the animus revertendi accompanies the whole period of absence, effects no change of domicile. Hall v. Wake County Bd. of Elections, 1972, 187 S.E.2d 52, 280 N.C. 600. Domicile ⚷ 4(1)

To constitute a domicile, there must be residence and intent to make place of residence a home. Hall v. Wake County Bd. of Elections, 1972, 187 S.E.2d 52, 280 N.C. 600. Domicile ⚷ 1

To effect a change of domicile there must be an actual abandonment of the first domicile, accompanied by intention not to return to it and the acquisition of new domicile by actual residence at another place, coupled with intention of making the last acquired residence a permanent home. Hall v. Wake County Bd. of Elections, 1972, 187 S.E.2d 52, 280 N.C. 600. Domicile ⚷ 4(2)

Where a voter has been in the habit of leaving his home in another county every summer, and coming to the county in which the election was held, for the purpose of working there, and returning to the other county after the season was over, and testifies that he considered the county in which the election was held his home, his true residence is a question for the jury. People v. Teague, 1890, 11 S.E. 665, 106 N.C. 576. Elections ⚷ 72

8. —— Students, residency

It was not an unjustifiable intrusion into the private affairs of students seeking to register to vote to compel them to answer certain questions concerning their residency. Lloyd v. Babb, 1979, 251 S.E.2d 843, 296 N.C. 416. Elections ⚷ 18

Student who intends to remain at his college community only until graduation should not for that reason alone be denied the right to vote in that community; modifying, to the extent that it might be interpreted to the contrary, *Hall v. Board of Elections*, 280 N.C. 600, 187 S.E.2d 52. Lloyd v. Babb, 1979, 251 S.E.2d 843, 296 N.C. 416. Elections ⚷ 76

So long as a student intends to make his home in the community where he is physically present for the purpose of attending school while he is attending school and has no intent to return to his former home after graduation, he may claim the college community as his domicile for voting purposes; he need not also intend to stay in the college community beyond graduation in order to establish his domicile there. Lloyd v. Babb, 1979, 251 S.E.2d 843, 296 N.C. 416. Elections ⚷ 76

Person has a domicile for voting places at a place if he has abandoned his prior home, has a present intent to make that place his home, and has no intention to presently leave that place; applying that rule to the case of students, the student is entitled to register to vote at the place where he is attending school if he can show that he has abandoned his prior home, has the present intention of making the place where he is attending school his home, and intends to remain in the college town at least as long as he is a student there and until he acquires a new domicile. Lloyd v. Babb, 1979, 251 S.E.2d

843, 296 N.C. 416. Elections ⚷ 73; Elections ⚷ 76

Adult student may acquire domicile at place at which his university or college is situated, if he regards place as his home, or intends to stay there indefinitely, and has no intention of resuming his former home, but if he goes to college town merely as a student, intending to remain there only until his education is completed and does not change his intention, he does not acquire a domicile there. Hall v. Wake County Bd. of Elections, 1972, 187 S.E.2d 52, 280 N.C. 600. Domicile ⚷ 4(2)

9. Proceedings for registration

Registrars of election, under Acts 1895, c. 159, may ask an elector as to his age and residence, as well as the township and county from whence he removed, in the case of a removal since the last election, and the name by which he is commonly known. In re Reid, 1896, 26 S.E. 337, 119 N.C. 641. Elections ⚷ 106

Under Const. Art. 6, § 1, registrars of election may ask an elector if he has resided in the state 12 months next preceding the election, and 90 days in the county in which he offers to vote. In re Reid, 1896, 26 S.E. 337, 119 N.C. 641. Elections ⚷ 106

A registrar of election cannot ask a person proposing to register whether he has been convicted of an infamous crime, such conviction not being a disqualification if the person has been restored to the rights of citizenship. In re Reid, 1896, 26 S.E. 337, 119 N.C. 641. Elections ⚷ 106

The registrar may receive the certificate, and administer the oath to the voter, while outside the precinct for which he is acting, and enter the name on the registration books after his return home. People v. Teague, 1890, 11 S.E. 665, 106 N.C. 576. Elections ⚷ 106

10. Presumptions and burden of proof

It is presumed that student who leaves his parents' home to enter college is not domiciled in the college town to which he goes, but such presumption is rebuttable. Hall v. Wake County Bd. of Elections, 1972, 187 S.E.2d 52, 280 N.C. 600. Domicile ⚷ 8

Domicile, once acquired, is presumed to continue and it is never lost until a new one is established. Hall v. Wake County Bd. of Elections, 1972, 187 S.E.2d 52, 280 N.C. 600. Domicile ⚷ 8

Burden of proof rests on person alleging change in domicile. Hall v. Wake County Bd. of Elections, 1972, 187 S.E.2d 52, 280 N.C. 600. Domicile ⚷ 8

Where an elector is allowed to deposit his ballot, the burden is on one who questions its legality to establish his disqualification by a preponderance of the evidence. People v. Teague, 1890, 11 S.E. 665, 106 N.C. 576. Elections ⚷ 291

11. Admissibility of evidence

Intention as to domicile may be shown by acts, declarations, and other circumstances. Gower v. Carter, 1927, 139 S.E. 604, 194 N.C. 293. Domicile ⚷ 9

Questions as to voter's purpose in going to town, and her home when not teaching school therein, held competent in quo warranto to try title to office of mayor. Gower v. Carter, 1927, 139 S.E. 604, 194 N.C. 293. Quo Warranto ⚷ 55

It may be shown in an election contest that voters who were in fact registered were not qualified to register by having paid the poll tax. Echerd v. Viele, 1913, 80 S.E. 408, 164 N.C. 122. Elections ⚷ 293(2)

In a contested election case, evidence as to how a voter would have voted, or offered to vote, who was challenged, and who, by reason of the great number of voters, failed to have his challenge heard, so that he could in fact vote, is inadmissible. People v. Teague, 1890, 11 S.E. 665, 106 N.C. 576. Elections ⚷ 293(1)

The record of the indictment and conviction of a voter of a crime, previous to an election, is admissible to show that he voted fraudulently. People v. Teague, 1890, 11 S.E. 665, 106 N.C. 576. Elections ⚷ 293(2)

The declaration of a voter that he was born in 1868 (which, if true, would have made him less than 21 years old at the date of registration), made to the registrar when first examined, is admissible to show that he was a minor, though he afterwards returned to the registrar with a stranger, who swore that he was over 21 years old. People v. Teague, 1890, 11 S.E. 665, 106 N.C. 576. Elections ⚷ 293(2)

In a contested election case, after offering evidence tending to show that a

voter voted against a contestant, such voter is considered a party in interest as against such contestant, and his declarations made at or before the time of voting, tending to show his want of qualification, are admissible against defendant. People v. Teague, 1890, 11 S.E. 665, 106 N.C. 576. Elections ⚷ 293(2)

The testimony of the tax collector of a precinct in which the election was held, who made it his duty to look up every resident of the precinct, that a certain voter was never there until a few months before the election, and never paid a tax there, that the day after the election he saw him buy a ticket for an adjoining state, and that he had never returned, is properly submitted to the jury as tending to show that such voter never acquired a residence in the precinct to entitle him to vote. People v. Teague, 1890, 11 S.E. 665, 106 N.C. 576. Elections ⚷ 293(2)

The fact that a certain person was engaged in handing out tickets for one of the contesting candidates, and for no other person, and that he gave a ticket to an elector, and "voted him," is competent evidence, as tending to show for whom such elector voted. People v. Teague, 1890, 11 S.E. 665, 106 N.C. 576. Elections ⚷ 293(3)

12. Sufficiency of evidence

Domicile is a fact which may be proved by direct and circumstantial evidence. Hall v. Wake County Bd. of Elections, 1972, 187 S.E.2d 52, 280 N.C. 600. Domicile ⚷ 9

Person's testimony regarding his intention with respect to acquiring a new domicile or retaining his old one is competent evidence, but it is not conclusive of the question, in that all surrounding circumstances and conduct of person must be taken into consideration. Hall v. Wake County Bd. of Elections, 1972, 187 S.E.2d 52, 280 N.C. 600. Domicile ⚷ 9; Domicile ⚷ 10

Determination of domicile depends on no one fact or combination of circumstances, but upon the whole, taken together, showing a preponderance of evidence in favor of some particular place as the domicile. Hall v. Wake County Bd. of Elections, 1972, 187 S.E.2d 52, 280 N.C. 600. Domicile ⚷ 10

Person's testimony regarding his intention with respect to acquiring or retaining a domicile is not conclusive and such testimony is to be accepted with considerable reserve, though no suspicion may be entertained as to the truthfulness of such person. Hall v. Wake County Bd. of Elections, 1972, 187 S.E.2d 52, 280 N.C. 600. Domicile ⚷ 10

Finding that student had abandoned her former domicile and had acquired new one in place where she was attending college supported judgment that she was entitled to vote in such place. Hall v. Wake County Bd. of Elections, 1972, 187 S.E.2d 52, 280 N.C. 600. Elections ⚷ 112

Residence or domicile may be proved by direct or circumstantial evidence. Gower v. Carter, 1927, 139 S.E. 604, 194 N.C. 293. Domicile ⚷ 9

The returns of the pollholders showing the number of votes cast at an election for mayor were prima facie correct when attacked in an action to impeach the election. Echerd v. Viele, 1913, 80 S.E. 408, 164 N.C. 122. Elections ⚷ 295(1)

Where it does not appear from direct testimony for what candidate an unqualified voter voted, the fact may be shown by circumstantial evidence. People v. Teague, 1890, 11 S.E. 665, 106 N.C. 576. Elections ⚷ 295(1)

Evidence that a voter got a ticket from a table at the polls, where only defendant's tickets were distributed, and from a known agent of defendant, and "came down the line within the ropes and voted," is sufficient to go to the jury as tending to show that he voted for defendant. People v. Teague, 1890, 11 S.E. 665, 106 N.C. 576. Elections ⚷ 293(3)

It is for the trial judge to say whether the evidence tending to show the illegality of a particular vote is sufficient as a foundation for compelling the voter to tell for whom he voted. People v. Teague, 1890, 11 S.E. 665, 106 N.C. 576. Elections ⚷ 300

13. Witnesses

In quo warranto to try title to office of mayor, question whether voters intended to make town "legal residence" held improper as calling for matters of law and fact. Gower v. Carter, 1928, 143 S.E. 513, 195 N.C. 697. Witnesses ⚷ 236(1)

Neither contestant nor defendant can object to the testimony of a voter alleged to have voted illegally, on the ground that he cannot be compelled to

criminate himself, where the witness does not raise the objection himself. People v. Teague, 1890, 11 S.E. 665, 106 N.C. 576. Witnesses ⚷ 306

14. Injunction

Testimony of seven witnesses relating to the number of students registered in the county and where they were registered, testimony of two students who could not remember what, if any questions, were asked of them at the time that they registered, and testimony of one witness which tended to show that the registrars had not been properly instructed about registering college students but that he remembered few details of the meeting at which the allegedly incorrect instructions were given was insufficient, in view of offer of testimony that would show that registrars were properly instructed and were complying with the law, that registrars had been improperly registering college students so that preliminary mandatory injunction requiring the registrars to do so was not based on sufficient evidence. Lloyd v. Babb, 1979, 251 S.E.2d 843, 296 N.C. 416. Injunction ⚷ 147

If evidence adduced at trial showed that members and officials of the county board had failed to require students seeking to register to vote to prove their domicile to be in the county, court could enjoin the board from further registering students without doing so. Lloyd v. Babb, 1979, 251 S.E.2d 843, 296 N.C. 416. Injunction ⚷ 76

15. Mandamus

Voters who sought to compel county election officials to perform their duties with respect to making inquiry as to whether students registering to vote were residents of the county could not obtain that relief by challenging the registration of students who had already been registered so that their court action to compel the county election officials from performing their duties could be maintained despite a claim that they had not exhausted their administrative remedies through the challenged procedure. Lloyd v. Babb, 1979, 251 S.E.2d 843, 296 N.C. 416. Mandamus ⚷ 3(8)

Judicial purging of voter registrants was not an available remedy in a mandamus proceeding as it would be duplicative of the statutory process for challenging voters; persons seeking to challenge the registration of certain college students were not entitled to a judicial remedy identical to the administrative remedy merely because of the number of voters involved, some 6,000 to 10,000, or because of the possibility that the challenges might not be fairly heard by the county board. Lloyd v. Babb, 1979, 251 S.E.2d 843, 296 N.C. 416. Mandamus ⚷ 3(8)

Court has the power to order county board to use a specific set of questions in connection with registering students to vote but should use caution in the exercise of that power. Lloyd v. Babb, 1979, 251 S.E.2d 843, 296 N.C. 416. Mandamus ⚷ 176

16. Quo warranto

Whether certain voter in mayoralty election was domiciled in another town and voted for defendant in quo warranto held for jury. Gower v. Carter, 1927, 139 S.E. 604, 194 N.C. 293. Quo Warranto ⚷ 58

In quo warranto to try title to an office, where the complaint alleges that relator at the election received a majority of the legal votes, and was elected, but that a large number of votes received by defendant were illegal, being by minors, nonresidents, etc., and that the number of illegal votes so cast was greater than the majority by which defendant was declared elected, and the judge requires relator to further give the number of the alleged illegal votes, and the grounds on which the charges of illegality were based as to each class, and when the votes were polled, defendant cannot demand a further order requiring relator to file a bill of particulars setting forth the names of the illegal voters. People v. Teague, 1890, 11 S.E. 665, 106 N.C. 576. Quo Warranto ⚷ 49

17. Judicial review

Action of the State Board of Elections in considering a claim that certain voters had been improperly registered in one county and in determining that no further proceedings on the matter were appropriate did not arise from a "contested case" so that there was no basis for judicial review and, as a result, court had jurisdiction to consider application for preliminary injunction. Lloyd v. Babb, 1979, 251 S.E.2d 843, 296 N.C. 416. Elections ⚷ 112

§ 163–56. Repealed by Laws 1973, c. 793, § 19

Historical and Statutory Notes

The repealed section provided for shortening the state residency requirement for voters at presidential elections.

§ 163–57. Residence defined for registration and voting

All election officials in determining the residence of a person offering to register or vote, shall be governed by the following rules, so far as they may apply:

(1) That place shall be considered the residence of a person in which that person's habitation is fixed, and to which, whenever that person is absent, that person has the intention of returning.

a. In the event that a person's habitation is divided by a State, county, municipal, precinct, ward, or other election district, then the location of the bedroom or usual sleeping area for that person with respect to the location of the boundary line at issue shall be controlling as the residency of that person.

b. If the person disputes the determination of residency, the person may request a hearing before the county board of elections making the determination of residency. The procedures for notice of hearing and the conduct of the hearing shall be as provided in G.S. 163–86. The presentation of an accurate and current determination of a person's residence and the boundary line at issue by map or other means available shall constitute prima facie evidence of the geographic location of the residence of that person.

c. In the event that a person's residence is not a traditional residence associated with real property, then the location of the usual sleeping area for that person shall be controlling as to the residency of that person. Residence shall be broadly construed to provide all persons with the opportunity to register and to vote, including stating a mailing address different from residence address.

(2) A person shall not be considered to have lost that person's residence if that person leaves home and goes into another state, county, municipality, precinct, ward, or other election district of this State, for temporary purposes only, with the intention of returning.

(3) A person shall not be considered to have gained a residence in any county, municipality, precinct, ward, or other election district of this State, into which that person comes for temporary purposes only, without the intention of

making that county, municipality, precinct, ward, or other election district a permanent place of abode.

(4) If a person removes to another state or county, municipality, precinct, ward, or other election district within this State, with the intention of making that state, county, municipality, precinct, ward, or other election district a permanent residence, that person shall be considered to have lost residence in the state, county, municipality, precinct, ward, or other election district from which that person has removed.

(5) If a person removes to another state or county, municipality, precinct, ward, or other election district within this State, with the intention of remaining there an indefinite time and making that state, county, municipality, precinct, ward, or other election district that person's place of residence, that person shall be considered to have lost that person's place of residence in this State, county, municipality, precinct, ward, or other election district from which that person has removed, notwithstanding that person may entertain an intention to return at some future time.

(6) If a person goes into another state, county, municipality, precinct, ward, or other election district, or into the District of Columbia, and while there exercises the right of a citizen by voting in an election, that person shall be considered to have lost residence in that State, county, municipality, precinct, ward, or other election district from which that person removed.

(7) School teachers who remove to a county, municipality, precinct, ward, or other election district in this State for the purpose of teaching in the schools of that county temporarily and with the intention or expectation of returning during vacation periods to live where their parents or other relatives reside in this State and who do not have the intention of becoming residents of the county, municipality, precinct, ward, or other election district to which they have moved to teach, for purposes of registration and voting shall be considered residents of the county, municipality, precinct, ward, or other election district in which their parents or other relatives reside.

(8) If a person removes to the District of Columbia or other federal territory to engage in the government service, that person shall not be considered to have lost residence in this State during the period of such service unless that person votes in the place to which the person removed, and the place at which that person resided at the time of

that person's removal shall be considered and held to be the place of residence.

(9) If a person removes to a county, municipality, precinct, ward, or other election district to engage in the service of the State government, that person shall not be considered to have lost residence in the county, municipality, precinct, ward, or other election district from which that person removed, unless that person votes in the place to which the person removed, and the place at which that person resided at the time of that person's removal shall be considered and held to be the place of residence.

(9a) The establishment of a secondary residence by an elected official outside the district of the elected official shall not constitute prima facie evidence of a change of residence.

(10) For the purpose of voting a spouse shall be eligible to establish a separate domicile.

(11) So long as a student intends to make the student's home in the community where the student is physically present for the purpose of attending school while the student is attending school and has no intent to return to the student's former home after graduation, the student may claim the college community as the student's domicile. The student need not also intend to stay in the college community beyond graduation in order to establish domicile there. This subdivision is intended to codify the case law.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1981, c. 184; Laws 1991, c. 727, § 5.1; Laws 1993 (Reg. Sess., 1994), c. 762, § 22, eff. Jan. 1, 1995; S.L. 2001–316, § 1, eff. July 28, 2001; S.L. 2005–428, § 3(b), eff. Jan. 1, 2006; S.L. 2006–262, § 2.1, eff. Aug. 27, 2006.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

''Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.'' [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

2001 Legislation

S.L. 2001–316, § 1, eff. July 28, 2001, rewrote the section, which prior thereto read:

''All election officials in determining the residence of a person offering to register or vote, shall be governed by the following rules, so far as they may apply:

''(1) That place shall be considered the residence of a person in which his habitation is fixed, and to which, whenever he is absent, he has the intention of returning.

''(2) A person shall not be considered to have lost his residence who leaves his home and goes into another state or county of this State, for temporary purposes only, with the intention of returning.

''(3) A person shall not be considered to have gained a residence in any county of this State, into which he comes for temporary purposes only, without the intention of making such county his permanent place of abode.

''(4) If a person removes to another state or county within this State, with the intention of making such state or county his permanent residence, he shall be considered to have lost his residence in the state or county from which he has removed.

''(5) If a person removes to another state or county within this State, with the intention of remaining there an indefinite time and making such state or county his place of residence, he shall be considered to have lost his place of residence in this State or the county from which he has removed, notwithstanding he may entertain an intention to return at some future time.

''(6) If a person goes into another state or county, or into the District of Columbia, and while there exercises the right of a citizen by voting in an election, he shall be considered to have lost his residence in this State or county.

''(7) School teachers who remove to a county for the purpose of teaching in the schools of that county temporarily and with the intention or expectation of returning during vacation periods to live in the county in which their parents or other relatives reside, and who do not have the intention of becoming residents of the county to which they have moved to teach, for purposes of registration and voting shall be considered residents of the county in which their parents or other relatives reside.

''(8) If a person removes to the District of Columbia or other federal territory to engage in the government service, he shall not be considered to have lost his residence in this State during the period of such service unless he votes there, and the place at which he resided at the time of his removal shall be considered and held to be his place of residence.

''(9) If a person removes to a county to engage in the service of the State government, he shall not be considered to have lost his residence in the county from which he removed, unless he demonstrates a contrary intention.

''(10) For the purpose of voting a spouse shall be eligible to establish a separate domicile.

''(11) So long as a student intends to make his home in the community where he is physically present for the purpose of attending school while he is attending school and has no intent to return to his former home after graduation, he may claim the college community as his domicile. He need not also intend to stay in the college community beyond graduation in order to establish his domicile there. This subdivision is intended to codify the case law.''

2005 Legislation

S.L. 2005–428, § 3(b), eff. Jan. 1, 2006, rewrote section, which prior thereto read:

''All election officials in determining the residence of a person offering to register or vote, shall be governed by the following rules, so far as they may apply:

''(1) That place shall be considered the residence of a person in which that person's habitation is fixed, and to which, whenever that person is absent, has the intention of returning.

''(2) A person shall not be considered to have lost that person's residence if that person leaves home and goes into another state or county of this State, for temporary purposes only, with the intention of returning.

''(3) A person shall not be considered to have gained a residence in any county of this State, into which that person comes for temporary purposes only, without the intention of making that county a permanent place of abode.

''(4) If a person removes to another state or county within this State, with the intention of making that state or county a permanent residence, that person shall be considered to have lost residence in the state or county from which that person has removed.

''(5) If a person removes to another state or county within this State, with the intention of remaining there an indefinite time and making that state or county that person's place of residence, that person shall be considered to have lost that person's place of residence in this State or the county from which that person has removed, notwithstanding that person may entertain an intention to return at some future time.

''(6) If a person goes into another state or county, or into the District of Columbia, and while there exercises the right of a citizen by voting in an election, that person shall be considered to

have lost residence in this State or county.

''(7) School teachers who remove to a county for the purpose of teaching in the schools of that county temporarily and with the intention or expectation of returning during vacation periods to live in the county in which their parents or other relatives reside, and who do not have the intention of becoming residents of the county to which they have moved to teach, for purposes of registration and voting shall be considered residents of the county in which their parents or other relatives reside.

''(8) If a person removes to the District of Columbia or other federal territory to engage in the government service, that person shall not be considered to have lost residence in this State during the period of such service unless that person votes in the place to which the person removed, and the place at which that person resided at the time of that person's removal shall be considered and held to be the place of residence.

''(9) If a person removes to a county to engage in the service of the State government, that person shall not be considered to have lost residence in the county from which that person removed, unless that person votes in the place to which the person removed, and the place at which that person resided at the time of that person's removal shall be considered and held to be the place of residence.

''(9a) The establishment of a secondary residence by an elected official outside the district of the elected official shall not constitute prima facie evidence of a change of residence.

''(10) For the purpose of voting a spouse shall be eligible to establish a separate domicile.

''(11) So long as a student intends to make the student's home in the community where the student is physically present for the purpose of attending school while the student is attending school and has no intent to return to the student's former home after graduation, the student may claim the college community as the student's domicile. The student need not also intend to stay in the college community beyond graduation in order to establish domicile there. This subdivision is intended to codify the case law.''

S.L. 2005–428, § 18, provides:

''Sections 2, 6, 7, 8, 10, 12, 13, 14, 15, and 16 of this act are effective when this act becomes law and apply to all primaries and elections held on or after that date. The remainder of this act becomes effective January 1, 2006, and applies to all primaries and elections held on or after that date.''

2006 Legislation

S.L. 2006–262, § 2.1, eff. Aug. 27, 2006, amended subd. (1) by inserting ''that person'' in the introductory paragraph and adding sub-subd. c.

S.L. 2006–262, § 5, provides:

''Section 4 of this act becomes effective January 1, 2007. The remainder of this act is effective when it becomes law, except that any criminal penalty resulting from this act becomes effective October 1, 2006. Prosecutions for offenses committed before October 1, 2006, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.''

Cross References

Change of registration when county line changes, see § 163–82.15A.
Initial counting of official ballots, see § 163–182.2.
Qualifications to vote; exclusion from electoral franchise, see § 163–55.

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1. Validity

Appropriately defined and uniformly applied bona fide residence requirements for voting are permissible. Lloyd v. Babb, 1979, 251 S.E.2d 843, 296 N.C. 416. Elections ⚷ 18

State has the authority to determine whether a person is a bona fide resident for voting purposes. Lloyd v. Babb, 1979, 251 S.E.2d 843, 296 N.C. 416. Elections ⚷ 18

Fact that students seeking to register to vote in the community in which they went to college might be asked certain questions about their financial affairs, such as whether they had an automobile, and where their banking and business connections lay would not impermissibly make voting classifications on the basis of wealth or property ownership. Lloyd v. Babb, 1979, 251 S.E.2d 843, 296 N.C. 416. Elections ⚷ 18

Method of making the classification between potential voters as residents entitled to vote and nonresidents not entitled to vote should be upheld if they are reasonable; such methods are not subject to the compelling state interest test. Lloyd v. Babb, 1979, 251 S.E.2d 843, 296 N.C. 416. Elections ⚷ 18

It would not be a denial of equal protection to make certain inquiries of students who sought to register to vote as to their residency which were not made of other would-be registrants. Lloyd v. Babb, 1979, 251 S.E.2d 843, 296 N.C. 416. Constitutional Law ⚷ 3367

There is no denial of equal protection in the use of a rebuttable presumption that a student who leaves his parents' home to go to college is not domiciled in the place where the college was located for voting purposes. Lloyd v. Babb, 1979, 251 S.E.2d 843, 296 N.C. 416. Constitutional Law ⚷ 3367

Fact that inconsistent results as to whether students were residents of the county and entitled to register to vote might follow from the use of questions designed to determine the student's residencies would not give rise to a violation of due process. Lloyd v. Babb, 1979, 251 S.E.2d 843, 296 N.C. 416. Constitutional Law ⚷ 4232

2. Construction and application

Any test of domicile used for voting purposes must exclude only those whose exclusion is necessary to preserve the basic conception of a political community. Lloyd v. Babb, 1979, 251 S.E.2d 843, 296 N.C. 416. Elections ⚷ 72

The registrar may receive the certificate, and administer the oath to the voter, while outside the precinct for which he is acting, and enter the name on the registration books after his return home. People v. Teague, 1890, 11 S.E. 665, 106 N.C. 576. Elections ⚷ 106

In quo warranto to try title to an office, where the complaint alleges that relator at the election received a majority of the legal votes, and was elected, but that a large number of votes received by defendant were illegal, being by minors, nonresidents, etc., and that the number of illegal votes so cast was greater than the majority by which defendant was declared elected, and the judge requires relator to further give the number of the alleged illegal votes, and the grounds on which the charges of illegality were based as to each class, and when the votes were polled, defendant cannot demand a further order requiring relator to file a bill of particulars setting forth the names of the illegal voters. People v. Teague, 1890, 11 S.E. 665, 106 N.C. 576. Quo Warranto ⚷ 49

Domicile, as distinguished from residence, generally denotes a permanent, rather than a temporary, dwelling place. State ex rel. Hannon v. Grizzard, 1883, 89 N.C. 115. Domicile ⚷ 2

3. Residency for registration and voting—In general

Term "residence" as used in state election laws, is synonymous with legal domicile. Farnsworth v. Jones, 1994, 114 N.C.App. 182, 441 S.E.2d 597. Elections ⚷ 71.1

Term "residence," when used in election law, means domicile. Hall v. Wake County Bd. of Elections, 1972, 187 S.E.2d 52, 280 N.C. 600. Elections ⚷ 72

One's voting residence is at his domicile. Owens v. Chaplin, 1948, 48 S.E.2d 37, 229 N.C. 797. Elections ⚷ 72

"Residence" as defined by statute for voting purposes must be construed in harmony with Constitution in the sense of "domicile", denoting a permanent abode, as distinguished from a temporary dwelling place. Owens v. Chaplin,

1948, 48 S.E.2d 37, 229 N.C. 797. Elections ⚷ 72

Voter residing in town only three months before election, whose name was registered by one of candidates, held not qualified elector (C.S. §§ 2654, 5937). Gower v. Carter, 1928, 143 S.E. 513, 195 N.C. 697. Elections ⚷ 72

School teachers voting for office of mayor must have established legal residence to be qualified electors (Const. Art. 6, § 2). Gower v. Carter, 1928, 143 S.E. 513, 195 N.C. 697. Elections ⚷ 74

Where a voter has been in the habit of leaving his home in another county every summer, and coming to the county in which the election was held, for the purpose of working there, and returning to the other county after the season was over, and testifies that he considered the county in which the election was held his home, his true residence is a question for the jury. People v. Teague, 1890, 11 S.E. 665, 106 N.C. 576. Elections ⚷ 72

Plaintiff was in the service of the government at Washington as watchman, but paid his poll tax and voted in North Carolina, where he had always resided previous to his appointment. Held, that his constitutional residence—i.e. domicile—was in North Carolina. State ex rel. Hannon v. Grizzard, 1883, 89 N.C. 115. Domicile ⚷ 5

''Residence,'' as used in Const. Art. 6, § 1, defining political rights, is synonymous with ''domicile,'' denoting a permanent, as distinguished from a temporary, dwelling place. State ex rel. Hannon v. Grizzard, 1883, 89 N.C. 115. Elections ⚷ 72

4. —— Change of registration, residency for registration and voting

Where plaintiff had returned to North Carolina on holidays and vacations from her California teaching position, had acquired or reacquired her family home in North Carolina in 1971, had thereafter resided in that home until date suit was filed, was not employed in California on that date and met requirements of domicile to register to vote in North Carolina, plaintiff was a resident of North Carolina on date suit was filed against North Carolina resident in March, 1972, and diversity of citizenship therefore did not exist even though plaintiff was registered to vote in California. Webb v. Nolan, 1972, 361 F.Supp. 418, affirmed 484 F.2d 1049, appeal dismissed, certiorari denied 94 S.Ct. 1397, 415 U.S. 903, 39 L.Ed.2d 461. Federal Courts ⚷ 282

Requisites for ''domicile'' for voting purpose are legal capacity, physical presence, and the intent to acquire domicile; intent to acquire domicile requires both an intent to abandon one's prior domicile and an intent to remain at the new domicile; abandonment of one's prior domicile and adoption of a new domicile may be shown both by declarations of the registrant and by objective facts; the latter should be obtained by appropriate inquiries directed to the registrant by the registrar. Lloyd v. Babb, 1979, 251 S.E.2d 843, 296 N.C. 416. Elections ⚷ 73

Code, § 2681, providing that, if an elector has previously registered in any precinct in the county in which he resides, he cannot again register in any other precinct in the county until he produces a certificate of the registrar of the former precinct that he has removed, and his name been stricken from the registration books, applies to bona fide residents who neglect to obtain such certificate. People v. Teague, 1890, 11 S.E. 665, 106 N.C. 576. Elections ⚷ 98

5. —— Students, residency for registration and voting

Student who intends to remain at his college community only until graduation should not for that reason alone be denied the right to vote in that community; modifying, to the extent that it might be interpreted to the contrary, *Hall v. Board of Elections*, 280 N.C. 600, 187 S.E.2d 52. Lloyd v. Babb, 1979, 251 S.E.2d 843, 296 N.C. 416. Elections ⚷ 76

So long as a student intends to make his home in the community where he is physically present for the purpose of attending school while he is attending school and has no intent to return to his former home after graduation, he may claim the college community as his domicile for voting purposes; he need not also intend to stay in the college community beyond graduation in order to establish his domicile there. Lloyd v. Babb, 1979, 251 S.E.2d 843, 296 N.C. 416. Elections ⚷ 76

Person has a domicile for voting places at a place if he has abandoned his prior home, has a present intent to make that place his home, and has no intention to presently leave that place; applying that rule to the case of students, the student is entitled to register

to vote at the place where he is attending school if he can show that he has abandoned his prior home, has the present intention of making the place where he is attending school his home, and intends to remain in the college town at least as long as he is a student there and until he acquires a new domicile. Lloyd v. Babb, 1979, 251 S.E.2d 843, 296 N.C. 416. Elections ⚷ 73; Elections ⚷ 76

It was not an unjustifiable intrusion into the private affairs of students seeking to register to vote to compel them to answer certain questions concerning their residency. Lloyd v. Babb, 1979, 251 S.E.2d 843, 296 N.C. 416. Elections ⚷ 18

Use by registrars of a questionnaire to obtain necessary facts to determine whether a student is entitled to vote in a particular locality is permissible. Lloyd v. Babb, 1979, 251 S.E.2d 843, 296 N.C. 416. Elections ⚷ 18

Finding that student had abandoned her former domicile and had acquired new one in place where she was attending college supported judgment that she was entitled to vote in such place. Hall v. Wake County Bd. of Elections, 1972, 187 S.E.2d 52, 280 N.C. 600. Elections ⚷ 112

6. Qualifications for voting

Otherwise eligible persons who reside in a community and are subject to its laws must be permitted to vote there even though their interests may differ from the majority of the community's residents. Lloyd v. Babb, 1979, 251 S.E.2d 843, 296 N.C. 416. Elections ⚷ 72

Vote of married woman under 21 years of age for office of mayor held illegal (C.S. §§ 2654, 5936, 5937). Gower v. Carter, 1928, 143 S.E. 513, 195 N.C. 697. Elections ⚷ 66

Vote of citizen of Syria for office of mayor held illegal (C.S. §§ 2654, 5936, 5937). Gower v. Carter, 1928, 143 S.E. 513, 195 N.C. 697. Elections ⚷ 70

C.S. § 5960, requiring that physical inability to vote in person appear by affidavit or physician's certificate is mandatory, and, without substantial compliance therewith, a voter in the county cannot vote, especially in view of Pub.Laws 1923, c. 111, § 5, though C.S. § 5968, requires that the election laws be liberally construed in favor of the elector's right to vote. Davis v. Board of Education of Beaufort County, 1923, 119 S.E. 372, 186 N.C. 227. Elections ⚷ 213

7. Absentee ballots

Doubtful statements of challenged electors as to whether they were sworn by attesting officer when they signed statutory affidavit accompanying absentee ballot were insufficient to overcome certificate of notary, which imported prima facie truth of pertinent recitals, stipulation of the parties, and evidence of attesting officer called as a witness by unsuccessful candidates. Owens v. Chaplin, 1948, 48 S.E.2d 37, 229 N.C. 797. Elections ⚷ 216.1

Absentee ballots cast for successful candidate were improperly rejected in quo warranto proceeding to try title to office of clerk of superior court, where relator failed to carry burden of proving disqualification of challenged electors, in view of presumption arising from official certificate declaring defendant elected to office and relator's concession that challenged electors were registered in county and that absentee ballots were in proper form. Owens v. Chaplin, 1948, 48 S.E.2d 37, 229 N.C. 797. Quo Warranto ⚷ 57

Misconduct of election officials did not disfranchise otherwise qualified electors who cast absentee ballots. Per STACY, C. J., and SEAWELL, J. Owens v. Chaplin, 1948, 48 S.E.2d 37, 229 N.C. 797. Elections ⚷ 227(8)

Absentee ballots cast by absentee voters who were not sworn were defective and could not be counted. Owens v. Chaplin, 1948, 47 S.E.2d 12, 228 N.C. 705, rehearing denied 48 S.E.2d 37, 229 N.C. 797. Elections ⚷ 216.1; Elections ⚷ 227(8)

Superior court clerk's interest in reelection did not invalidate absentee ballots cast by absentee voters to whom clerk administered the oaths, since clerk was merely performing duty imposed by law regarding which nothing was left to his discretion and his act in administering oaths was ministerial and not judicial. Owens v. Chaplin, 1948, 47 S.E.2d 12, 228 N.C. 705, rehearing denied 48 S.E.2d 37, 229 N.C. 797. Elections ⚷ 216.1

8. Presumptions and burden of proof

Admission by unsuccessful candidate for office of clerk of superior court that each challenged elector was duly registered in county, and that his absentee ballot was in proper form gave rise to a presumption of validity of ballot and

imposed on unsuccessful candidate the burden of showing the contrary. Per STACY, C. J., and SEAWELL, J. Owens v. Chaplin, 1948, 48 S.E.2d 37, 229 N.C. 797. Elections ⚷ 216.1

Where an elector is allowed to deposit his ballot, the burden is on one who questions its legality to establish his disqualification by a preponderance of the evidence. People v. Teague, 1890, 11 S.E. 665, 106 N.C. 576. Elections ⚷ 291

9. Admissibility of evidence

In a contested election case, evidence as to how a voter would have voted, or offered to vote, who was challenged, and who, by reason of the great number of voters, failed to have his challenge heard, so that he could in fact vote, is inadmissible. People v. Teague, 1890, 11 S.E. 665, 106 N.C. 576. Elections ⚷ 293(1)

The record of the indictment and conviction of a voter of a crime, previous to an election, is admissible to show that he voted fraudulently. People v. Teague, 1890, 11 S.E. 665, 106 N.C. 576. Elections ⚷ 293(2)

The declaration of a voter that he was born in 1868 (which, if true, would have made him less than 21 years old at the date of registration), made to the registrar when first examined, is admissible to show that he was a minor, though he afterwards returned to the registrar with a stranger, who swore that he was over 21 years old. People v. Teague, 1890, 11 S.E. 665, 106 N.C. 576. Elections ⚷ 293(2)

In a contested election case, after offering evidence tending to show that a voter voted against a contestant, such voter is considered a party in interest as against such contestant, and his declarations made at or before the time of voting, tending to show his want of qualification, are admissible against defendant. People v. Teague, 1890, 11 S.E. 665, 106 N.C. 576. Elections ⚷ 293(2)

The testimony of the tax collector of a precinct in which the election was held, who made it his duty to look up every resident of the precinct, that a certain voter was never there until a few months before the election, and never paid a tax there, that the day after the election he saw him buy a ticket for an adjoining state, and that he had never returned, is properly submitted to the jury as tending to show that such voter never acquired a residence in the precinct to entitle him to vote. People v. Teague, 1890, 11 S.E. 665, 106 N.C. 576. Elections ⚷ 293(2)

The fact that a certain person was engaged in handing out tickets for one of the contesting candidates, and for no other person, and that he gave a ticket to an elector, and ''voted him,'' is competent evidence, as tending to show for whom such elector voted. People v. Teague, 1890, 11 S.E. 665, 106 N.C. 576. Elections ⚷ 293(3)

One's declaration, made at the time of changing his residence, are admissible as part of the res gestae on a question of domicile. State ex rel. Hannon v. Grizzard, 1883, 89 N.C. 115. Domicile ⚷ 9

On trial of an issue of the residence of one of the parties to an action, where the registration books had been offered in evidence, but not read or shown to the jury, it was not error to refuse to allow the jury to take the books into their room without consent of both parties. State ex rel. Hannon v. Grizzard, 1883, 89 N.C. 115. Trial ⚷ 307(3)

10. Sufficiency of evidence

There was no substantial evidence to support finding of county board of elections that municipal election candidate for city council seat met residency requirement by establishing his domicile in ward 30 days prior to city council election, even though candidate acquired new residence in ward and expressed his intention to remain there permanently; candidate maintained his previous residence and spent approximately 50% of his time there, candidate did not change his address to that of new residence for any purpose, and candidate executed month-to-month lease for new residence because he wanted to see what would happen in election. Farnsworth v. Jones, 1994, 114 N.C.App. 182, 441 S.E.2d 597. Municipal Corporations ⚷ 138

Testimony of challenged elector, called as a witness by unsuccessful candidate for office of clerk of superior court, that at time he voted by absentee ballot he intended to return to county which he had always considered his home and that he returned to home of father and mother in that county upon being discharged from Armed Forces, established his right to vote in that county, notwithstanding his testimony that he had considered going elsewhere upon being discharged, depending upon where he could find work. Owens v.

Chaplin, 1948, 48 S.E.2d 37, 229 N.C. 797. Elections ⚷ 72

Testimony of challenged elector called as a witness by unsuccessful candidate for office of clerk of superior court that, if he was laid off, he would return to county in which challenged absentee ballot was cast, did not show loss of voting residence in that county in view of other testimony. Owens v. Chaplin, 1948, 48 S.E.2d 37, 229 N.C. 797. Elections ⚷ 72

Unsuccessful candidate challenging election of clerk of superior court, having called electors as witnesses to prove their own disqualification, was bound by their testimony as to residence and as to being sworn when they voted, in absence of evidence to the contrary, PER STACY, C.J., and SEAWELL, J. Owens v. Chaplin, 1948, 48 S.E.2d 37, 229 N.C. 797. Evidence ⚷ 591

Where it does not appear from direct testimony for what candidate an unqualified voter voted, the fact may be shown by circumstantial evidence. People v. Teague, 1890, 11 S.E. 665, 106 N.C. 576. Elections ⚷ 295(1)

Evidence that a voter got a ticket from a table at the polls, where only defendant's tickets were distributed, and from a known agent of defendant, and ''came down the line within the ropes and voted,'' is sufficient to go to the jury as tending to show that he voted for defendant. People v. Teague, 1890, 11 S.E. 665, 106 N.C. 576. Elections ⚷ 293(3)

It is for the trial judge to say whether the evidence tending to show the illegality of a particular vote is sufficient as a foundation for compelling the voter to tell for whom he voted. People v. Teague, 1890, 11 S.E. 665, 106 N.C. 576. Elections ⚷ 300

11. Witnesses

In quo warranto to try title to office of mayor, question whether voters intended to make town ''legal residence'' held improper as calling for matters of law and fact. Gower v. Carter, 1928, 143 S.E. 513, 195 N.C. 697. Witnesses ⚷ 236(1)

Neither contestant nor defendant can object to the testimony of a voter alleged to have voted illegally, on the ground that he cannot be compelled to criminate himself, where the witness does not raise the objection himself. People v. Teague, 1890, 11 S.E. 665, 106 N.C. 576. Witnesses ⚷ 306

12. Injunction

Action of the State Board of Elections in considering a claim that certain voters had been improperly registered in one county and in determining that no further proceedings on the matter were appropriate did not arise from a ''contested case'' so that there was no basis for judicial review and, as a result, court had jurisdiction to consider application for preliminary injunction. Lloyd v. Babb, 1979, 251 S.E.2d 843, 296 N.C. 416. Elections ⚷ 112

Testimony of seven witnesses relating to the number of students registered in the county and where they were registered, testimony of two students who could not remember what, if any questions, were asked of them at the time that they registered, and testimony of one witness which tended to show that the registrars had not been properly instructed about registering college students but that he remembered few details of the meeting at which the allegedly incorrect instructions were given was insufficient, in view of offer of testimony that would show that registrars were properly instructed and were complying with the law, that registrars had been improperly registering college students so that preliminary mandatory injunction requiring the registrars to do so was not based on sufficient evidence. Lloyd v. Babb, 1979, 251 S.E.2d 843, 296 N.C. 416. Injunction ⚷ 147

If evidence adduced at trial showed that members and officials of the county board had failed to require students seeking to register to vote to prove their domicile to be in the county, court could enjoin the board from further registering students without doing so. Lloyd v. Babb, 1979, 251 S.E.2d 843, 296 N.C. 416. Injunction ⚷ 76

13. Mandamus

Voters who sought to compel county election officials to perform their duties with respect to making inquiry as to whether students registering to vote were residents of the county could not obtain that relief by challenging the registration of students who had already been registered so that their court action to compel the county election officials from performing their duties could be maintained despite a claim that they had not exhausted their administrative remedies through the challenged proce-

dure. Lloyd v. Babb, 1979, 251 S.E.2d 843, 296 N.C. 416. Mandamus ⚷ 3(8)

Judicial purging of voter registrants was not an available remedy in a mandamus proceeding as it would be duplicative of the statutory process for challenging voters; persons seeking to challenge the registration of certain college students were not entitled to a judicial remedy identical to the administrative remedy merely because of the number of voters involved, some 6,000 to 10,000, or because of the possibility that the challenges might not be fairly heard by the county board. Lloyd v. Babb, 1979, 251 S.E.2d 843, 296 N.C. 416. Mandamus ⚷ 3(8)

Court has the power to order county board to use a specific set of questions in connection with registering students to vote but should use caution in the exercise of that power. Lloyd v. Babb, 1979, 251 S.E.2d 843, 296 N.C. 416. Mandamus ⚷ 176

§ 163–58. Repealed by Laws 1985, c. 563, § 3

Historical and Statutory Notes

The repealed section provided a literacy requirement for voter registration.

§ 163–59. Right to participate or vote in party primary

No person shall be entitled to vote or otherwise participate in the primary election of any political party unless that person complies with all of the following:

(1) Is a registered voter.

(2) Has declared and has had recorded on the registration book or record the fact that the voter affiliates with the political party in whose primary the voter proposes to vote or participate.

(3) Is in good faith a member of that party.

Notwithstanding the previous paragraph, any unaffiliated voter who is authorized under G.S. 163–119 may also vote in the primary if the voter is otherwise eligible to vote in that primary except for subdivisions (2) and (3) of the previous paragraph.

Any person who will become qualified by age to register and vote in the general election for which the primary is held, even though not so qualified by the date of the primary, shall be entitled to register for the primary and general election prior to the primary and then to vote in the primary after being registered. Such person may register not earlier than 60 days nor later than the last day for making application to register under G.S. 163–82.6(c) prior to the primary. In addition, persons who will become qualified by age to register and vote in the general election for which the primary is held, who do not register during the special period may register to vote after such period as if they were qualified on the basis of age, but until they are qualified by age to vote, they may vote only in primary elections. Such a

person also may register and vote in the primary and general election pursuant to G.S. 163–82.6A(f).

Added by Laws 1967, c. 775, § 1. Amended by Laws 1971, c. 1166, § 4; Laws 1973, c. 793, § 20; Laws 1981, c. 33, § 1; Laws 1983, c. 324, § 3; Laws 1987, c. 408, § 4; Laws 1987, c. 457, § 1; Laws 1991 (Reg. Sess., 1992), c. 1032, § 5; Laws 1993 (Reg. Sess., 1994), c. 762, § 23, eff. Jan. 1, 1995; S.L. 2007–391, § 28, eff. Aug. 19, 2007; S.L. 2009–541, § 6, eff. Aug. 28, 2009.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

''Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.'' [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

2007 Legislation

S.L. 2007–391, § 28, in the third undesignated paragraph, in the first sentence, deleted ''or residence'' following ''qualified by age''.

2009 Legislation

S.L. 2009–541, § 6, in the first undesignated paragraph, in the introductory language, substituted ''that person complies with all of the following'' for ''he''; and in subds. (1) and (2), made nonsubstantive changes and changes to make the language gender neutral; and, in the third undesignated paragraph, deleted ''or regular municipal'' after ''primary and general'' in the first sentence and ''or regular municipal election'' after ''general election'' in the first and third sentences and added the fourth sentence.

Cross References

Qualifications to vote; exclusion from electoral franchise, see § 163–55.

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1. Validity

Statute restricting vote in Democratic primary election for District Court judge to party members and unaffiliated voters did not violate equal protection and freedom of association rights of voter registered with the Republican Party, even though the winner of the primary election automatically won the general election because other parties failed to field candidates. Neier v. State, 2002, 151 N.C.App. 228, 565 S.E.2d 229, appeal dismissed, review denied 357 N.C. 165, 580 S.E.2d 369. Constitutional Law ⚷ 1477; Constitutional Law ⚷ 3636; Elections ⚷ 21

2. Construction and application

C.S. § 5960, requiring that physical inability to vote in person appear by affidavit or physician's certificate is mandatory, and, without substantial compliance therewith, a voter in the county cannot vote, especially in view of Pub.Laws 1923, c. 111, § 5, though C.S. § 5968, requires that the election laws be liberally construed in favor of the elector's right to vote. Davis v. Board of Education of Beaufort County, 1923, 119 S.E. 372, 186 N.C. 227. Elections ⚷ 213

An elected member of a town council who ceases to reside in the town may not continue to serve on that town council and upon arriving at a determination that an elected town official has removed his residence to another electoral jurisdiction, a town council, pursuant to the provisions of N. C. Gen. Stat. § 160A–63, may fill the vacancy

created by the official's departure. 58 Op.Atty.Gen. 28, Wessell, April 18, 1988.

3. Burden of proof

On motion to dismiss for failure to state claim, trial court did not impermissibly shift burden of proof by inviting voter to submit case law to support the legal sufficiency of his challenge to validity of statute prohibiting him, as a registered Republican, from participating in the Democratic primary election for District Court judge; neither party had burden of proof on the motion, and case law was not evidence. Neier v. State, 2002, 151 N.C.App. 228, 565 S.E.2d 229, appeal dismissed, review denied 357 N.C. 165, 580 S.E.2d 369. Pretrial Procedure ⚷ 683

4. Review

Voter's declaratory judgment action, which challenged validity of statute that prohibited him, as a registered Republican, from participating in the Democratic primary election for District Court judge, was not rendered moot by fact that law was enacted providing for nonpartisan elections of District Court judges; elected judge held office unlawfully if voter was correct, and thus the violation would continue. Neier v. State, 2002, 151 N.C.App. 228, 565 S.E.2d 229, appeal dismissed, review denied 357 N.C. 165, 580 S.E.2d 369. Declaratory Judgment ⚷ 212

Any impartiality of trial judge was irrelevant in regard to his granting motions to dismiss, for failure to state claim, voter's declaratory judgment action that challenged validity of statute that prohibited him, as a registered Republican, from participating in the Democratic primary election for District Court judge, as Court of Appeals reviewed the ruling de novo and affirmed. Neier v. State, 2002, 151 N.C.App. 228, 565 S.E.2d 229, appeal dismissed, review denied 357 N.C. 165, 580 S.E.2d 369. Declaratory Judgment ⚷ 362; Declaratory Judgment ⚷ 393

§§ 163–60 to 163–64. Reserved

Article 7

Registration of Voters [Repealed]

§§ 163–65 to 163–82. Repealed by Laws 1993 (Reg. Sess., 1994), c. 762, § 1, eff. Jan. 1, 1995

Historical and Statutory Notes

Laws 1993, c. 762 repealed provisions of Article 7 not formerly repealed. Sections previously repealed include §§ 163–66.1, 163–67.1, 163–68, 163–73.

See, now, § 163–82.1 et seq.

Article 7A

Registration of Voters

Section

163–82.1. General principles of voter registration.
163–82.2. Chief State Election Official.
163–82.3. Voter registration application forms.
163–82.4. Contents of application form.
163–82.5. Distribution of application forms.
163–82.6. Acceptance of application forms.
163–82.6A. In-person registration and voting at one-stop sites.
163–82.7. Verification of qualifications and address of applicant; denial or approval of application.
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163–82.9. Cancellation of prior registration.
163–82.10. Official record of voter registration.
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163–82.10B. Confidentiality of date of birth.
163–82.11. Establishment of statewide computerized voter registration.
163–82.12. Promulgation of guidelines relating to computerized voter registration.
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163–82.14. List maintenance.
163–82.15. Change of address within the county.
163–82.15A. Administrative change of registration when county line is adjusted.
163–82.16. Change of name.
163–82.17. Change of party affiliation.
163–82.18. Appeal from denial of registration.
163–82.19. Voter registration at drivers license offices; coordination on data interface.
163–82.20. Voter registration at other public agencies.
163–82.20A. Voter registration upon restoration of citizenship.
163–82.21. Voter registration at military recruitment offices.
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163–82.24. Statewide training and certification for election officials.
163–82.25. Mandated voter registration drive.
163–82.26. Rule-making authority.
163–82.27. Help America Vote Act of 2002.
163–82.28. The HAVA Election Fund.
163–83. Reserved.

§ 163–82.1. General principles of voter registration

(a) Prerequisite to Voting.—No person shall be permitted to vote who has not been registered under the provisions of this Article or registered as previously provided by law.

(b) County Board's Duty to Register.—A county board of elections shall register, in accordance with this Article, every person qualified to vote in that county who makes an application in accordance with this Article.

(c) Permanent Registration.—Every person registered to vote by a county board of elections in accordance with this Article shall remain registered until:

(1) The registrant requests in writing to the county board of elections to be removed from the list of registered voters; or

(2) The registrant becomes disqualified through death, conviction of a felony, or removal out of the county; or

(3) The county board of elections determines, through the procedure outlined in G.S. 163–82.14, that it can no longer confirm where the voter resides.

Text of subsec. (d) eff. Jan. 1, 2010.

(d) Preregistration.—A person who is at least 16 years of age but will not be 18 years of age by the date of the next election and who is otherwise qualified to register may preregister to vote and shall be automatically registered upon reaching the age of eligibility following verification of the person's qualifications and address in accordance with G. S. 163–82.7.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1973, c. 793, § 25; Laws 1975, c. 395; Laws 1981, c. 39, § 1; Laws 1981, c. 87, § 1; Laws 1981, c. 308, § 1; Laws 1985, c. 211, §§ 1, 2; Laws 1993 (Reg. Sess., 1994), c. 762, § 2, eff. Jan. 1, 1995; Laws 1993 (Reg. Sess., 1994), c. 762, § 2, eff. Jan. 1, 1995; S.L. 2009–541, § 7(a), eff. Jan. 1, 2010.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

''Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.'' [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

2009 Legislation

S.L. 2009–541, § 7(a), added subsec. (d).

Cross References

Initial counting of official ballots, see § 163–182.2.
Provisional voting requirements, see § 163–166.11.

Notes of Decisions

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Validity 1

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1. Validity

Since the general assembly has no power to change the qualifications of voters in state, county, township, city, or town elections, so much of the act amending the charter of the city of Wilmington, ratified on February 3, 1875, as requires of voters a residence of 90 days, instead of 30, is unconstitutional, and consequently void. People ex rel. Van Bokkelen v. Canaday, 1875, 73 N.C. 198, 21 Am.Rep. 465. Elections ⚷ 60

So much of the act of February, 1875, amending the charter of the city of Wilmington and regulating the election of aldermen, as gives to each of the first and second wards, having 400 voters each, a representation of 3 aldermen, and to a third ward, having 2,800 voters, the same number of aldermen, violates the fundamental principle of the state constitution that representation shall be apportioned to the popular vote as nearly as possible. People ex rel. Van Bokkelen v. Canaday, 1875, 73 N.C. 198, 21 Am.Rep. 465. Municipal Corporations ⚷ 124(1)

2. Construction and application

Cities and towns, like counties and townships, are parts and parcels of the state, organized for the convenience of local self-government; and the qualifications of voters are the same, to wit, citizenship, 21 years of age, 12 months' residence in the state, and 30 days in the city or town. People ex rel. Van Bokkelen v. Canaday, 1875, 73 N.C. 198, 21 Am.Rep. 465. Elections ⚷ 59

3. Right to vote

A qualified voter, under Const. Art. 6, § 1, who has been registered as re-

quired by section 2 of said article, cannot be deprived of his right to vote because the registrar failed to administer to him the required oath before registration, nor because he was registered by a third person, with whom the registrar had left the books, where such registration has been accepted as sufficient by the registrar. State v. Lattimore, 1897, 26 S.E. 638, 120 N.C. 426, 58 Am.St.Rep. 797. Elections ⚷ 115

A vote cast by a qualified voter, who within the proper time went to the registrar for the purpose of being registered, and took the required oath, but whose name, through the negligence or fault of the registrar, was not entered on the registry list, having been received by the judges, should be counted. State v. Lattimore, 1897, 26 S.E. 638, 120 N.C. 426, 58 Am.St.Rep. 797. Elections ⚷ 115

Where the registration of an elector fails to show that all the questions relating to his age, residence, etc., were answered, the burden is on him, or one claiming that he was entitled to vote, to show that he offered to comply with the law, and that his defective registration is the fault of the registrar, and not on the registrar to show that the elector, when asked the proper questions, refused or failed to give sufficient answers. State v. Scarboro, 1892, 14 S.E. 737, 110 N.C. 232. Elections ⚷ 115

The requirements of the registration act are not merely directory, but mandatory. State v. Scarboro, 1892, 14 S.E. 737, 110 N.C. 232. Elections ⚷ 115

4. Registration, generally

Failure to administer oath to registered electors held not to invalidate school tax election. Gibson v. Board of Com'rs of Scotland County, 1913, 79 S.E. 976, 163 N.C. 510. Elections ⚷ 106

A voter, otherwise legally qualified, who had been refused registry because at that time he had not been a resident of the state for one year, but who was a legal voter prior to the election, should have been allowed to register on election day and to vote. State v. Lattimore, 1897, 26 S.E. 638, 120 N.C. 426, 58 Am.St.Rep. 797. Elections ⚷ 98

Where, under the statute, the questions asked by the registrar are, ''What is your place of birth?'' and ''What is your place of residence?'' an answer giving a certain county is sufficient to entitle the elector to vote, being a natural answer to the questions; but an answer giving only the state, without specifying any county, is insufficient. State v. Scarboro, 1892, 14 S.E. 737, 110 N.C. 232. Elections ⚷ 106

Where the register testifies that the oath was not administered upon the Bible, but does not state how it was administered, it will be presumed, in the absence of direct evidence, that the oath was taken with uplifted hand, as specified in Code, § 3310, for persons who have conscientious scruples against swearing upon the ''holy evangelists,'' as specified in the preceding section; and whether such scruples in fact existed or not is immaterial, that form of oath being sanctioned by the statute. State v. Nicholson, 1889, 9 S.E. 545, 102 N.C. 465. Elections ⚷ 106

Const. Art. 6, § 2, requiring that the oath administered to persons offering themselves for registration as voters shall bind them to support the constitution ''and laws of the United States,'' and the constitution and laws of the state not inconsistent therewith, is satisfied by an oath to support the constitution of the United States and that of the state. All valid laws, whether state or national, are included by implication. State v. Nicholson, 1889, 9 S.E. 545, 102 N.C. 465. Elections ⚷ 106

A registration official's authority does not extend beyond that official's county of appointment thus election registration officials are not authorized to register voters when they are geographically outside the boundaries of the counties in which they are appointed to serve. 53 Op.Atty.Gen. 65, Goodwyn, Feb. 24, 1984.

5. Irregularities or defects in registration

The fact that the registrar of elections did not administer an oath to any of the electors whose names were registered in the register book would not invalidate an election to determine whether a school tax should be levied, in absence of fraud or improper motive. Gibson v. Board of Com'rs of Scotland County, 1913, 79 S.E. 976, 163 N.C. 510. Schools ⚷ 103(2)

Where voters who lived near the line between two townships, which line was not definitely located, registered and voted in the township in which they did not reside, as they had done at previous elections, and it was shown that they were taxed and sent their children to school in the township in which they

voted, there is no evidence to sustain a finding that they acted in bad faith; and, having been permitted to vote, their votes must be counted. Harris v. Scarborough (1892) 14 S.E. 737, 110 N.C. 232, overruled. State v. Lattimore, 1897, 26 S.E. 638, 120 N.C. 426, 58 Am.St.Rep. 797. Elections ⚷ 72

The fact that the registration book was not kept open for the prescribed time on the Saturday before the election cannot be allowed to vitiate the election, where it appears that the book was kept open until 2 o'clock p.m., and that no one was denied an opportunity to examine it, or sought it afterwards. State v. Nicholson, 1889, 9 S.E. 545, 102 N.C. 465. Elections ⚷ 116

A disregard of constitutional or statutory directions relating to the registration of electors, which does not affect the result as an expression of popular will, does not warrant a rejection of the vote cast. If none are incompetent to vote who are put on the list, the registration must be accepted as the act of a public officer, and entitles the electors to vote, notwithstanding irregularities as to administering the oath, the registrar's appointment, etc. State v. Nicholson, 1889, 9 S.E. 545, 102 N.C. 465. Elections ⚷ 116

An election is not invalidated by an irregularity which is not shown to have affected the result. State v. Nicholson, 1889, 9 S.E. 545, 102 N.C. 465. Elections ⚷ 227(1)

If the opportunity of registering and becoming a qualified voter is withheld or denied to persons who are eligible, either by accident or inadvertence, such denial would vitiate an election, more particularly if it would materially affect the result of the same. McDowell v. Rutherford Ry. Const. Co., 1887, 2 S.E. 351, 96 N.C. 514. Elections ⚷ 97

6. Power to prescribe qualifications

Under Const. Art. 6, §§ 1, 2, declaring that "it shall be the duty of the general assembly to provide from time to time for the registration of all electors, and no person shall be allowed to vote without registration," the legislature had power to enact Laws 1889, c. 287, § 3, declaring that "no registration shall be valid unless it specifies, as near as may be, the age, occupation, place of birth, place of residence of the elector, as well as the township or county from whence the elector has removed, in event of removal, and the full name by which the voter is known"; and the requirement is reasonable. State v. Scarboro, 1892, 14 S.E. 737, 110 N.C. 232. Elections ⚷ 95

The general assembly has no power to change the qualifications of voters in state, county, township, city, or town elections. People ex rel. Van Bokkelen v. Canaday, 1875, 73 N.C. 198, 21 Am. Rep. 465. Elections ⚷ 18

7. Contesting elections

An entry and order made by the board of county commissioners to the effect that a subscription in aid of railroads submitted to the sense of the "qualified voters" of the county had been carried by a majority of such voters, while it cannot be collaterally attacked, is nevertheless not such an adjudication of the legality of the election that it cannot be contested in a proceeding brought directly for that purpose. McDowell v. Rutherford Ry. Const. Co., 1887, 2 S.E. 351, 96 N.C. 514. Counties ⚷ 154(2)

An entry and order made by the board of county commissioners that a matter submitted to the majority of the qualified voters of a county at an election has been carried by a vote of such majority, while it cannot be attacked collaterally, is nevertheless not such an adjudication of the fact that it cannot be contested in a proceeding brought directly for the purpose. McDowell v. Rutherford Ry. Const. Co., 1887, 2 S.E. 351, 96 N.C. 514. Elections ⚷ 235

Where an irregular election is held, and a person claiming to be injured gives notice of his intention to contest the same as soon as it became necessary, he is not obliged to follow it up with proceedings for the purpose within any fixed time, but may wait until some step is taken to act on the results of the election. McDowell v. Rutherford Ry. Const. Co., 1887, 2 S.E. 351, 96 N.C. 514. Elections ⚷ 278

§ 163–82.2. Chief State Election Official

The Executive Director of the State Board of Elections is the "Chief State Election Official" of North Carolina for purposes of P.L. 103–31, The National Voter Registration Act of 1993, subse-

quently referred to in this Article as the ''National Voter Registration Act''. As such the Executive Director is responsible for coordination of State responsibilities under the National Voter Registration Act.

Added by Laws 1993 (Reg. Sess., 1994), c. 762, § 2, eff. Jan. 1, 1995. Amended by S.L. 2001–319, § 11, eff. July 28, 2001.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

''Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.'' [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

2001 Legislation

S.L. 2001–319, § 11, eff. July 28, 2001, substituted ''Executive Director'' for ''Executive Secretary-Director'' and ''State Executive Secretary-Director'' throughout this section.

§ 163–82.3. Voter registration application forms

Text of section eff. Jan. 1, 2010. See, also, section eff. until Jan. 1, 2010.

Text of subsec. (a) eff. until Jan. 1, 2010.

(a) Form Developed by State Board of Elections.—The State Board of Elections shall develop an application form for voter registration. Any person may use the form to apply to do any of the following:

(1) Register to vote;

(2) Change party affiliation or unaffiliated status;

(3) Report a change of address within a county;

(4) Report a change of name.

The county board of elections for the county where the applicant resides shall accept the form as application for any of those purposes if the form is submitted as set out in G.S. 163–82.3.

Text of subsec. (a) eff. Jan. 1, 2010.

(a) Form Developed by State Board of Elections.—The State Board of Elections shall develop an application form for voter registration. Any person may use the form to apply to do any of the following:

(1) Register to vote.

(2) Change party affiliation or unaffiliated status.

(3) Report a change of address within a county.

(4) Report a change of name.

(5) Preregister to vote.

The county board of elections for the county where the applicant resides shall accept the form as application for any of those purposes if the form is submitted as set out in G.S. 163–82.3.

(b) Interstate Form.—The county board of elections where an applicant resides shall accept as application for any of the purposes set out in subsection (a) of this section the interstate registration form designed by the Federal Election Commission pursuant to section 9 of the National Voter Registration Act, if the interstate form is submitted in accordance with G.S. 163–82.6.

(c) Agency Application Form.—The county board of elections where an applicant resides shall accept as application for any of the purposes set out in subsection (a) of this section a form developed pursuant to G.S. 163–82.19 or G.S. 163–82.20.

Added by Laws 1991 (Reg. Sess., 1992), c. 1044, § 18(a); Amended by Laws 1993 (Reg. Sess., 1994), c. 762, § 2, eff. Jan. 1, 1995; S.L. 2009–541, § 8(a), eff. Jan. 1, 2010.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

"Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences." [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

2009 Legislation

S.L. 2009–541, § 8(a), in subsec. (a), added subd. (5) and made other, nonsubstantive changes.

Cross References

Powers and duties, State Board of Elections, see § 163–22.

§ 163–82.4. Contents of application form

(a) Information Requested of Applicant. — The form required by G.S. 163–82.3(a) shall request the applicant's:

(1) Name,

(2) Date of birth,

(3) Residence address,

(4) County of residence,

(5) Date of application,

(6) Gender,

(7) Race,

(7a) Ethnicity,

(8) Political party affiliation, if any, in accordance with subsection (c) of this section,

(9) Telephone number (to assist the county board of elections in contacting the voter if needed in processing the application),

(10) Drivers license number or, if the applicant does not have a drivers license number, the last four digits of the applicant's social security number,

and any other information the State Board finds is necessary to enable officials of the county where the person resides to satisfactorily process the application. The form shall require the applicant to state whether currently registered to vote anywhere, and at what address, so that any prior registration can be cancelled. The portions of the form concerning race and ethnicity shall include as a choice any category shown by the most recent decennial federal census to compose at least one percent (1%) of the total population of North Carolina. The county board shall make a diligent effort to complete for the registration records any information requested on the form that the applicant does not complete, but no application shall be denied because an applicant does not state race, ethnicity, gender, or telephone number. The application shall conspicuously state that provision of the applicant's telephone number is optional. If the county board maintains voter records on computer, the free list provided under this subsection shall include telephone numbers if the county board enters the telephone number into its computer records of voters.

(a1) No Drivers License or Social Security Number Issued. — The State Board shall assign a unique identifier number to an applicant for voter registration if the applicant has not been issued either a current and valid drivers license or a social security number. That unique identifier number shall serve to identify that applicant for voter registration purposes.

(b) Notice of Requirements, Attestation, Notice of Penalty, and Notice of Confidentiality. — The form required by G.S. 163–82.3(a) shall contain, in uniform type, the following:

(1) A statement that specifies each eligibility requirement (including citizenship) and an attestation that the applicant meets each such requirement, with a requirement for the signature of the applicant, under penalty of a Class I felony under G.S. 163–275(13).

(2) A statement that, if the applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes.

(3) A statement that, if the applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes.

(c) Party Affiliation or Unaffiliated Status. — The application form described in G.S. 163–82.3(a) shall provide a place for the applicant to state a preference to be affiliated with one of the political parties in G.S. 163–96, or a preference to be an ''unaffiliated'' voter. Every person who applies to register shall state his preference. If the applicant fails to declare a preference for a party or for unaffiliated status, that person shall be listed as ''unaffiliated'', except that if the person is already registered to vote in the county and that person's registration already contains a party affiliation, the county board shall not change the registrant's status to ''unaffiliated'' unless the registrant clearly indicates a desire in accordance with G.S. 163–82.17 for such a change. An unaffiliated registrant shall not be eligible to vote in any political party primary, except as provided in G.S. 163–119, but may vote in any other primary or general election. The application form shall so state.

Text of subsec. (d) eff. until Jan. 1, 2010.

(d) Citizenship and Age Questions. — Voter registration application forms shall include all of the following:

(1) The question ''Are you a citizen of the United States of America?'' and boxes for the applicant to check to indicate whether the applicant is or is not a citizen of the United States.

(2) The question ''Will you be 18 years of age on or before election day?'' and boxes for the applicant to check to indicate whether the applicant will be 18 years of age or older on election day.

(3) The statement ''If you checked 'no' in response to either of these questions, do not complete this form.''

Text of subsec. (d) eff. Jan. 1, 2010.

(d) Citizenship and Age Questions.—Voter registration application forms shall include all of the following:

(1) The following question and statement:

a. ''Are you a citizen of the United States of America?'' and boxes for the applicant to check to indicate whether the applicant is or is not a citizen of the United States.

b. ''If you checked ''no'' in response to this question, do not submit this form.''

(2) The following questions and statement:

a. ''Will you be 18 years of age on or before election day?'' and boxes for the applicant to check to indicate whether the applicant will be 18 years of age or older on election day.

b. ''Are you at least 16 years of age and understand that you must be 18 years of age on or before election day to

vote?'' and boxes for the applicant to check to indicate whether the applicant is at least 16 years of age and understands that the applicant must be at least 18 years of age or older by election day to vote.

c. ''If you checked ''no'' in response to both of these questions, do not submit this form.''

(e) Correcting Registration Forms.—If the voter fails to complete any required item on the voter registration form but provides enough information on the form to enable the county board of elections to identify and contact the voter, the voter shall be notified of the omission and given the opportunity to complete the form at least by 5:00 P.M. on the day before the county canvass as set in G.S. 163–182.5(b). If the voter corrects that omission within that time and is determined by the county board of elections to be eligible to vote, the board shall permit the voter to vote. If the information is not corrected by election day, the voter shall be allowed to vote a provisional official ballot. If the correct information is provided to the county board of elections by at least 5:00 P.M. on the day before the county canvass, the board shall count any portion of the provisional official ballot that the voter is eligible to vote.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1971, c. 1166, § 6; Laws 1973, c. 793, § 27; Laws 1973, c. 1223, § 3; Laws 1975, c. 234, § 2; Laws 1979, c. 135, § 1; Laws 1979, c. 539, §§ 1 to 3; Laws 1979, c. 797, §§ 1, 2; Laws 1981, c. 222; Laws 1981, c. 308, § 2; Laws 1991 (Reg. Sess., 1992), c. 1044, § 18(a); Laws 1993, c. 74, § 1; Laws 1993 (Reg. Sess., 1994), c. 762, § 2, eff. Jan. 1, 1995; S.L. 1999–424, § 7(c), (d),eff. Aug. 5, 1999; S.L. 1999–453, § 8(a), eff. Jan. 1, 2000; S.L. 2003–226, § 9, eff. Jan. 1, 2004; S.L. 2004–127, § 4, eff. July 26, 2004; S.L. 2005–428, § 15, eff. Sept. 22, 2005; S.L. 2007–391, § 20, eff. Aug. 19, 2007; S.L. 2009–541, § 9(a), eff. Jan. 1, 2010.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

''Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.'' [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

S.L. 1999–453, §§ 1 and 10 provide:

''Section 1. This act shall be called 'The Campaign Reform Act of 1999'.''

''Section 10. Prosecutions for, or sentences based on, offenses occurring before the relevant effective date in this act are not abated or affected by this act, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.''

2003 Legislation

S.L. 2003–226, § 9, eff. Jan. 1, 2004, added subd. (a)(10), subsec. (a1), and subsec. (d).

S.L. 2003–226, §§ 1 and 22, eff. June 19, 2003, provide:

''Section 1. The purpose of this act is to ensure that the State of North Carolina has a system for all North Car-

olina elections that complies with the requirements for federal elections set forth in the federal Help America Vote Act of 2002, Public Law 107–252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481–15485.

''The General Assembly finds that the education and training of election officials as required by G.S. 163–82.34 has met and continues to meet the mandate for the education and training of precinct officials and other election officials in section 254(a)(3) of the Help America Vote Act of 2002. The General Assembly further finds that the establishment, development, and continued operation of the statewide list maintenance program for voter registration set forth in G.S. 163–82.14 has met and continues to meet the mandates of section 303(a)(2) of the Help America Vote Act of 2002.

''In certain other areas of the election statutes and other laws, the General Assembly finds that the statutes must be amended to comply with the Help America Vote Act.''

''Section 22. Sections 1, 3, 4, 5, 12, 18, 21, and 22 of this act are effective when this act becomes law. Sections 11 and 13 of this act become effective January 1, 2006. The remainder of this act becomes effective January 1, 2004. All sections of this act apply with respect to all primaries and elections held on or after the date they become effective.''

2004 Legislation

S.L. 2004–127, § 4, eff. July 26, 2004, in subd. (b)(1), substituted ''163–275(13)'' for ''163–275(4)''.

2005 Legislation

S.L. 2005–428, § 15, eff. Sept. 22, 2005, designated the last paragraph as subsec. (e) and rewrote the new subsec. (e), which prior thereto read:

''If the voter fails to answer the question set out in subdivision (1) of this subsection, the person filling out the registration shall be notified of the omission and given the opportunity to complete the form in a timely manner in order to be registered for the next election.''

S.L. 2005–428, § 18, provides:

''Sections 2, 6, 7, 8, 10, 12, 13, 14, 15, and 16 of this act are effective when this act becomes law and apply to all primaries and elections held on or after that date. The remainder of this act becomes effective January 1, 2006, and applies to all primaries and elections held on or after that date.''

2007 Legislation

S.L. 2007–391, § 20, rewrote subsec. (e), which prior thereto read:

''(e) Correcting Registration Forms. — If the voter fails to answer the question set out in subdivision (1) of subsection (d) of this section, the voter shall be notified of the omission and given the opportunity to complete the form at any time before casting a vote in the election on election day. If the voter corrects that omission within that time, the voter may vote in the election.''

2009 Legislation

S.L. 2009–541, § 9(a), rewrote subsec. (d), which formerly read:

''(d) Citizenship and Age Questions. — Voter registration application forms shall include all of the following:

''(1) The question 'Are you a citizen of the United States of America?' and boxes for the applicant to check to indicate whether the applicant is or is not a citizen of the United States.

''(2) The question 'Will you be 18 years of age on or before election day?' and boxes for the applicant to check to indicate whether the applicant will be 18 years of age or older on election day.

''(3) The statement 'If you checked 'no' in response to either of these questions, do not complete this form.'''

Cross References

Felony sentencing and punishment, see § 15A–1340.10 et seq.
Forfeiture of gain acquired through commission of felony, see § 14–2.3.
Forfeiture of licensing privileges after felony conviction, see § 15A–1331A.

§ 163–82.5. Distribution of application forms

The State Board of Elections shall make the forms described in G.S. 163–82.3 available for distribution through governmental and

private entities, with particular emphasis on making them available for organized voter registration drives.

Added by Laws 1991 (Reg. Sess., 1992), c. 1044, § 18(a). Amended by Laws 1993 (Reg. Sess., 1994), c. 762, § 2, eff. Jan. 1, 1995.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

"Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences." [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

§ 163–82.6. Acceptance of application forms

(a) How the Form May Be Submitted.—The county board of elections shall accept any form described in G.S. 163–82.3 if the applicant submits the form by mail, facsimile transmission, transmission of a scanned document, or in person. The applicant may delegate the submission of the form to another person. Any person who communicates to an applicant acceptance of that delegation shall deliver that form so that it is received by the appropriate county board of elections in time to satisfy the registration deadline in subdivision (1) or (2) of subsection (c) of this section for the next election.

(a1) Misdemeanors.—It shall be a Class 2 misdemeanor for any person to do any of the following:

(1) To communicate to the applicant acceptance of the delegation described in subsection (a) of this section and then fail to make a good faith effort to deliver the form so that it is received by the county board of elections in time to satisfy the registration deadline in subdivision (1) or (2) of subsection (c) of this section for the next election. It shall be an affirmative defense to a charge of failing to make a good faith effort to deliver a delegated form by the registration deadline that the delegatee informed the applicant that the form would not likely be delivered in time for the applicant to vote in the next election.

(2) To sell or attempt to sell a completed voter registration form or to condition its delivery upon payment.

(3) To change a person's information on a voter registration form prior to its delivery to a county board of elections.

(4) To coerce a person into marking a party affiliation other than the party affiliation the person desires.

(5) To offer a person a voter registration form that has a party affiliation premarked unless the person receiving the form has requested the premarking.

(b) Signature. — The form shall be valid only if signed by the applicant. An electronically captured image of the signature of a voter on an electronic voter registration form offered by a State agency shall be considered a valid signature for all purposes for which a signature on a paper voter registration form is used.

(c) Registration Deadlines for a Primary or Election.—In order to be valid for a primary or election, except as provided in G.S. 163–82.6A, the form:

(1) If submitted by mail, must be postmarked at least 25 days before the primary or election, except that any mailed application on which the postmark is missing or unclear is validly submitted if received in the mail not later than 20 days before the primary or election,

(2) If submitted in person, by facsimile transmission, or by transmission of a scanned document, must be received by the county board of elections by a time established by that board, but no earlier than 5:00 P.M., on the twenty-fifth day before the primary or election,

(3) If submitted through a delegatee who violates the duty set forth in subsection (a) of this section, must be signed by the applicant and given to the delegatee not later than 25 days before the primary or election, except as provided in subsection (d) of this section.

(c1) If the application is submitted by facsimile transmission or transmission of a scanned document, a permanent copy of the completed, signed form shall be delivered to the county board no later than 20 days before the election.

(d) Instances When Person May Register and Vote on Primary or Election Day.—If a person has become qualified to register and vote between the twenty-fifth day before a primary or election and primary or election day, then that person may apply to register on primary or election day by submitting an application form described in G. S. 163–82.3(a) or (b) to:

(1) A member of the county board of elections;

(2) The county director of elections; or

(3) The chief judge or a judge of the precinct in which the person is eligible to vote,

and, if the application is approved, that person may vote the same day. The official in subdivisions (1) through (3) of this subsection to whom the application is submitted shall decide whether the applicant is eligible to vote. The applicant shall present to the official written or documentary evidence that the applicant is the person he represents himself to be. The official, if in doubt as to

the right of the applicant to register, may require other evidence satisfactory to that official as to the applicant's qualifications. If the official determines that the person is eligible, the person shall be permitted to vote in the primary or election and the county board shall add the person's name to the list of registered voters. If the official denies the application, the person shall be permitted to vote a challenged ballot under the provisions of G.S. 163–88.1, and may appeal the denial to the full county board of elections. The State Board of Elections shall promulgate rules for the county boards of elections to follow in hearing appeals for denial of primary or election day applications to register. No person shall be permitted to register on the day of a second primary unless he shall have become qualified to register and vote between the date of the first primary and the date of the succeeding second primary.

(e) For purposes of subsection (d) of this section, persons who ''become qualified to register and vote'' during a time period:

(1) Include those who during that time period are naturalized as citizens of the United States or who are restored to citizenship after a conviction of a felony; but

(2) Do not include persons who reach the age of 18 during that time period, if those persons were eligible to register while 17 years old during an earlier period.

Text of subsec. (f) eff. Jan. 1, 2010.

(f) The county board of elections shall forward by electronic means any application submitted for the purpose of preregistration to the State Board of Elections. No later than 60 days prior to the first election in which the applicant will be legally entitled to vote, the State Board of Elections shall notify the appropriate county board of elections to verify the qualifications and address of the applicant in accordance with G.S. 163–82.7.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1969, c. 750, §§ 1, 2; Laws 1977, c. 626, § 1; Laws 1979, c. 539, § 5; Laws 1979, c. 766, § 2; Laws 1981, c. 33, § 2; Laws 1981 (Reg. Sess., 1982), c. 1265, § 6; Laws 1983, c. 553; Laws 1985, c. 260, § 1; Laws 1991, c. 363, § 1; Laws 1991 (Reg. Sess., 1992), c. 1032, § 1; Laws 1991 (Reg. Sess., 1992), c. 1044, § 18(a); Laws 1993, c. 74, § 1; Laws 1993 (Reg. Sess., 1994), c. 762, § 2, eff. Jan. 1, 1995; Laws 1995, c. 243, § 1, eff. Jan. 1, 1996; S.L. 1997–456, § 27, eff. Aug. 29, 1997; S.L. 1999–426, § 1(a), (b), eff. Jan. 1, 2000; S.L. 2001–315, § 1, eff. Jan. 1, 2002; S.L. 2001–319, § 6(a); S.L. 2003–226, § 4, eff. June 19, 2003; S.L. 2004–127, § 9(a), eff. July 26, 2004; S.L. 2007–253, § 2, eff. Oct. 9, 2007; S.L. 2007–391, § 16(a), eff. Dec. 1, 2007; S.L. 2008–150, §§ 5(d), 5(e), eff. Aug. 2, 2008; S.L. 2009–541, § 10(a), eff. Jan. 1, 2010.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

''Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after

the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.'' [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

Laws 1995, c. 243, § 1, provides:

''Wherever the term 'supervisor' appears in the General Statutes of North Carolina or in any local act in reference to the county supervisor of elections as provided in G.S. 163–35, the term is changed to read 'director.' ''

S.L. 1999–426, § 1.(c) provides:

''This section becomes effective January 1, 2000, and applies to all offenses occurring and all applications signed on and after that date.''

2001 Legislation

S.L. 2001–315, § 1, eff. Jan. 1, 2002, in the first sentence of subsec. (a), inserted '', facsimile transmission,''; in subd. (c)(2), inserted ''or by facsimile transmission''; and inserted subsec. (c1).

S.L. 2001–319, § 6(a), eff. Jan. 1, 2002, in subd. (c)(2), substituted ''a time established by that board, but no earlier than 5:00 P.M.,'' for ''5:00 p.m.''.

S.L. 2001–319, § 6(b), provides:

''This section becomes effective with respect to primaries and elections held on or after January 1, 2002.''

2003 Legislation

S.L. 2003–226, § 4, eff. June 19, 2003, in subsec. (b), added the second sentence.

S.L. 2003–226, §§ 1 and 22, eff. June 19, 2003, provide:

''Section 1. The purpose of this act is to ensure that the State of North Carolina has a system for all North Carolina elections that complies with the requirements for federal elections set forth in the federal Help America Vote Act of 2002, Public Law 107–252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481–15485.

''The General Assembly finds that the education and training of election officials as required by G.S. 163–82.34 has met and continues to meet the mandate for the education and training of precinct officials and other election officials in section 254(a)(3) of the Help America Vote Act of 2002. The General Assembly further finds that the establishment, development, and continued operation of the statewide list maintenance program for voter registration set forth in G.S. 163–82.14 has met and continues to meet the mandates of section 303(a)(2) of the Help America Vote Act of 2002.

''In certain other areas of the election statutes and other laws, the General Assembly finds that the statutes must be amended to comply with the Help America Vote Act.''

''Section 22. Sections 1, 3, 4, 5, 12, 18, 21, and 22 of this act are effective when this act becomes law. Sections 11 and 13 of this act become effective January 1, 2006. The remainder of this act becomes effective January 1, 2004. All sections of this act apply with respect to all primaries and elections held on or after the date they become effective.''

2004 Legislation

S.L. 2004–127, § 9(a), eff. July 26, 2004, in the first sentence of subsec. (a), inserted ''transmission of a scanned document,''; in subd. (c)(2), substituted ''person, by facsimile transmission, or by transmission of a scanned document,'' for ''person or by facsimile transmission''; and in subsec. (c1), inserted ''or transmission of a scanned document''.

2007 Legislation

S.L. 2007–253, § 2, in subsec. (c) inserted ''except as provided in G.S. 163–82.6A,''.

S.L. 2007–253, § 5, provides:

''Sections 1, 2, and 3 of this act become effective as follows:

''(1) If preclearance under Section 5 of the Voting Rights Act of 1965 is obtained before September 1, 2007, those sections are effective with regard to registration and voting for any primary or election held on or after October 9, 2007.

''(2) If preclearance is obtained during September 2007, those sections are effective with regard to registration and voting for any primary or election held on or after November 6, 2007.

''(3) If preclearance is obtained on or after October 1, 2007, those sections are effective with regard to registration and voting for any primary or election held on or after the 60th day after preclearance is obtained.

''The remainder of this act is effective when it becomes law. The State Board of Elections may adopt any necessary procedures to implement this act at any time after this act becomes law.''

On Aug. 16, 2007, the United States Attorney General interposed no objection to the amendment of this section by S.L. 2007–253, § 2.

S.L. 2007–391, § 16(a), rewrote subsec. (a) and added subsec. (a1). Prior to S.L. 2007–391, § 16(a), subsec. (a) read:

''(a) How the Form May Be Submitted. — The county board of elections shall accept any form described in G.S. 163–82.3 if the applicant submits the form by mail, facsimile transmission, transmission of a scanned document, or in person. The applicant may delegate the submission of the form to another person. Any person who communicates to an applicant acceptance of that delegation shall deliver that form so that it is received by the appropriate county board of elections in time to satisfy the registration deadline in subdivision (1) or (2) of subsection (c) of this section for the next election. It shall be a Class 2 misdemeanor for any person to communicate to the applicant acceptance of that delegation and then fail to make a good faith effort to deliver the form so that it is received by the county board of elections in time to satisfy the registration deadline in subdivision (1) or (2) of subsection (c) of this section for the next election. It shall be an affirmative defense to a charge of failing to make a good faith effort to deliver a delegated form by the registration deadline that the delegatee informed the applicant that the form would not likely be delivered in time for the applicant to vote in the next election. It shall be a Class 2 misdemeanor for any person to sell or attempt to sell a completed voter registration form or to condition its delivery upon payment.''

S.L. 2007–391, § 16(c), provides:

''This section becomes effective December 1, 2007, and applies to any offense committed on or after that date.''

2008 Legislation

S.L. 2008–150, § 5(d), throughout subsec. (c), preceding ''election'', inserted ''primary or''.

S.L. 2008–150, § 5(e), in the heading and throughout subsec. (d), preceding ''election'', inserted ''primary or''.

2009 Legislation

S.L. 2009–541, § 10(a), added subsec. (f).

Cross References

Misdemeanor sentencing and punishment, see § 15A–1340.13 et seq.
Right to participate or vote in party primary, see § 163–59.

Administrative Code References

Voter registration, see 8 NCAC 7B.0101 et seq.

Notes of Decisions

Election challenges 1

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1. Election challenges

An election by voters of a district authorizing issuance of bonds will not be declared invalid for the reason that registration books were only kept open for 19 days instead of 20 days as required by C.S. § 5947, where the matter was fully known and discussed and opportunity afforded to every voter to register, and there is no evidence of failure of any voters to register, or that any application was made to register after the books were closed, and the measure was generally acquiesced in. Hammond v. McRae, 1921, 110 S.E. 102, 182 N.C. 747. Schools ⚷ 97(4)

The charter of the city of Henderson, referring to registration for bond elections, held to refer to Revisal 1905, § 4323, and to require 20 days' registration, instead of to sections 2949, 2952, relating to municipal elections, and requiring only 7 days' registration. Hardee v. City of Henderson, 1916, 87 S.E. 498, 170 N.C. 572. Municipal Corporations ⚷ 918(4)

Where there was an unusually large registration, and no voters were deprived of their right to vote, the result of an election held by a city for the issuance of bonds will not be interfered with because the registration books were not kept open the required time. Hardee v. City of Henderson, 1916, 87

S.E. 498, 170 N.C. 572. Municipal Corporations ⚷ 918(4)

Where it was not shown that any voters were deprived of their rights or that a longer period of registration would have affected the result, the closing of the books before time held not ground to set aside the election. Hill v. Skinner, 1915, 86 S.E. 351, 169 N.C. 405. Elections ⚷ 116

A voter, otherwise legally qualified, who had been refused registry because at that time he had not been a resident of the state for one year, but who was a legal voter prior to the election, should have been allowed to register on election day and to vote. State v. Lattimore, 1897, 26 S.E. 638, 120 N.C. 426, 58 Am.St.Rep. 797. Elections ⚷ 98

§ 163–82.6A. In-person registration and voting at one-stop sites

(a) Who May Register in Person. — In accordance with the provisions in this section, an individual who is qualified to register to vote may register in person and then vote at a one-stop voting site in the person's county of residence during the period for one-stop voting provided under G.S. 163–227.2. For purposes of this section, a one-stop voting site includes the county board of elections office, if that office is used for one-stop voting.

(b) Both Attestation and Proof of Residence Required. — To register and vote under this section, the person shall do both of the following:

(1) Complete a voter registration form as prescribed in G.S. 163–82.4, including the attestation requirement of G.S. 163–82.4(b) that the person meets each eligibility requirement. Such attestation is signed under penalty of a Class I felony under G.S. 163–275(13); and

(2) Provide proof of residence by presenting any of the following valid documents that show the person's current name and current residence address: a North Carolina drivers license, a photo identification from a government agency, or any of the documents listed in G.S. 163–166.12(a)(2). The State Board of Elections may designate additional documents or methods that suffice and shall prescribe procedures for establishing proof of residence.

(c) Voting With Retrievable Ballot. — A person who registers under this section shall vote a retrievable absentee ballot as provided in G.S. 163–227.2 immediately after registering. If a person declines to vote immediately, the registration shall be processed, and the person may later vote at a one-stop voting site under this section in the same election.

(d) Verification of Registration; Counting of Ballot. — Within two business days of the person's registration under this section, the county board of elections in conjunction with the State Board of Elections shall verify the North Carolina drivers license or Social Security number in accordance with G.S. 163–82.12, update the statewide registration database and search for possible duplicate registrations, and proceed under G.S. 163–82.7 to verify

the person's address. The person's vote shall be counted unless the county board determines that the applicant is not qualified to vote in accordance with the provisions of this Chapter.

(e) Change of Registration at One–Stop Voting Site. — A person who is already registered to vote in the county may update the information in the registration record in accordance with procedures prescribed by the State Board of Elections, but an individual's party affiliation may not be changed during the one-stop voting period before any first or second partisan primary in which the individual is eligible to vote.

(f) Voting in Primary.—Any person who will become qualified by age to register and vote in the general election for which a partisan or nonpartisan primary is held, even though not so qualified by the date of the primary, may register for the primary and general election prior to the primary and then vote in the primary and general election after being registered in accordance with the provisions of this section.

Added by S.L. 2007–253, § 1, eff. Oct. 9, 2007. Amended by S.L. 2009–541, § 11, eff. Aug. 28, 2009.

Historical and Statutory Notes

2007 Legislation

S.L. 2007–253, § 5, provides:

''Sections 1, 2, and 3 of this act become effective as follows:

''(1) If preclearance under Section 5 of the Voting Rights Act of 1965 is obtained before September 1, 2007, those sections are effective with regard to registration and voting for any primary or election held on or after October 9, 2007.

''(2) If preclearance is obtained during September 2007, those sections are effective with regard to registration and voting for any primary or election held on or after November 6, 2007.

''(3) If preclearance is obtained on or after October 1, 2007, those sections are effective with regard to registration and voting for any primary or election held on or after the 60th day after preclearance is obtained.

''The remainder of this act is effective when it becomes law. The State Board of Elections may adopt any necessary procedures to implement this act at any time after this act becomes law.''

On Aug. 16, 2007, the United States Attorney General interposed no objection to the addition of this section by S.L. 2007–253, § 1.

2009 Legislation

S.L. 2009–541, § 11, added subsec. (f).

Cross References

Right to participate or vote in party primary, see § 163–59.

§ 163–82.7. Verification of qualifications and address of applicant; denial or approval of application

(a) Tentative Determination of Qualification.—When a county board of elections receives an application for registration submitted pursuant to G.S. 163–82.6, the board either:

(1) Shall make a determination that the applicant is not qualified to vote at the address given, or

(2) Shall make a tentative determination that the applicant is qualified to vote at the address given, subject to the mail

verification notice procedure outlined in subsection (c) of this section

within a reasonable time after receiving the application.

(b) Denial of Registration.—If the county board of elections makes a determination pursuant to subsection (a) of this section that the applicant is not qualified to vote at the address given, the board shall send, by certified mail, a notice of denial of registration. The notice of denial shall contain the date on which registration was denied, and shall be mailed within two business days after denial. The notice of denial shall inform the applicant of alternatives that the applicant may pursue to exercise the franchise. If the applicant disagrees with the denial, the applicant may appeal the decision under G.S. 163–82.18.

(c) Verification of Address by Mail.—If the county board of elections tentatively determines that the applicant is qualified to vote at the address given, then the county board shall send a notice to the applicant, by nonforwardable mail, at the address the applicant provides on the application form. The notice shall state that the county will register the applicant to vote if the Postal Service does not return the notice as undeliverable to the county board. The notice shall also inform the applicant of the precinct and voting place to which the applicant will be assigned if registered.

(d) Approval of Application.—If the Postal Service does not return the notice as undeliverable, the county board shall register the applicant to vote.

(e) Second Notice if First Notice Is Returned as Undeliverable.—If the Postal Service returns the notice as undeliverable, the county board shall send a second notice by nonforwardable mail to the same address to which the first was sent. If the second notice is not returned as undeliverable, the county board shall register the applicant to vote.

(f) Denial of Application Based on Lack of Verification of Address.—If the Postal Service returns as undeliverable the notice sent by nonforwardable mail pursuant to subsection (e) of this section, the county board shall deny the application. The county board need not try to notify the applicant further.

(g) Voting When Verification Process Is Incomplete.—In cases where an election occurs before the process of verification outlined in this section has had time to be completed, the county board of elections shall be guided by the following rules:

(1) If the county board has made a tentative determination that an applicant is qualified to vote under subsection (a) of this section, then that person shall not be denied the right to vote in person in an election unless the Postal

Service has returned as undeliverable two notices to the applicant: one mailed pursuant to subsection (c) of this section and one mailed pursuant to subsection (e) of this section. This subdivision does not preclude a challenge to the voter's qualifications under Article 8 of this Chapter.

(2) If the Postal Service has returned as undeliverable a notice sent within 25 days before the election to the applicant under subsection (c) of this section, then the applicant may vote only in person in that first election and may not vote by absentee ballot except in person under G.S. 163–227.2. The county board of elections shall establish a procedure at the voting site for:

a. Obtaining the correct address of any person described in this subdivision who appears to vote in person; and

b. Assuring that the person votes in the proper place and in the proper contests.

If a notice mailed under subsection (c) or subsection (e) of this section is returned as undeliverable after a person has already voted by absentee ballot, then that person's ballot may be challenged in accordance with G.S. 163–89.

(3) If a notice sent pursuant to subsection (c) or (e) of this section is returned by the Postal Service as undeliverable after a person has already voted in an election, then the county board shall treat the person as a registered voter but shall send a confirmation mailing pursuant to G.S. 163–82.14(d)(2) and remove or retain the person on the registration records in accordance with that subdivision.

Added by Laws 1991 (Reg. Sess., 1992), c. 1044, § 18(a). Amended by Laws 1993, c. 74, § 1; Laws 1993 (Reg. Sess., 1994), c. 762, § 2, eff. Jan. 1, 1995; S.L. 1997–455, § 16.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

''Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.'' [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

S.L. 1999–455, § 24 provides:

''This act applies to elections held on or after January 1, 2000, except that the State Board of Elections may issue rules required or permitted by this act prior to that date.''

Notes of Decisions

Permitted questions 1

1. Permitted questions

Registrars of election, under Acts 1895, c. 159, may ask an elector as to his age and residence, as well as the township and county from whence he removed, in the case of a removal since the last election, and the name by which he is commonly known. In re Reid, 1896, 26 S.E. 337, 119 N.C. 641. Elections ⚷ 106

Under Const. Art. 6, § 1, registrars of election may ask an elector if he has resided in the state 12 months next preceding the election, and 90 days in the county in which he offers to vote. In re Reid, 1896, 26 S.E. 337, 119 N.C. 641. Elections ⚷ 106

Where, under the statute, the questions asked by the registrar are, ''What is your place of birth?'' and ''What is your place of residence?'' an answer giving a certain county is sufficient to entitle the elector to vote, being a natural answer to the questions; but an answer giving only the state, without specifying any county, is insufficient. State v. Scarboro, 1892, 14 S.E. 737, 110 N.C. 232. Elections ⚷ 106

Where the registration of an elector fails to show that all the questions relating to his age, residence, etc., were answered, the burden is on him, or one claiming that he was entitled to vote, to show that he offered to comply with the law, and that his defective registration is the fault of the registrar, and not on the registrar to show that the elector, when asked the proper questions, refused or failed to give sufficient answers. State v. Scarboro, 1892, 14 S.E. 737, 110 N.C. 232. Elections ⚷ 115

§ 163–82.8. Voter registration cards

(a) Authority to Issue Card.—With the approval of the board of county commissioners, the county board of elections may issue to each voter in the county a voter registration card, or may issue cards to all voters registered after January 1, 1995.

(b) Content and Format of Card.—At a minimum, the voter registration card shall:

(1) List the voter's name, address, and voting place;

(2) Contain the address and telephone number of the county board of elections, along with blanks to report a change of address within the county, change of name, and change of party affiliation; and

(3) Be wallet size.

No voter registration card may be issued by a county board of elections unless the State Board of Elections has approved the format of the card.

(c) Ways County Board and Registrant May Use Card.—If the county board of elections issues voter registration cards, the county board may use that card as a notice of tentative approval of the voter's application pursuant to G.S. 163–82.7(c), provided that the mailing contains the statements and information required in that subsection. The county board may also satisfy the requirements of G.S. 163–82.15(b), 163–82.16(b), or 163–82.17(b) by sending the registrant a replacement of the voter registration card to verify change of address, change of name, or change of party affiliation. A registrant may use the card to report a change of address,

change of name, or change of party affiliation, satisfying G.S. 163–82.15, 163–82.16, or 163–82.17.

(d) Card as Evidence of Registration.—A voter registration card shall be evidence of registration but shall not preclude a challenge as permitted by law.

(e) Display of Card May Not Be Required to Vote.—No county board of elections may require that a voter registration card be displayed in order to vote.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1969, c. 750, §§ 1, 2; Laws 1977, c. 626, § 1; Laws 1979, c. 539, § 5; Laws 1979, c. 766, § 2; Laws 1981, c. 33, § 2; Laws 1981 (Reg. Sess., 1982), c. 1265, § 6; Laws 1983, c. 553; Laws 1985, c. 260, § 1; Laws 1991, c. 363, § 1; Laws 1991 (Reg. Sess., 1992), c. 1032, § 1; Laws 1993 (Reg. Sess., 1994), c. 762, § 2, eff. Jan. 1, 1995.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

"Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences." [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

§ 163–82.9. Cancellation of prior registration

If an applicant indicates on an application form described in G.S. 163–82. 3 a current registration to vote in any other county, municipality, or state, the county board of elections, upon registering the person to vote, shall send a notice to the appropriate officials in the other county, municipality, or state and shall ask them to cancel the person's voter registration there. If an applicant completes an application form described in G.S. 163–82.3 except that the applicant neglects to complete the portion of the form that authorizes cancellation of previous registration in another county, the State Board of Elections shall notify the county board of elections in the previous county of the new registration, and the board in the previous county shall cancel the registration. The State Board of Elections shall adopt rules to prevent disenfranchisement in the implementation of this section. Those rules shall include adequate notice to the person whose previous registration is to be cancelled.

Added by Laws 1973, c. 793, § 28. Amended by Laws 1973, c. 1223, § 4; Laws 1977, c. 265, § 3; Laws 1983, c. 411, §§ 1, 2; Laws 1993 (Reg. Sess., 1994), c. 762, § 2, eff. Jan. 1, 1995; Laws 1995, c. 509, § 115, eff. July 29, 1995; S.L. 2005–428, § 9, eff. Jan. 1, 2006.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

"Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences." [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

2005 Legislation

S.L. 2005–428, § 9, eff. Jan. 1, 2006, amended section by adding the last three sentences.

S.L. 2005–428, § 18, provides:

"Sections 2, 6, 7, 8, 10, 12, 13, 14, 15, and 16 of this act are effective when this act becomes law and apply to all primaries and elections held on or after that date. The remainder of this act becomes effective January 1, 2006, and applies to all primaries and elections held on or after that date."

§ 163–82.10. Official record of voter registration

(a) Official Record.—The State voter registration system is the official voter registration list for the conduct of all elections in the State. The State Board of Elections and the county board of elections may keep copies of voter registration data, including voter registration applications, in any medium and format expressly approved by the Department of Cultural Resources pursuant to standards and conditions established by the Department and mutually agreed to by the Department and the State Board of Elections. A completed and signed registration application form, if available, described in G.S. 163–82.3, once approved by the county board of elections, becomes backup to the official registration record of the voter. Full or partial social security numbers, dates of birth, the identity of the public agency at which the voter registered under G.S. 163–82.20, and drivers license numbers that may be generated in the voter registration process, by either the State Board of Elections or a county board of elections, are confidential and shall not be considered public records and subject to disclosure to the general public under Chapter 132 of the General Statutes. Cumulative data based on those items of information may be publicly disclosed as long as information about any individual cannot be discerned from the disclosed data. Disclosure of information in violation of this subsection shall not give rise to a civil cause of action. This limitation of liability does not apply to the disclosure of information in violation of this subsection as a result of gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The signature of the voter, either on the paper application or an electronically captured image of it, may be viewed by the public but may not be copied or traced except by election officials for election administration purposes. Any such copy or tracing is not a public record.

(a1) Paperless, Instant Electronic Transfer. — The application described in G.S. 163–82.3 may be either a paper hard copy or an electronic document.

(b) Access to Registration Records. — Upon request by that person, the county board of elections shall provide to any person a list of the registered voters of the county or of any precinct or precincts in the county. The county board may furnish selective lists according to party affiliation, gender, race, date of registration, precinct name, precinct identification code, congressional district, senate district, representative district, and, where applicable, county commissioner district, city governing board district, fire district, soil and water conservation district, and voter history including primary, general, and special districts, or any other reasonable category. No list produced under this section shall contain a voter's date of birth. However, lists may be produced according to voters' ages. Both the following shall apply to all counties:

(1) The county board of elections shall make the voter registration information available to the public on electronic or magnetic medium. For purposes of this section, ''electronic or magnetic medium'' means any of the media in use by the State Board of Elections at the time of the request.

(2) Information requested on electronic or magnetic medium shall contain the following: voter name, county voter identification number, residential address, mailing address, sex, race, age but not date of birth, party affiliation, precinct name, precinct identification code, congressional district, senate district, representative district, and, where applicable, county commissioner district, city governing board district, fire district, soil and water conservation district, and any other district information available, and voter history including primary, general, and special districts, or any other reasonable category.

The county board shall require each person to whom a list is furnished to reimburse the board for the actual cost incurred in preparing it, except as provided in subsection (c) of this section. Actual cost for the purpose of this section shall not include the cost of any equipment or any imputed overhead expenses. When furnishing information under this subsection to a purchaser on a magnetic medium provided by the county board or the purchaser, the county board may impose a service charge of up to twenty-five dollars ($25.00).

(c) Free Lists. — A county board shall provide, upon written request, one free list of all the registered voters in the county to the State chair of each political party and to the county chair of each political party once in every odd-numbered year, once during the

first six calendar months of every even-numbered year, and once during the latter six calendar months of every even-numbered year.

Each free list shall include the name, address, gender, age but not date of birth, race, political affiliation, voting history, precinct, precinct name, precinct identification code, congressional district, senate district, representative district, and, where applicable, county commissioner district, city governing board district, fire district, soil and water conservation district, and voter history including primary, general, and special districts of each registered voter. All free lists shall be provided as soon as practicable on one of any electronic or magnetic media, but no later than 30 days after written request. Each State party chair shall provide the information on the media received from the county boards or a copy of the media containing the data itself to candidates of that party who request the data in writing. As used in this section, ''political party'' means a political party as defined in G.S. 163–96.

(d) Exception for Address of Certain Registered Voters. — Notwithstanding subsections (b) and (c) of this section, if a registered voter submits to the county board of elections a copy of a protective order without attachments, if any, issued to that person under G.S. 50B–3 or a lawful order of any court of competent jurisdiction restricting the access or contact of one or more persons with a registered voter or a current and valid Address Confidentiality Program authorization card issued pursuant to the provisions of Chapter 15C of the General Statutes, accompanied by a signed statement that the voter has good reason to believe that the physical safety of the voter or a member of the voter's family residing with the voter would be jeopardized if the voter's address were open to public inspection, that voter's address is a public record but shall be kept confidential as long as the protective order remains in effect or the voter remains a certified program participant in the Address Confidentiality Program. That voter's name, precinct, and the other data contained in that voter's registration record shall remain a public record. That voter's signed statement submitted under this subsection is a public record but shall be kept confidential as long as the protective order remains in effect or the voter remains a certified program participant in the Address Confidentiality Program. It is the responsibility of the voter to provide the county board with a copy of the valid protective order in effect or a current and valid Address Confidentiality Program authorization card issued pursuant to the provisions of Chapter 15C of the General Statutes. The voter's actual address shall be used for any election-related purpose by any board of elections. That voter's address shall be available for inspection by a law enforcement agency or by a person identified in a court order, if inspection of the address by that person is directed by that court order. It shall not be a violation of this section if the address of a

voter who is participating in the Address Confidentiality Program is discovered by a member of the public in public records disclosed by a county board of elections prior to December 1, 2001. Addresses required to be kept confidential by this section shall not be made available to the jury commission under the provisions of G.S. 9–2.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1973, c. 793, §§ 22, 25; Laws 1975, c. 12; Laws 1975, c. 395; Laws 1979 (2nd Sess.), c. 1242; Laws 1981, c. 39, § 1; Laws 1981, c. 87, § 1; Laws 1981, c. 308, § 1; Laws 1981, c. 656; Laws 1983, c. 218, §§ 1, 2; Laws 1985, c. 211, §§ 1, 2; Laws 1985, c. 472, § 1; Laws 1993 (Reg. Sess., 1994), c. 762, § 2, eff. Jan. 1, 1995; Laws 1995 (Reg. Sess., 1996), c. 688, § 2, eff. July 1, 1996; S.L. 2001–396, § 1, eff. Dec. 1, 2001; S.L. 2002–171, § 8, eff. Jan. 1, 2003; S.L. 2003–226, § 2, eff. Jan. 1, 2004; S.L. 2003–226, § 3, eff. June 19, 2003; S.L. 2003–278, § 6, eff. June 27, 2003; S.L. 2004–127, § 17(c), eff. June 1, 2005; S.L. 2005–428, §§ 10(a), 10(b), eff. Sept. 22, 2005; S.L. 2007–391, § 19, eff. Aug. 19, 2007; S.L. 2009–541, § 12, eff. Aug. 28, 2009.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

''Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.'' [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

2001 Legislation

S.L. 2001–396, § 1, eff. Dec. 1, 2001, added subsec. (d).

2002 Legislation

S.L. 2002–171, § 8, eff. Oct. 31, 2002, rewrote subsec. (d), which prior thereto read:

''(d) Exception for Address of Certain Registered Voters. – Notwithstanding subsections (b) and (c) of this section, if a registered voter submits to the county board of elections a copy of a protective order without attachments, if any, issued to that person under G.S. 50B-3 or a lawful order of any court of competent jurisdiction restricting the access or contact of one or more persons with a registered voter, accompanied by a signed statement that the voter has good reason to believe that the physical safety of the voter or a member of the voter's family residing with the voter would be jeopardized if the voter's address were open to public inspection, that voter's address is a public record but shall be kept confidential as long as the protective order remains in effect. That voter's name, precinct, and the other data contained in that voter's registration record shall remain a public record. That voter's signed statement submitted under this subsection is a public record but shall be kept confidential as long as the protective order remains in effect. It is the responsibility of the voter to provide the county board with a copy of the valid protective order in effect. That voter's address shall be available for inspection by a law enforcement agency or by a person identified in a court order, if inspection of the address by that person is directed by that court order.''

2003 Legislation

S.L. 2003–226, § 2, eff. Jan. 1, 2004, rewrote subsec. (a), which prior thereto read:

''(a) Application Form Becomes Official Record.—A completed and signed registration application form described in G.S. 163-82.3, once approved by the county board of elections, becomes the official registration record of the voter. The county board of elections shall maintain custody of the official registration records of all voters in the county

and shall keep them in a place where they are secure.''

S.L. 2003–226, § 3, eff. June 19, 2003, added subsec. (a1).

S.L. 2003–226, §§ 1 and 22, eff. June 19, 2003, provide:

''Section 1. The purpose of this act is to ensure that the State of North Carolina has a system for all North Carolina elections that complies with the requirements for federal elections set forth in the federal Help America Vote Act of 2002, Public Law 107–252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481–15485.

''The General Assembly finds that the education and training of election officials as required by G.S. 163–82.34 has met and continues to meet the mandate for the education and training of precinct officials and other election officials in section 254(a)(3) of the Help America Vote Act of 2002. The General Assembly further finds that the establishment, development, and continued operation of the statewide list maintenance program for voter registration set forth in G.S. 163–82.14 has met and continues to meet the mandates of section 303(a)(2) of the Help America Vote Act of 2002.

''In certain other areas of the election statutes and other laws, the General Assembly finds that the statutes must be amended to comply with the Help America Vote Act.''

''Section 22. Sections 1, 3, 4, 5, 12, 18, 21, and 22 of this act are effective when this act becomes law. Sections 11 and 13 of this act become effective January 1, 2006. The remainder of this act becomes effective January 1, 2004. All sections of this act apply with respect to all primaries and elections held on or after the date they become effective.''

S.L. 2003–278, § 6, eff. June 27, 2003, in subsec. (d), added the eighth sentence.

2004 Legislation

S.L. 2004–127, § 17(c), eff. June 1, 2005, in subsec. (a), inserted ''dates of birth,'' in the third sentence and ''or dates of birth'' in the fourth and fifth sentences; in the first paragraph of subsec. (b), inserted the third and fourth sentences; in subd. (b)(2), substituted ''but not date of birth,'' for ''or date of birth or both,''; and in the second paragraph of subsec. (c), in the first sentence, inserted ''age but not''.

2005 Legislation

S.L. 2005–428, § 10(a), eff. Sept. 22, 2005, rewrote subsec. (b), which prior thereto read:

''(b) Access to Registration Records. — Upon request by that person, the county board of elections shall provide to any person a list of the registered voters of the county or of any precinct or precincts in the county. The county board may furnish selective lists according to party affiliation, gender, race, date of registration, precinct name, precinct identification code, congressional district, senate district, representative district, and, where applicable, county commissioner district, city governing board district, fire district, soil and water conservation district, and voter history including primary, general, and special districts, or any other reasonable category. No list produced under this section shall contain a voter's date of birth. However, lists may be produced according to voters' ages. The following shall apply if a county maintains or has its voter registration list maintained on a computer:

''(1) In addition to the typed, mimeographed, photocopied, computer printout or label lists, the county board of elections shall make the voter registration information available to the public on magnetic medium. Magnetic medium for the purpose of this section shall consist of nine track tape or 3.5 inch diskettes and 5.25 inch diskettes readily accessible using MS-DOS or Microsoft Windows operating systems or both such systems; and

''(2) Information requested on magnetic medium shall contain the following: voter name, county voter identification number, residential address, mailing address, sex, race, age but not date of birth, party affiliation, precinct name, precinct identification code, congressional district, senate district, representative district, and, where applicable, county commissioner district, city governing board district, fire district, soil and water conservation district, and any other district information available, and voter history including primary, general, and special districts, or any other reasonable category,

''provided that this subsection shall not require a county to computerize its lists, but if a county does computerize it shall comply with subdivisions (1) and (2) of this subsection. The county board shall require each person to whom a list is furnished to reimburse the board for the

actual cost incurred in preparing it, except as provided in subsection (c) of this section. Actual cost for the purpose of this section shall not include the cost of any equipment or any imputed overhead expenses. It may include the actual cost of paper, labels, and magnetic medium. The purchaser at its discretion may provide the magnetic medium. When furnishing information under this subsection to a purchaser on a magnetic medium provided by the county board or the purchaser, the county board may impose a service charge of up to twenty-five dollars ($25.00).''

S.L. 2005–428, § 10(b), eff. Sept. 22, 2005, rewrote subsec. (c), which prior thereto read:

''(c) Free Lists. — Free lists of all registered voters in the county shall be provided in the following cases:

''(1) A county board that maintains voter records on computer shall provide, upon written request, one free list to:

''a. The State chair of each political party; and

''b. The county chair of each political party

''once in every odd-numbered year, once during the first six calendar months of every even-numbered year, and once during the latter six calendar months of every even-numbered year.

''(2) A county board that does not maintain voter records on computer shall provide one free paper list every two years to the county chair of each political party.

''Each free list shall include the name, address, gender, age but not date of birth, race, political affiliation, voting history, precinct, precinct name, precinct identification code, congressional district, senate district, representative district, and, where applicable, county commissioner district, city governing board district, fire district, soil and water conservation district, and voter history including primary, general, and special districts of each registered voter. The free paper list to the county party chairs shall group voters by precinct. All free lists shall be provided as soon as practicable but no later than 30 days after written request. Each State party chair shall provide the discs or tapes received from the county boards to candidates of that party who request the discs or tapes in writing. Each State party chair shall return discs and tapes to the county boards within 30 days after receiving them. As used in this section, 'political party' means a political party as defined in G.S. 163–96.''

S.L. 2005–428, § 18, provides:

''Sections 2, 6, 7, 8, 10, 12, 13, 14, 15, and 16 of this act are effective when this act becomes law and apply to all primaries and elections held on or after that date. The remainder of this act becomes effective January 1, 2006, and applies to all primaries and elections held on or after that date.''

2007 Legislation

S.L. 2007–391, § 19, rewrote subsec. (a), which prior thereto read:

''(a) Official Record. — The State voter registration system is the official voter registration list for the conduct of all elections in the State. A completed and signed registration application form, if available, described in G.S. 163–82.3, once approved by the county board of elections, becomes backup to the official registration record of the voter. Electronically captured images of the signatures of voters, full or partial social security numbers, dates of birth, and drivers license numbers that may be generated in the voter registration process, by either the State Board of Elections or a county board of elections, are confidential and shall not be considered public records and subject to disclosure to the general public under Chapter 132 of the General Statutes. Disclosure of drivers license numbers or dates of birth in violation of this subsection shall not give rise to a civil cause of action. This limitation of liability does not apply to the disclosure of drivers license numbers or dates of birth in violation of this subsection as a result of gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The county board of elections shall maintain custody of any paper hard copy registration records of voters in the county and shall keep them in a place where they are secure.''

2009 Legislation

S.L. 2009–541, § 12, in subsec. (a), inserted the second sentence and deleted the last sentence, which prior thereto read:

''The county board of elections shall maintain custody of any paper hard copy registration records of voters in the county and shall keep them in a place where they are secure.''

Cross References

Address confidentiality program, use of addresses by state or local agencies, see § 15C–8.

§ 163–82.10A. Permanent voter registration numbers

The statewide voter registration system shall assign to each voter a unique registration number. That number shall be permanent for that voter and shall not be changed or reassigned by the county board of elections.

Added by S.L. 2001–319, § 8.1(a), eff. Jan. 1, 2002. Amended by S.L. 2003–226, § 10, eff. Jan. 1, 2004.

Historical and Statutory Notes

2003 Legislation

S.L. 2003–226, § 10, eff. Jan. 1, 2004, rewrote the section, which prior thereto read:

''Each county board of elections shall assign to each voter a registration number. That number shall be permanent for that voter and shall not be changed or reassigned by the county board of elections.''

S.L. 2003–226, §§ 1 and 22, eff. June 19, 2003, provide:

''Section 1. The purpose of this act is to ensure that the State of North Carolina has a system for all North Carolina elections that complies with the requirements for federal elections set forth in the federal Help America Vote Act of 2002, Public Law 107–252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481–15485.

''The General Assembly finds that the education and training of election officials as required by G.S. 163–82.34 has met and continues to meet the mandate for the education and training of precinct officials and other election officials in section 254(a)(3) of the Help America Vote Act of 2002. The General Assembly further finds that the establishment, development, and continued operation of the statewide list maintenance program for voter registration set forth in G.S. 163–82.14 has met and continues to meet the mandates of section 303(a)(2) of the Help America Vote Act of 2002.

''In certain other areas of the election statutes and other laws, the General Assembly finds that the statutes must be amended to comply with the Help America Vote Act.''

''Section 22. Sections 1, 3, 4, 5, 12, 18, 21, and 22 of this act are effective when this act becomes law. Sections 11 and 13 of this act become effective January 1, 2006. The remainder of this act becomes effective January 1, 2004. All sections of this act apply with respect to all primaries and elections held on or after the date they become effective.''

§ 163–82.10B. Confidentiality of date of birth

Boards of elections shall keep confidential the date of birth of every voter-registration applicant and registered voter, except in the following situations:

(1) When a voter has filed notice of candidacy for elective office under G.S. 163–106, 163–122, 163–123, or 163–294.2, or 163–323, has been nominated as a candidate under G.S. 163–98 or G.S. 163–114, or has otherwise formally become a candidate for elective office. The exception of this subdivision does not extend to an individual who meets the definition of ''candidate'' only by beginning a tentative candidacy by receiving funds or making payments or giving consent to someone else to receive funds

or transfer something of value for the purpose of exploring a candidacy.

(2) When a voter is serving in an elective office.

(3) When a voter has been challenged pursuant to Article 8 of this Chapter.

(4) When a voter-registration applicant or registered voter expressly authorizes in writing the disclosure of that individual's date of birth.

The disclosure of an individual's age does not constitute disclosure of date of birth in violation of this section.

The county board of elections shall give precinct officials access to a voter's date of birth where necessary for election administration, consistent with the duty to keep dates of birth confidential.

Disclosure of a date of birth in violation of this section shall not give rise to a civil cause of action. This limitation of liability does not apply to the disclosure of a date of birth in violation of this subsection as a result of gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable.

Added by S.L. 2004–127, § 17(a), eff. June 1, 2005.

§ 163–82.11. Establishment of statewide computerized voter registration

(a) Statewide System as Official List. —The State Board of Elections shall develop and implement a statewide computerized voter registration system to facilitate voter registration and to provide a central database containing voter registration information for each county. The system shall serve as the single system for storing and managing the official list of registered voters in the State. The system shall serve as the official voter registration list for the conduct of all elections in the State. The system shall encompass both software development and purchasing of the necessary hardware for the central and distributed-network systems.

(b) Uses of Statewide System. —The State Board of Elections shall develop and implement the system so that each county board of elections can do all the following:

(1) Verify that an applicant to register in its county is not also registered in another county.

(2) Be notified automatically that a registered voter in its county has registered to vote in another county.

(3) Receive automatically data about a person who has applied to vote at a drivers license office or at another public agency that is authorized to accept voter registration applications.

(c) Compliance With Federal Law. —The State Board of Elections shall update the statewide computerized voter registration list and database to meet the requirements of section 303(a) of the Help America Vote Act of 2002 and to reflect changes when citizenship rights are restored under G.S. 13–1.

(d) Role of County and State Boards of Elections. —Each county board of elections shall be responsible for registering voters within its county according to law. Each county board of elections shall maintain its records by using the statewide computerized voter registration system in accordance with rules promulgated by the State Board of Elections. Each county board of elections shall enter through the computer system all additions, deletions, and changes in its list of registered voters promptly to the statewide computer system.

(e) Cooperation on List for Jury Commission.—The State Board of Elections shall assist the Division of Motor Vehicles in providing to the county jury commission of each county, as required by G.S. 20–43.4, a list of all registered voters in the county and all persons in the county with drivers license records. The list of registered voters provided by the State Board of Elections shall not include any registered voter who has been inactive for eight years or more.

Added by Laws 1993 (Reg. Sess., 1994), c. 762, § 2, eff. Jan. 1, 1995. Amended by Laws 1995, c. 507, § 28.12; S.L. 2003–226, § 6, eff. Jan. 1, 2004; S.L. 2007–512, § 4, eff. Oct. 1, 2007.

Historical and Statutory Notes

2003 Legislation

S.L. 2003–226, § 6, eff. Jan. 1, 2004, rewrote the section, which prior thereto read:

''The State Board of Elections shall develop and implement a statewide computerized voter registration system to facilitate voter registration and to provide a central database containing voter registration information for each county. The system shall encompass both software development and purchasing of the necessary hardware for the central and distributed-network systems.

''The State Board of Elections shall develop and implement the system so that each county board of elections can:

''(1) Verify that an applicant to register in its county is not also registered in another county;

''(2) Be notified automatically that a registered voter in its county has registered to vote in another county; and

''(3) Receive automatically data about a person who has applied to vote at a drivers license office or at another public agency that is authorized to accept voter registration applications.

''Each county board of elections shall be responsible for registering voters within its county according to law. Each county board of elections shall maintain its own computer file of registered voters in accordance with rules promulgated by the State Board of Elections. Each county board of elections shall transmit through the computer network all additions, deletions, and changes in its list of registered voters promptly to the statewide computer file. The State Board of Elections shall maintain a continually updated duplicate file of each county's registered voters.''

S.L. 2003–226, §§ 1 and 22, eff. June 19, 2003, provide:

''Section 1. The purpose of this act is to ensure that the State of North Carolina has a system for all North Carolina elections that complies with the requirements for federal elections set forth in the federal Help America Vote Act of 2002, Public Law 107–252, 116

Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481–15485.

''The General Assembly finds that the education and training of election officials as required by G.S. 163–82.34 has met and continues to meet the mandate for the education and training of precinct officials and other election officials in section 254(a)(3) of the Help America Vote Act of 2002. The General Assembly further finds that the establishment, development, and continued operation of the statewide list maintenance program for voter registration set forth in G.S. 163–82.14 has met and continues to meet the mandates of section 303(a)(2) of the Help America Vote Act of 2002.

''In certain other areas of the election statutes and other laws, the General Assembly finds that the statutes must be amended to comply with the Help America Vote Act.''

''Section 22. Sections 1, 3, 4, 5, 12, 18, 21, and 22 of this act are effective when this act becomes law. Sections 11 and 13 of this act become effective January 1, 2006. The remainder of this act becomes effective January 1, 2004. All sections of this act apply with respect to all primaries and elections held on or after the date they become effective.''

2007 Legislation

S.L. 2007–512, § 4, in subsec. (e), added the second sentence relating to inactive voters.

§ 163–82.12. Promulgation of guidelines relating to computerized voter registration

The State Board of Elections shall make all guidelines necessary to administer the statewide voter registration system established by this Article. All county boards of elections shall follow these guidelines and cooperate with the State Board of Elections in implementing guidelines. These guidelines shall include provisions for all of the following:

(1) Establishing, developing, and maintaining a computerized central voter registration file.

(2) Linking the central file through a network with computerized voter registration files in each of the counties.

(3) Interacting with the computerized drivers license records of the Division of Motor Vehicles and with the computerized records of other public agencies authorized to accept voter registration applications.

(4) Protecting and securing the data.

(5) Converting current voter registration records in the counties in computer files that can be used on the statewide computerized registration system.

(6) Enabling the statewide system to determine whether the voter identification information provided by an individual is valid.

(7) Enabling the statewide system to interact electronically with the Division of Motor Vehicles system to validate identification information.

(8) Enabling the Division of Motor Vehicles to provide real-time interface for the validation of the drivers license number and last four digits of the social security number.

(8b) Notifying voter-registration applicants whose drivers license or last four digits of social security number does

not result in a validation, attempting to resolve the discrepancy, initiating investigations under G.S. 163–33(3) or challenges under Article 8 of this Chapter where warranted, and notifying any voters of the requirement under G.S. 163–166.2(b2) to present identification when voting.

(9) Enabling the statewide system to assign a unique identifier to each legally registered voter in the State.

(10) Enabling the State Board of Elections to assist the Division of Motor Vehicles in providing to the jury commission of each county, as required by G.S. 20–43.4, a list of all registered voters in the county and all persons in the county with drivers license records.

These guidelines shall not be considered to be rules subject to Article 2A of Chapter 150B of the General Statutes. However, the State Board shall publish in the North Carolina Register the guidelines and any changes to them after adoption, with that publication noted as information helpful to the public under G.S. 150B–21.17(a)(6). Copies of those guidelines shall be made available to the public upon request or otherwise by the State Board.

Added by Laws 1993 (Reg. Sess., 1994), c. 762, § 2, eff. Jan. 1, 1995. Amended by S.L. 2003–226, § 7(a), eff. Jan. 1, 2004; S.L. 2007–391, § 21(b), eff. Aug. 19, 2007.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

''Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.'' [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

S.L.1997–443, § 31, provides for establishment of a statewide data elections management system. The section provides that to the extent that the section conflicts with G.S. 163–82.11 through G.S. 163–82-13, with Session Laws 1993 (Reg. Sess. 1994) c. 769, § 16, or with Session Laws 1995, c. 507, § 13.2, section 31 prevails; except to the extent of the conflict, Session Laws 1993 (Reg. Sess. 1994) c. 769, § 16 remains in effect.

2003 Legislation

S.L. 2003–226, § 7(a), eff. Jan. 1, 2004, rewrote the section, which prior thereto read:

''§ 163–82.12. Promulgation of rules relating to computerized voter registration

''The State Board of Elections shall make all rules necessary to administer the statewide voter registration system established by this Article. These rules shall include provisions for:

''(1) Establishing, developing, and maintaining a computerized central voter registration file;

''(2) Linking the central file through a network with computerized voter registration files in each of the counties;

''(3) Interacting with the computerized drivers license records of the Division of Motor Vehicles and with the computerized records of other public agencies authorized to accept voter registration applications;

''(4) Protecting and securing the data; and

''(5) Converting current voter registration records in the counties in computer files that can be used on the statewide computerized registration system.''

S.L. 2003–226, §§ 1 and 22, eff. June 19, 2003, provide:

''Section 1. The purpose of this act is to ensure that the State of North Carolina has a system for all North Carolina elections that complies with the requirements for federal elections set forth in the federal Help America Vote Act of 2002, Public Law 107–252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481–15485.

''The General Assembly finds that the education and training of election officials as required by G.S. 163–82.34 has met and continues to meet the mandate for the education and training of precinct officials and other election officials in section 254(a)(3) of the Help America Vote Act of 2002. The General Assembly further finds that the establishment, development, and continued operation of the statewide list maintenance program for voter registration set forth in G.S. 163–82.14 has met and continues to meet the mandates of section 303(a)(2) of the Help America Vote Act of 2002.

''In certain other areas of the election statutes and other laws, the General Assembly finds that the statutes must be amended to comply with the Help America Vote Act.''

''Section 22. Sections 1, 3, 4, 5, 12, 18, 21, and 22 of this act are effective when this act becomes law. Sections 11 and 13 of this act become effective January 1, 2006. The remainder of this act becomes effective January 1, 2004. All sections of this act apply with respect to all primaries and elections held on or after the date they become effective.''

2007 Legislation

S.L. 2007–391, § 21(b), added subd. (8b).

§ 163–82.13. Access to statewide voter registration file

(a) Free Copy for Political Parties. — Beginning January 1, 1996, the State Board of Elections shall make available free of charge, upon written request, one magnetic copy of the statewide computerized voter registration file to the chairman of each political party as defined in G.S. 163–96 as soon as practicable after the close of registration before every statewide primary and election. The file made available to the political party chairmen shall contain the name, address, gender, age but not date of birth, race, voting history, political affiliation, and precinct of every registered voter in the State. If a county board enters telephone numbers into its computer lists of registered voters, then the free list provided under this subsection shall include telephone numbers.

(b) Copies for Sale to Others. — Beginning January 1, 1996, the State Board of Elections shall sell, upon written request, to other public and private organizations and persons magnetic copies of the statewide computerized voter registration file. The State Board of Elections may sell selective lists of registered voters according to county, congressional or legislative district, party affiliation, gender, age but not date of birth, race, date of registration, or any other reasonable category, or a combination of categories. The State Board of Elections shall require all persons to whom any list is furnished under this subsection to reimburse the board for the actual cost incurred in preparing it.

Added by Laws 1993 (Reg. Sess., 1994), c. 762, § 2, eff. Jan. 1, 1995. Amended by S.L. 2004–127, § 17(d), eff. June 1, 2005.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

''Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.'' [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

S.L.1997–443, § 31, provides for establishment of a statewide data elections management system. The section provides that to the extent that the section conflicts with G.S. 163–82.11 through G.S. 163–82-13, with Session Laws 1993 (Reg. Sess. 1994) c. 769, § 16, or with Session Laws 1995, c. 507, § 13.2, section 31 prevails; except to the extent of the conflict, Session Laws 1993 (Reg. Sess. 1994) c. 769, § 16 remains in effect.

2004 Legislation

S.L. 2004–127, § 17(d), eff. June 1, 2005, in the second sentence of subsecs. (a) and (b), inserted ''age but not''.

§ 163–82.14. List maintenance

(a) Uniform Program.—The State Board of Elections shall adopt a uniform program that makes a reasonable effort:

(1) To remove the names of ineligible voters from the official lists of eligible voters, and

(2) To update the addresses and other necessary data of persons who remain on the official lists of eligible voters.

That program shall be nondiscriminatory and shall comply with the provisions of the Voting Rights Act of 1965, as amended, and with the provisions of the National Voter Registration Act. The State Board of Elections, in addition to the methods set forth in this section, may use other methods toward the ends set forth in subdivisions (1) and (2) of this subsection, including address-updating services provided by the Postal Service. Each county board of elections shall conduct systematic efforts to remove names from its list of registered voters in accordance with this section and with the program adopted by the State Board. The county boards of elections shall complete their list maintenance mailing program by April 15 of every odd-numbered year, unless the State Board of Elections approves a different date for the county.

(b) Death.—The Department of Health and Human Services shall furnish free of charge to the State Board of Elections every month, in a format prescribed by the State Board of Elections, the names of deceased persons who were residents of the State. The State Board of Elections shall distribute every month to each county board of elections the names on that list of deceased persons who were residents of that county. The Department of Health and Human Services shall base each list upon information supplied by death certifications it received during the preceding month. Upon the receipt of those names, each county board of

elections shall remove from its voter registration records any person the list shows to be dead. The county board need not send any notice to the address of the person so removed.

(c) Conviction of a Felony.—

(1) Report of Conviction Within the State.—The State Board of Elections, on or before the fifteenth day of every month, shall report to the county board of elections of that county the name, county of residence, and residence address if available, of each individual against whom a final judgment of conviction of a felony has been entered in that county in the preceding calendar month.

(2) Report of Federal Conviction.—The Executive Director of the State Board of Elections, upon receipt of a notice of conviction sent by a United States Attorney pursuant to section 8(g) of the National Voter Registration Act, shall notify the appropriate county boards of elections of the conviction.

(3) County Board's Duty Upon Receiving Report of Conviction.—When a county board of elections receives a notice pursuant to subdivision (1) or (2) of this subsection relating to a resident of that county and that person is registered to vote in that county, the board shall, after giving 30 days' written notice to the voter at his registration address, and if the voter makes no objection, remove the person's name from its registration records. If the voter notifies the county board of elections of his objection to the removal within 30 days of the notice, the chairman of the board of elections shall enter a challenge under G.S. 163–85(c)(5), and the notice the county board received pursuant to this subsection shall be prima facie evidence for the preliminary hearing that the registrant was convicted of a felony.

(d) Change of Address. — A county board of elections shall conduct a systematic program to remove from its list of registered voters those who have moved out of the county, and to update the registration records of persons who have moved within the county. The county board shall remove a person from its list if the registrant:

(1) Gives confirmation in writing of a change of address for voting purposes out of the county. ''Confirmation in writing'' for purposes of this subdivision shall include:

a. A report to the county board from the Department of Transportation or from a voter registration agency listed in G.S. 163–82.20 that the voter has reported a change of address for voting purposes outside the county;

b. A notice of cancellation received under G.S. 163–82.9; or

c. A notice of cancellation received from an election jurisdiction outside the State.

(2) Fails to respond to a confirmation mailing sent by the county board in accordance with this subdivision and does not vote or appear to vote in an election beginning on the date of the notice and ending on the day after the date of the second general election for the United States House of Representatives that occurs after the date of the notice. A county board sends a confirmation notice in accordance with this subdivision if the notice:

a. Is a postage prepaid and preaddressed return card, sent by forwardable mail, on which the registrant may state current address;

b. Contains or is accompanied by a notice to the effect that if the registrant did not change residence but remained in the county, the registrant should return the card not later than the deadline for registration by mail in G.S. 163–82.6(c)(1); and

c. Contains or is accompanied by information as to how the registrant may continue to be eligible to vote if the registrant has moved outside the county.

A county board shall send a confirmation mailing in accordance with this subdivision to every registrant after every congressional election if the county board has not confirmed the registrant's address by another means.

(3) Any registrant who is removed from the list of registered voters pursuant to this subsection shall be reinstated if the voter appears to vote and gives oral or written affirmation that the voter has not moved out of the county but has maintained residence continuously within the county. That person shall be allowed to vote as provided in G.S. 163–82.15(f).

Added by Laws 1967, c. 775, § 1. Amended by Laws 1973, c. 793, §§ 22, 28; Laws 1973, c. 1223, § 4; Laws 1975, c. 395; Laws 1977, c. 265, § 3; Laws 1981, c. 39, § 1; Laws 1981, c. 87, § 1; Laws 1981, c. 308, § 1; Laws 1983, c. 411, §§ 1, 2; Laws 1985, c. 211, §§ 1, 2; Laws 1987, c. 691, § 1; Laws 1993 (Reg. Sess., 1994), c. 762, § 2, eff. Jan. 1, 1995; S.L. 1997–443, § 11A.117, eff. July 1, 1997; S.L. 1999–453, § 7(a), (b), eff. Jan. 1, 2000; S.L. 2001–319, §§ 8(a), 11, eff. July 28, 2001; S.L. 2005–428, § 14, eff. Sept. 22, 2005; S.L. 2007–391, §§ 18, 32, eff. Aug. 19, 2007.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

"Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or

affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.'' [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

S.L. 1999–453, §§ 1 and 10 provide:

''Section 1. This act shall be called 'The Campaign Reform Act of 1999'.''

''Section 10. Prosecutions for, or sentences based on, offenses occurring before the relevant effective date in this act are not abated or affected by this act, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.''

2001 Legislation

S.L. 2001–319, § 8(a), eff. July 28, 2001, in subsec. (d), rewrote the second paragraph, which prior thereto read:

''A county board shall send a confirmation mailing in accordance with this subdivision if the registrant remains on the list, the registrant has not voted in two successive presidential elections or in any election in between, and the county board has not confirmed the registrant's address by another means. The county board may send a confirmation mailing in accordance with this subdivision if the registrant has been identified as residing outside the county through change-of-address information supplied by the Postal Service through its licensees.''

S.L. 2001–319, § 11, eff. July 28, 2001, substituted ''Executive Director'' for ''Executive Secretary-Director'' and ''State Executive Secretary-Director'' throughout this section.

2005 Legislation

S.L. 2005–428, § 14, eff. Sept. 22, 2005, added subd. (d)(3).

S.L. 2005–428, § 18, provides:

''Sections 2, 6, 7, 8, 10, 12, 13, 14, 15, and 16 of this act are effective when this act becomes law and apply to all primaries and elections held on or after that date. The remainder of this act becomes effective January 1, 2006, and applies to all primaries and elections held on or after that date.''

2007 Legislation

S.L. 2007–391, § 18, in subd. (c)(1), substituted ''State Board of Elections'' for ''clerk of superior court'' and deleted the second sentence which prior thereto read: ''Any county board of elections receiving such a report about an individual who is a resident of another county in this State shall forward a copy of that report to the board of elections of that county as soon as possible.''

S.L. 2007–391, § 32, in subsec. (a), in the undesignated paragraph, added the fourth sentence relating to completion of list maintenance mailing programs.

§ 163–82.15. Change of address within the county

(a) Registrant's Duty to Report. — No registered voter shall be required to re-register upon moving from one precinct to another within the same county. Instead, a registrant shall notify the county board of the change of address by the close of registration for an election as set out in G.S. 163–82.6(c). In addition to any other method allowed by G.S. 163–82.6, the form may be submitted by electronic facsimile, under the same deadlines as if it had been submitted in person. The registrant shall make the notification by means of a voter registration form as described in G.S. 163–82.3, or by another written notice, signed by the registrant, that includes the registrant's full name, former residence address, new residence address, and the registrant's attestation that the registrant moved at least 30 days before the next primary or election from the old to the new address.

(b) Verification of New Address by Mail.—When a county board of elections receives a notice that a registrant in that county has changed residence within the same county, the county board shall

send a notice, by nonforwardable mail, to the registrant at the new address. The notice shall inform the registrant of any new precinct and voting place that will result from the change of address, and it shall state whether the registrant shall vote at the new voting place during the upcoming election or at a later election. If the Postal Service returns the county board's notice to the registrant as undeliverable, the county board shall either:

(1) Send a second notice by nonforwardable mail to the new address and, if it is returned as undeliverable, send to the registrant's old address a confirmation notice as described in G.S. 163–82.14(d)(2); or

(2) Send to the registrant's old address a confirmation notice as described in G.S. 163–82.14(d)(2) without first sending a second nonforwardable notice to the new address.

In either case, if the registrant does not respond to the confirmation notice as described in G.S. 163–82.14(d)(2), then the county board shall proceed with the removal of the registrant from the list of voters in accordance with G.S. 163–82.14(d).

(c) Board's Duty to Make Change.—If the county board confirms the registrant's new address in accordance with subsection (b) of this section, the county board shall as soon as practical change the record to reflect the new address.

(d) Unreported Move Within the Same Precinct.—A registrant who has moved from one address to another within the same precinct shall, notwithstanding failure to notify the county board of the change of address before an election, be permitted to vote at the voting place of that precinct upon oral or written affirmation by the registrant of the change of address before a precinct official at that voting place.

(e) Unreported Move to Another Precinct Within the County. — If a registrant has moved from an address in one precinct to an address in another precinct within the same county more than 30 days before an election and has failed to notify the county board of the change of address before the close of registration for that election, the county board shall permit that person to vote in that election. The county board shall permit the registrant described in this subsection to vote at the registrant's new precinct, upon the registrant's written affirmation of the new address, or, if the registrant prefers, at a central location in the county to be chosen by the county board. If the registrant appears at the old precinct, the precinct officials there shall send the registrant to the new precinct or, if the registrant prefers, to the central location, according to rules which shall be prescribed by the State Board of Elections. At the new precinct, the registrant shall be processed by a precinct transfer assistant, according to rules which shall be prescribed by the State Board of Elections. Any voter subject to

this subsection may instead vote a provisional ballot according to the provisions of G.S. 163–166.11.

(f) When Registrant Disputes Registration Records.—If the registration records indicate that the registrant has moved outside the precinct, but the registrant denies having moved from the address within the precinct previously shown on the records, the registrant shall be permitted to vote at the voting place for the precinct where the registrant claims to reside, if the registrant gives oral or written affirmation before a precinct official at that voting place.

(g) Precinct Transfer Assistants.—The county board of elections shall either designate a board employee or appoint other persons to serve as precinct transfer assistants to receive the election-day transfers of the voters described in subsection (e) of this section. In addition, board members and employees may perform the duties of precinct transfer assistants. The State Board of Elections shall promulgate uniform rules to carry out the provisions of this section, and shall define in those rules the duties of the precinct transfer assistant.

Added by Laws 1979, c. 135, § 2. Amended by Laws 1983, c. 392, § 2; Laws 1984 (Ex. Sess.), c. 3, §§ 1, 2; Laws 1987, c. 549, § 1; Laws 1989, c. 427; Laws 1991, c. 12, § 1; Laws 1991 (Reg. Sess., 1992), c. 1032, § 3; Laws 1993 (Reg. Sess., 1994), c. 762, § 2, eff. Jan. 1, 1995; S.L. 2001–314, § 1, eff. Jan. 1, 2002; S.L. 2005–2, § 3, eff. March 2, 2005; S.L. 2006–262, § 2, eff. Aug. 27, 2006.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

''Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.'' [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

2001 Legislation

S.L. 2001–314, § 1, eff. Jan. 1, 2002, in subsec. (a), inserted the third sentence.

2005 Legislation

S.L. 2005–2, § 3, eff. March 2, 2005, in subsec. (e), added the fifth sentence.

S.L. 2005–2, § 7, provides:

''This act is effective when it becomes law and, being declaratory of existing law, applies to all elections held after January 1, 2004, the effective date of G.S. 163–166.11.''

2006 Legislation

S.L. 2006–262, § 2, eff. Aug. 27, 2006, amended subsec. (a) by substituting ''the registrant's attestation that the registrant moved at least 30 days before the next primary or election'' for ''date of moving''.

S.L. 2006–262, § 5, provides:

''Section 4 of this act becomes effective January 1, 2007. The remainder of this act is effective when it becomes law, except that any criminal penalty resulting from this act becomes effective October 1, 2006. Prosecutions for offenses committed before October 1, 2006, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.''

Cross References

Initial counting of official ballots, see § 163–182.2.
Powers and duties, county boards of elections, see § 163–33.

Administrative Code References

Voter registration, see 8 NCAC 7B.0101 et seq.

§ 163–82.15A. Administrative change of registration when county line is adjusted

When a boundary between counties is established by legislation or under G.S. 153A–18, the Executive Director shall direct the county boards of elections involved to administratively change the voter registration of any voter whose county of residence is altered by the establishment of the boundary. The voter shall not be required to submit a new application to register, and the provisions of G.S. 163–57 shall apply to the determination of residency. The Executive Director shall prescribe a method of notifying the voter of the change of county registration, the correct precinct, and other relevant information.

Added by S.L. 2005–428, § 3(a), eff. Jan. 1, 2006.

Historical and Statutory Notes

2005 Legislation

S.L. 2005–428, § 18, provides:

''Sections 2, 6, 7, 8, 10, 12, 13, 14, 15, and 16 of this act are effective when this act becomes law and apply to all primaries and elections held on or after that date. The remainder of this act becomes effective January 1, 2006, and applies to all primaries and elections held on or after that date.''

§ 163–82.16. Change of name

(a) Registrant's Duty to Report.—If the name of a registrant is changed in accordance with G.S. 48–1–104, G.S. 50–12, or Chapter 101 of the General Statutes, or if a married registrant assumes the last name of the registrant's spouse, the registrant shall not be required to re-register, but shall report the change of name to the county board not later than the last day for applying to register to vote for an election in G.S. 163–82.6. The registrant shall report the change on a form described in G.S. 163–82.3 or on a voter registration card described in G.S. 163–82.8 or in another written statement that is signed, contains the registrant's full names, old and new, and the registrant's current residence address.

(b) Verification of New Name by Mail.—When a county board of elections receives a notice of name change from a registrant in that county, the county board shall send a notice, by nonforwardable mail, to the registrant's residence address. The notice shall state that the registrant's records will be changed to reflect the new name if the registrant does not respond that the name change is incorrect. If the Postal Service returns the county board's notice to the registrant as undeliverable, the county board shall

send to the registrant's residence address a confirmation notice as described in G.S. 163–82.14(d)(2).

If the registrant does not respond to the confirmation notice as described in G.S. 163–82.14(d)(2), then the county board shall proceed with the removal of the registrant from the list of voters in accordance with G.S. 163–82.14(d).

(c) Board's Duty to Make Change.—If the county board confirms the registrant's address in accordance with subsection (b) of this section and the registrant does not deny making the application for the name change, the county board shall as soon as practical change the record of the registrant's name to conform to that stated in the application.

(d) Unreported Name Change.—A registrant who has not reported a name change in accordance with subsection (a) of this section shall be permitted to vote if the registrant reports the name change to the chief judge at the voting place, or to the county board along with the voter's application for an absentee ballot.

Added by Laws 1979, c. 480. Amended by Laws 1981, c. 33, § 3; Laws 1989 (Reg. Sess., 1990), c. 991, § 3; Laws 1991 (Reg. Sess., 1992), c. 1032, § 3; Laws 1993 (Reg. Sess., 1994), c. 762, § 2, eff. Jan. 1, 1995; Laws 1995, c. 457, § 9, eff. July 1, 1996.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

"Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences." [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

Laws 1995, c. 457, §§ 11 and 12, provide:

"Section 11. Nothing in this act shall affect the validity of an adoption completed or validated under any prior law.

"Section 12. This act becomes effective July 1, 1996. Any petition for adoption filed prior to and still pending on the effective date of this act shall be completed in accordance with the law in effect immediately prior to the effective date of this act."

§ 163–82.17. Change of party affiliation

(a) Registrant's Duty to Report.—Any registrant who desires to have the record of his party affiliation or unaffiliated status changed on the registration list shall, no later than the last day for making application to register under G.S. 163–82.6 before the election, indicate the change on an application form as described in G.S. 163–82.3 or on a voter registration card described in G.S. 163–82.8. No registrant shall be permitted to change party affiliation or unaffiliated status for a primary, second primary, or special or general election after the deadline for registration applications for that election as set out in G.S. 163–82.6.

(b) Verification of Affiliation Change by Mail.—When a county board of elections receives a notice of change of party affiliation or unaffiliated status from a registrant in that county, the county board shall send a notice, by nonforwardable mail, to the registrant's residence address. The notice shall state that the registrant's records will be changed to reflect the change of status if the registrant does not respond by stating that he does not desire a change in status. The notice shall also inform the registrant of the time that the change of affiliation status will occur, and shall explain the provisions of subsection (d) of this section. If the Postal Service returns the county board's notice to the registrant as undeliverable, the county board shall send to the registrant's residence address a confirmation notice as described in G.S. 163–82.14(d)(2). If the registrant does not respond to the confirmation notice as described in G.S. 163–82.14(d)(2), then the county board shall proceed with the removal of the registrant from the list of voters in accordance with G.S. 163–82.14(d).

(c) Board's Duty to Make Change.—If the county board confirms the registrant's address in accordance with subsection (b) of this section and the registrant does not deny making the application to change affiliated or unaffiliated status, the county board of elections shall as soon as practical change the record of the registrant's party affiliation, or unaffiliated status, to conform to that stated in the application. Thereafter the voter shall be considered registered and qualified to vote in accordance with the change, except as provided in subsection (d) of this section.

(d) Deadline to Change Status Before Primary.—If a registrant applies to change party affiliation or unaffiliated status later than the last day for applying to register under G.S. 163–82.6 before a primary, the registrant shall not be entitled to vote in the primary of a party in which the registrant's status on that last day did not entitle the registrant to vote.

(e) Authority of County Board or Director to Make Correction.—If at any time the chairman or director of elections of the county board of elections is satisfied that an error has been made in designating the party affiliation of any voter on the registration records, then the chairman or director of elections of the county board of elections shall make the necessary correction after receiving from the voter a sworn statement as to the error and the correct status.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1973, c. 793, §§ 30, 31; Laws 1973, c. 1223, § 5; Laws 1975, c. 234, § 2; Laws 1977, c. 130, § 1; Laws 1977, c. 626, § 1; Laws 1981, c. 33, § 4; Laws 1981, c. 219, § 4; Laws 1983, c. 576, § 4; Laws 1987, c. 408, §§ 1, 6; Laws 1989, c. 635, § 2; Laws 1991 (Reg. Sess., 1992), c. 1032, § 4; Laws 1993 (Reg. Sess., 1994), c. 762, § 2, eff. Jan. 1, 1995; Laws 1995, c. 243, § 1, eff. Jan. 1, 1996.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

''Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.'' [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

Laws 1995, c. 243, § 1, provides:

''Wherever the term 'supervisor' appears in the General Statutes of North Carolina or in any local act in reference to the county supervisor of elections as provided in G.S. 163–35, the term is changed to read 'director.' ''

Cross References

Notices of candidacy, generally, see § 163–106.
Voters affiliated with expired political party, see § 163–97.1.

Notes of Decisions

Validity 1

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1. Validity

The primary election laws do not deprive voter of complete liberty of conscience or future conduct, if he concludes after primary that it is no longer desirable for him to support candidates of such party. Clark v. Meyland, 1964, 134 S.E.2d 168, 261 N.C. 140. Elections ⚷ 126(1)

The statute requiring, as a condition of party transfer, that voter make oath that he will support the nominees of party to which he is transferring ''in the next general election and the said party nominees thereafter until I shall, in good faith, change my party affiliation in the manner provided by law'' is invalid as violating principle of freedom of conscience and denying a free ballot. Clark v. Meyland, 1964, 134 S.E.2d 168, 261 N.C. 140. Elections ⚷ 21

The provision of statute requiring, as condition precedent to change of party affiliation, that voter take oath that he desires in good faith to change party affiliation is divisible from invalid requirement that voter will support the ''next'' and the ''thereafter'' candidates of the party, and hence statute stood with objectionable part eliminated. Clark v. Meyland, 1964, 134 S.E.2d 168, 261 N.C. 140. Statutes ⚷ 64(2)

§ 163–82.18. Appeal from denial of registration

(a) Right to Appeal.—Any applicant who receives notice of denial of registration pursuant to G.S. 163–82.7 may appeal the denial within five days after receipt of the notice of denial. The county board of elections shall promptly set a date for a public hearing. The notice of appeal shall be in writing and shall be signed by the appealing party, shall include the appealing party's name, date of birth, address, and reasons for the appeal.

(b) Hearing Before County Board of Elections.—The county board of elections shall set a date and time for a public hearing and shall notify the appealing party. Every person appealing to the county board of elections from denial of registration shall be entitled to a prompt and fair hearing on the question of the denied applicant's right and qualifications to register as a voter. All cases on appeal to a county board of elections shall be heard de novo.

Two members of the county board of elections shall constitute a quorum for the purpose of hearing appeals on questions of registration. The decision of a majority of the members of the board shall be the decision of the board. The board shall be authorized to subpoena witnesses and to compel their attendance and testimony under oath, and it is further authorized to subpoena papers and documents relevant to any matters pending before the board.

If at the hearing the board shall find that the person appealing from a denial of registration meets all requirements of law for registration as a voter in the county, the board shall enter an order directing that the appellant be registered and assign the appellant to the appropriate precinct. Not later than five days after an appeal is heard before the county board of elections, the board shall give written notice of its decision to the appealing party.

(c) Appeal to Superior Court.—Any person aggrieved by a final decision of a county board of elections denying registration may at any time within 10 days from the date on which he receives notice of the decision appeal to the superior court of the county in which the board is located. Upon such an appeal, the appealing party shall be the plaintiff and the county board of elections shall be the defendant, and the matter shall be heard de novo in the superior court in the manner in which other civil actions are tried and disposed of in that court.

If the decision of the court is that the order of the county board of elections shall be set aside, then the court shall enter its order so providing and adjudging that the plaintiff is entitled to be registered as a qualified voter in the precinct in which he originally made application to register, and in such case the plaintiff's name shall be entered in the registration book of that precinct. The court shall not order the registration of any person in a precinct in which he did not apply to register prior to the proceeding in court.

From the judgment of the superior court an appeal may be taken to the appellate division in the same manner as other appeals are taken from judgments of that court in civil actions.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1969,c. 44, § 82; Laws 1981, c. 542, §§ 1, 2; Laws 1993 (Reg. Sess., 1994), c. 762, § 2, eff. Jan. 1, 1995.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

''Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.'' [Amended

by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

§ 163–82.19. Voter registration at drivers license offices; coordination on data interface

Text of subsec. (a) eff. until Jan. 1, 2010.

(a) Voter Registration at Drivers License Offices. —The Division of Motor Vehicles shall, pursuant to the rules adopted by the State Board of Elections, modify its forms so that any eligible person who applies for original issuance, renewal or correction of a drivers license, or special identification card issued under G.S. 20–37.7 may, on a part of the form, complete an application to register to vote or to update his registration if the voter has changed his address or moved from one precinct to another or from one county to another. The person taking the application shall ask if the applicant is a citizen of the United States. If the applicant states that the applicant is not a citizen of the United States, or declines to answer the question, the person taking the application shall inform the applicant that it is a felony for a person who is not a citizen of the United States to apply to register to vote. Any person who willfully and knowingly and with fraudulent intent gives false information on the application is guilty of a Class I felony. The application shall state in clear language the penalty for violation of this section. The necessary forms shall be prescribed by the State Board of Elections. The form must ask for the previous voter registration address of the voter, if any. If a previous address is listed, and it is not in the county of residence of the applicant, the appropriate county board of elections shall treat the application as an authorization to cancel the previous registration and also process it as such under the procedures of G.S. 163–82.9. If a previous address is listed and that address is in the county where the voter applies to register, the application shall be processed as if it had been submitted under G.S. 163–82.9.

Registration shall become effective as provided in G.S. 163–82.7. Applications to register to vote accepted at a drivers license office under this section until the deadline established in G.S. 163–82.6(c)(2) shall be treated as timely made for an election, and no person who completes an application at that drivers license office shall be denied the vote in that election for failure to apply earlier than that deadline.

All applications shall be forwarded by the Department of Transportation to the appropriate board of elections not later than five business days after the date of acceptance, according to rules which shall be promulgated by the State Board of Elections.

Those rules shall provide for a paperless, instant, electronic transfer of applications to the appropriate board of elections.

Text of subsec. (a) eff. Jan. 1, 2010.

(a) Voter Registration at Drivers License Offices.—The Division of Motor Vehicles shall, pursuant to the rules adopted by the State Board of Elections, modify its forms so that any eligible person who applies for original issuance, renewal or correction of a drivers license, or special identification card issued under G.S. 20–37.7 may, on a part of the form, complete an application to register to vote, or to update the voter's registration if the voter has changed his or her address or moved from one precinct to another or from one county to another, or to preregister to vote. The person taking the application shall ask if the applicant is a citizen of the United States. If the applicant states that the applicant is not a citizen of the United States, or declines to answer the question, the person taking the application shall inform the applicant that it is a felony for a person who is not a citizen of the United States to apply to register to vote. Any person who willfully and knowingly and with fraudulent intent gives false information on the application is guilty of a Class I felony. The application shall state in clear language the penalty for violation of this section. The necessary forms shall be prescribed by the State Board of Elections. The form must ask for the previous voter registration address of the voter, if any. If a previous address is listed, and it is not in the county of residence of the applicant, the appropriate county board of elections shall treat the application as an authorization to cancel the previous registration and also process it as such under the procedures of G.S. 163–82.9. If a previous address is listed and that address is in the county where the voter applies to register, the application shall be processed as if it had been submitted under G.S. 163–82.9.

Registration shall become effective as provided in G.S. 163–82.7. Applications to register to vote accepted at a drivers license office under this section until the deadline established in G.S. 163–82.6(c)(2) shall be treated as timely made for an election, and no person who completes an application at that drivers license office shall be denied the vote in that election for failure to apply earlier than that deadline.

All applications shall be forwarded by the Department of Transportation to the appropriate board of elections not later than five business days after the date of acceptance, according to rules which shall be promulgated by the State Board of Elections. Those rules shall provide for a paperless, instant, electronic transfer of applications to the appropriate board of elections. Applications for preregistration to vote shall be forwarded to the State Board of Elections.

(b) Coordination on Data Interface. —The Department of Transportation jointly with the State Board of Elections shall develop and operate a computerized interface to match information in the database of the statewide voter registration system with the drivers license information in the Division of Motor Vehicles to the extent required to enable the State Board of Elections and the Department of Transportation to verify the accuracy of the information provided on applications for voter registration, whether the applications were received at drivers license offices or elsewhere. The Department of Transportation and the State Board shall implement the provisions of this subsection so as to comply with section 303 of the Help America Vote Act of 2002.[1] The Department of Transportation shall enter into an agreement with the Commissioner of Social Security so as to comply with section 303 of the Help America Vote Act of 2002.

Added by Laws 1983, c. 854, § 1. Amended by Laws 1991 (Reg. Sess., 1992), c. 1044, § 19(a); Laws 1993, c. 74, § 2; Laws 1993 (Reg. Sess., 1994), c. 762, § 2, eff. Jan. 1, 1995; S.L. 1998–149, § 11.1, eff. Dec. 1, 1998; S.L. 2001–319, § 7(a); S.L. 2003–226, § 7(b), eff. Jan. 1, 2004; S.L. 2009–541, § 13(a), eff. Jan. 1, 2010.

[1] 42 U.S.C.A. § 15483.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

''Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.'' [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

2001 Legislation

S.L. 2001–319, § 7(a), eff. Jan. 1, 2002, in the third paragraph, added the second sentence.

S.L. 2001–319, § 7(b), provides:

''This section becomes effective with respect to primaries and elections held on or after January 1, 2002.''

2003 Legislation

S.L. 2003–226, § 7(b), eff. Jan. 1, 2004, rewrote the section, which prior thereto read:

''§ 163–82.19. Voter registration at drivers license offices.

''The Division of Motor Vehicles shall, pursuant to the rules adopted by the State Board of Elections, modify its forms so that any eligible person who applies for original issuance, renewal or correction of a drivers license, or special identification card issued under G.S. 20-37.7 may, on a part of the form, complete an application to register to vote or to update his registration if the voter has changed his address or moved from one precinct to another or from one county to another. The person taking the application shall ask if the applicant is a citizen of the United States. If the applicant states that the applicant is not a citizen of the United States, or declines to answer the question, the person taking the application shall inform the applicant that it is a felony for a person who is not a citizen of the United States to apply to register to vote. Any person who willfully and knowingly and with fraudulent intent gives false information on the application is guilty of a Class I felony. The application shall state in clear language the penalty for violation of this section. The necessary forms shall be prescribed by the State Board of Elections. The form must ask for the previous voter

registration address of the voter, if any. If a previous address is listed, and it is not in the county of residence of the applicant, the appropriate county board of elections shall treat the application as an authorization to cancel the previous registration and also process it as such under the procedures of G.S. 163-82.9. If a previous address is listed and that address is in the county where the voter applies to register, the application shall be processed as if it had been submitted under G.S. 163-82.9.

''Registration shall become effective as provided in G.S. 163-82.7. Applications to register to vote accepted at a drivers license office under this section until the deadline established in G.S. 163-82.6(c)(2) shall be treated as timely made for an election, and no person who completes an application at that drivers license office shall be denied the vote in that election for failure to apply earlier than that deadline.

''All applications shall be forwarded by the Department of Transportation to the appropriate board of elections not later than five business days after the date of acceptance, according to rules which shall be promulgated by the State Board of Elections. Those rules shall provide for a paperless, instant, electronic transfer of applications to the appropriate county board of elections.''

S.L. 2003–226, §§ 1 and 22, eff. June 19, 2003, provide:

''Section 1. The purpose of this act is to ensure that the State of North Carolina has a system for all North Carolina elections that complies with the requirements for federal elections set forth in the federal Help America Vote Act of 2002, Public Law 107–252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481–15485.

''The General Assembly finds that the education and training of election officials as required by G.S. 163–82.34 has met and continues to meet the mandate for the education and training of precinct officials and other election officials in section 254(a)(3) of the Help America Vote Act of 2002. The General Assembly further finds that the establishment, development, and continued operation of the statewide list maintenance program for voter registration set forth in G.S. 163–82.14 has met and continues to meet the mandates of section 303(a)(2) of the Help America Vote Act of 2002.

''In certain other areas of the election statutes and other laws, the General Assembly finds that the statutes must be amended to comply with the Help America Vote Act.''

''Section 22. Sections 1, 3, 4, 5, 12, 18, 21, and 22 of this act are effective when this act becomes law. Sections 11 and 13 of this act become effective January 1, 2006. The remainder of this act becomes effective January 1, 2004. All sections of this act apply with respect to all primaries and elections held on or after the date they become effective.''

2009 Legislation

S.L. 2009–541, § 13(a), in subsec. (a), in the first sentence of the first paragraph, added '', or to preregister to vote'' after ''from one county to another'' and made nonsubstantive changes; and in subsec. (a), in the third paragraph, added the third sentence.

Cross References

Felony sentencing and punishment, see § 15A–1340.10 et seq.
Forfeiture of gain acquired through commission of felony, see § 14–2.3.
Forfeiture of licensing privileges after felony conviction, see § 15A–1331A.

§ 163–82.20. Voter registration at other public agencies

Text of section eff. until Jan. 1, 2010. See, also, section eff. Jan. 1, 2010.

(a) Voter Registration Agencies.—Every office in this State which accepts:

(1) Applications for a program of public assistance under Article 2 of Chapter 108A of the General Statutes or under Article 13 of Chapter 130A of the General Statutes;

(2) Applications for State-funded State or local government programs primarily engaged in providing services to persons with disabilities, with such office designated by the State Board of Elections; or

(3) Claims for benefits under Chapter 96 of the General Statutes, the Employment Security Law,

is designated as a voter registration agency for purposes of this section.

(b) Duties of Voter Registration Agencies.—A voter registration agency described in subsection (a) of this section shall, unless the applicant declines, in writing, to register to vote:

(1) Distribute with each application for service or assistance, and with each recertification, renewal, or change of address relating to such service or assistance:

a. The voter registration application form described in G.S. 163–82.3(a) or (b); or

b. The voter registration agency's own form, if it is substantially equivalent to the form described in G.S. 163–82.3(a) or (b) and has been approved by the State Board of Elections, provided that the agency's own form may be a detachable part of the agency's paper application or may be a paperless computer process, as long as the applicant is required to sign an attestation as part of the application to register.

(2) Provide a form that contains the elements required by section 7(a)(6)(B) of the National Voter Registration Act; and

(3) Provide to each applicant who does not decline to register to vote the same degree of assistance with regard to the completion of the registration application as is provided by the office with regard to the completion of its own forms.

(c) Provided that voter registration agencies designated under subdivision (a)(3) of this section shall only be required to provide the services set out in this subsection to applicants for new claims, reopened claims, and changes of address under Chapter 96 of the General Statutes, the Employment Security Law.

(d) Home Registration for Disabled.—If a voter registration agency provides services to a person with disability at the person's home, the voter registration agency shall provide the services described in subsection (b) of this section at the person's home.

(e) Prohibitions.—Any person providing any service under subsection (b) of this section shall not:

(1) Seek to influence an applicant's political preference or party registration, except that this shall not be construed to prevent the notice provided by G.S. 163–82.4(c) to be given if the applicant refuses to declare his party affiliation;

(2) Display any such political preference or party allegiance;

(3) Make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or

(4) Make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.

(f) Confidentiality of Declination to Register.—No information relating to a declination to register to vote in connection with an application made at a voter registration agency may be used for any purpose other than voter registration.

(g) Transmittal From Agency to Board of Elections.—Any voter registration application completed at a voter registration agency shall be accepted by that agency in lieu of the applicant's mailing the application. Any such application so received shall be transmitted to the appropriate board of elections not later than five business days after acceptance, according to rules which shall be promulgated by the State Board of Elections.

(h) Twenty–Five–Day Deadline for an Election.—Applications to register accepted by a voter registration agency shall entitle a registrant to vote in any primary, general, or special election unless the registrant shall have made application later than the twenty-fifth calendar day immediately preceding such primary, general, or special election, provided that nothing shall prohibit voter registration agencies from continuing to accept applications during that period.

(i) Ineligible Applications Prohibited.—No person shall make application to register to vote under this section if that person is ineligible to vote on account of age, citizenship, lack of residence for the period of time provided by law, or because of conviction of a felony.

Amended by Laws 1993 (Reg. Sess., 1994), c. 762, § 2, eff. Jan. 1, 1995; Laws 1995, c. 507, §§ 25.10, 28.12; Laws 1995 (Reg. Sess., 1996), c. 608, § 1.

§ 163–82.20. Voter registration at other public agencies

Text of section eff. Jan. 1, 2010. See, also, section eff. until Jan. 1, 2010.

(a) Voter Registration Agencies.—Every office in this State which accepts:

(1) Applications for a program of public assistance under Article 2 of Chapter 108A of the General Statutes or under Article 13 of Chapter 130A of the General Statutes;

(2) Applications for State-funded State or local government programs primarily engaged in providing services to per-

sons with disabilities, with such office designated by the State Board of Elections; or

(3) Claims for benefits under Chapter 96 of the General Statutes, the Employment Security Law,

is designated as a voter registration agency for purposes of this section.

(b) Duties of Voter Registration Agencies.—A voter registration agency described in subsection (a) of this section shall, unless the applicant declines, in writing, to register or preregister to vote:

(1) Distribute with each application for service or assistance, and with each recertification, renewal, or change of address relating to such service or assistance:

a. The voter registration application form described in G.S. 163–82.3(a) or (b); or

b. The voter registration agency's own form, if it is substantially equivalent to the form described in G.S. 163–82.3(a) or (b) and has been approved by the State Board of Elections, provided that the agency's own form may be a detachable part of the agency's paper application or may be a paperless computer process, as long as the applicant is required to sign an attestation as part of the application to register or preregister.

(2) Provide a form that contains the elements required by section 7(a)(6)(B) of the National Voter Registration Act; and

(3) Provide to each applicant who does not decline to register or preregister to vote the same degree of assistance with regard to the completion of the registration application as is provided by the office with regard to the completion of its own forms.

(c) Provided that voter registration agencies designated under subdivision (a)(3) of this section shall only be required to provide the services set out in this subsection to applicants for new claims, reopened claims, and changes of address under Chapter 96 of the General Statutes, the Employment Security Law.

(d) Home Registration for Disabled.—If a voter registration agency provides services to a person with disability at the person's home, the voter registration agency shall provide the services described in subsection (b) of this section at the person's home.

(e) Prohibitions.—Any person providing any service under subsection (b) of this section shall not:

(1) Seek to influence an applicant's political preference or party registration, except that this shall not be construed to prevent the notice provided by G.S. 163–82.4(c) to be given if the applicant refuses to declare his party affiliation;

(2) Display any such political preference or party allegiance;

(3) Make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering or preregistering to vote; or

(4) Make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or preregister or not to register or preregister has any bearing on the availability of services or benefits.

(f) Confidentiality of Declination to Register.—No information relating to a declination to register or preregister to vote in connection with an application made at a voter registration agency may be used for any purpose other than voter registration.

(g) Transmittal From Agency to Board of Elections.—Any voter registration or preregistration application completed at a voter registration agency shall be accepted by that agency in lieu of the applicant's mailing the application. Any such application so received shall be transmitted to the appropriate board of elections not later than five business days after acceptance, according to rules which shall be promulgated by the State Board of Elections.

(h) Twenty–Five–Day Deadline for an Election.—Applications to register accepted by a voter registration agency shall entitle a registrant to vote in any primary, general, or special election unless the registrant shall have made application later than the twenty-fifth calendar day immediately preceding such primary, general, or special election, provided that nothing shall prohibit voter registration agencies from continuing to accept applications during that period.

(i) Ineligible Applications Prohibited.—No person shall make application to register or preregister to vote under this section if that person is ineligible on account of age, citizenship, lack of residence for the period of time provided by law, or because of conviction of a felony.

Amended by Laws 1993 (Reg. Sess., 1994), c. 762, § 2, eff. Jan. 1, 1995; Laws 1995, c. 507, §§ 25.10, 28.12; Laws 1995 (Reg. Sess., 1996), c. 608, § 1; S.L. 2009–541, § 14(a), eff. Jan. 1, 2010.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

"Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences." [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

2009 Legislation

S.L. 2009–541, § 14(a), in subsec. (b), in the introductory paragraph, inserted

''or preregister'', in subd. (1)b., inserted ''or preregister'', and in subd. (3) inserted ''or preregister''; in subd. (e)(3), inserted ''or preregistering'' after ''registering''; in subsec. (g), substituted ''registration or preregistration application'' for ''registration application''; in subsec. (i), deleted ''to vote'' after ''if that person is ineligible''; and inserted ''or preregister'' after ''to register'' throughout the section.

§ 163–82.20A. Voter registration upon restoration of citizenship

The State Board of Elections, the Department of Correction, and the Administrative Office of the Courts shall jointly develop and implement educational programs and procedures for persons to apply to register to vote at the time they are restored to citizenship and all filings required have been completed under Chapter 13 of the General Statutes. Those procedures shall be designed to do both of the following:

(1) Inform the person that the restoration of rights removes the person's disqualification from voting, but that in order to vote the person must register to vote.

(2) Provide an opportunity to that person to register to vote.

At a minimum, the program shall include a written notice to the person whose citizenship has been restored, informing that person that the person may now register to vote, with a voter registration form enclosed with the notice.

Added by S.L. 2007–391, § 26(a), eff. Oct. 1, 2007.

Cross References

Voter registration upon restoration of citizenship, see § 163–82.20A.

§ 163–82.21. Voter registration at military recruitment offices

The Executive Director, jointly with the Department of Defense, shall develop and implement procedures for persons to apply to register to vote at recruitment offices of the Armed Forces of the United States in compliance with section 7(c) of the National Voter Registration Act.

Added by Laws 1993 (Reg. Sess., 1994), c. 762, § 2, eff. Jan. 1, 1995. Amended by S.L. 2001–319, § 11, eff. July 28, 2001.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

''Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.'' [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

2001 Legislation

S.L. 2001–319, § 11, eff. July 28, 2001, substituted ''Executive Director''

for ''Executive Secretary-Director'' and ''State Executive Secretary-Director'' throughout this section.

§ 163–82.22. Voter registration at public libraries

Every library covered by G.S. 153A–272 shall make available to the public the application forms described in G.S. 163–82.3, and shall keep a sufficient supply of the forms so that they are always available. Every library covered by G.S. 153A–272 shall designate at least one employee to assist voter registration applicants in completing the form during all times that the library is open.

Added by Laws 1975, c. 234, § 1. Amended by 1977, c. 626, § 1; Laws 1983, c. 558, §§ 2, 3; Laws 1983, c. 707; Laws 1991 (Reg. Sess., 1992), c. 973, §§ 1, 2; Laws 1991 (Reg. Sess., 1992), c. 1044, § 19(b); Laws 1993, c. 74, § 2; Laws 1993 (Reg. Sess., 1994), c. 762, § 2, eff. Jan. 1, 1995.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

''Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.'' [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

§ 163–82.23. Voter registration at public high schools

Text of section eff. until Jan. 1, 2010. See, also, section eff. Jan. 1, 2010.

Every public high school shall make available to its students and others who are eligible to register to vote the application forms described in G.S. 163–82.3, and shall keep a sufficient supply of the forms so that they are always available. A local board of education may, but is not required to, designate high school employees to assist in completing the forms. Only employees who volunteer for this duty may be designated by boards of education.

Added by Laws 1975, c. 234, § 1. Amended by 1977, c. 626, § 1; Laws 1983, c. 558, §§ 2, 3; Laws 1983, c. 707; Laws 1991 (Reg. Sess., 1992), c. 973, §§ 1, 2; Laws 1991 (Reg. Sess., 1992), c. 1044, § 19(b); Laws 1993, c. 74, § 2; Laws 1993 (Reg. Sess., 1994), c. 762, § 2, eff. Jan. 1, 1995.

§ 163–82.23. Voter registration at public high schools

Text of section eff. Jan. 1, 2010. See, also, section eff. until Jan. 1, 2010.

Every public high school shall make available to its students and others who are eligible to register and preregister to vote the application forms described in G.S. 163–82.3, and shall keep a sufficient supply of the forms so that they are always available. A

local board of education may, but is not required to, designate high school employees to assist in completing the forms. Only employees who volunteer for this duty may be designated by boards of education.

Added by Laws 1975, c. 234, § 1. Amended by 1977, c. 626, § 1; Laws 1983, c. 558, §§ 2, 3; Laws 1983, c. 707; Laws 1991 (Reg. Sess., 1992), c. 973, §§ 1, 2; Laws 1991 (Reg. Sess., 1992), c. 1044, § 19(b); Laws 1993, c. 74, § 2; Laws 1993 (Reg. Sess., 1994), c. 762, § 2, eff. Jan. 1, 1995; S.L. 2009–541, § 15(a), eff. Jan. 1, 2010.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

''Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.'' [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

2009 Legislation

S.L. 2009–541, § 15(a), in the first sentence, inserted ''and preregister'' after ''eligible to register''.

§ 163–82.24. Statewide training and certification for election officials

(a) Training. —The State Board of Elections shall conduct training programs in election law and procedures. Every county elections director shall receive training conducted by the State Board at least as often as required in the following schedule:

(1) Once during each odd-numbered year before the municipal election held in the county;

(2) Once during each even-numbered year before the first partisan primary; and

(3) Once during each even-numbered year after the partisan primaries but before the general election.

Every member of a county board of elections shall receive training conducted by the State Board at least once during the six months after the member's initial appointment and at least once again during the first two years of the member's service. The State Board of Elections shall promulgate rules for the training of precinct officials, which shall be followed by the county boards of elections.

(b) Certification. —The State Board of Elections shall conduct a program for certification of election officials. The program shall include training in election law and procedures. Before issuing certification to an election official, the State Board shall administer an examination designed to determine the proficiency of the

official in election law and procedures. The State Board shall set adequate standards for the passage of the examination.

Added by Laws 1993 (Reg. Sess., 1994), c. 762, § 2, eff. Jan. 1, 1995; Laws 1995, c. 243, § 1, eff. Jan. 1, 1996. Amended by S.L. 2001–319, § 2(a), eff. July 28, 2001.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

''Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.'' [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

Laws 1995, c. 243, § 1, provides:

''Wherever the term 'supervisor' appears in the General Statutes of North Carolina or in any local act in reference to the county supervisor of elections as provided in G.S. 163–35, the term is changed to read 'director.' ''

Laws 1995, c. 243, was ratified June 14, 1995.

2001 Legislation

S.L. 2001–319, § 2(a), eff. July 28, 2001, rewrote the section, which prior thereto read:

''§ 163–82.24. Statewide training for election officials

''The State Board of Elections shall conduct training programs in election law and procedures. Every county elections director shall receive training conducted by the State Board at least as often as required in the following schedule:

''(1) Once during each odd-numbered year before the municipal election held in the county;

''(2) Once during each even-numbered year before the first partisan primary; and

''(3) Once during each even-numbered year after the partisan primaries but before the general election.

''Every member of a county board of elections shall receive training conducted by the State Board at least once during the six months after the member's initial appointment and at least once again during the first two years of the member's service. The State Board of Elections shall promulgate rules for the training of precinct officials, which shall be followed by the county boards of elections.''

Cross References

County directors of elections, training and certification, see § 163–35.
Precinct chief judges, see § 163–41.

§ 163–82.25. Mandated voter registration drive

Text of section eff. until Jan. 1, 2010. See, also, section eff. Jan. 1, 2010.

The Governor shall proclaim as Citizens Awareness Month the month designated by the State Board of Elections during every even-numbered year. During that month, the State Board of Elections shall initiate a statewide voter registration drive and shall adopt rules under which county boards of elections shall conduct the drives. Each county board of elections shall partici-

pate in the statewide voter registration drives in accordance with the rules adopted by the State Board.

Added by Laws 1991 (Reg. Sess., 1992), c. 1044, § 19(e). Amended by Laws 1993 (Reg. Sess., 1994), c. 762, § 2, eff. Jan. 1, 1995.

§ 163–82.25. Mandated voter registration drive

Text of section eff. Jan. 1, 2010. See, also, section eff. until Jan. 1, 2010.

The Governor shall proclaim as Citizens Awareness Month the month designated by the State Board of Elections annually. During that month, the State Board of Elections shall initiate a statewide voter registration drive and shall adopt rules under which county boards of elections shall conduct the drives. Each county board of elections shall participate in the statewide voter registration drives and conduct voter registration and preregistration drives at public high schools in accordance with local board of education policies, school system administrative procedures, and guidelines of the State Board of Elections.

Added by Laws 1991 (Reg. Sess., 1992), c. 1044, § 19(e). Amended by Laws 1993 (Reg. Sess., 1994), c. 762, § 2, eff. Jan. 1, 1995; S.L. 2009–541, § 16(a), eff. Jan. 1, 2010.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

''Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.'' [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

2009 Legislation

S.L. 2009–541, § 16(a), in the first sentence, substituted ''annually'' for ''during every even-numbered year''; and, in the third sentence, substituted ''and conduct voter registration and preregistration drives at public high schools in accordance with local board of education policies, school system administrative procedures, and guidelines of the State Board of Elections'' for ''in accordance with the rules adopted by the State Board''.

§ 163–82.26. Rule-making authority

The State Board of Elections shall promulgate rules necessary to implement the provisions of this Article.

Added by Laws 1993 (Reg. Sess., 1994), c. 762, § 2, eff. Jan. 1, 1995.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

''Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses oc-

curring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.'' [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

§ 163–82.27. Help America Vote Act of 2002

As used in this Chapter, the term ''Help America Vote Act of 2002'' means the Help America Vote Act of 2002, Public Law 107–252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481–15485. Citations to titles and sections of the Help America Vote Act of 2002 are as they appear in the Public Law. The State Board shall have the authority to adopt rules and guidelines to implement the minimum requirements of the Help America Vote Act of 2002.

Added by S.L. 2003–226, § 21, eff. June 19, 2003.

Historical and Statutory Notes

2003 Legislation

S.L. 2003–226, §§ 1, 22, eff. June 19, 2003, provide:

''Section 1. The purpose of this act is to ensure that the State of North Carolina has a system for all North Carolina elections that complies with the requirements for federal elections set forth in the federal Help America Vote Act of 2002, Public Law 107–252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481–15485.

''The General Assembly finds that the education and training of election officials as required by G.S. 163–82.34 has met and continues to meet the mandate for the education and training of precinct officials and other election officials in section 254(a)(3) of the Help America Vote Act of 2002. The General Assembly further finds that the establishment, development, and continued operation of the statewide list maintenance program for voter registration set forth in G.S. 163–82.14 has met and continues to meet the mandates of section 303(a)(2) of the Help America Vote Act of 2002.

''In certain other areas of the election statutes and other laws, the General Assembly finds that the statutes must be amended to comply with the Help America Vote Act.''

''Section 22. Sections 1, 3, 4, 5, 12, 18, 21, and 22 of this act are effective when this act becomes law. Sections 11 and 13 of this act become effective January 1, 2006. The remainder of this act becomes effective January 1, 2004. All sections of this act apply with respect to all primaries and elections held on or after the date they become effective.''

§ 163–82.28. The HAVA Election Fund

There is established a special fund to be known as the Election Fund. All funds received for implementation of the Help America Vote Act of 2002, Public Law 107–252 [1], shall be deposited in that fund. The State Board of Elections shall use funds in the Election Fund only to implement HAVA.

Added by S.L. 2003–12, § 1, eff. April 16, 2003. Amended by S.L. 2005–276, § 23A.2(a), eff. July 1, 2005; S.L. 2005–323, § 7, eff. Aug. 26, 2005; S.L. 2006–264, § 76(d), eff. Aug. 27, 2006.

[1] 42 U.S.C.A. § 15481 et seq.

Historical and Statutory Notes

2003 Legislation

S.L. 2003–12, § 1, eff. April 16, 2003, was codified as this section by the Revisor of Statutes.

2005 Legislation

S.L. 2005–276, § 23A.2(a), eff. July 1, 2005, amended this section by inserting ''and for purposes permitted by HAVA to comply with State law.''

S.L. 2005–323, § 7, eff. Aug. 26, 2005, amended section by adding ''HAVA and for purposes permitted by HAVA to comply with State law.'' which was also added by S.L. 2005–276, § 23A.2(a), eff. July 1, 2005.

S.L. 2005–323, §§ 7.1 and 10 provide:

''Section 7.1. Each county shall receive a grant of up to twelve thousand dollars ($12,000) per polling place and one-stop site from the Election Fund created under G.S. 163–82.28 for voting equipment that complies with the requirements of HAVA and this act. The grant shall also include two backup units per county. Each county shall also receive a grant equal to one dollar ($1.00) per voter in the 2004 presidential election, but no less than ten thousand dollars ($10,000) or more than one hundred thousand dollars ($100,000), for central administrative software for tabulation.''

''Section 10. The requirement for testing a voting system in an election provided in G.S. 163–165.9(a)(3), as enacted in Section 4 of this act, does not apply to any voting system acquired before January 1, 2008, as long as the voting system is demonstrated in a public forum in the county. Notwithstanding G.S. 163–132.5G, as amended by this act, voting data by precinct shall be reported for the general elections of 2006 by March 1, 2007, and for the primary elections of 2006 by May 1, 2007. Except as otherwise provided in this act, the remainder of this act is effective when it becomes law.''

2006 Legislation

S.L. 2006–264, § 76(d), eff. Aug. 27, 2006, amended the section by deleting ''and for purposes permitted by HAVA to comply with state law'' at the end of the section.

2007 Legislation

S.L. 2007–144, § 1, provides:

''The State Board of Elections is authorized to expend funds from the Election Fund under G.S. 163–82.28 (HAVA funds) for maintenance performed on voting equipment, and funds in the amount of two million five hundred thousand dollars ($2,500,000) are hereby appropriated for the 2007–2008 fiscal year for that purpose.'' [Repealed by S.L. 2007–323, § 25.1(c), eff. July 1, 2007.]

§ 163–83. Reserved

Article 8

Challenges

Section

163–84. Time for challenge other than on day of primary or election.
163–85. Challenge procedure other than on day of primary or election.
163–86. Hearing on challenge.
163–87. Challenges allowed on day of primary or election.
163–88. Hearing on challenge made on day of primary or election.
163–88.1. Request for challenged ballot.
163–89. Procedures for challenging absentee ballots.
163–90. Challenge as felon; answer not to be used on prosecution.
163–90.1. Burden of proof.
163–90.2. Action when challenge sustained, overruled, or dismissed.
163–90.3. Making false affidavit perjury.

§ 163–84. Time for challenge other than on day of primary or election

The registration records of each county shall be open to inspection by any registered voter of the county, including any chief

judge or judge of elections, during the normal business hours of the county board of elections on the days when the board's office is open. At those times the right of any person to register, remain registered, or vote shall be subject to objection and challenge.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1973, c. 793, § 33; Laws 1993 (Reg. Sess., 1994), c. 762, § 24, eff. Jan. 1, 1995.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

"Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences." [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

Notes of Decisions

Construction and application 1

1. Construction and application

Legal remedy of challenging voters at city primary election held adequate to correct registration irregularities (Raleigh City Charter, Art. 7; C.S. § 5972). Glenn v. Culbreth, 1929, 150 S.E. 332, 197 N.C. 675. Elections ⚷ 116

Primary election registration cannot be declared void by mandamus, as this would be equivalent to action to try title to office. Glenn v. Culbreth, 1929, 150 S.E. 332, 197 N.C. 675. Mandamus ⚷ 74(3)

§ 163–85. Challenge procedure other than on day of primary or election

(a) Right to Challenge; When Challenge May Be Made.—Any registered voter of the county may challenge the right of any person to register, remain registered or vote in such county. No such challenge may be made after the twenty-fifth day before each primary, general, or special election.

(b) Challenges Shall Be Made to the County Board of Elections.—Each challenge shall be made separately, in writing, under oath and on forms prescribed by the State Board of Elections, and shall specify the reasons why the challenged voter is not entitled to register, remain registered, or vote. When a challenge is made, the board of elections shall cause the word "challenged" to be written in pencil on the registration records of the voter challenged. The challenge shall be signed by the challenger and shall set forth the challenger's address.

(c) Grounds for Challenge.—Such challenge may be made only for one or more of the following reasons:

(1) That a person is not a resident of the State of North Carolina, or

(2) That a person is not a resident of the county in which the person is registered, provided that no such challenge may be made if the person removed his residency and the period of removal has been less than 30 days, or

(3) That a person is not a resident of the precinct in which the person is registered, provided that no such challenge may be made if the person removed his residency and the period of removal has been less than 30 days, or

(4) That a person is not 18 years of age, or if the challenge is made within 60 days before a primary, that the person will not be 18 years of age by the next general election, or

(5) That a person has been adjudged guilty of a felony and is ineligible to vote under G.S. 163-55(2), or

(6), (7) Repealed by Laws 1985, c. 563, §§ 11.1, 11.2.

(7a) That a person is dead,

(8) That a person is not a citizen of the United States, or

(9) With respect to municipal registration only, that a person is not a resident of the municipality in which the person is registered.

(10) That the person is not who he or she represents himself or herself to be.

(d) Preliminary Hearing.—When a challenge is made, the county board of election shall schedule a preliminary hearing on the challenge, and shall take such testimony under oath and receive such other evidence proffered by the challenger as may be offered. The burden of proof shall be on the challenger, and if no testimony is presented, the board shall dismiss the challenge. If the challenger presents evidence and if the board finds that probable cause exists that the person challenged is not qualified to vote, then the board shall schedule a hearing on the challenge.

(e) Prima Facie Evidence That Voter No Longer Resides in Precinct.—The presentation of a letter mailed by returnable first-class mail to the voter at the address listed on the voter registration card and returned because the person does not live at the address shall constitute prima facie evidence that the person no longer resides in the precinct.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1973, c. 793, § 34; Laws 1979, c. 357, § 1; Laws 1985, c. 563, §§ 11 to 11.2, 11.5; Laws 1985, c. 589, § 60; Laws 1993 (Reg. Sess., 1994), c. 762, § 25, eff. Jan. 1, 1995; S.L. 2009–526, § 1.2, eff. Aug. 26, 2009; S.L. 2009–541, § 16.1(a), eff. Aug. 28, 2009; S.L. 2009–550, § 11, eff. Aug. 28, 2009.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

"Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after

the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.'' [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

2009 Legislation

S.L. 2009–526, § 1.2, and S.L. 2009–550, § 11, in subd. (c)(10), deleted ''presenting himself to vote'' following ''person'' and inserted ''or she'' and ''or herself''.

S.L. 2009–541, § 16.1(a), inserted subd. (c)(10).

Cross References

Action when challenge sustained, overruled, or dismissed, see § 163–90.2.
List maintenance; registration of voters, see § 163–82.14.

Notes of Decisions

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½. Due process

County board of elections violated due process rights of voter who was subject of voter registration challenge, where voter moved for recusal of board member with three supporting affidavits alleging the member had publicly stated that voter did not live in that county, board failed to make decision as to whether member should be disqualified, and board upheld the challenge to voter's registration by 2-1 vote in which member in question voted in the majority. Knight v. Higgs, 2008, 189 N.C.App. 696, 659 S.E.2d 742. Constitutional Law ⚷ 4232; Elections ⚷ 54

1. Board of elections, generally

In canvassing election returns and judicially determining the result, the board of canvassers must pass upon legality of any disputed ballots. Ledwell v. Proctor, 1942, 19 S.E.2d 234, 221 N.C. 161. Elections ⚷ 259

The board of elections has authority, judicial in its nature, to examine the election returns and decide upon their regularity, correctness and sufficiency, and to accept or reject them. Ledwell v. Proctor, 1942, 19 S.E.2d 234, 221 N.C. 161. Elections ⚷ 259

The declaration of board of elections of result of an election as judicially determined, and the certificate issued thereon must be taken as ''prima facie'' correct. Ledwell v. Proctor, 1942, 19 S.E.2d 234, 221 N.C. 161. Elections ⚷ 267

Although a certificate of election issued by board of elections is prima facie correct, resort, in proper instance, may be had to the court to pass upon correctness and sufficiency of the return and to determine true result of election as it affects right of parties before the court. Ledwell v. Proctor, 1942, 19 S.E.2d 234, 221 N.C. 161. Elections ⚷ 267

The court will not permit itself to be substituted for board of elections in the first instance for purpose of canvassing election returns from precinct officials and declaring the result thereof, but contesting candidates must first use machinery at hand before applying to court for relief. Ledwell v. Proctor, 1942, 19 S.E.2d 234, 221 N.C. 161. Elections ⚷ 271

1.5. Recusal

While county board of elections has the right, in hearing voter registration challenges, to consult with its attorney concerning a challenge to impartiality of a board member, board may not delegate its decision-making authority with respect to ruling on a motion for recusal. Knight v. Higgs, 2008, 189 N.C.App. 696, 659 S.E.2d 742. Elections ⚷ 54

1.6. Open meetings

Failure of county board of elections to consider, in a public setting, voter's motion to recuse board member from proceeding involving a challenge to a voter's registration violated the Open Meetings Law. Knight v. Higgs, 2008,

189 N.C.App. 696, 659 S.E.2d 742. Elections ⚷ 54

Closed session of county board of elections, which chair announced as being for the purpose of allowing board members to talk among themselves and make a decision concerning challenge to voter's registration, violated Open Meetings Law; there was no motion and vote taken on chair's announcement, nor was the stated purpose among the permitted exceptions to requirements of Open Meetings Law. Knight v. Higgs, 2008, 189 N.C.App. 696, 659 S.E.2d 742. Elections ⚷ 54

Chair's mere mention of discussing ''procedure'' with attorney for county board of elections was insufficient to invoke attorney-client privilege as basis under Open Meetings Law for board to go into closed session in proceeding involving a voter registration challenge. Knight v. Higgs, 2008, 189 N.C.App. 696, 659 S.E.2d 742. Elections ⚷ 54

Chair of county board of elections, acting alone, did not have the authority under Open Meetings Law to direct that the board go into closed session in proceeding involving a challenge to voter's registration; rather, a motion and a vote by the board to go into closed session was required. Knight v. Higgs, 2008, 189 N.C.App. 696, 659 S.E.2d 742. Elections ⚷ 54

2. Pleading

In voter's action against other voters in connection with their voter challenge of first voter's qualification to vote in specific county, first voter's complaint failed to adequately state claim for malicious prosecution. Hurow v. Miller, 1980, 262 S.E.2d 287, 45 N.C.App. 58. Malicious Prosecution ⚷ 47

In action to have relator declared a duly elected alderman of town, complaint which did not allege that returns of precinct officials had been canvassed, or that result of election had been judicially determined, or that a certificate of election had been issued to relator, or that board acted arbitrarily or in bad faith in refusing to issue certificate, failed to state a cause of action. Ledwell v. Proctor, 1942, 19 S.E.2d 234, 221 N.C. 161. Elections ⚷ 285(1)

3. Evidence

There was no substantial evidence to support finding of county board of elections that municipal election candidate for city council seat met residency requirement by establishing his domicile in ward 30 days prior to city council election, even though candidate acquired new residence in ward and expressed his intention to remain there permanently; candidate maintained his previous residence and spent approximately 50% of his time there, candidate did not change his address to that of new residence for any purpose, and candidate executed month-to-month lease for new residence because he wanted to see what would happen in election. Farnsworth v. Jones, 1994, 114 N.C.App. 182, 441 S.E.2d 597. Municipal Corporations ⚷ 138

In action in the nature of quo warranto by private citizens against candidates for office of sheriff to determine conflicting claims of the candidates, returns made by registrars and judges of election and abstract of votes for county officers prepared by county board of elections in compliance with statute, were properly admitted as substantive evidence, where properly authenticated. State ex rel. Freeman v. Ponder, 1951, 67 S.E.2d 292, 234 N.C. 294. Evidence ⚷ 383(3)

4. Mandamus

Voters who sought to compel county election officials to perform their duties with respect to making inquiry as to whether students registering to vote were residents of the county could not obtain that relief by challenging the registration of students who had already been registered so that their court action to compel the county election officials from performing their duties could be maintained despite a claim that they had not exhausted their administrative remedies through the challenged procedure. Lloyd v. Babb, 1979, 251 S.E.2d 843, 296 N.C. 416. Mandamus ⚷ 3(8)

Judicial purging of voter registrants was not an available remedy in a mandamus proceeding as it would be duplicative of the statutory process for challenging voters; persons seeking to challenge the registration of certain college students were not entitled to a judicial remedy identical to the administrative remedy merely because of the number of voters involved, some 6,000 to 10,000, or because of the possibility that the challenges might not be fairly heard by the county board. Lloyd v. Babb, 1979, 251 S.E.2d 843, 296 N.C. 416. Mandamus ⚷ 3(8)

5. Conclusions of law

Trial court's failure, on voter's appeal from decision of county board of elec-

tions to remove voter's name from county's registration rolls, to make conclusions of law that demonstrated court's consideration of relevant statutory factors in connection with voter's allegation that board violated Open Meetings Law, was reversible error. Knight v. Higgs, 2008, 189 N.C.App. 696, 659 S.E.2d 742. Elections ⚷ 112

6. Attorney fees

Voter whose pleadings in trial court sought to establish a violation of Open Meetings Law, on appeal from decision of county board of elections to remove voter's name from registration rolls, was ''prevailing party'' to whom a discretionary award of attorney fees should be considered on remand to trial court, where appellate court determined as a matter of law that an Open Meetings Law violation had occurred. Knight v. Higgs, 2008, 189 N.C.App. 696, 659 S.E.2d 742. Elections ⚷ 112

§ 163–86. Hearing on challenge

(a) A challenge made under G.S. 163–85 shall be heard and decided before the date of the next primary or election, except that if the board finds that because of the number of challenges, it cannot hold all hearings before the date of the election, it may order the challenges to be heard and decided at the next time the challenged person appears and seeks to vote, as if the challenge had been filed under G.S. 163–87. Unless the hearing is ordered held under G.S. 163–87, it shall be heard and decided by the board of elections.

(b) At least 10 days prior to the hearing scheduled under G.S. 163–86(c), the board of elections shall mail by first-class mail, a written notice of the challenge to the challenged voter, to the address of the voter listed in the registration records of the county. The notice shall state succinctly the grounds asserted, and shall state the time and place of the hearing. If the hearing is to be held at the polls, the notice shall state that fact and shall list the date of the next scheduled election, the location of the voter's polling place, and the time the polls will be open. A copy of the notice shall be sent to the person making the challenge and to the chairman of each political party in the county.

(c) At the time and place set for the hearing on a challenge entered prior to the date of a primary or election, the county board of elections shall explain to the challenged registrant the qualifications for registration and voting in this State. The board chairman, or in his absence the board secretary, shall then administer the following oath to the challenged registrant:

''You swear (or affirm) that the statements and information you shall give in this hearing with respect to your identity and qualifications to be registered and to vote shall be the truth, the whole truth, and nothing but the truth, so help you, God.''

After swearing the challenged registrant, the board shall examine him as to his qualifications to be registered and to vote. If the challenged registrant insists that he is qualified, the board shall tender to him the following oath or affirmation:

''You do solemnly swear (or affirm) that you are a citizen of the United States; that you are at least 18 years of age or will become 18 by the date of the next general election; that you have or will have resided in this State and in the precinct for which registered for 30 days by the date of the next primary or election; that you are not disqualified from voting by the Constitution or the laws of this State; that your name is ....., and that in such name you were duly registered as a voter of..... precinct; and that you are the person you represent yourself to be, so help you, God.''

If the challenged registrant refuses to take the tendered oath, or submit to the board the affidavit required by subsection (d), below, the challenge shall be sustained. If the challenged registrant takes the tendered oath, the board may, nevertheless, sustain the challenge if it finds the challenged registrant is not a legal voter.

The board, in conducting hearings on challenges, shall have authority to subpoena any witnesses it may deem appropriate, and administer the necessary oaths or affirmations to all witnesses brought before it to testify to the qualifications of the persons challenged.

(d) Appearance by Challenged Registrant.—The challenged registrant shall appear in person at the challenge hearing. If he is unable to appear in person, he may be represented by another person and must tender to the county board of elections an affidavit that he is a citizen of the United States, is at least 18 years of age or will become 18 by the date of the next general election, has or will have resided in this State and in the precinct for which registered for 30 days by the date of the next primary or election, is not disqualified from voting by the Constitution or laws of this State, is named..... and was duly registered as a voter of..... precinct in such name, and is the person represented to be by the affidavit.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1971, c. 1231, § 1; Laws 1973, c. 793, § 35; Laws 1979, c. 357, § 2; S.L. 2008–150, § 5(b), eff. Aug. 2, 2008.

Historical and Statutory Notes

2008 Legislation

S.L. 2008–150, § 5(b), in subsec. (c), in the third paragraph, and in subsec. (d), substituted ''primary or'' for ''general'' preceding election.

Cross References

Residence defined; voter qualifications, see § 163–57.

Notes of Decisions

Attorney fees 3.6
Board of elections 1
Conclusions of law 3.5
Conclusiveness, operation, and effect of decisions 2
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Open meetings 2.5
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Review 4

½. Due process

County board of elections violated due process rights of voter who was subject of voter registration challenge, where voter moved for recusal of board member with three supporting affidavits alleging the member had publicly stated that voter did not live in that county, board failed to make decision as to whether member should be disqualified, and board upheld the challenge to voter's registration by 2-1 vote in which member in question voted in the majority. Knight v. Higgs, 2008, 189 N.C.App. 696, 659 S.E.2d 742. Constitutional Law ⚷ 4232; Elections ⚷ 54

1. Board of elections

County board of elections is proper agency to canvass returns in primary for selection of party nominees for county offices as well as general election to fill such offices. Ponder v. Joslin, 1964, 138 S.E.2d 143, 262 N.C. 496. Elections ⚷ 126(7)

Statute, which was enacted in 1915, and which provides that when, on account of errors in tabulating returns and filling out blanks, result of election in any one or more precincts cannot be accurately known, county board of elections and state board of elections shall be allowed access to ballot boxes to make recount and declare results under such rules as state board of elections shall establish to protect integrity of election and rights of voters, to extent of conflict therewith, was repealed or superseded by statute, which was enacted in 1933, and providing that county board of elections shall have power and authority to pass judicially on all facts relative to election and judicially determine and declare results of election. Strickland v. Hill, 1960, 116 S.E.2d 463, 253 N.C. 198. Elections ⚷ 236

In canvassing election returns and judicially determining the result, the board of canvassers must pass upon legality of any disputed ballots. Ledwell v. Proctor, 1942, 19 S.E.2d 234, 221 N.C. 161. Elections ⚷ 259

The board of elections has authority, judicial in its nature, to examine the election returns and decide upon their regularity, correctness and sufficiency, and to accept or reject them. Ledwell v. Proctor, 1942, 19 S.E.2d 234, 221 N.C. 161. Elections ⚷ 259

1.5. Recusal

While county board of elections has the right, in hearing voter registration challenges, to consult with its attorney concerning a challenge to impartiality of a board member, board may not delegate its decision-making authority with respect to ruling on a motion for recusal. Knight v. Higgs, 2008, 189 N.C.App. 696, 659 S.E.2d 742. Elections ⚷ 54

2. Conclusiveness, operation, and effect of decisions

The declaration of board of elections of result of an election as judicially determined, and the certificate issued thereon must be taken as ''prima facie'' correct. Ledwell v. Proctor, 1942, 19 S.E.2d 234, 221 N.C. 161. Elections ⚷ 267

Although a certificate of election issued by board of elections is prima facie correct, resort, in proper instance, may be had to the court to pass upon correctness and sufficiency of the return and to determine true result of election as it affects right of parties before the court. Ledwell v. Proctor, 1942, 19 S.E.2d 234, 221 N.C. 161. Elections ⚷ 267

2.5. Open meetings

Failure of county board of elections to consider, in a public setting, voter's motion to recuse board member from proceeding involving a challenge to a voter's registration violated the Open Meetings Law. Knight v. Higgs, 2008, 189 N.C.App. 696, 659 S.E.2d 742. Elections ⚷ 54

Closed session of county board of elections, which chair announced as being for the purpose of allowing board members to talk among themselves and make a decision concerning challenge to voter's registration, violated Open Meetings Law; there was no motion and vote taken on chair's announcement, nor was the stated purpose among the permitted exceptions to requirements of Open Meetings Law. Knight v. Higgs, 2008, 189 N.C.App. 696, 659 S.E.2d 742. Elections ⚷ 54

Chair's mere mention of discussing ''procedure'' with attorney for county board of elections was insufficient to invoke attorney-client privilege as basis under Open Meetings Law for board to go into closed session in proceeding involving a voter registration challenge. Knight v. Higgs, 2008, 189 N.C.App. 696, 659 S.E.2d 742. Elections ⚷ 54

Chair of county board of elections, acting alone, did not have the authority under Open Meetings Law to direct that the board go into closed session in proceeding involving a challenge to voter's registration; rather, a motion and a vote by the board to go into closed session was required. Knight v. Higgs, 2008, 189 N.C.App. 696, 659 S.E.2d 742. Elections ⚷ 54

3. Mandamus

Voters who sought to compel county election officials to perform their duties with respect to making inquiry as to whether students registering to vote were residents of the county could not obtain that relief by challenging the registration of students who had already been registered so that their court action to compel the county election officials from performing their duties could be maintained despite a claim that they had not exhausted their administrative remedies through the challenged procedure. Lloyd v. Babb, 1979, 251 S.E.2d 843, 296 N.C. 416. Mandamus ⚷ 3(8)

Judicial purging of voter registrants was not an available remedy in a mandamus proceeding as it would be duplicative of the statutory process for challenging voters; persons seeking to challenge the registration of certain college students were not entitled to a judicial remedy identical to the administrative remedy merely because of the number of voters involved, some 6,000 to 10,000, or because of the possibility that the challenges might not be fairly heard by the county board. Lloyd v. Babb, 1979, 251 S.E.2d 843, 296 N.C. 416. Mandamus ⚷ 3(8)

3.5. Conclusions of law

Trial court's failure, on voter's appeal from decision of county board of elections to remove voter's name from county's registration rolls, to make conclusions of law that demonstrated court's consideration of relevant statutory factors in connection with voter's allegation that board violated Open Meetings Law, was reversible error. Knight v. Higgs, 2008, 189 N.C.App. 696, 659 S.E.2d 742. Elections ⚷ 112

3.6. Attorney fees

Voter whose pleadings in trial court sought to establish a violation of Open Meetings Law, on appeal from decision of county board of elections to remove voter's name from registration rolls, was "prevailing party" to whom a discretionary award of attorney fees should be considered on remand to trial court, where appellate court determined as a matter of law that an Open Meetings Law violation had occurred. Knight v. Higgs, 2008, 189 N.C.App. 696, 659 S.E.2d 742. Elections ⚷ 112

4. Review

There was no substantial evidence to support finding of county board of elections that municipal election candidate for city council seat met residency requirement by establishing his domicile in ward 30 days prior to city council election, even though candidate acquired new residence in ward and expressed his intention to remain there permanently; candidate maintained his previous residence and spent approximately 50% of his time there, candidate did not change his address to that of new residence for any purpose, and candidate executed month-to-month lease for new residence because he wanted to see what would happen in election. Farnsworth v. Jones, 1994, 114 N.C.App. 182, 441 S.E.2d 597. Municipal Corporations ⚷ 138

Affidavit of unsuccessful candidate at primary election providing that on closing of polls in four named precincts the ballot boxes were immediately opened and counting and tabulation of ballots were begun, and that no one who assisted or aided in counting tabulation was sworn as required by statute and that in all the precincts there were counters and tabulators who were not electors of the precinct, and that they were not instructed on how differently marked ballots should be counted and tabulated, and that unsuccessful candidate believed that if counting and tabulation of votes in the four precincts had been done in accordance with law, result would have been materially different and that unsuccessful candidate would have been successful candidate, constituted sufficient basis for county board of elections, in exercise of its judgment and discretion, to order and conduct a recount of the ballots and to declare and certify the unsuccessful candidate as nominee in accordance with recount. Strickland v. Hill, 1960, 116 S.E.2d 463, 253 N.C. 198. Elections ⚷ 126(7)

Rule of state board of elections is invalid to extent it is in conflict with statute giving county board of elections power and authority to pass judicially on all facts relative to election, and judi-

cially determine and declare result thereof, and power and authority to send for papers and persons and examine them, and pass on legality of any disputed ballots transmitted by any precinct officer. Strickland v. Hill, 1960, 116 S.E.2d 463, 253 N.C. 198. Elections ⚷ 260

The court will not permit itself to be substituted for board of elections in the first instance for purpose of canvassing election returns from precinct officials and declaring the result thereof, but contesting candidates must first use machinery at hand before applying to court for relief. Ledwell v. Proctor, 1942, 19 S.E.2d 234, 221 N.C. 161. Elections ⚷ 271

In action to have relator declared a duly elected alderman of town, complaint which did not allege that returns of precinct officials had been canvassed, or that result of election had been judicially determined, or that a certificate of election had been issued to relator, or that board acted arbitrarily or in bad faith in refusing to issue certificate, failed to state a cause of action. Ledwell v. Proctor, 1942, 19 S.E.2d 234, 221 N.C. 161. Elections ⚷ 285(1)

§ 163–87. Challenges allowed on day of primary or election

On the day of a primary or election, at the time a registered voter offers to vote, any other registered voter of the precinct may exercise the right of challenge, and when he does so may enter the voting enclosure to make the challenge, but he shall retire therefrom as soon as the challenge is heard.

On the day of a primary or election, any other registered voter of the precinct may challenge a person for one or more of the following reasons:

(1) One or more of the reasons listed in G.S. 163–85(c).

(2) That the person has already voted in that primary or election.

(3) Deleted by S.L. 2009–541, § 16.1(b), eff. Aug. 28, 2009.

(4) If the challenge is made with respect to voting in a partisan primary, that the person is a registered voter of another political party.

The chief judge, judge, or assistant appointed under G.S. 163–41 or 163–42 may enter challenges under this section against voters in the precinct for which appointed regardless of the place of residence of the chief judge, judge, or assistant.

If a person is challenged under this subsection, and the challenge is sustained under G.S. 163–85(c)(3), the voter may still transfer his registration under G.S. 163–82.15(e) if eligible under that section, and the registration shall not be cancelled under G.S. 163–90.2(a) if the transfer is made. A person who has transferred his registration under G.S. 163–82.15(e) may be challenged at the precinct to which the registration is being transferred.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1985, c. 563, §§ 11.4, 14; Laws 1987, c. 408, § 7; Laws 1993 (Reg. Sess., 1994), c. 762, §§ 5, 26, eff. Jan. 1, 1995; Laws 1995 (Reg. Sess., 1996), c. 734, § 4, eff. June 21, 1996; S.L. 2006–262, § 3(a), eff. Aug. 27, 2006; S.L. 2009–541, § 16.1(b), eff. Aug. 28, 2009.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

''Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.'' [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

2006 Legislation

S.L. 2006–262, § 3(a), eff. Aug. 27, 2006, rewrote section, which prior thereto read:

''On the day of a primary or election, at the time a registered voter offers to vote, any other registered voter of the precinct may exercise the right of challenge, and when he does so may enter the voting enclosure to make the challenge, but he shall retire therefrom as soon as the challenge is heard.

''On the day of a primary or election, any other registered voter of the precinct may challenge a person for one or more of the following reasons:

''(1) One or more of the reasons listed in G.S. 163–85(c), or

''(2) That the person has already voted in that primary or election, or

''(3) That the person presenting himself to vote is not who he represents himself to be.

''On the day of a party primary, any voter of the precinct who is registered as a member of the political party conducting the primary may, at the time any registrant proposes to vote, challenge his right to vote upon the ground that he does not affiliate with the party conducting the primary or does not in good faith intend to support the candidates nominated in that party's primary, and it shall be the duty of the chief judge and judges of election to determine whether or not the challenged registrant has a right to vote in that primary according to the procedures prescribed in G.S. 163–88; provided that no challenge may be made on the grounds specified in the paragraph against an unaffiliated voter voting in the primary under G.S. 163–74(a1).

''The chief judge, judge, or assistant appointed under G.S. 163–41 or 163–42 may enter challenges under this section against voters in the precinct for which appointed regardless of the place of residence of the chief judge, judge, or assistant.

''If a person is challenged under this subsection, and the challenge is sustained under G.S. 163–85(c)(3), the voter may still transfer his registration under G.S. 163–82.15(e) if eligible under that section, and the registration shall not be cancelled under G.S. 163–90.2(a) if the transfer is made. A person who has transferred his registration under G.S. 163–82.15(e) may be challenged at the precinct to which the registration is being transferred.''

S.L. 2006–262, § 5, provides:

''Section 4 of this act becomes effective January 1, 2007. The remainder of this act is effective when it becomes law, except that any criminal penalty resulting from this act becomes effective October 1, 2006. Prosecutions for offenses committed before October 1, 2006, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.''

2009 Legislation

S.L. 2009–541, § 16.1(b), in the second undesignated paragraph, deleted subd. (3), which formerly read:

''(3) That the person presenting himself to vote is not who he represents himself to be.''

Notes of Decisions

Construction and application 1

Mandamus 2

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1. Construction and application

The primary election laws confine qualified elector's right to vote in party

primaries to that of existing party with which he affiliates at time of primary election, but does not deprive voter of complete liberty of conscience or future conduct, if he concludes after primary that it is no longer desirable for him to support candidates of such party. States' Rights Democratic Party v. State Bd. of Elections, 1948, 49 S.E.2d 379, 229 N.C. 179. Elections ⚷ 126(4)

2. Mandamus

Voters who sought to compel county election officials to perform their duties with respect to making inquiry as to whether students registering to vote were residents of the county could not obtain that relief by challenging the registration of students who had already been registered so that their court action to compel the county election officials from performing their duties could be maintained despite a claim that they had not exhausted their administrative remedies through the challenged procedure. Lloyd v. Babb, 1979, 251 S.E.2d 843, 296 N.C. 416. Mandamus ⚷ 3(8)

Judicial purging of voter registrants was not an available remedy in a mandamus proceeding as it would be duplicative of the statutory process for challenging voters; persons seeking to challenge the registration of certain college students were not entitled to a judicial remedy identical to the administrative remedy merely because of the number of voters involved, some 6,000 to 10,000, or because of the possibility that the challenges might not be fairly heard by the county board. Lloyd v. Babb, 1979, 251 S.E.2d 843, 296 N.C. 416. Mandamus ⚷ 3(8)

§ 163–88. Hearing on challenge made on day of primary or election

A challenge entered on the day of a primary or election shall be heard and decided by the chief judge and judges of election of the precinct in which the challenged registrant is registered before the polls are closed on the day the challenge is made. When the challenge is heard the precinct officials conducting the hearing shall explain to the challenged registrant the qualifications for registration and voting in this State, and shall examine him as to his qualifications to be registered and to vote. If the challenged registrant insists that he is qualified, and if, by sworn testimony, he shall prove his identity with the person in whose name he offers to vote and his continued residence in the precinct since he was registered, one of the judges of election or the chief judge shall tender to him the following oath or affirmation, omitting the portions in brackets if the challenge is heard on the day of an election other than a primary:

"You do solemnly swear (or affirm) that you are a citizen of the United States; that you are at least 18 years of age [or will become 18 by the date of the next general election]; that you have [or will have] resided in this State and in the precinct for which registered for 30 days [by the date of the next general election]; that you are not disqualified from voting by the Constitution and laws of this State; that your name is ....., and that in such name you were duly registered as a voter of this precinct; that you are the person you represent yourself to be; [that you are affiliated with the ..... party]; and that you have not voted in this [primary] election at this or any other voting place. So help you, God."

If the challenged registrant refuses to take the tendered oath, the challenge shall be sustained, and the precinct officials conducting the hearing shall mark the registration records to reflect their decision, and they shall erase the challenged registrant's name from the pollbook if it has been entered therein. If the challenged registrant takes the tendered oath, the precinct officials conducting the hearing may, nevertheless, sustain the challenge unless they are satisfied that the challenged registrant is a legal voter. If they are satisfied that he is a legal voter, they shall overrule the challenge and permit him to vote. Whenever any person's vote is received after having taken the oath prescribed in this section, the chief judge or one of the judges of election shall write on the registration record and on the pollbook opposite the registrant's name the word ''sworn.''

Precinct election officials conducting hearings on challenges on the day of a primary or election shall have authority to administer the necessary oaths or affirmations to all witnesses brought before them to testify to the qualifications of the person challenged.

A letter or postal card mailed by returnable mail and returned by the United States Postal Service purportedly because the person no longer lives at that address or because a forwarding order has expired shall not be admissible evidence in a challenge heard under this section which was made under G.S. 163–87.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1971, c. 1231, § 1; Laws 1973, c. 1223, § 6; Laws 1985, c. 380, §§ 1, 1.1; Laws 1993 (Reg. Sess., 1994), c. 762, § 27, eff. Jan. 1, 1995.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

''Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.'' [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

Notes of Decisions

Admissibility of evidence 1

1. Admissibility of evidence

In action in the nature of quo warranto by private citizens against candidates for office of sheriff to determine conflicting claims of the candidates, returns made by registrars and judges of election and abstract of votes for county officers prepared by county board of elections in compliance with statute, were properly admitted as substantive evidence, where properly authenticated. State ex rel. Freeman v. Ponder, 1951, 67 S.E.2d 292, 234 N.C. 294. Evidence ⚷ 383(3)

§ 163–88.1. Request for challenged ballot

(a) If the decision of the chief judge and judges pursuant to G.S. 163–88 is to sustain the challenge, the challenged voter may

request a challenged ballot by submitting an application to the chief judge, such application shall include as part thereof an affidavit that such person possesses all the qualifications for voting and is entitled to vote at the election. The form of such affidavit shall be prescribed by the State Board of Elections and shall be available at the polls.

(b) Any person requesting a challenged ballot shall have the letter ''C'' entered at the appropriate place on the voter's permanent registration record. The voter's name shall be entered on a separate page in the pollbook entitled ''Challenged Ballot,'' and serially numbered. The challenged ballot shall be the same type of ballot used for absentee voters, and the chief judge shall write across the top of the ballot ''Challenged Ballot # . . . . . .,'' and shall insert the same serial number as entered in the pollbook. The chief judge shall deliver to such voter a challenged ballot together with an envelope marked ''Challenged Ballot'' and serially numbered. The challenged voter shall forthwith mark the ballot in the presence of the chief judge in such manner that the chief judge shall not know how the ballot is marked. He shall then fold the ballot in the presence of the chief judge so as to conceal the markings and deposit and seal it in the serially numbered envelope. He shall then deliver such envelope to the chief judge. The chief judge shall retain all such envelopes in an envelope provided by the county board of elections, which he shall seal immediately after the polls close, and deliver to the board chairman at the canvass.

(c) The chairman of the county board of elections shall preserve such ballots in the sealed envelopes for a period of six months after the election. However, in the case of a contested election, either party to such action may request the court to order that the sealed envelopes containing challenged ballots be delivered to the board of elections by the chairman. If so ordered, the board of elections shall then convene and consider each challenged ballot and rule as to which ballots shall be counted. In such consideration, the board may take such further evidence as it deems necessary, and shall have the power of subpoena. If any ballots are ordered to be counted, they shall be added to the vote totals.

Added by Laws 1979, c. 357, § 3. Amended by Laws 1993 (Reg. Sess., 1994), c. 762, §§ 5, 28, eff. Jan. 1, 1995.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

''Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those

prosecutions or sentences.'' [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

§ 163–89. Procedures for challenging absentee ballots

Text of subsec. (a) eff. until Jan. 1, 2010.

(a) Time for Challenge.—The absentee ballot of any voter may be challenged on the day of any statewide primary or general election or county bond election beginning no earlier than noon and ending no later than 5:00 P.M., or by the chief judge at the time of closing of the polls as provided in G.S. 163–232 and G.S. 163–251(b).

Text of subsec. (a) eff. Jan. 1, 2010.

(a) Time for Challenge.—The absentee ballot of any voter may be challenged on the day of any statewide primary or general election or county bond election beginning no earlier than noon and ending no later than 5:00 P. M., or by the chief judge at the time of closing of the polls as provided in G.S. 163–232 and G.S. 163–251(b). The absentee ballot of any voter received by the county board of elections pursuant to G.S. 163–231(b)(ii) or (iii) may be challenged no earlier than noon on the day following the election and no later than 5:00 p.m. on the next business day following the deadline for receipt of such absentee ballots.

(b) Who May Challenge.—Any registered voter of the same precinct as the absentee voter may challenge that voter's absentee ballot.

(c) Form and Nature of Challenge.—Each challenged absentee ballot shall be challenged separately. The burden of proof shall be on the challenger. Each challenge shall be made in writing and, if they are available, shall be made on forms prescribed by the State Board of Elections. Each challenge shall specify the reasons why the ballot does not comply with the provisions of this Article or why the absentee voter is not legally entitled to vote in the particular primary or election. The challenge shall be signed by the challenger.

(d) To Whom Challenge Addressed; to Whom Challenge Delivered.—Each challenge shall be addressed to the county board of elections. It may be filed with the board at its offices or with the chief judge of the precinct in which the challenger and absentee voter are registered. If it is delivered to the chief judge, the chief judge shall personally deliver the challenge to the chairman of the county board of elections on the day of the county canvass.

(e) Hearing Procedure.—All challenges filed under this section shall be heard by the county board of elections on the day set for the canvass of the returns. All members of the board shall attend the canvass and all members shall be present for the hearing of challenges to absentee ballots.

Before the board hears a challenge to an absentee ballot, the chairman shall mark the word ''challenged'' after the voter's name in the register of absentee ballot applications and ballots issued and in the pollbook of absentee voters.

The board then shall hear the challenger's reasons for the challenge, and it shall make its decision without opening the container-return envelope or removing the ballots from it.

The board shall have authority to administer the necessary oaths or affirmations to all witnesses brought before it to testify to the qualifications of the voter challenged or to the validity or invalidity of the ballot.

If the challenge is sustained, the chairman shall mark the word ''sustained'' after the word ''challenged'' following the voter's name in the register of absentee ballot applications and ballots issued and in the pollbook of absentee voters; the voter's ballots shall not be counted; and the container-return envelope shall not be opened but shall be marked ''Challenge Sustained.'' All envelopes so marked shall be preserved intact by the chairman for a period of six months from canvass day or longer if any contest then is pending concerning the validity of any absentee ballot.

If the challenge is overruled, the absentee ballots shall be removed from the container-return envelopes and counted by the board of elections, and the board shall adjust the appropriate abstracts of returns to show that the ballots have been counted and tallied in the manner provided for unchallenged absentee ballots.

If the challenge was delivered to the board by the chief judge of the precinct and was sustained, the board shall reopen the appropriate ballot boxes, remove such ballots, determine how those ballots were voted, deduct such ballots from the returns, and adjust the appropriate abstracts of returns.

Any voter whose ballots have been challenged may, either personally or through an authorized representative, appear before the board at the hearing on the challenge and present evidence as to the validity of the ballot.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1973, c. 536, § 4; Laws 1993 (Reg. Sess., 1994), c. 762, §§ 5, 29, eff. Jan. 1, 1995; S.L. 2009–537, § 8(c), eff. Jan. 1, 2010.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

''Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.'' [Amended by Laws 1995, c. 507, § 25.10(c), eff.

July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

2009 Legislation

S.L. 2009–537, § 8(c), in subsec. (a), added the second sentence.

S.L. 2009–537, § 11, provides:

"This act becomes effective January 1, 2010, and applies with respect to elections held on or after that date."

Cross References

Certified list of executed absentee ballots received on or after election day; publication of list, see § 163–232.1.

Certified list of executed absentee ballots, distribution, see § 163–232.

Notes of Decisions

Construction and application 1

1. Construction and application

In voter's action against other voters in connection with their voter challenge of first voter's qualification to vote in specific county, first voter's complaint failed to adequately state claim for malicious prosecution. Hurow v. Miller, 1980, 262 S.E.2d 287, 45 N.C.App. 58. Malicious Prosecution ⚷ 47

§ 163–90. Challenge as felon; answer not to be used on prosecution

If any registered voter is challenged as having been convicted of any crime which excludes him from the right of suffrage, he shall be required to answer any question in relation to the alleged conviction, but his answers to such questions shall not be used against him in any criminal prosecution.

Added by Laws 1967, c. 775, § 1.

§ 163–90.1. Burden of proof

(a) Challenges shall not be made indiscriminately and may only be made if the challenger knows, suspects or reasonably believes such a person not to be qualified and entitled to vote.

(b) No challenge shall be sustained unless the challenge is substantiated by affirmative proof. In the absence of such proof, the presumption shall be that the voter is properly registered or affiliated.

Added by Laws 1979, c. 357, § 4.

§ 163–90.2. Action when challenge sustained, overruled, or dismissed

(a) When any challenge is sustained for any cause listed under G.S. 163–85(c), the board shall cancel or correct the voter registration of the voter. The board shall maintain such record for at least six months and during the pendency of any appeal. The challenged ballot shall be counted for any ballot items for which the challenged voter is eligible to vote, as if it were a provisional official ballot under the provisions of G.S. 163–166.11(4).

(b) Repealed by S.L. 2006–262, § 3(b), eff. Aug. 27, 2006.

(c) When any challenge made under G.S. 163–85 is overruled or dismissed, the board shall erase the word ''challenged'' which appears on the person's registration records.

(d) A decision by a county board of elections on any challenge made under the provisions of this Article shall be appealable to the Superior Court of the county in which the offices of that board are located within 10 days. Only those persons against whom a challenge is sustained or persons who have made a challenge which is overruled shall have standing to file such appeal.

Added by Laws 1979, c. 357, § 4. Amended by Laws 1987 (Reg. Sess., 1988), c. 1028, § 11; S.L. 2006–262, § 3(b), eff. Aug. 27, 2006.

Historical and Statutory Notes

2006 Legislation

S.L. 2006–262, § 3(b), eff. Aug. 27, 2006, rewrote subsec. (a) and repealed subsec. (b), which prior thereto read:

''(a) When any challenge is sustained for any cause listed under G.S. 163-85(c), the board shall cancel the voter registration of the voter and shall remove his card from the book, but shall maintain such record for at least six months and during the pendency of any appeal.''

S.L. 2006–262, § 5, provides:

''Section 4 of this act becomes effective January 1, 2007. The remainder of this act is effective when it becomes law, except that any criminal penalty resulting from this act becomes effective October 1, 2006. Prosecutions for offenses committed before October 1, 2006, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.''

§ 163–90.3. Making false affidavit perjury

Any person who shall knowingly make any false affidavit or shall knowingly swear or affirm falsely to any matter or thing required by the terms of this Article to be sworn or affirmed shall be guilty of a Class I felony.

Added by Laws 1979, c. 357, § 4. Amended by Laws 1987, c. 565, § 2.

Cross References

Felony sentencing and punishment, see § 15A–1340.10 et seq.
Forfeiture of gain acquired through commission of felony, see § 14–2.3.
Forfeiture of licensing privileges after felony conviction, see § 15A–1331A.

Article 8A

HAVA Administrative Complaint Procedure

Section

163–91. Complaint procedure.
163–92 to 163–95. Reserved.

Historical and Statutory Notes

2003 Legislation

S.L. 2003–226, §§ 1 and 22, provide:

''Section 1. The purpose of this act is to ensure that the State of North Carolina has a system for all North Carolina elections that complies with the requirements for federal elections set forth in the federal Help America Vote

Act of 2002, Public Law 107–252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481–15485.

''The General Assembly finds that the education and training of election officials as required by G.S. 163–82.34 has met and continues to meet the mandate for the education and training of precinct officials and other election officials in section 254(a)(3) of the Help America Vote Act of 2002. The General Assembly further finds that the establishment, development, and continued operation of the statewide list maintenance program for voter registration set forth in G.S. 163–82.14 has met and continues to meet the mandates of section 303(a)(2) of the Help America Vote Act of 2002.

''In certain other areas of the election statutes and other laws, the General Assembly finds that the statutes must be amended to comply with the Help America Vote Act.''

''Section 22. Sections 1, 3, 4, 5, 12, 18, 21, and 22 of this act are effective when this act becomes law. Sections 11 and 13 of this act become effective January 1, 2006. The remainder of this act becomes effective January 1, 2004. All sections of this act apply with respect to all primaries and elections held on or after the date they become effective.''

§ 163–91. Complaint procedure

(a) The State Board of Elections shall establish a complaint procedure as required by section 402 of Title IV of the Help America Vote Act of 2002 [1] for the resolution of complaints alleging violations of Title III of that Act.

(b) With respect to the adoption of the complaint procedure under this section, the State Board of Elections is exempt from the requirements of Article 2A of Chapter 150B of the General Statutes. Prior to adoption or amendment of the complaint procedure under this section, the State Board of Elections shall complete all of the following:

(1) Publish the proposed plan in the North Carolina Register at least 30 days prior to the adoption of the final complaint procedure.

(2) Accept oral and written comments on the proposed complaint procedure.

(3) Hold at least one public hearing on the proposed complaint procedure.

(c) Hearings and final determinations of complaints filed under the procedure adopted pursuant to this section are not subject to Articles 3 and 4 of Chapter 150B of the General Statutes.

Added by S.L. 2003–226, § 17(a), eff. Jan. 1, 2004.

[1] 42 U.S.C.A. § 15512.

Historical and Statutory Notes

2003 Legislation

S.L. 2003–226, §§ 1, 22, eff. June 19, 2003, provide:

''Section 1. The purpose of this act is to ensure that the State of North Carolina has a system for all North Carolina elections that complies with the requirements for federal elections set forth in the federal Help America Vote Act of 2002, Public Law 107–252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481–15485.

''The General Assembly finds that the education and training of election officials as required by G.S. 163–82.34 has met and continues to meet the mandate for the education and training of precinct officials and other election offi-

cials in section 254(a)(3) of the Help America Vote Act of 2002. The General Assembly further finds that the establishment, development, and continued operation of the statewide list maintenance program for voter registration set forth in G.S. 163–82.14 has met and continues to meet the mandates of section 303(a)(2) of the Help America Vote Act of 2002.

''In certain other areas of the election statutes and other laws, the General Assembly finds that the statutes must be amended to comply with the Help America Vote Act.''

''Section 22. Sections 1, 3, 4, 5, 12, 18, 21, and 22 of this act are effective when this act becomes law. Sections 11 and 13 of this act become effective January 1, 2006. The remainder of this act becomes effective January 1, 2004. All sections of this act apply with respect to all primaries and elections held on or after the date they become effective.''

§§ 163–92 to 163–95. Reserved

SUBCHAPTER IV. POLITICAL PARTIES

Article 9

Political Party Definition

Section

163–96. ''Political party'' defined; creation of new party.
163–97. Termination of status as political party.
163–97.1. Voters affiliated with expired political party.
163–98. General election participation by new political party.
163–99. Use of schools and other public buildings for political meetings.
163–100 to 163–103. Reserved.

Cross References

Designation of tax by individual to political party, see § 105–159.1.

§ 163–96. ''Political party'' defined; creation of new party

(a) Definition. — A political party within the meaning of the election laws of this State shall be either:

(1) Any group of voters which, at the last preceding general State election, polled for its candidate for Governor, or for presidential electors, at least two percent (2%) of the entire vote cast in the State for Governor or for presidential electors; or

(2) Any group of voters which shall have filed with the State Board of Elections petitions for the formulation of a new political party which are signed by registered and qualified voters in this State equal in number to two percent (2%) of the total number of voters who voted in the most recent general election for Governor. Also the petition must be signed by at least 200 registered voters from each of four congressional districts in North Carolina. To be effective, the petitioners must file their petitions with the State Board of Elections before 12:00 noon on the first day of June preceding the day on which is to be held the first general State election in which the new political party desires to participate. The State Board of Elections shall forthwith determine the sufficiency of petitions filed with it and shall immediately communicate its determination to the State chairman of the proposed new political party.

(b) Petitions for New Political Party. — Petitions for the creation of a new political party shall contain on the heading of each page of the petition in bold print or all in capital letters the words: ''THE UNDERSIGNED REGISTERED VOTERS IN _____ COUNTY HEREBY PETITION FOR THE FORMATION OF A NEW POLITICAL PARTY TO BE NAMED _____ AND WHOSE

STATE CHAIRMAN IS _____, RESIDING AT _____
AND WHO CAN BE REACHED BY TELEPHONE AT _____ ''

All printing required to appear on the heading of the petition shall be in type no smaller than 10 point or in all capital letters, double spaced typewriter size. In addition to the form of the petition, the organizers and petition circulators shall inform the signers of the general purpose and intent of the new party.

The petitions must specify the name selected for the proposed political party. The State Board of Elections shall reject petitions for the formation of a new party if the name chosen contains any word that appears in the name of any existing political party recognized in this State or if, in the Board's opinion, the name is so similar to that of an existing political party recognized in this State as to confuse or mislead the voters at an election.

The petitions must state the name and address of the State chairman of the proposed new political party.

(b1) Each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained, and it shall be the chairman's duty:

(1) To examine the signatures on the petition and place a check mark on the petition by the name of each signer who is qualified and registered to vote in his county.

(2) To attach to the petition his signed certificate

a. Stating that the signatures on the petition have been checked against the registration records and

b. Indicating the number found qualified and registered to vote in his county.

(3) To return each petition, together with the certificate required by the preceding subdivision, to the person who presented it to him for checking.

The group of petitioners shall submit the petitions to the chairman of the county board of elections in the county in which the signatures were obtained no later than 5:00 P.M. on the fifteenth day preceding the date the petitions are due to be filed with the State Board of Elections as provided in subsection (a)(2) of this section. Provided the petitions are timely submitted, the chairman of the county board of elections shall proceed to examine and verify the signatures under the provisions of this subsection. Verification shall be completed within two weeks from the date such petitions are presented.

(c) Repealed by Laws 1983, c. 576, § 3.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1975, c. 179; Laws 1979, c. 411, § 3; Laws 1981, c. 219, §§ 1 to 3; Laws 1983, c. 576, §§ 1 to 3; S.L. 1997–456, § 27, eff. Aug. 29, 1997; S.L. 1999–424, § 5(a), eff. Aug. 5, 1999; S.L. 2004–127, § 14, eff. July 26, 2004; S.L. 2006–234, § 1, eff. Jan. 1, 2007.

Historical and Statutory Notes

2004 Legislation

S.L. 2004–127, § 14, eff. July 26, 2004, in the first paragraph of subsec. (b), deleted ''THE SIGNERS OF THIS PETITION INTEND TO ORGANIZE A NEW POLITICAL PARTY TO PARTICIPATE IN THE NEXT SUCCEEDING GENERAL ELECTION.'' from the end of the heading on the petition.

2006 Legislation

S.L. 2006–234, § 1, eff. Jan. 1, 2007, amended subd. (a)(1) by substituting ''two'' for ''ten'' and ''(2%)'' for ''(10%)''.

S.L. 2006–234, § 7, provides:

''This act becomes effective January 1, 2007, and applies to all primaries and elections held on or after that date.''

Cross References

Access to statewide voter registration file, see § 163–82.13.
Certified list of executed absentee ballots received on or after election day; publication of list, see § 163–232.1.
Certified list of executed absentee ballots, distribution, see § 163–232.
Powers and duties of State Board of Elections, voting systems, see § 163–165.7.
Special one-time permits for alcoholic beverages, see § 163–96.
Time of regular elections and primaries, § 163–1.
Use of schools and other public buildings for political meetings, see § 115C–527.

Notes of Decisions

Construction and application 2
Creation of new party, generally 4
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Validity 1

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1. Validity

North Carolina statutes restricting political party access to ballot by requiring that new party file petitions signed by registered voters numbering at least 2% of total number of votes in most recent general election in order to be listed and that to continue being listed party's nominee for governor or president must receive at least 10% of votes in general election do not unconstitutionally burden rights guaranteed by First and Fourteenth Amendments; higher percentage requirement for retention than for initial inclusion is permissible as requirements have different purposes, and lack of separate avenue for candidates to be listed on ballot without being classified as independent does not render statute unconstitutional. McLaughlin v. North Carolina Bd. of Elections, 1995, 65 F.3d 1215, certiorari denied 116 S.Ct. 1320, 517 U.S. 1104, 134 L.Ed.2d 472. Constitutional Law ⚷ 1467; Constitutional Law ⚷ 4231; Elections ⚷ 22

Requirement under North Carolina law that petition for inclusion of political party on ballot contain language that ''THE UNDERSIGNED REGISTERED VOTERS HEREBY PETITION FOR THE FORMATION OF A NEW POLITICAL PARTY'' and that ''THE SIGNERS OF THIS PETITION INTEND TO ORGANIZE A NEW POLITICAL PARTY TO PARTICIPATE IN THE NEXT SUCCEEDING GENERAL ELECTION'' did not violate party's rights under First and Fourteenth Amendments; party had made no showing that requirement burdened its protected rights, and reasonable voter could construe language to mean only that signers intend jointly—and not necessarily severally—to organize political party that is new in sense of not being presently qualified to participate in next general election. McLaughlin v. North Carolina Bd. of Elections, 1995, 65 F.3d 1215, certiorari denied 116 S.Ct. 1320, 517 U.S. 1104, 134 L.Ed.2d 472. Constitutional Law ⚷ 1465; Constitutional Law ⚷ 4231; Elections ⚷ 22; Constitutional Law ⚷ 1467

North Carolina statute increasing number of signatures required on petition to recognize a new political party and to grant that party access to ballot to 2% of number of persons who voted in most recent general election for governor was reasonable restriction on First and Fourteenth Amendment rights to valid access. McLaughlin v. North Carolina Bd. of Elections, 1994, 850 F.Supp. 373, affirmed 65 F.3d 1215,

certiorari denied 116 S.Ct. 1320, 517 U.S. 1104, 134 L.Ed.2d 472. Constitutional Law ⚷ 1467; Constitutional Law ⚷ 4231; Elections ⚷ 22

North Carolina statute requiring new political party which has gained ballot access to obtain 10% of vote for governor or president to retain recognition was not unconstitutionally unreasonable; it was not unfair to expect party to improve its showing of support from petition process for obtaining initial recognition to be accorded automatic ballot access, including that of primary elections. McLaughlin v. North Carolina Bd. of Elections, 1994, 850 F.Supp. 373, affirmed 65 F.3d 1215, certiorari denied 116 S.Ct. 1320, 517 U.S. 1104, 134 L.Ed.2d 472. Constitutional Law ⚷ 4231; Elections ⚷ 22

North Carolina statute requiring only minor political parties to have notarized signatures on petition to recognize party and requiring only minor political parties to pay a fee of five cents for each signature appearing on petition violated equal protection clause; although ostensible purpose of both was to prevent fraud by making sure only qualified voters signed petition, state did not advance interest in having both requirements and then only imposing them on minor political parties. McLaughlin v. North Carolina Bd. of Elections, 1994, 850 F.Supp. 373, affirmed 65 F.3d 1215, certiorari denied 116 S.Ct. 1320, 517 U.S. 1104, 134 L.Ed.2d 472. Constitutional Law ⚷ 3636; Elections ⚷ 22

North Carolina statute requiring political parties on their ballot access petition to proclaim in large capital letters "THE SIGNERS OF THIS PETITION INTEND TO ORGANIZE A NEW POLITICAL PARTY TO PARTICIPATE IN THE NEXT SUCCEEDING GENERAL ELECTION" did not impose unconstitutional restriction on voters-signers, although it was alleged that language confused voters by making them believe they had to actively participate in organization of political group. McLaughlin v. North Carolina Bd. of Elections, 1994, 850 F.Supp. 373, affirmed 65 F.3d 1215, certiorari denied 116 S.Ct. 1320, 517 U.S. 1104, 134 L.Ed.2d 472. Constitutional Law ⚷ 1467; Elections ⚷ 22; Constitutional Law ⚷ 1465

North Carolina's combination of five percent verification fee for signatures on petition to recognize minor political party, petition language, disaffiliation requirement if political party lost recognition and requirement that political party have 10% of voters in prior preceding election to retain election did not together freeze the status quo and did not render whole North Carolina statutory election scheme unconstitutional as a denial of equal protection. McLaughlin v. North Carolina Bd. of Elections, 1994, 850 F.Supp. 373, affirmed 65 F.3d 1215, certiorari denied 116 S.Ct. 1320, 517 U.S. 1104, 134 L.Ed.2d 472. Constitutional Law ⚷ 3636; Elections ⚷ 22

State law, which entitled new political parties to have names of their candidates for state, congressional or national office to be printed on ballot upon meeting a petition requirement, but did not entitle new parties' local candidates to have their names printed on ballot unless party had ten percent polling in last presidential or gubernatorial election denied members of those parties equal protection. New Alliance Party v. North Carolina State Bd. of Elections, 1988, 697 F.Supp. 904. Constitutional Law ⚷ 3636; Elections ⚷ 22

That portion of state election statute which required an independent candidate for President to file written petition signed by qualified voters equal in number of ten percent of those who voted for Governor in the last gubernatorial election was an unconstitutional infringement upon plaintiffs' rights to associate for the advancement of political beliefs, to cast their votes effectively, and to enjoy equal protection under law, in that in 1980 statute required independent candidates to produce over 166,000 signatures, while group of voters seeking a place on the ballot as a new party and candidate desiring to run in Presidential primary had to submit petitions signed by only 10,000 voters, and state asserted no rational basis, much less any compelling interest, for such disparate treatment. Greaves v. State Bd. of Elections of North Carolina, 1980, 508 F.Supp. 78. Constitutional Law ⚷ 1464; Constitutional Law ⚷ 3644; Elections ⚷ 21

Filing deadline contained in state election law, under which independent candidate's petitions had to be submitted to State Board of Elections by the last Friday in April before the general election, did not serve a compelling state interest and was an unconstitutional restriction on plaintiffs' rights to associate for advancement of political beliefs, to cast their votes effectively,

and to enjoy equal protection under law, in that early filing deadline was not necessary to preserve integrity of either direct party primary or general election ballot, and no interest was asserted, compelling or otherwise, which justified disparity in treatment of independent and party candidates. Greaves v. State Bd. of Elections of North Carolina, 1980, 508 F.Supp. 78. Constitutional Law ⚷ 1464; Constitutional Law ⚷ 3644; Elections ⚷ 21

Alternative means of access to the general election ballot, by means of running as an independent or third-party candidate or conducting a write-in campaign to obtain nomination, did not vitiate constitutional challenge to North Carolina statute which restricted access to primary election ballot by requiring payment of filing fee. Brown v. North Carolina State Bd. of Elections, 1975, 394 F.Supp. 359. Elections ⚷ 21

2. Construction and application

Notwithstanding that harm arising from statutory provision that anyone signing petition to have new political party put on ballot would automatically lose previous party affiliation and would have party affiliation changed to new party immediately following new party's certification was not technically irreparable, injunction against enforcement of such requirement against State Socialist Workers Party was warranted by balancing of hardships, likelihood of Party's success on the merits and public's interest in maintenance of First and Fourteenth Amendment values at stake. North Carolina Socialist Workers Party v. North Carolina State Bd. of Elections, 1982, 538 F.Supp. 864. Injunction ⚷ 138.51

The primary election laws confine qualified elector's right to vote in party primaries to that of existing party with which he affiliates at time of primary election, but does not deprive voter of complete liberty of conscience or future conduct, if he concludes after primary that it is no longer desirable for him to support candidates of such party. States' Rights Democratic Party v. State Bd. of Elections, 1948, 49 S.E.2d 379, 229 N.C. 179. Elections ⚷ 126(4)

3. Due process

Notice of, and opportunity for, hearing on petition for creation of new political party are necessary to meet constitutional requirement of "due process of law," which hears before it condemns, proceeds on inquiry, and renders judgment only after trial. States' Rights Democratic Party v. State Bd. of Elections, 1948, 49 S.E.2d 379, 229 N.C. 179. Constitutional Law ⚷ 4475

4. Creation of new party, generally

The Supreme Court cannot determine whether primary election laws impose on qualified voters, participating in primary elections of existing political parties, moral obligation to such party to refrain from signing statutory petition for creation of new political party during year in which such elections are held, but must decide whether participation in such elections legally disables qualified electors to sign such a petition during that year. States' Rights Democratic Party v. State Bd. of Elections, 1948, 49 S.E.2d 379, 229 N.C. 179. Elections ⚷ 154(1)

The statutory power of State Board of Elections to make reasonable rules for carrying into effect law governing creation of new political parties is subject to restriction that such rules must not conflict with any provisions of such law, even if such restriction were not specifically annexed by statute, to grant of such power, as constitution forbids legislature to delegate power to make law to any other body. States' Rights Democratic Party v. State Bd. of Elections, 1948, 49 S.E.2d 379, 229 N.C. 179. Administrative Law And Procedure ⚷ 387; Elections ⚷ 54

Regulations of State Board of Elections, requiring that voters petitioning for creation of new political party attach to and file with petition certificates from chairman of county boards of elections that registration and poll books disclose that requisite number of signers of petition are registered voters who have not voted in primary election of any existing party during year in which petition is signed, cannot be sustained as proper exercise of state board's rule making power for mere purpose of establishing expeditious procedure to determine whether petition is signed by requisite number of registered voters. States' Rights Democratic Party v. State Bd. of Elections, 1948, 49 S.E.2d 379, 229 N.C. 179. Administrative Law And Procedure ⚷ 390.1; Elections ⚷ 54

Regulations of State Board of Elections, requiring voters desiring to create new political party to attach to and file with petition therefor certificates from chairmen of county boards of elections that registration and poll books disclose

that required number of signers of petition are registered voters, who have not voted in primary election of any existing party during year in which petition is signed, are invalid as legislating rather than regulating. States' Rights Democratic Party v. State Bd. of Elections, 1948, 49 S.E.2d 379, 229 N.C. 179. Constitutional Law ⚷ 2621

5. Petitions

The duty to determine whether petition for organization of new political party is in accordance with statutory requirements devolves in first instance on State Board of Elections, which must ascertain whether petition is signed by required number of qualified registered voters. States' Rights Democratic Party v. State Bd. of Elections, 1948, 49 S.E.2d 379, 229 N.C. 179. Elections ⚷ 153

The State Board of Elections has authority to determine registration or nonregistration of signers of petition for creation of new political party by examination of registration books through agency of county election boards as matter of administrative routine before calling on signers to prove signature of petition by requisite number of qualified voters. States' Rights Democratic Party v. State Bd. of Elections, 1948, 49 S.E.2d 379, 229 N.C. 179. Elections ⚷ 153

The statute governing creation of new political parties imposes no duty on State Board of Elections to determine sufficiency of petition for organization of new party at time of its filing, but purpose of statutory provision for filing of petition with board at least 90 days before general election is to afford board approximately 60 days time in which to determine sufficiency of petition and print ballots bearing names of new party's nominees. States' Rights Democratic Party v. State Bd. of Elections, 1948, 49 S.E.2d 379, 229 N.C. 179. Elections ⚷ 153

The statute providing for creation of new political parties confers on any qualified voter legal right to sign petition therefor, irrespective of whether he has participated in primary election of existing political party during year in which petition is signed. States' Rights Democratic Party v. State Bd. of Elections, 1948, 49 S.E.2d 379, 229 N.C. 179. Elections ⚷ 121(1)

The primary election laws do not modify statute giving any qualified voter legal right to sign petition for creation of new political party, regardless of whether he has voted in primary election of existing party during year in which petition is signed and filed, as such laws are inapplicable to new parties created by such petitions, but apply only to existing political parties. States' Rights Democratic Party v. State Bd. of Elections, 1948, 49 S.E.2d 379, 229 N.C. 179. Elections ⚷ 121(1)

Where petition for creation of new political party was shown beyond doubt to have been signed by at least 10,000 qualified voters and otherwise met every statutory requirement, Superior Court properly granted writ of mandamus, ordering State Board of Elections to cause names of new party's nominees for President and Vice-President of the United States to be printed on official ballots for general election. States' Rights Democratic Party v. State Bd. of Elections, 1948, 49 S.E.2d 379, 229 N.C. 179. Mandamus ⚷ 74(3)

§ 163–97. Termination of status as political party

When any political party fails to meet the test set forth in G.S. 163–96(a)(1), it shall cease to be a political party within the meaning of the primary and general election laws and all other provisions of this Chapter.''

Added by Laws 1967, c. 775, § 1. Amended by S.L. 2006–234, § 2, eff. Jan. 1, 2007.

Historical and Statutory Notes

2006 Legislation

S.L. 2006–234, § 2, eff. Jan. 1, 2007, amended section by substituting ''meet the test set forth in G.S. 163–96(a)(1)'' for ''poll for its candidate for governor, or for presidential electors, at least ten percent (10%) of the entire vote cast in the State for presidential electors at a general election''.

S.L. 2006–234, § 7, provides:

''This act becomes effective January 1, 2007, and applies to all primaries and elections held on or after that date.''

Notes of Decisions

Validity 1

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1. Validity

North Carolina statutes restricting political party access to ballot by requiring that new party file petitions signed by registered voters numbering at least 2% of total number of votes in most recent general election in order to be listed and that to continue being listed party's nominee for governor or president must receive at least 10% of votes in general election do not unconstitutionally burden rights guaranteed by First and Fourteenth Amendments; higher percentage requirement for retention than for initial inclusion is permissible as requirements have different purposes, and lack of separate avenue for candidates to be listed on ballot without being classified as independent does not render statute unconstitutional. McLaughlin v. North Carolina Bd. of Elections, 1995, 65 F.3d 1215, certiorari denied 116 S.Ct. 1320, 517 U.S. 1104, 134 L.Ed.2d 472. Constitutional Law ⚷ 1467; Constitutional Law ⚷ 4231; Elections ⚷ 22

North Carolina statute requiring new political party which has gained ballot access to obtain 10% of vote for governor or president to retain recognition was not unconstitutionally unreasonable; it was not unfair to expect party to improve its showing of support from petition process for obtaining initial recognition to be accorded automatic ballot access, including that of primary elections. McLaughlin v. North Carolina Bd. of Elections, 1994, 850 F.Supp. 373, affirmed 65 F.3d 1215, certiorari denied 116 S.Ct. 1320, 517 U.S. 1104, 134 L.Ed.2d 472. Constitutional Law ⚷ 4231; Elections ⚷ 22

North Carolina's combination of five percent verification fee for signatures on petition to recognize minor political party, petition language, disaffiliation requirement if political party lost recognition and requirement that political party have 10% of voters in prior preceding election to retain election did not together freeze the status quo and did not render whole North Carolina statutory election scheme unconstitutional as a denial of equal protection. McLaughlin v. North Carolina Bd. of Elections, 1994, 850 F.Supp. 373, affirmed 65 F.3d 1215, certiorari denied 116 S.Ct. 1320, 517 U.S. 1104, 134 L.Ed.2d 472. Constitutional Law ⚷ 3636; Elections ⚷ 22

§ 163–97.1. Voters affiliated with expired political party

The State Board of Elections shall be authorized to promulgate appropriate procedures to order the county boards of elections to change the registration affiliation of all voters who are recorded on the voter registration books as being affiliated with a political party which has lost its legal status as provided in G.S. 163–97. The State Board of Elections shall not implement the authority contained in this section earlier than 90 days following the certification of the election in which the political party failed to continue its legal status as provided in G.S. 163–97. All voters affiliated with such expired political party shall be changed to ''unaffiliated'' designation by the State Board's order and all such registrants shall be entitled to declare a political party affiliation as provided in G.S. 163–82.17.

Added by Laws 1975, c. 789. Amended by Laws 1977, c. 408, § 1; S.L. 2004–127, § 10, eff. July 26, 2004.

Historical and Statutory Notes

2004 Legislation

S.L. 2004–127, § 10, eff. July 26, 2004, in the third sentence, substituted ''163–82.17'' for ''163–74(b)''.

§ 163–98. General election participation by new political party

In the first general election following the date on which a new political party qualifies under the provisions of G.S. 163–96, it shall be entitled to have the names of its candidates for national, State, congressional, and local offices printed on the official ballots upon paying a filing fee equal to that provided for candidates for the office in G.S. 163–107 or upon complying with the alternative available to candidates for the office in G.S. 163–107.1.

For the first general election following the date on which it qualifies under G.S. 163–96, a new political party shall select its candidates by party convention. Following adjournment of the nominating convention, but not later than the first day of July prior to the general election, the president of the convention shall certify to the State Board of Elections the names of persons chosen in the convention as the new party's candidates in the ensuing general election. Any candidate nominated by a new party shall be affiliated with the party at the time of certification to the State Board of Elections. The requirement of affiliation with the party will be met if the candidate submits at or before the time of certification as a candidate an application to change party affiliation to that party. The State Board of Elections shall print names thus certified on the appropriate ballots as the nominees of the new party. The State Board of Elections shall send to each county board of elections the list of any new party candidates so that the county board can add those names to the appropriate ballot.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1979, c. 411, § 4; S.L. 2002–159, § 55(b), eff. Jan. 1, 2003; S.L. 2006–234, § 3, eff. Jan. 1, 2007; S.L. 2008–150, § 10.1(a), eff. Jan. 1, 2009.

Historical and Statutory Notes

2008 Legislation

S.L. 2008–150, § 10.1(a), in the second paragraph, inserted the third and fourth sentences.

Notes of Decisions

Validity 1

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1. Validity

State law, which entitled new political parties to have names of their candidates for state, congressional or national office to be printed on ballot upon meeting a petition requirement, but did not entitle new parties' local candidates to have their names printed on ballot unless party had ten percent polling in last presidential or gubernatorial election denied members of those parties

equal protection. New Alliance Party v. North Carolina State Bd. of Elections, 1988, 697 F.Supp. 904. Constitutional Law ⚷ 3636; Elections ⚷ 22

Filing deadline contained in state election law, under which independent candidate's petitions had to be submitted to State Board of Elections by the last Friday in April before the general election, did not serve a compelling state interest and was an unconstitutional restriction on plaintiffs' rights to associate for advancement of political beliefs, to cast their votes effectively, and to enjoy equal protection under law, in that early filing deadline was not necessary to preserve integrity of either direct party primary or general election ballot, and no interest was asserted, compelling or otherwise, which justified disparity in treatment of independent and party candidates. Greaves v. State Bd. of Elections of North Carolina, 1980, 508 F.Supp. 78. Constitutional Law ⚷ 1464; Constitutional Law ⚷ 3644; Elections ⚷ 21

Alternative means of access to the general election ballot, by means of running as an independent or third-party candidate or conducting a write-in campaign to obtain nomination, did not vitiate constitutional challenge to North Carolina statute which restricted access to primary election ballot by requiring payment of filing fee. Brown v. North Carolina State Bd. of Elections, 1975, 394 F.Supp. 359. Elections ⚷ 21

§ 163–99. Use of schools and other public buildings for political meetings

The governing authority having control over schools or other public buildings which have facilities for group meetings, or where polling places are located, is hereby authorized and directed to permit the use of such buildings without charge, except custodial and utility fees, by political parties, as defined in G.S. 163-96, for the express purpose of annual or biennial precinct meetings and county and district conventions. Provided, that the use of such buildings by political parties shall not be permitted at times when school is in session or which would interfere with normal school activities or functions normally carried on in such school buildings, and such use shall be subject to reasonable rules and regulations of the school boards and other governing authorities.

Added by Laws 1975, c. 465. Amended by Laws 1983, c. 519, §§ 1, 2.

§§ 163–100 to 163–103. Reserved

SUBCHAPTER V. NOMINATION OF CANDIDATES

Article 10

Primary Elections

Section

163–104. Primaries governed by general election laws; authority of State Board of Elections to modify time schedule.
163–105. Payment of expense of conducting primary elections.
163–106. Notices of candidacy; pledge; with whom filed; date for filing; withdrawal.
163–107. Filing fees required of candidates in primary; refunds.
163–107.1. Petition in lieu of payment of filing fee.
163–108. Certification of notices of candidacy.
163–108.1. Nomination of members of House of Representatives.
163–109. Repealed.
163–110. Candidates declared nominees without primary.
163–111. Determination of primary results; second primaries.
163–112. Death of candidate before primary; vacancy in single office.
163–113. Nominee's right to withdraw as candidate.
163–114. Filling vacancies among party nominees occurring after nomination and before election.
163–115. Special provisions for obtaining nominations when vacancies occur in certain offices.
163–116 to 163–118. Repealed.
163–119. Voting by unaffiliated voter in party primary.
163–120, 163–121. Reserved.

Cross References

Election; term of office; oath; vacancy; office and office hours; appointment of acting clerk, see § 7A–100.

§ 163–104. Primaries governed by general election laws; authority of State Board of Elections to modify time schedule

Unless otherwise provided in this Chapter, primary elections shall be conducted as far as practicable in accordance with the general election laws of this State. All provisions of this Chapter and of other laws governing elections, not inconsistent with this Article and other provisions of law dealing specifically with primaries, shall apply as fully to primary elections and to the acts and things done thereunder as to general elections. Nevertheless, for purposes of primary elections the State Board of Elections may, by general rule, modify the general election law time schedule with regard to ascertaining, declaring, and reporting results.

All acts made criminal if committed in connection with a general election shall likewise be criminal, with the same punishment, when committed in a primary election held under the provisions of this Chapter.

Added by Laws 1967, c. 775, § 1.

Notes of Decisions

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Construction and application 2
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Election protests and contests 6
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Validity 1

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1. Validity

The primary election laws confine qualified elector's right to vote in party primaries to that of existing party with which he affiliates at time of primary election, but does not deprive voter of complete liberty of conscience or future conduct, if he concludes after primary that it is no longer desirable for him to support candidates of such party. States' Rights Democratic Party v. State Bd. of Elections, 1948, 49 S.E.2d 379, 229 N.C. 179. Elections ⚷ 126(4)

Statutes requiring candidate for public office to file notice of candidacy, to sign a pledge to abide by the results of primary, to pay a filing fee equal to one per cent. of annual salary of office sought, and providing that only those who complied with such provisions should have their names printed on official ballot, did not conflict with any provisions of the state or federal constitution. McLean v. Durham County Board of Elections, 1942, 21 S.E.2d 842, 222 N.C. 6. Elections ⚷ 21

The power to control and regulate primaries and elections as they affect county and state offices rests exclusively in the legislative branch of the state government unaffected by any provision of federal constitution except Fourteenth Amendment. McLean v. Durham County Board of Elections, 1942, 21 S.E.2d 842, 222 N.C. 6. Elections ⚷ 21

So long as there is no unjust discrimination, the state may, by exercising its inherent police power, suppress whatever evils may be incident to a primary or convention for the designation of candidates for election to public office. McLean v. Durham County Board of Elections, 1942, 21 S.E.2d 842, 222 N.C. 6. Elections ⚷ 21

The filing fee of one per cent of annual salary of office sought required by statute of a candidate for public office is not a "tax" within meaning of the constitutional provisions prescribing manner of passing laws imposing a tax, nor is it a "local law" condemned by the constitution, but is only one of the reasonable means adopted by legislature to regulate primary elections and to prevent wholesale filing of petitions for nominations regardless of fitness or qualification. McLean v. Durham County Board of Elections, 1942, 21 S.E.2d 842, 222 N.C. 6. Elections ⚷ 21; Statutes ⚷ 21; Statutes ⚷ 101(1)

2. Construction and application

Political party could not bring action challenging North Carolina's method of electing state trial court judges under First Amendment's free speech provisions where there was no indication that North Carolina laws subjected party members to threat of civil or criminal penalties for engaging in political expression. Republican Party of North Carolina v. Martin, 1992, 980 F.2d 943, rehearing denied 991 F.2d 1202, certiorari denied 114 S.Ct. 93, 510 U.S. 828, 126 L.Ed.2d 60, on remand 841 F.Supp. 722. Constitutional Law ⚷ 863; Constitutional Law ⚷ 859

As the North Carolina Australian Ballot Law did not repeal the primary law, and as the two acts deal with the same subject matter they must be construed in "pari materia". McLean v. Durham County Board of Elections, 1942, 21 S.E.2d 842, 222 N.C. 6. Statutes ⚷ 223.2(11)

The North Carolina Australian Ballot Law does not purport to supersede and replace the primary law but is merely amendatory of and supplementary to the primary law. McLean v. Durham County Board of Elections, 1942, 21 S.E.2d 842, 222 N.C. 6. Elections ⚷ 120

3. Ballots

Under the statutes regulating primaries and elections, only those who have been legally nominated for county office under the law applicable to the county in which the nomination is made are entitled to have their names appear on the official ballot. McLean v. Durham County Board of Elections, 1942, 21 S.E.2d 842, 222 N.C. 6. Elections ⚷ 126(5)

One who failed to file notice of his candidacy or to sign pledge to abide by results of primary or to pay filing fee required by statute, was not the "nominee" of any political party within meaning of primary law and was not entitled

to have his name placed on the official ballot. McLean v. Durham County Board of Elections, 1942, 21 S.E.2d 842, 222 N.C. 6. Elections ⚷ 126(5)

4. Creation of new parties

The statute providing for creation of new political parties confers on any qualified voter legal right to sign petition therefor, irrespective of whether he has participated in primary election of existing political party during year in which petition is signed. States' Rights Democratic Party v. State Bd. of Elections, 1948, 49 S.E.2d 379, 229 N.C. 179. Elections ⚷ 121(1)

The Supreme Court cannot determine whether primary election laws impose on qualified voters, participating in primary elections of existing political parties, moral obligation to such party to refrain from signing statutory petition for creation of new political party during year in which such elections are held, but must decide whether participation in such elections legally disables qualified electors to sign such a petition during that year. States' Rights Democratic Party v. State Bd. of Elections, 1948, 49 S.E.2d 379, 229 N.C. 179. Elections ⚷ 154(1)

Regulations of State Board of Elections, requiring that voters petitioning for creation of new political party attach to and file with petition certificates from chairman of county boards of elections that registration and poll books disclose that requisite number of signers of petition are registered voters who have not voted in primary election of any existing party during year in which petition is signed, cannot be sustained as proper exercise of state board's rule making power for mere purpose of establishing expeditious procedure to determine whether petition is signed by requisite number of registered voters. States' Rights Democratic Party v. State Bd. of Elections, 1948, 49 S.E.2d 379, 229 N.C. 179. Administrative Law And Procedure ⚷ 390.1; Elections ⚷ 54

Regulations of State Board of Elections, requiring voters desiring to create new political party to attach to and file with petition therefor certificates from chairmen of county boards of elections that registration and poll books disclose that required number of signers of petition are registered voters, who have not voted in primary election of any existing party during year in which petition is signed, are invalid as legislating rather than regulating. States' Rights Democratic Party v. State Bd. of Elections, 1948, 49 S.E.2d 379, 229 N.C. 179. Constitutional Law ⚷ 2621

The primary election laws do not modify statute giving any qualified voter legal right to sign petition for creation of new political party, regardless of whether he has voted in primary election of existing party during year in which petition is signed and filed, as such laws are inapplicable to new parties created by such petitions, but apply only to existing political parties. States' Rights Democratic Party v. State Bd. of Elections, 1948, 49 S.E.2d 379, 229 N.C. 179. Elections ⚷ 121(1)

5. Count of votes, returns, and canvass

County board of elections is proper agency to canvass returns in primary for selection of party nominees for county offices as well as general election to fill such offices. Ponder v. Joslin, 1964, 138 S.E.2d 143, 262 N.C. 496. Elections ⚷ 126(7)

State board of elections is appropriate agency to canvass and judicially declare results of primary for nomination of candidate in senatorial district composed of more than one county. Ponder v. Joslin, 1964, 138 S.E.2d 143, 262 N.C. 496. Elections ⚷ 126(7)

County board of elections in multiple county senatorial district has no power to canvass election returns and determine judicially nominee in such district but such power is vested exclusively in state board. Ponder v. Joslin, 1964, 138 S.E.2d 143, 262 N.C. 496. Elections ⚷ 126(7)

While returns certified to state board of elections or county board of elections, nothing else appearing, will be deemed prima facie correct, such certification is not conclusive and returns certified by county board may be collaterally attacked. Ponder v. Joslin, 1964, 138 S.E.2d 143, 262 N.C. 496. Elections ⚷ 267

6. Election protests and contests

Where only protest before state board of elections involving returns from multiple county senatorial districts related to one county, when amended returns from that county were certified in accordance with findings of fact and conclusions of law of state board, it would have legal duty to declare results of primary election and to certify nominee. Ponder v. Joslin, 1964, 138 S.E.2d 143, 262 N.C. 496. Elections ⚷ 153

When protest has been filed challenging legality of returns certified by county board of elections, state board of elections can go behind returns as certified and its duty is not restricted to computation and tabulation of returns as certified by various county boards. Ponder v. Joslin, 1964, 138 S.E.2d 143, 262 N.C. 496. Elections ⚷ 259

State board of elections is not limited merely to investigating frauds and irregularities in any county for sole purpose of making report of such frauds and irregularities to attorney general or solicitor for further investigation and prosecution. Ponder v. Joslin, 1964, 138 S.E.2d 143, 262 N.C. 496. Elections ⚷ 259

State board of elections is quasi-judicial agency and may, in primary or election in multiple county district, investigate alleged frauds and irregularities in any county upon appeal from county board or upon protest filed in apt time with state board and may take such action as findings of fact may justify, and may direct county board to amend returns in accordance therewith. Ponder v. Joslin, 1964, 138 S.E.2d 143, 262 N.C. 496. Elections ⚷ 153; Elections ⚷ 259

Findings of fact and conclusions of law made by state board of elections may be reviewed in action instituted in Superior Court of Wake county under statute; and in such an action appellant is not entitled to a jury trial. Ponder v. Joslin, 1964, 138 S.E.2d 143, 262 N.C. 496. Elections ⚷ 269; Jury ⚷ 19(1)

Whenever protest is filed before county board of elections in multiple county senatorial district, charging fraud and misconduct in connection with primary or election, and there is appeal from board or upon protest filed in apt time with state board, state board has right and duty to investigate charges and determine actual total of valid ballots cast and to require county board to amend returns accordingly, and, based upon its findings and amended returns, to determine which candidate is entitled to be certified as nominee in multiple county senatorial district. Ponder v. Joslin, 1964, 138 S.E.2d 143, 262 N.C. 496. Elections ⚷ 126(7); Elections ⚷ 259; Elections ⚷ 260

7. Special elections

Under statute providing that county governing body may submit order authorizing issuance of bonds to voters at a special election, or at regular election for county officers, but that no such special election may be held within month before or after regular election for county officers, term "regular election for county officers" does not include a party primary. Rider v. Lenoir County, 1953, 73 S.E.2d 913, 236 N.C. 620. Counties ⚷ 178

8. Injunction

Preliminary injunction modifying method of election for superior court judges whereby districtwide primary nominations were followed by statewide elections, was appropriate; plaintiffs raised serious questions as to whether challenged method of election denied plaintiffs equal protection by diluting voting franchise of Republican voters, harm to plaintiffs if preliminary relief was denied greatly outweighed likely harm to defendants upon issuing of injunction, and public interest demanded opportunity to choose from among most qualified candidates available for the office. Republican Party of North Carolina v. Hunt, 1994, 841 F.Supp. 722, affirmed as modified 27 F.3d 563. Injunction ⚷ 138.51

Contestant claiming to be entitled to be certified as party nominee for state senator in multiple county district was not entitled to have state board of elections restrained in order to keep board from completing investigation of protest filed, finding facts with respect thereto, and making conclusions of law based thereon. Ponder v. Joslin, 1964, 138 S.E.2d 143, 262 N.C. 496. Injunction ⚷ 80

§ 163–105. Payment of expense of conducting primary elections

The expense of printing and distributing the poll and registration books, blanks, and ballots for those offices required by G.S. 163–109(b) to be furnished by the State, and the per diem and expenses of the State Board of Elections while engaged in the discharge of primary election duties imposed by law upon that Board, shall be paid by the State.

The expenses of printing and distributing the ballots for those offices required by G.S. 163–109(c) to be furnished by counties, and the per diem (or salary) and expenses of the county board of elections and the chief judges and judges of election, while engaged in the discharge of primary election duties imposed by law upon them, shall be paid by the counties.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1985, c. 563, § 1; Laws 1993 (Reg. Sess., 1994), c. 762, § 30, eff. Jan. 1, 1995.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

"Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences." [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

§ 163–106. Notices of candidacy; pledge; with whom filed; date for filing; withdrawal

Text of subsec. (a) eff. until Jan. 1, 2010.

(a) Notice and Pledge. – No one shall be voted for in a primary election without having filed a notice of candidacy with the appropriate board of elections, State or county, as required by this section. To this end every candidate for selection as the nominee of a political party shall file with and place in the possession of the board of elections specified in subsection (c) of this section, a notice and pledge in the following form:

Date _____

I hereby file notice as a candidate for nomination as _____ in the _____ party primary election to be held on _____, _____. I affiliate with the _____ party, (and I certify that I am now registered on the registration records of the precinct in which I reside as an affiliate of the _____ party.)

I pledge that if I am defeated in the primary, I will not run for any office as a write-in candidate in the next general election.

Signed _____

Name of candidate

Witness:

_____

_____

(Title of witness)

Each candidate shall sign the notice of candidacy in the presence of the chairman or secretary of the board of elections, State or county, with which the candidate files. In the alternative, a candidate may have the candidate's signature on the notice of candidacy acknowledged and certified to by an officer authorized to take acknowledgments and administer oaths, in which case the

candidate may mail or deliver by commercial courier service the candidate's notice of candidacy to the appropriate board of elections.

In signing the notice of candidacy the candidate shall use only that candidate's legal name and may use any nickname by which he is commonly known. A candidate may also, in lieu of that candidate's legal first name and legal middle initial or middle name (if any) sign a nickname, provided that the candidate appends to the notice of candidacy an affidavit that the candidate has been commonly known by that nickname for at least five years prior to the date of making the affidavit. The candidate shall also include with the affidavit the way that candidate's name (as permitted by law) should be listed on the ballot if another candidate with the same last name files a notice of candidacy for that office.

A notice of candidacy signed by an agent or any person other than the candidate shall be invalid.

Prior to the date on which candidates may commence filing, the State Board of Elections shall print and furnish, at State expense, to each county board of elections a sufficient number of the notice of candidacy forms prescribed by this subsection for use by candidates required to file with county boards of elections.

Text of subsec. (a) eff. Jan. 1, 2010.

(a) Notice and Pledge.—No one shall be voted for in a primary election without having filed a notice of candidacy with the appropriate board of elections, State or county, as required by this section. To this end every candidate for selection as the nominee of a political party shall file with and place in the possession of the board of elections specified in subsection (c) of this section, a notice and pledge in the following form:

''Date . . . . . .

I hereby file notice as a candidate for nomination as . . . . . in the . . . . . party primary election to be held on . . . . . , ... I affiliate with the . . . . . party, (and I certify that I am now registered on the registration records of the precinct in which I reside as an affiliate of the . . . . . party.)

I pledge that if I am defeated in the primary, I will not run for the same office as a write-in candidate in the next general election.

Signed

(Name of Candidate)

Witness:

. . . . . .

. . . . . .

(Title of witness)''

Each candidate shall sign the notice of candidacy in the presence of the chairman or secretary of the board of elections, State or county, with which the candidate files. In the alternative, a

candidate may have the candidate's signature on the notice of candidacy acknowledged and certified to by an officer authorized to take acknowledgments and administer oaths, in which case the candidate may mail or deliver by commercial courier service the candidate's notice of candidacy to the appropriate board of elections.

In signing the notice of candidacy the candidate shall use only that candidate's legal name and may use any nickname by which he is commonly known. A candidate may also, in lieu of that candidate's legal first name and legal middle initial or middle name (if any) sign a nickname, provided that the candidate appends to the notice of candidacy an affidavit that the candidate has been commonly known by that nickname for at least five years prior to the date of making the affidavit. The candidate shall also include with the affidavit the way that candidate's name (as permitted by law) should be listed on the ballot if another candidate with the same last name files a notice of candidacy for that office.

A notice of candidacy signed by an agent or any person other than the candidate shall be invalid.

Prior to the date on which candidates may commence filing, the State Board of Elections shall print and furnish, at State expense, to each county board of elections a sufficient number of the notice of candidacy forms prescribed by this subsection for use by candidates required to file with county boards of elections.

(a1) Disclosure of Felony Conviction.—At the same time the candidate files notice of candidacy under this section, the candidate shall file with the same office a statement answering the following question: ''Have you ever been convicted of a felony?'' The State Board of Elections shall adapt the notice of candidacy form to include the statement required by this subsection. The form shall make clear that a felony conviction need not be disclosed if the conviction was dismissed as a result of reversal on appeal or resulted in a pardon of innocence or expungement. The form shall require a candidate who answers ''yes'' to the question to provide the name of the offense, the date of conviction, the date of the restoration of citizenship rights, and the county and state of conviction. The form shall require the candidate to swear or affirm that the statements on the form are true, correct, and complete to the best of the candidate's knowledge or belief. The form shall be available as a public record in the office of the board of elections where the candidate files notice of candidacy and shall contain an explanation that a prior felony conviction does not preclude holding elective office if the candidate's rights of citizenship have been restored. This subsection shall also apply to individuals who become candidates for election by the people under G.S. 163–114, 163–122, 163–123, 163–98, 115C–37,

130A–50, Article 24 of Chapter 163 of the General Statutes, or any other statute or local act. Those individuals shall complete the question at the time the documents are filed initiating their candidacy. The State Board of Elections shall adapt those documents to include the statement required by this subsection. If an individual does not complete the statement required by this subsection, the board of elections accepting the filing shall notify the individual of the omission, and the individual shall have 48 hours after notice to complete the statement. If the individual does not complete the statement at the time of filing or within 48 hours after the notice, the individual's filing is not complete, the individual's name shall not appear on the ballot as a candidate, and votes for the individual shall not be counted. It is a Class I felony to complete the form knowing that information as to felony conviction or restoration of citizenship is untrue. This subsection shall not apply to candidates required by G.S. 138A–22(d) to file Statements of Economic Interest.

(b) Eligibility to File. – No person shall be permitted to file as a candidate in a primary if, at the time he offers to file notice of candidacy, he is registered on the appropriate registration book or record as an affiliate of a political party other than that in whose primary he is attempting to file. No person who has changed his political party affiliation or who has changed from unaffiliated status to party affiliation as permitted in G.S. 163–82.17, shall be permitted to file as a candidate in the primary of the party to which he changed unless he has been affiliated with the political party in which he seeks to be a candidate for at least 90 days prior to the filing date for the office for which he desires to file his notice of candidacy.

A person registered as ''unaffiliated'' shall be ineligible to file as a candidate in a party primary election.

(c) Time for Filing Notice of Candidacy. – Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the second Monday in February and no later than 12:00 noon on the last business day in February preceding the primary:

Governor

Lieutenant Governor

All State executive officers

United States Senators

Members of the House of Representatives of the United States

District attorneys

Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the county board of

elections no earlier than 12:00 noon on the second Monday in February and no later than 12: 00 noon on the last business day in February preceding the primary:

State Senators

Members of the State House of Representatives

All county offices.

(d) Notice of Candidacy for Certain Offices to Indicate Vacancy. – In any primary in which there are two vacancies for United States Senator from North Carolina, each candidate shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the vacancy to which he seeks nomination. Votes cast for a candidate shall be effective only for his nomination to the vacancy for which he has given notice of candidacy as provided in this subsection.

(e) Withdrawal of Notice of Candidacy. – Any person who has filed notice of candidacy for an office shall have the right to withdraw it at any time prior to the date on which the right to file for that office expires under the terms of subsection (c) of this section. If a candidate does not withdraw before the filing deadline, except as provided in G.S. 163–112, his name shall be printed on the primary ballot, any votes for him shall be counted, and he shall not be refunded his filing fee.

(f) Candidates required to file their notice of candidacy with the State Board of Elections under subsection (c) of this section shall file along with their notice a certificate signed by the chairman of the board of elections or the director of elections of the county in which they are registered to vote, stating that the person is registered to vote in that county, stating the party with which the person is affiliated, and that the person has not changed his affiliation from another party or from unaffiliated within three months prior to the filing deadline under subsection (c) of this section. In issuing such certificate, the chairman or director shall check the registration records of the county to verify such information. During the period commencing 36 hours immediately preceding the filing deadline the State Board of Elections shall accept, on a conditional basis, the notice of candidacy of a candidate who has failed to secure the verification ordered herein subject to receipt of verification no later than three days following the filing deadline. The State Board of Elections shall prescribe the form for such certificate, and distribute it to each county board of elections no later than the last Monday in December of each odd-numbered year.

(g) When any candidate files a notice of candidacy with a board of elections under subsection (c) of this section or under G.S. 163–291(2), the board of elections shall, immediately upon receipt of the notice of candidacy, inspect the registration records of the

county, and cancel the notice of candidacy of any person who does not meet the constitutional or statutory qualifications for the office, including residency.

The board shall give notice of cancellation to any candidate whose notice of candidacy has been cancelled under this subsection by mail or by having the notice served on him by the sheriff, and to any other candidate filing for the same office. A candidate who has been adversely affected by a cancellation or another candidate for the same office affected by a substantiation under this subsection may request a hearing on the cancellation. If the candidate requests a hearing, the hearing shall be conducted in accordance with Article 11B of Chapter 163 of the General Statutes.

(h) No person may file a notice of candidacy for more than one office described in subsection (c) of this section for any one election. If a person has filed a notice of candidacy with a board of elections under this section for one office, then a notice of candidacy may not later be filed for any other office under this section when the election is on the same date unless the notice of candidacy for the first office is withdrawn under subsection (e) of this section; provided that this subsection shall not apply unless the deadline for filing notices of candidacy for both offices is the same. Notwithstanding this subsection, a person may file a notice of candidacy for a full term as United States Senator, and also file a notice of candidacy for the remainder of the unexpired term of that same seat in an election held under G.S. 163–12, and may file a notice of candidacy for a full term as a member of the United States House of Representatives, and also file a notice of candidacy for the remainder of the unexpired term in an election held under G.S. 163–13.

(i) Deleted by S.L. 2001–403, § 3, eff. Jan. 1, 2002.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1967, c. 1063, § 2; Laws 1969, c. 44, § 83; Laws 1969, c. 1190, § 56; Laws 1971, c. 189; Laws 1971, c. 189; Laws 1971, c. 675; Laws 1971, c. 798; Laws 1973, c. 47, § 2; Laws 1973, c. 793, § 36; Laws 1973, c. 862; Laws 1975, c. 844, § 2; Laws 1977, c. 265, §§ 4, 5; Laws 1977, c. 408, § 2; Laws 1977, c. 661, §§ 2, 3; Laws 1979, c. 24; Laws 1979, c. 411, § 5; Laws 1981, c. 32, § 1, 2; Laws 1983, c. 330, § 1; Laws 1985, c. 472, § 2; Laws 1985, c. 558, § 1; Laws 1985, c. 759, § 6; Laws 1985 (Reg. Sess., 1986), c. 957, § 1; Laws 1987, c. 509, § 13; Laws 1987, c.738, § 124; Laws 1987 (Reg. Sess., 1988), c. 1028, § 1; Laws 1993 (Reg. Sess., 1994), c. 762, § 31, eff. Jan. 1, 1995; Laws 1995, c. 243, § 1, eff. Jan. 1, 1996; Laws 1996 (2nd Ex. Sess.), c. 9, § 8; S.L. 1999–456, § 59, eff. Jan. 1, 2000; S.L. 2001–403, § 3, eff. Jan. 1, 2002; S.L. 2001–466, § 5.1(a), eff. Jan. 1, 2003; S.L. 2002–158, §§ 8, 9, eff. Jan. 1, 2004; S.L. 2002–159, § 55(a), eff. Jan. 1, 2003; S.L. 2006–155, § 2, eff. Jan. 1, 2007; S.L. 2007–369, § 1, eff. Jan. 1, 2008; S.L. 2009–47, § 1, eff. Jan. 1, 2010.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

''Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.'' [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

Laws 1995, c. 243, § 1, provides:

''Wherever the term 'supervisor' appears in the General Statutes of North Carolina or in any local act in reference to the county supervisor of elections as provided in G.S. 163–35, the term is changed to read 'director.' ''

Laws 1996, 2nd Ex. Sess., c. 9, § 24, provides, in part, that part 2 of this act ''becomes effective with respect to elections conducted in 1998 and thereafter''.

Laws 1996, 2nd Ex. Sess., c. 9, was ratified August 2, 1996.

S.L. 1999–456, § 59, provides for deletion of year prefix ''19'' in the date segment of the form.

2001 Legislation

S.L. 2001–403, § 3, eff. Jan. 1, 2002, rewrote subsecs. (c) and (d), which prior thereto read:

''(c) Time for Filing Notice of Candidacy.--Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the first Monday in January and no later than 12:00 noon on the first Monday in February preceding the primary:

''Governor

''Lieutenant Governor

''All State executive officers

''Justices of the Supreme Court, Judges of the Court of Appeals

''Judges of the district courts

''United States Senators

''Members of the House of Representatives of the United States

''District attorneys

''Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the county board of elections no earlier than 12:00 noon on the first Monday in January and no later than 12:00 noon on the first Monday in February preceding the primary:

''State Senators

''Members of the State House of Representatives

''All county offices.

''(d) Notice of Candidacy for Certain Offices to Indicate Vacancy.--In any primary in which there are two or more vacancies for Chief Justice and associate justices of the Supreme Court, two or more vacancies for judge of the Court of Appeals, or two vacancies for United States Senator from North Carolina or two or more vacancies for the office of district court judge to be filled by nominations, each candidate shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the vacancy to which he seeks nomination. Votes cast for a candidate shall be effective only for his nomination to the vacancy for which he has given notice of candidacy as provided in this subsection.

''A person seeking party nomination for a specialized district judgeship established under G.S. 7A–147 shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the specialized judgeship to which he seeks nomination.'';

and deleted subsec. (i), which prior thereto read:

''(i) No person may file a notice of candidacy for superior court judge unless that person is at the time of filing the notice of candidacy a resident of the judicial district as it will exist at the time the person would take office if elected. No person may be nominated as a superior court judge under G.S. 163–114 unless that person is at the time of nomination a resident of the judicial district as it will exist at the time the person would take office if elected. This subsection implements Article IV Section 9(1) of the North Carolina Constitution which requires regular Superior Court Judges to reside in the district for which elected.''

S.L. 2001–466, § 5.1(a), eff. Jan. 1, 2003, rewrote subsec. (c), which prior thereto read:

''(c) Time for Filing Notice of Candidacy.--Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the first Monday in January and no later than 12:00 noon on the first Monday in February preceding the primary:

''Governor

''Lieutenant Governor

''All State executive officers

''Justices of the Supreme Court, Judges of the Court of Appeals

''Judges of the district courts

''United States Senators

''Members of the House of Representatives of the United States

''District attorneys

''Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the county board of elections no earlier than 12:00 noon on the first Monday in January and no later than 12:00 noon on the first Monday in February preceding the primary:

''State Senators

''Members of the State House of Representatives

''All county offices.''

2002 Legislation

S.L. 2002–21 (Ex. Sess.), §§ 1(a) to 2, eff. July 16, 2002, provide:

''Section 1.(a) Notwithstanding G.S. 163–1(b), the date of the primary election in 2002 shall be September 10, 2002.

''Section 1.(b) In order to accommodate the scheduling of the 2002 primary on September 10, 2002, and in order to comply with the requirements of Section 5 of the Voting Rights Act of 1965 and any court orders, and in order to comply with any objections interposed under Section 5, the State Board of Elections may issue temporary orders that may change, modify, delete, amend, or add to any statute contained in Chapter 163 of the General Statutes, any rules contained in Title 8 of the North Carolina Administrative Code, or any other election regulation or guideline that may affect the 2002 primaries and general elections. These temporary orders are only effective for the 2002 primary and 2002 general election. These orders shall include a primary election schedule.

''Section 1.(c) Notwithstanding G.S. 163–111 or any local act, in 2002 only, the result of the primary shall be determined by a plurality and no second primary shall be held. Any runoff election for local office that might by local act have been held on the date of the second primary shall instead be held on the date of the general election. If there is a tie in a primary in 2002, the result shall be determined in accordance with G.S. 163–111(f) under the same rule as if there had been a tie in a second primary.

''Section 1.(d) The authority to adopt orders also extends to any elections originally scheduled to be held on May 7, 2002, any elections ordered by the State Board of Elections to be held on the date of a county primary that were originally scheduled to be held on May 7, 2002, or any elections to be held on the date of the second primary. If any municipality had its election scheduled under G.S. 160A–23.1(d)(2) to be on the date of the second primary in 2002, the election shall instead be held on the date of the general election in 2002.

''Section 1.(e) The orders shall provide for candidate filing for member of the State Senate and State House of Representatives to open as soon as practicable.

''Section 1.(f) The State Board of Elections may set a period of time for unaffiliated candidates who wish to obtain ballot access by petition, under the provisions of G.S. 163–122, for legislative races in districts used in new legislative filings, to obtain and submit signed petitions for such purpose. Any unaffiliated candidate for a legislative seat, in a district used under a previously approved legislative redistricting plan, who had submitted a petition in a timely manner under the provisions of G.S. 163–122, shall have the right under any State Board plan to have any valid voter signatures contained in the previously approved petition, that meet the residency requirements of the new district, to be considered a part of any new petition to obtain ballot access for a legislative seat in that new district.

''Section 1.(g) The authority granted by this section shall be exercised only when needed to ensure the orderly and timely operations of the electoral process, the public good, and any valid interest of voters, candidates, and officeholders in order to accommodate

the compressed schedule necessitated by holding the primary elections at such a late date. All orders of the State Board issued under this section shall be presumed to be reasonable and to serve the public interest.

''Section 1.(h) Orders issued under this section are not rules subject to the provisions of Chapter 150B of the General Statutes. Orders issued under this section shall, however, be published in the North Carolina Register as quickly as possible.

''Section 1.(i) The times to publish notice of a bond referendum required by G.S. 159–61(c) shall not apply to any bond referendum held on the date of the 2002 statewide primary. The local government unit holding the bond referendum on that date shall comply with the times to publish notice of the election prescribed by the State Board of Elections pursuant to this section.

''Section 1.(j) The provisions of G.S. 159–61(b) that provide that a bond referendum may not be held within 30 days before or 10 days after a statewide primary, election, or referendum shall not apply to any bond referendum previously called to be conducted on a date that is within 30 days before or 10 days after the date selected as the date for the 2002 statewide primary.

''Section 1.(k) As used in this section, ''order'' also includes guidelines and directives.

''Section 1.(*l*) Any orders issued under this section become void 10 days after the final certification of all elections that were originally scheduled to be held in 2002.

''This section expires 10 days after the final certification of all elections that were originally scheduled to be held in 2002.

''Section 1.1. Notwithstanding G.S. 163–106(h), any person who filed a notice of candidacy under G.S. 163–106(c) during the filing period in 2002 for an office other than member of the State Senate or member of the State House of Representatives and did not withdraw that notice of candidacy before the filing deadline may not file a notice of candidacy as a member of the State Senate or member of the State House of Representatives unless either of the following applies:

''(1) If that person was declared the nominee of the party under G.S. 163–110, that person resigns the nomination (in which case the vacancy in nomination shall be filled in accordance with G.S. 163–114).

''(2) If that person is in a contested primary, that person withdraws the notice of candidacy. That notice of candidacy may be withdrawn notwithstanding the requirements of G.S. 163–106(e) that it be withdrawn prior to the filing deadline for that office. In the case of any such withdrawal, the appropriate board of election shall reopen filing for three days under the usual procedures of G.S. 163–112 notwithstanding the time of and reason for the withdrawal.

''Section 2. If any members of any county board of education are elected at the primary election and take office under a local act in July after the primary, in 2002 only, they shall instead take office on the same day in December after the primary, and the terms of any such member which would otherwise expire in July of 2002 are extended accordingly.''

S.L. 2002–158, § 8, eff. Jan. 1, 2004, in subsec. (c), deleted ''Justices of the Supreme Court, Judges of the Court of Appeals'' after ''All State executive officers''.

S.L. 2002–158, § 9, eff. Jan. 1, 2004, in subsec. (d), deleted ''two or more vacancies for Chief Justice and associate justices of the Supreme Court, two or more vacancies for judge of the Court of Appeals, or'' after ''In any primary in which there are''.

S.L. 2002–158, § 16, provides:

''Section 1 of this act is effective when it becomes law, provided that distributions from the Fund shall begin in the 2004 election year. Section 2 becomes effective January 1, 2003. Section 3 becomes effective July 1, 2003. Sections 4 and 6(a) become effective for taxable years beginning on or after January 1, 2003. Section 5 becomes effective January 1, 2003. Sections 7 through 13 become effective with respect to primaries and elections held on or after January 1, 2004. Except as otherwise provided in this act, this act is effective when it becomes law.''

S.L. 2002–159, § 55(a), eff. Jan. 1, 2003, rewrote the first paragraph of subsec. (a), which prior thereto read:

''(a) Notice and Pledge. – No one shall be voted for in a primary election unless he shall have filed a notice of candidacy with the appropriate board of elections, State or county, as required by this section. To this end every candidate for selection as the nominee of a

political party shall file with and place in the possession of the board of elections specified in subsection (c) of this section, a notice and pledge in the following form:'';

rewrote the third and fourth paragraphs of subsec. (a), which prior thereto read:

''Each candidate shall sign his notice of candidacy in the presence of the chairman or secretary of the board of elections, State or county, with which he files. In the alternative, a candidate may have his signature on the notice of candidacy acknowledged and certified to by an officer authorized to take acknowledgments and administer oaths, in which case the candidate may mail his notice of candidacy to the appropriate board of elections.

''In signing his notice of candidacy the candidate shall use only his legal name and, in his discretion, any nickname by which he is commonly known. A candidate may also, in lieu of his legal first name and legal middle initial or middle name (if any) sign his nickname, provided that he appends to the notice of candidacy an affidavit that he has been commonly known by that nickname for at least five years prior to the date of making the affidavit. The candidate shall also include with the affidavit the way his name (as permitted by law) should be listed on the ballot if another candidate with the same last name files a notice of candidacy for that office.'';

and in the fifth paragraph of subsec. (a), deleted ''himself'' after ''the candidate''.

S.L. 2002–159, § 55(p), provides:

''Subsections 55(a) through 55(n) of this section become effective January 1, 2003, and apply to all primaries and elections held on and after that date. Subsection 55(*o*) is effective when this act becomes law.''

2006 Legislation

S.L. 2006–155, § 2, eff. Jan. 1, 2007, rewrote subsec. (g), which prior thereto read:

''(g) When any candidate files a notice of candidacy with a county board of elections under subsection (c) of this section or under G.S. 163–291(2), the chairman or director of elections shall, immediately upon receipt of the notice of candidacy, inspect the registration records of the county, and cancel the notice of candidacy of any person who is not eligible under subsection (c) of this section. The Board shall give notice of cancellation to any candidate whose notice of candidacy has been cancelled under this subsection by mail or by having the notice served on him by the sheriff.''

S.L. 2006–155, §§ 7 and 8, provide:

''Section. 7. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

''Section 8. This act becomes effective January 1, 2007, and applies to actions filed on or after that date.''

2007 Legislation

S.L. 2007–369, § 1, added subsec. (a1).

S.L. 2007–369, § 2, provides:

''This act becomes effective January 1, 2008.''

2009 Legislation

S.L. 2009–47, § 1, in subsec. (a), substituted ''the same'' for ''any'' in the notice and pledge.

S.L. 2009–47, § 2, provides:

''This act becomes effective January 1, 2010, and applies with respect to primaries and elections held on or after that date.''

Local Modifications

Pasquotank County: Laws 1995 (Reg. Sess., 1996), c. 612, § 1.

Halifax County Board of Elections: Laws 1983 (Reg. Sess., 1984), c. 984.

Cross References

Application of lobbying regulations, see § 120C–104.
Confidentiality of date of birth, see § 163–82.10B.
Contents of official ballots, see § 163–165.5.
County Board of Elections littering notification, see § 163–33.3.
Filling a vacancy, United States House of Representatives, § 163–13.
General Assembly statement of economic interest; place and manner of filing, see § 138A–22.
Prohibitions on campaign contributions, see § 120C–302.
Special provisions for vacancies in certain offices, see § 163–115.

State Board of Elections littering notification, see § 163–22.3.
Statement of economic interests, filing required, see § 138A–22.
Unaffiliated and new-party candidates, eligibility for revenues from Voter-Owned Elections Fund, see § 163–278.99C.

Notes of Decisions

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1. Validity

The North Carolina ''anti-single shot law'' is unconstitutional as denying to voters in North Carolina the equal protection of the laws because it allows voters to single shot vote in some areas of the state while prohibiting this manner of voting in others, and the state has shown no justification for such discrimination. Dunston v. Scott, 1972, 336 F.Supp. 206. Constitutional Law ⚷ 3657; Elections ⚷ 27

In view of fact that the North Carolina ''numbered seat law'' and the ''anti-single shot law'' are unconstitutional, their enforcement would be permanently enjoined. Dunston v. Scott, 1972, 336 F.Supp. 206. Injunction ⚷ 85(2)

Statutes that allowed defendant judges to simultaneously run for superior court judgeship and district court judgeship did not violate equal protection, despite claim that because only lawyers were allowed to take advantage of such ''loophole'' and run for more than one office, lawyers were granted benefit unavailable to others; State Constitution required that superior court judges be authorized to practice law, and nonlawyers were permitted to run for more than one of several offices so long as filing periods were not same. Comer v. Ammons, 1999, 135 N.C.App. 531, 522 S.E.2d 77. Constitutional Law ⚷ 3594; Judges ⚷ 3

Provision of State Constitution that prohibits person from holding more than one office does not prohibit person from seeking election to more than one office. Comer v. Ammons, 1999, 135 N.C.App. 531, 522 S.E.2d 77. Officers And Public Employees ⚷ 30.1

Securing uniformity in beginning of terms of office for superior court judges was adequate public purpose to sustain under State Constitution statute providing for that uniformity by delaying election for nine superior court judges. State ex rel. Martin v. Preston, 1989, 385 S.E.2d 473, 325 N.C. 438. Judges ⚷ 7

One-time delay in certain judicial elections created by statute postponing election of certain superior court judges so as to eliminate staggered terms did not violate right of citizens to vote guaranteed by State Constitution. State ex rel. Martin v. Preston, 1989, 385 S.E.2d 473, 325 N.C. 438. Elections ⚷ 10.5; Judges ⚷ 3

Where terms of incumbent superior court judges end without successors having been elected and qualified, new terms of office have not begun, and Constitution's ''hold over'' provision operates and allows incumbents to continue serving interim; thus, by allowing nine judges to hold over in office beyond their terms' expiration, legislature did not unconstitutionally use authority of governor to make judicial appointments for vacancies in judicial offices. State ex rel. Martin v. Preston, 1989, 385 S.E.2d 473, 325 N.C. 438. Constitutional Law ⚷ 2391; Judges ⚷ 9

The statute providing that in any primary election when there are two or more vacancies for Chief Justice and Associate Justices of Supreme Court to be filled by nomination, all candidates shall file with the State Board of Elections at time of filing notice of candidacy, the notice designating to which of the vacancies the respective candidate is asking nomination is not unconstitutional as violative of provision in Constitution that Justices of Supreme Court shall be elected by qualified voters of the state, ''as is provided for the election of members of the general assembly''. Ingle v. State Bd. of Elections, 1946, 38 S.E.2d 566, 226 N.C. 454. Elections ⚷ 21

2. Preclearance under Civil Rights Act

Fact that election law deals with election of members of judiciary does not remove it from ambit of preclearance requirement of Voting Rights Act. Haith v. Martin, 1985, 618 F.Supp. 410, affirmed 106 S.Ct. 3268, 477 U.S. 901, 91 L.Ed.2d 559. Elections ⚷ 12(8)

North Carolina statutes [N.C.G.S. § 163–147; N.C.Laws 1967, c. 997, § 1

et seq.] which established system of numbered seat elections for position of superior court judge in districts with two or more vacancies and which provided for additional resident judge in particular districts to serve 8-year terms staggered from positions already in existence in those districts were not precleared as required by Voting Rights Act by inclusion in later enactments of North Carolina General Assembly. Haith v. Martin, 1985, 618 F.Supp. 410, affirmed 106 S.Ct. 3268, 477 U.S. 901, 91 L.Ed.2d 559. Elections ⚷ 12(8)

3. Creation of new political parties

The statute providing for creation of new political parties confers on any qualified voter legal right to sign petition therefor, irrespective of whether he has participated in primary election of existing political party during year in which petition is signed. States' Rights Democratic Party v. State Bd. of Elections, 1948, 49 S.E.2d 379, 229 N.C. 179. Elections ⚷ 121(1)

The primary election laws do not modify statute giving any qualified voter legal right to sign petition for creation of new political party, regardless of whether he has voted in primary election of existing party during year in which petition is signed and filed, as such laws are inapplicable to new parties created by such petitions, but apply only to existing political parties. States' Rights Democratic Party v. State Bd. of Elections, 1948, 49 S.E.2d 379, 229 N.C. 179. Elections ⚷ 121(1)

The primary election laws confine qualified elector's right to vote in party primaries to that of existing party with which he affiliates at time of primary election, but does not deprive voter of complete liberty of conscience or future conduct, if he concludes after primary that it is no longer desirable for him to support candidates of such party. States' Rights Democratic Party v. State Bd. of Elections, 1948, 49 S.E.2d 379, 229 N.C. 179. Elections ⚷ 126(4)

4. Parties

Action challenging method of electing North Carolina Superior Court judges would be dismissed as against county boards of elections; county boards had no power to independently place candidate on ballot in election, boards could not remove candidate from election ballot, and boards were merely acting in ministerial capacity and could only carry out duties as detailed by statute and State Board of Elections. Republican Party of North Carolina v. Martin, 1988, 682 F.Supp. 834. Federal Civil Procedure ⚷ 1695

Where challenged state election statute required that candidates for Congress file with state board of elections, and county board with which plaintiff candidate sought to file had no authority to accept or reject such applications, county board and its members were not proper parties to action seeking to have statute declared unconstitutional and its application permanently enjoined. Brown v. North Carolina State Bd. of Elections, 1975, 394 F.Supp. 359. Declaratory Judgment ⚷ 302.1

5. Review

Preliminary injunction modifying method of election for superior court judges whereby districtwide primary nominations were followed by statewide elections, was appropriate; plaintiffs raised serious questions as to whether challenged method of election denied plaintiffs equal protection by diluting voting franchise of Republican voters, harm to plaintiffs if preliminary relief was denied greatly outweighed likely harm to defendants upon issuing of injunction, and public interest demanded opportunity to choose from among most qualified candidates available for the office. Republican Party of North Carolina v. Hunt, 1994, 841 F.Supp. 722, affirmed as modified 27 F.3d 563. Injunction ⚷ 138.51

Voter's appeal from trial court order upholding constitutionality of statutes that allowed defendant judges to simultaneously run for superior court judgeship and district court judgeship was not moot, even though relevant statutes had been amended to disallow superior court candidates from running for other offices during same election; if statutes were unconstitutional, defendant judges were holding office unlawfully, in which case there would have been no eradication of effects of alleged violation. Comer v. Ammons, 1999, 135 N.C.App. 531, 522 S.E.2d 77. Appeal And Error ⚷ 781(1)

Relief requested by voter who challenged constitutionality of statutes that allowed defendant judges to simultaneously run for superior court judgeship and district court judgeship did not match harm he asserted; while he claimed that power to choose officials was taken out of voters' hands when governor appointed judge to fill district

court seat that was left vacant when candidate who was elected to both district court and superior court judgeships chose latter, voter requested only that election for superior court seat be voided, and voter did not challenge appointed judge. Comer v. Ammons, 1999, 135 N.C.App. 531, 522 S.E.2d 77. Judges ⚷ 3

In mandamus proceeding to require State Election Board to cause petitioner's name to be placed on official ballot as candidate of Republican Party for office of Associate Justice of State Supreme Court to be voted on in general election, petitioner's motion for judgment on the pleadings admitted, for purpose of the motion, the allegation in Board's answer that at time of filing notice of candidacy, the petitioner failed to designate to which of the two vacancies on Supreme Court he was asking the nomination. Ingle v. State Bd. of Elections, 1946, 38 S.E.2d 566, 226 N.C. 454. Pleading ⚷ 350(4)

Failure of one seeking to file notice of his candidacy for office of Associate Justice of State Supreme Court to designate to which of the two vacancies of the Court he was asking nomination, constituted a fatal defect in a notice of candidacy. Ingle v. State Bd. of Elections, 1946, 38 S.E.2d 566, 226 N.C. 454. Elections ⚷ 126(1)

§ 163–107. Filing fees required of candidates in primary; refunds

(a) Fee Schedule. — At the time of filing a notice of candidacy, each candidate shall pay to the board of elections with which he files under the provisions of G.S. 163–106 a filing fee for the office he seeks in the amount specified in the following tabulation:

Office Sought	Amount of Filing Fee
''Governor	One percent (1%) of the annual salary of the office sought
''Lieutenant Governor	One percent (1%) of the annual salary of the office sought
''All State executive offices	One percent (1%) of the annual salary of the office sought
''All District Attorneys of the General Court of Justice	One percent (1%) of the annual salary of the office sought
''United States Senator	One percent (1%) of the annual salary of the office sought
''Members of the United States House of Representatives	One percent (1%) of the annual salary of the office sought
''State Senator	One percent (1%) of the annual salary of the office sought
''Member of the State House of Representatives	One percent (1%) of the annual salary of the office sought
''All county offices not compensated by fees	One percent (1%) of the annual salary of the office sought
''All county offices compensated partly by salary and partly by fees	One percent (1%) of the first annual salary to be received (exclusive of fees)''

The salary of any office that is the basis for calculating the filing fee is the starting salary for the office, rather than the salary received by the incumbent, if different. If no starting salary can be determined for the office, then the salary used for calculation is the salary of the incumbent, as of January 1 of the election year.

(b) Refund of Fees. —If any person who has filed a notice of candidacy and paid the filing fee prescribed in subsection (a) of

this section, withdraws his notice of candidacy within the period prescribed in G.S. 163–106(e), he shall be entitled to have the fee he paid refunded. If the fee was paid to the State Board of Elections, the chairman of that board shall cause a warrant to be drawn on the Treasurer of the State for the refund payment. If the fee was paid to a county board of elections, the chairman of the Board shall certify to the county finance officer that the refund should be made, and the county finance officer shall make the refund in accordance with the provisions of the Local Government Budget and Fiscal Control Act. If any person who has filed a notice of candidacy and paid the filing fee prescribed in subsection (a) of this section dies prior to the date of the primary election provided by G.S. 163–1, the personal representative of the estate shall be entitled to have the fee refunded if application is made to the board of elections to which the fee was paid no later than one year after the date of death, and refund shall be made in the same manner as in withdrawal of notice of candidacy.

If any person files a notice of candidacy and pays a filing fee to a board of elections other than that with which he is required to file under the provisions of G.S. 163–106(e), he shall be entitled to have the fee refunded in the manner prescribed in this subsection if he requests the refund before the date on which the right to file for that office expires under the provisions of G.S. 163–106(e).

Added by Laws 1967, c. 775, § 1. Amended by Laws 1969, c. 44, § 84; Laws 1973, c. 47, § 2; Laws 1973, c. 793, § 37; Laws 1977, c. 265, § 6; Laws 1983, c. 913, § 56; Laws 1995, c. 464, § 1, eff. Jan. 1, 1994; Laws 1996 (2nd Ex. Sess.), c. 9, § 9; S.L. 2001–403, § 4, eff. Jan. 1, 2002; S.L. 2002–158, § 10, eff. Jan. 1, 2004; S.L. 2005–428, § 8, eff. Sept. 22, 2005.

Historical and Statutory Notes

Laws 1996, 2 Ex. Sess., c. 9, § 24, provides, in part, that part 2 of this act ''becomes effective with respect to elections conducted in 1998 and thereafter''.

2001 Legislation

S.L. 2001–403, § 4, eff. Jan. 1, 2002, in subsec. (a), inserted ''and district'' following ''other than superior''.

2002 Legislation

S.L. 2002–158, § 10, eff. Jan. 1, 2004, in subsec. (a), deleted ''Justices, Judges, and'' before ''District Attorneys'', and deleted ''other than superior and district court judge'' after ''General Court of Justice''.

S.L. 2002–158, § 16, provides:

''Section 1 of this act is effective when it becomes law, provided that distributions from the Fund shall begin in the 2004 election year. Section 2 becomes effective January 1, 2003. Section 3 becomes effective July 1, 2003. Sections 4 and 6(a) become effective for taxable years beginning on or after January 1, 2003. Section 5 becomes effective January 1, 2003. Sections 7 through 13 become effective with respect to primaries and elections held on or after January 1, 2004. Except as otherwise provided in this act, this act is effective when it becomes law.''

2005 Legislation

S.L. 2005–428, § 8, eff. Sept. 22, 2005, rewrote subsec. (a), which prior thereto read:

''(a) Fee Schedule. —At the time of filing a notice of candidacy, each candidate shall pay to the board of elections with which he files under the provisions of G.S. 163–106 a filing fee for the office he seeks in the amount specified in the following tabulation:

Office Sought	Amount of Filing Fee
Governor	One percent (1%) of the annual salary of the office sought
Lieutenant Governor	One percent (1%) of the annual salary of the office sought
All State executive offices	One percent (1%) of the annual salary of the office sought
All District Attorneys of the General Court of Justice	One percent (1%) of the annual salary of the office sought
United States Senator	One percent (1%) of the annual salary of the office sought
Members of the United States House of Representatives	One percent (1%) of the annual salary of the office sought
State Senator	One percent (1%) of the annual salary of the office sought
Member of the State House of Representatives	One percent (1%) of the annual salary of the office sought
All county offices not compensated by fees	One percent (1%) of the annual salary of the office sought
County commissioners, if compensated entirely by fees	Ten dollars ($10.00)
Members of county board of education, if compensated entirely by fees	Five dollars ($5.00)
Sheriff, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Clerk of superior court, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Register of deeds, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Any other county office, if compensated entirely by fees	Twenty dollars ($20.00), plus one percent (1%) of the income of the office above two thousand dollars ($2,000)
All county offices compensated partly by salary and partly by fees	One percent (1%) of the first annual salary to be received (exclusive of fees)

S.L. 2005–428, § 18, provides:

''Sections 2, 6, 7, 8, 10, 12, 13, 14, 15, and 16 of this act are effective when this act becomes law and apply to all primaries and elections held on or after that date. The remainder of this act becomes effective January 1, 2006, and applies to all primaries and elections held on or after that date.''

Cross References

County commissioners to fix fees, see § 153A–102.
General election participation by new political party, see § 163–98.

Notes of Decisions

Notice of candidacy 2
Parties 3
Validity 1

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1. Validity

Alternative means of access to the general election ballot, by means of running as an independent or third-party

candidate or conducting a write-in campaign to obtain nomination, did not vitiate constitutional challenge to North Carolina statute which restricted access to primary election ballot by requiring payment of filing fee. Brown v. North Carolina State Bd. of Elections, 1975, 394 F.Supp. 359. Elections ⚷ 21

Where there were no alternative means of access to primary ballot, North Carolina statute requiring that congressional candidates in primary pay filing fee of one percent of the annual salary of the office sought was unconstitutional. Brown v. North Carolina State Bd. of Elections, 1975, 394 F.Supp. 359. Elections ⚷ 21

The filing fee of one per cent of annual salary of office sought required by statute of a candidate for public office is not a ''tax'' within meaning of the constitutional provisions prescribing manner of passing laws imposing a tax, nor is it a ''local law'' condemned by the constitution, but is only one of the reasonable means adopted by legislature to regulate primary elections and to prevent wholesale filing of petitions for nominations regardless of fitness or qualification. McLean v. Durham County Board of Elections, 1942, 21 S.E.2d 842, 222 N.C. 6. Elections ⚷ 21; Statutes ⚷ 21; Statutes ⚷ 101(1)

Statutes requiring candidate for public office to file notice of candidacy, to sign a pledge to abide by the results of primary, to pay a filing fee equal to one per cent. of annual salary of office sought, and providing that only those who complied with such provisions should have their names printed on official ballot, did not conflict with any provisions of the state or federal constitution. McLean v. Durham County Board of Elections, 1942, 21 S.E.2d 842, 222 N.C. 6. Elections ⚷ 21

2. Notice of candidacy

Under the statutes regulating primaries and elections, only those who have been legally nominated for county office under the law applicable to the county in which the nomination is made are entitled to have their names appear on the official ballot. McLean v. Durham County Board of Elections, 1942, 21 S.E.2d 842, 222 N.C. 6. Elections ⚷ 126(5)

One who failed to file notice of his candidacy or to sign pledge to abide by results of primary or to pay filing fee required by statute, was not the ''nominee'' of any political party within meaning of primary law and was not entitled to have his name placed on the official ballot. McLean v. Durham County Board of Elections, 1942, 21 S.E.2d 842, 222 N.C. 6. Elections ⚷ 126(5)

3. Parties

Where challenged state election statute required that candidates for Congress file with state board of elections, and county board with which plaintiff candidate sought to file had no authority to accept or reject such applications, county board and its members were not proper parties to action seeking to have statute declared unconstitutional and its application permanently enjoined. Brown v. North Carolina State Bd. of Elections, 1975, 394 F.Supp. 359. Declaratory Judgment ⚷ 302.1

§ 163–107.1. Petition in lieu of payment of filing fee

(a) Any qualified voter who seeks nomination in the party primary of the political party with which he affiliates may, in lieu of payment of any filing fee required for the office he seeks, file a written petition requesting him to be a candidate for a specified office with the appropriate board of elections, State, county or municipal.

(b) If the candidate is seeking the office of United States Senator, Governor, Lieutenant Governor, or any State executive officer, the petition must be signed by 10,000 registered voters who are members of the political party in whose primary the candidate desires to run, except that in the case of a political party as defined by G.S. 163–96(a)(2) which will be making nominations by primary election, the petition must be signed by ten percent (10%) of

the registered voters of the State who are affiliated with the same political party in whose primary the candidate desires to run, or in the alternative, the petition shall be signed by no less than 10,000 registered voters regardless of the voter's political party affiliation, whichever requirement is greater. The petition must be filed with the State Board of Elections not later than 12:00 noon on Monday preceding the filing deadline before the primary in which he seeks to run. The names on the petition shall be verified by the board of elections of the county where the signer is registered, and the petition must be presented to the county board of elections at least 15 days before the petition is due to be filed with the State Board of Elections. When a proper petition has been filed, the candidate's name shall be printed on the primary ballot.

(c) County, Municipal and District Primaries. – If the candidate is seeking one of the offices set forth in G.S. 163–106(c) but which is not listed in subsection (b) of this section, or a municipal or any other office requiring a partisan primary which is not set forth in G.S. 163–106(c) or (d), he shall file a written petition with the appropriate board of elections no later than 12:00 noon on Monday preceding the filing deadline before the primary. The petition shall be signed by ten percent (10%) of the registered voters of the election area in which the office will be voted for, who are affiliated with the same political party in whose primary the candidate desires to run, or in the alternative, the petition shall be signed by no less than 200 registered voters regardless of said voter's political party affiliation, whichever requirement is greater. The board of elections shall verify the names on the petition, and if the petition is found to be sufficient, the candidate's name shall be printed on the appropriate primary ballot. Petitions for candidates for member of the U.S. House of Representatives, District Attorney, and members of the State House of Representatives from multi-county districts or members of the State Senate from multi-county districts must be presented to the county board of elections for verification at least 15 days before the petition is due to be filed with the State Board of Elections, and such petition must be filed with the State Board of Elections no later than 12:00 noon on Monday preceding the filing deadline. The State Board of Elections may adopt rules to implement this section and to provide standard petition forms.

(d) Nonpartisan Primaries and Elections.—Any qualified voter who seeks to be a candidate in any nonpartisan primary or election may, in lieu of payment of the filing fee required, file a written petition signed by ten percent (10%) of the registered voters in the election area in which the office will be voted for with the appropriate board of elections. Any qualified voter may sign the petition. The petition shall state the candidate's name, address and the office which he is seeking. The petition must be filed with the appropriate board of elections no later than 60 days prior to

the filing deadline for the primary or election, and if found to be sufficient, the candidate's name shall be printed on the ballot.

Added by Laws 1975, c. 853. Amended by Laws 1977, c. 386; Laws 1985, c. 563, § 13; Laws 1996 (2nd Ex. Sess.), c. 9, § 12; S.L. 2001–403, § 7, eff. Jan. 1, 2002; S.L. 2002–158, § 11, eff. Jan. 1, 2004.

Historical and Statutory Notes

Laws 1996, 2 Ex. Sess., c. 9, § 24, provides, in part, that part 2 of this act ''becomes effective with respect to elections conducted in 1998 and thereafter''.

2001 Legislation

S.L. 2001–403, § 7, eff. Jan. 1, 2002, in subsec. (c), deleted ''judge of the District Court or'' following ''District Attorney, and''.

2002 Legislation

S.L. 2002–158, § 11, eff. Jan. 1, 2004, in the first sentence of subsec. (b), added ''or'' after ''Lieutenant Governor'', and deleted ''Justice of the Supreme Court or Judge of the Court of Appeals,'' after ''State executive officer''.

S.L. 2002–158, § 16, provides:

''Section 1 of this act is effective when it becomes law, provided that distributions from the Fund shall begin in the 2004 election year. Section 2 becomes effective January 1, 2003. Section 3 becomes effective July 1, 2003. Sections 4 and 6(a) become effective for taxable years beginning on or after January 1, 2003. Section 5 becomes effective January 1, 2003. Sections 7 through 13 become effective with respect to primaries and elections held on or after January 1, 2004. Except as otherwise provided in this act, this act is effective when it becomes law.''

Local Modifications

Anson County Board of Commissioners: Laws 1991 (Reg. Sess., 1992), c. 781, § 10.

Cross References

General election participation by new political party, see § 163–98.

§ 163–108. Certification of notices of candidacy

(a) Within three days after the time for filing notices of candidacy with the State Board of Elections under the provisions of G.S. 163-106(c) has expired, the chairman or secretary of that Board shall certify to the Secretary of State the name, address, and party affiliation of each person who has filed with the State Board of Elections, indicating in each instance the office sought.

(b) No later than 10 days after the time for filing notices of candidacy under the provisions of G.S. 163-106(c) has expired, the chairman of the State Board of Elections shall certify to the chairman of the county board of elections in each county in the appropriate district the names of candidates for nomination to the following offices who have filed the required notice and pledge and paid the required filing fee to the State Board of Elections, so that their names may be printed on the official county ballots: Superior court judge, district court judge, and district attorney.

(c) In representative districts composed of more than one county and in multi-county senatorial districts the chairman or secretary of the county board of elections in each county shall, within three days after the time for filing notices of candidacy under the provisions of G.S. 163-106(c) has expired, certify to the State

Board of Elections (i) the names of all candidates who have filed notice of candidacy in his county for member of the State Senate, or, if such is the fact, that no candidates have filed in his county for that office, and (ii) the names of all candidates who have filed notice of candidacy in his county for the office of member of the State House of Representatives or, if such is the fact, that no candidates have filed in his county for that office. The chairman of the county board of elections shall forward a copy of this report to the chairman of the board of elections of each of the other counties in the representative or senatorial district. Within 10 days after the time for filing notices of candidacy for those offices has expired the chairman or secretary of the State Board of Elections shall certify to the chairman of the county board of elections in each county of each multi-county representative or senatorial district the names of all candidates for the House of Representatives and Senate which must be printed on the county ballots.

(d) Within two days after he receives each of the letters of certification from the chairman of the State Board of Elections required by subsections (b) and (c) of this section, each county elections board chairman shall acknowledge receipt by letter addressed to the chairman of the State Board of Elections.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1973, c. 793, § 38; Laws 1979, c. 797, § 5; Laws 1983, c. 331, § 1.

§ 163–108.1. Nomination of members of House of Representatives

Chapter 826, Session Laws of 1957; Chapter 484, Session Laws of 1961; Chapter 621, Session Laws of 1959; Chapter 894, Session Laws of 1945; Chapter 442, Session Laws of 1955; Chapter 103, Public-Local Laws of 1941; Chapter 439, Session Laws of 1955; Chapter 238, Session Laws of 1959; and all other special and local acts providing for the nomination of candidates for the State House of Representatives by convention in any county, are modified and amended as follows: In the several representative districts of the State containing two or more counties, each political party shall nominate candidates for membership in the State House of Representatives according to the provisions of the statewide primary law, Article 19,[1] Chapter 163 of the General Statutes of North Carolina, or by district convention of the party when so provided by law. In a county assigned to a multi-county representative district, no political party shall nominate candidates for the State House of Representatives by party convention for the single county.

Added by Laws 1966 (1st Ex. Sess.), c. 5, § 16.

[1] So in original; probably should read ''Article 10''.

§ 163–109. Repealed by S.L. 2002–159, § 55(j), eff. Jan. 1, 2003

Historical and Statutory Notes

2002 Legislation

S.L. 2002–159, § 55(p), provides:

''Subsections 55(a) through 55(n) of this section become effective January 1, 2003, and apply to all primaries and elections held on and after that date. Subsection 55(*o*) is effective when this act becomes law.''

The repealed section, which related to the printing and distribution of primary ballots, was derived from:

Laws 1967, c. 775, § 1.
Laws 1967, c. 1063, § 3.
Laws 1973, c. 793, §§ 39 to 41.
Laws 1977, c. 265, §§ 7, 8.
Laws 1979, c. 411, § 6.
Laws 1993 (Reg. Sess., 1994), c. 762, § 32.

§ 163–110. Candidates declared nominees without primary

If a nominee for a single office is to be selected and only one candidate of a political party files for that office, or if nominees for two or more offices (constituting a group) are to be selected, and only the number of candidates equal to the number of the positions to be filled file for a political party for said offices, then the appropriate board of elections shall, upon the expiration of the filing period for said office, declare such persons as the nominees or nominee of that party, and the names shall not be printed on the primary ballot, but shall be printed on the general election ballot as candidate for that political party for that office. For the following offices, this declaration shall be made by the county board of elections with which the aspirant filed notice of candidacy: All county offices, State Senators in single-county senatorial districts, and members of the State House of Representatives in single-county representative districts. For all other offices, this declaration shall be made by the State Board of Elections.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1975, c. 19, § 68; Laws 1981, c. 220, § 1, 2.

Historical and Statutory Notes

2002 Legislation

S.L. 2002–21 (Ex. Sess.), §§ 1(a) to 2, eff. July 16, 2002, provide:

''Section 1.(a) Notwithstanding G.S. 163–1(b), the date of the primary election in 2002 shall be September 10, 2002.

''Section 1.(b) In order to accommodate the scheduling of the 2002 primary on September 10, 2002, and in order to comply with the requirements of Section 5 of the Voting Rights Act of 1965 and any court orders, and in order to comply with any objections interposed under Section 5, the State Board of Elections may issue temporary orders that may change, modify, delete, amend, or add to any statute contained in Chapter 163 of the General Statutes, any rules contained in Title 8 of the North Carolina Administrative Code, or any other election regulation or guideline that may affect the 2002 primaries and general elections. These temporary orders are only effective for the 2002 primary and 2002 general election. These orders shall include a primary election schedule.

''Section 1.(c) Notwithstanding G.S. 163–111 or any local act, in 2002 only, the result of the primary shall be determined by a plurality and no second primary shall be held. Any runoff election for local office that might by local

act have been held on the date of the second primary shall instead be held on the date of the general election. If there is a tie in a primary in 2002, the result shall be determined in accordance with G.S. 163–111(f) under the same rule as if there had been a tie in a second primary.

''Section 1.(d) The authority to adopt orders also extends to any elections originally scheduled to be held on May 7, 2002, any elections ordered by the State Board of Elections to be held on the date of a county primary that were originally scheduled to be held on May 7, 2002, or any elections to be held on the date of the second primary. If any municipality had its election scheduled under G.S. 160A–23.1(d)(2) to be on the date of the second primary in 2002, the election shall instead be held on the date of the general election in 2002.

''Section 1.(e) The orders shall provide for candidate filing for member of the State Senate and State House of Representatives to open as soon as practicable.

''Section 1.(f) The State Board of Elections may set a period of time for unaffiliated candidates who wish to obtain ballot access by petition, under the provisions of G.S. 163–122, for legislative races in districts used in new legislative filings, to obtain and submit signed petitions for such purpose. Any unaffiliated candidate for a legislative seat, in a district used under a previously approved legislative redistricting plan, who had submitted a petition in a timely manner under the provisions of G.S. 163–122, shall have the right under any State Board plan to have any valid voter signatures contained in the previously approved petition, that meet the residency requirements of the new district, to be considered a part of any new petition to obtain ballot access for a legislative seat in that new district.

''Section 1.(g) The authority granted by this section shall be exercised only when needed to ensure the orderly and timely operations of the electoral process, the public good, and any valid interest of voters, candidates, and officeholders in order to accommodate the compressed schedule necessitated by holding the primary elections at such a late date. All orders of the State Board issued under this section shall be presumed to be reasonable and to serve the public interest.

''Section 1.(h) Orders issued under this section are not rules subject to the provisions of Chapter 150B of the General Statutes. Orders issued under this section shall, however, be published in the North Carolina Register as quickly as possible.

''Section 1.(i) The times to publish notice of a bond referendum required by G.S. 159–61(c) shall not apply to any bond referendum held on the date of the 2002 statewide primary. The local government unit holding the bond referendum on that date shall comply with the times to publish notice of the election prescribed by the State Board of Elections pursuant to this section.

''Section 1.(j) The provisions of G.S. 159–61(b) that provide that a bond referendum may not be held within 30 days before or 10 days after a statewide primary, election, or referendum shall not apply to any bond referendum previously called to be conducted on a date that is within 30 days before or 10 days after the date selected as the date for the 2002 statewide primary.

''Section 1.(k) As used in this section, ''order'' also includes guidelines and directives.

''Section 1.(*l*) Any orders issued under this section become void 10 days after the final certification of all elections that were originally scheduled to be held in 2002.

''This section expires 10 days after the final certification of all elections that were originally scheduled to be held in 2002.

''Section 1.1. Notwithstanding G.S. 163–106(h), any person who filed a notice of candidacy under G.S. 163–106(c) during the filing period in 2002 for an office other than member of the State Senate or member of the State House of Representatives and did not withdraw that notice of candidacy before the filing deadline may not file a notice of candidacy as a member of the State Senate or member of the State House of Representatives unless either of the following applies:

''(1) If that person was declared the nominee of the party under G.S. 163–110, that person resigns the nomination (in which case the vacancy in nomination shall be filled in accordance with G.S. 163–114).

''(2) If that person is in a contested primary, that person withdraws the notice of candidacy. That notice of candidacy may be withdrawn notwithstanding the requirements of G.S. 163–106(e) that it be withdrawn prior to the filing

deadline for that office. In the case of any such withdrawal, the appropriate board of election shall reopen filing for three days under the usual procedures of G.S. 163–112 notwithstanding the time of and reason for the withdrawal.

''Section 2. If any members of any county board of education are elected at the primary election and take office under a local act in July after the primary, in 2002 only, they shall instead take office on the same day in December after the primary, and the terms of any such member which would otherwise expire in July of 2002 are extended accordingly.''

§ 163–111. Determination of primary results; second primaries

(a) Nomination Determined by Substantial Plurality; Definition of Substantial Plurality.—Except as otherwise provided in this section, nominations in primary elections shall be determined by a substantial plurality of the votes cast. A substantial plurality within the meaning of this section shall be determined as follows:

(1) If a nominee for a single office is to be selected, and there is more than one person seeking nomination, the substantial plurality shall be ascertained by multiplying the total vote cast for all aspirants by forty percent (40%). Any excess of the sum so ascertained shall be a substantial plurality, and the aspirant who obtains a substantial plurality shall be declared the nominee. If two candidates receive a substantial plurality, the candidate receiving the highest vote shall be declared the nominee.

(2) If nominees for two or more offices (constituting a group) are to be selected, and there are more persons seeking nomination than there are offices, the substantial plurality shall be ascertained by dividing the total vote cast for all aspirants by the number of positions to be filled, and by multiplying the result by forty percent (40%). Any excess of the sum so ascertained shall be a substantial plurality, and the aspirants who obtain a substantial plurality shall be declared the nominees. If more candidates obtain a substantial plurality than there are positions to be filled, those having the highest vote (equal to the number of positions to be filled) shall be declared the nominees.

(b) Right to Demand Second Primary.—If an insufficient number of aspirants receive a substantial plurality of the votes cast for a given office or group of offices in a primary, a second primary, subject to the conditions specified in this section, shall be held:

(1) If a nominee for a single office is to be selected and no aspirant receives a substantial plurality of the votes cast, the aspirant receiving the highest number of votes shall be declared nominated by the appropriate board of elections unless the aspirant receiving the second highest number of votes shall request a second primary in accordance with the provisions of subsection (c) of this section. In the second primary only the two aspirants who received the

highest and next highest number of votes shall be voted for.

(2) If nominees for two or more offices (constituting a group) are to be selected and aspirants for some or all of the positions within the group do not receive a substantial plurality of the votes, those candidates equal in number to the positions remaining to be filled and having the highest number of votes shall be declared the nominees unless some one or all of the aspirants equal in number to the positions remaining to be filled and having the second highest number of votes shall request a second primary in accordance with the provisions of subsection (c) of this section. In the second primary to select nominees for the positions in the group remaining to be filled, the names of all those candidates receiving the highest number of votes and all those receiving the second highest number of votes and demanding a second primary shall be printed on the ballot.

(c) Procedure for Requesting Second Primary.—

(1) A candidate who is apparently entitled to demand a second primary, according to the unofficial results, for one of the offices listed below, and desiring to do so, shall file a request for a second primary in writing with the Executive Director of the State Board of Elections no later than 12:00 noon on the ninth day (including Saturdays and Sundays) following the date on which the primary was conducted, and such request shall be subject to the certification of the official results by the State Board of Elections. If the vote certification by the State Board of Elections determines that a candidate who was not originally thought to be eligible to call for a second primary is in fact eligible to call for a second primary, the Executive Director of the State Board of Elections shall immediately notify such candidate and permit him to exercise any options available to him within a 48-hour period following the notification:

Governor,

Lieutenant Governor,

All State executive officers,

District Attorneys of the General Court of Justice,

United States Senators,

Members of the United States House of Representatives,

State Senators in multi-county senatorial districts, and

Members of the State House of Representatives in multi-county representative districts.

(2) A candidate who is apparently entitled to demand a second primary, according to the unofficial results, for one of the offices listed below and desiring to do so, shall file a request for a second primary in writing with the chairman or director of the county board of elections no later than 12:00 noon on the ninth day (including Saturdays and Sundays) following the date on which the primary was conducted, and such request shall be subject to the certification of the official results by the county board of elections:

State Senators in single-county senatorial districts,

Members of the State House of Representatives in single-county representative districts, and

All county officers.

(3) Immediately upon receipt of a request for a second primary the appropriate board of elections, State or county, shall notify all candidates entitled to participate in the second primary, by telephone followed by written notice, that a second primary has been requested and of the date of the second primary.

(d) Tie Votes; How Determined.—

(1) In the event of a tie for the highest number of votes in a first primary between two candidates for party nomination for a single county, or single-county legislative district office, the board of elections of the county in which the two candidates were voted for shall conduct a recount and declare the results. If the recount shows a tie vote, a second primary shall be held on the date prescribed in subsection (e) of this section between the two candidates having an equal vote, unless one of the aspirants, within three days after the result of the recount has been officially declared, files a written notice of withdrawal with the board of elections with which he filed notice of candidacy. Should that be done, the remaining aspirant shall be declared the nominee. In the event of a tie for the highest number of votes in a first primary among more than two candidates for party nomination for one of the offices mentioned in this subdivision, no recount shall be held, but all of the tied candidates shall be entered in a second primary.

(2) In the event of a tie for the highest number of votes in a first primary between two candidates for a State office, for United States Senator, or for any district office (including State Senator in a multi-county senatorial district and member of the State House of Representatives in a multi-county representative district), no recount shall be held solely by reason of the tie, but the two candidates having

an equal vote shall be entered in a second primary to be held on the date prescribed in subsection (e) of this section, unless one of the two candidates files a written notice of withdrawal with the State Board of Elections within three days after the result of the first primary has been officially declared and published. Should that be done, the remaining aspirant shall be declared the nominee. In the event of a tie for the highest number of votes in a first primary among more than two candidates for party nomination for one of the offices mentioned in this subdivision, no recount shall be held, but all of the tied candidates shall be entered in a second primary.

(3) In the event one candidate receives the highest number of votes cast in a first primary, but short of a substantial plurality, and two or more of the other candidates receive the second highest number of votes cast in an equal number, the proper board of elections shall declare the candidate having the highest vote to be the party nominee, unless all but one of the tied candidates give written notice of withdrawal to the proper board of elections within three days after the result of the first primary has been officially declared. If all but one of the tied candidates withdraw within the prescribed three-day period, and the remaining candidate demands a second primary in accordance with the provisions of subsection (c) of this section, a second primary shall be held between the candidate who received the highest vote and the remaining candidate who received the second highest vote.

(e) Date of Second Primary; Procedures. — If a second primary is required under the provisions of this section, the appropriate board of elections, State or county, shall order that it be held seven weeks after the first primary.

There shall be no registration of voters between the dates of the first and second primaries. Persons whose qualifications to register and vote mature after the day of the first primary and before the day of the second primary may register on the day of the second primary and, when thus registered, shall be entitled to vote in the second primary. The second primary is a continuation of the first primary and any voter who files a proper and timely written affirmation of change of address within the county under the provisions of G.S. 163–82.15, in the first primary may vote in the second primary without having to refile that written affirmation if he is otherwise qualified to vote in the second primary. Subject to this provision for registration, the second primary shall be held under the laws, rules, and regulations provided for the first primary.

(f) No Third Primary Permitted.—In no case shall there be a third primary. The candidates receiving the highest number of votes in the second primary shall be nominated. If in a second primary there is a tie for the highest number of votes between two candidates, the proper party executive committee shall select the party nominee for the office in accordance with the provisions of G.S. 163–114.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1969, c. 44, § 85; Laws 1973, c. 47, § 2; Laws 1973, c. 793, §§ 43, 44; Laws 1975, c. 844, § 3; Laws 1977, c. 265, § 9; Laws 1981, c. 645, §§ 1, 2; Laws 1989, c. 549; Laws 1995, c. 243, § 1, eff. Jan. 1, 1996; Laws 1996 (2nd Ex. Sess.), c. 9, § 10; S.L. 1999–424, § 7(e), eff. Aug. 5, 1999; S.L. 2001–319, § 11, eff. July 28, 2001; S.L. 2001–403, § 5, eff. Jan. 1, 2002; S.L. 2002–158, § 12, eff. Jan. 1, 2004; S.L. 2003–278, § 10(d), eff. Jan. 1, 2004; S.L. 2006–192, § 2, eff. Jan. 1, 2007.

Historical and Statutory Notes

Laws 1995, c. 243, § 1, provides:

''Wherever the term 'supervisor' appears in the General Statutes of North Carolina or in any local act in reference to the county supervisor of elections as provided in G.S. 163–35, the term is changed to read 'director.' ''

Laws 1996, 2 Ex. Sess., c. 9, § 24, provides, in part, that part 2 of this act ''becomes effective with respect to elections conducted in 1998 and thereafter''.

2001 Legislation

S.L. 2001–319, § 11, eff. July 28, 2001, substituted ''Executive Director'' for ''Executive Secretary-Director'' and ''State Executive Secretary-Director'' throughout this section.

S.L. 2001–403, § 5, eff. Jan. 1, 2002, in subd. (c)(1), inserted ''and district'' and substituted ''judges'' for ''judge''.

2002 Legislation

S.L. 2002–21 (Ex. Sess.), §§ 1(a) to 2, eff. July 16, 2002, provide:

''Section 1.(a) Notwithstanding G.S. 163–1(b), the date of the primary election in 2002 shall be September 10, 2002.

''Section 1.(b) In order to accommodate the scheduling of the 2002 primary on September 10, 2002, and in order to comply with the requirements of Section 5 of the Voting Rights Act of 1965 and any court orders, and in order to comply with any objections interposed under Section 5, the State Board of Elections may issue temporary orders that may change, modify, delete, amend, or add to any statute contained in Chapter 163 of the General Statutes, any rules contained in Title 8 of the North Carolina Administrative Code, or any other election regulation or guideline that may affect the 2002 primaries and general elections. These temporary orders are only effective for the 2002 primary and 2002 general election. These orders shall include a primary election schedule.

''Section 1.(c) Notwithstanding G.S. 163–111 or any local act, in 2002 only, the result of the primary shall be determined by a plurality and no second primary shall be held. Any runoff election for local office that might by local act have been held on the date of the second primary shall instead be held on the date of the general election. If there is a tie in a primary in 2002, the result shall be determined in accordance with G.S. 163–111(f) under the same rule as if there had been a tie in a second primary.

''Section 1.(d) The authority to adopt orders also extends to any elections originally scheduled to be held on May 7, 2002, any elections ordered by the State Board of Elections to be held on the date of a county primary that were originally scheduled to be held on May 7, 2002, or any elections to be held on the date of the second primary. If any municipality had its election scheduled under G.S. 160A–23.1(d)(2) to be on the date of the second primary in 2002, the election shall instead be held on the date of the general election in 2002.

''Section 1.(e) The orders shall provide for candidate filing for member of the State Senate and State House of Representatives to open as soon as practicable.

''Section 1.(f) The State Board of Elections may set a period of time for unaffiliated candidates who wish to obtain ballot access by petition, under the provisions of G.S. 163–122, for legislative races in districts used in new legislative filings, to obtain and submit signed petitions for such purpose. Any unaffiliated candidate for a legislative seat, in a district used under a previously approved legislative redistricting plan, who had submitted a petition in a timely manner under the provisions of G.S. 163–122, shall have the right under any State Board plan to have any valid voter signatures contained in the previously approved petition, that meet the residency requirements of the new district, to be considered a part of any new petition to obtain ballot access for a legislative seat in that new district.

''Section 1.(g) The authority granted by this section shall be exercised only when needed to ensure the orderly and timely operations of the electoral process, the public good, and any valid interest of voters, candidates, and officeholders in order to accommodate the compressed schedule necessitated by holding the primary elections at such a late date. All orders of the State Board issued under this section shall be presumed to be reasonable and to serve the public interest.

''Section 1.(h) Orders issued under this section are not rules subject to the provisions of Chapter 150B of the General Statutes. Orders issued under this section shall, however, be published in the North Carolina Register as quickly as possible.

''Section 1.(i) The times to publish notice of a bond referendum required by G.S. 159–61(c) shall not apply to any bond referendum held on the date of the 2002 statewide primary. The local government unit holding the bond referendum on that date shall comply with the times to publish notice of the election prescribed by the State Board of Elections pursuant to this section.

''Section 1.(j) The provisions of G.S. 159–61(b) that provide that a bond referendum may not be held within 30 days before or 10 days after a statewide primary, election, or referendum shall not apply to any bond referendum previously called to be conducted on a date that is within 30 days before or 10 days after the date selected as the date for the 2002 statewide primary.

''Section 1.(k) As used in this section, ''order'' also includes guidelines and directives.

''Section 1.(*l*) Any orders issued under this section become void 10 days after the final certification of all elections that were originally scheduled to be held in 2002.

''This section expires 10 days after the final certification of all elections that were originally scheduled to be held in 2002.

''Section 1.1. Notwithstanding G.S. 163–106(h), any person who filed a notice of candidacy under G.S. 163–106(c) during the filing period in 2002 for an office other than member of the State Senate or member of the State House of Representatives and did not withdraw that notice of candidacy before the filing deadline may not file a notice of candidacy as a member of the State Senate or member of the State House of Representatives unless either of the following applies:

''(1) If that person was declared the nominee of the party under G.S. 163–110, that person resigns the nomination (in which case the vacancy in nomination shall be filled in accordance with G.S. 163–114).

''(2) If that person is in a contested primary, that person withdraws the notice of candidacy. That notice of candidacy may be withdrawn notwithstanding the requirements of G.S. 163–106(e) that it be withdrawn prior to the filing deadline for that office. In the case of any such withdrawal, the appropriate board of election shall reopen filing for three days under the usual procedures of G.S. 163–112 notwithstanding the time of and reason for the withdrawal.

''Section 2. If any members of any county board of education are elected at the primary election and take office under a local act in July after the primary, in 2002 only, they shall instead take office on the same day in December after the primary, and the terms of any such member which would otherwise expire in July of 2002 are extended accordingly.''

S.L. 2002–158, § 12, eff. Jan. 1, 2004, in subd. (c)(1), deleted ''Justices, Judges, or'' before ''District Attorneys'', and deleted ''other than superior and district court judges,'' after ''General Court of Justice''.

S.L. 2002–158, § 16, provides:

''Section 1 of this act is effective when it becomes law, provided that dis-

tributions from the Fund shall begin in the 2004 election year. Section 2 becomes effective January 1, 2003. Section 3 becomes effective July 1, 2003. Sections 4 and 6(a) become effective for taxable years beginning on or after January 1, 2003. Section 5 becomes effective January 1, 2003. Sections 7 through 13 become effective with respect to primaries and elections held on or after January 1, 2004. Except as otherwise provided in this act, this act is effective when it becomes law.''

2003 Legislation

S.L. 2003–278, § 10(d), eff. Jan. 1, 2004, in the first sentences of subds. (c)(1) and (2), deleted ''or by telegram'' following ''in writing'' and substituted ''ninth'' for ''seventh''.

2006 Legislation

S.L. 2006–192, § 2, eff. Jan. 1, 2007, amended subsec. (e) by substituting ''seven'' for ''four'', ''written affirmation'' for ''affidavit'', ''change of address within the county'' for ''transfer of precinct'', ''in'' for ''before'', and ''that written affirmation'' for ''the affidavit of transfer''.

S.L. 2006–192, § 19, provides:

''Sections 2 through 5 of this act are effective January 1, 2007, and apply to all primaries and elections conducted on or after that date. Sections 8 and 9 of this act are effective when this act becomes law and apply to vacancies occurring on or after that date. Section 17 of this act and the portion of Section 15 of this act that affects G.S. 163–278.13(e3) become effective January 1, 2007, and apply to contributions made or accepted on or after that date. Section 18 of this act becomes effective for taxable years beginning on or after January 1, 2006. The remainder of this act is effective when it becomes law.''

Local Modifications

Montgomery County: S.L. 2004–59, § 11.

Lenoir County: Laws 1989, c. 291, § 7(a).

Pamlico County: Laws 1987 (Reg. Sess., 1988), c. 939, § 5.

Richmond County: Laws 1989, c. 88, § 1.1.

City of Albemarle: Laws 1987 (Reg. Sess., 1996), c. 881, § 5.

Vance County Board of Education: Laws 1987 (Reg. Sess. 1988), c. 974, §§ 3, 4.

Notes of Decisions

Construction and application 1
Mandamus 2

1. Construction and application

Under Pub.Laws 1915, c. 101, § 24, where, after primary to select nominees for General Assembly, county being entitled to three members, the fourth highest, the third highest not having received a majority of the votes cast, failed to demand, in writing, within five days, a second primary, the third highest became nominee for third place. Johnston v. Board of Elections of Wake County, 1916, 90 S.E. 143, 172 N.C. 162. Elections ⚷ 126(1)

2. Mandamus

Candidate was not entitled to mandamus for second primary, unless defendant, in refusing it, denied him a manifest, present, clear legal right to a ministerial act. Umstead v. Board of Elections of Durham County, 1926, 134 S.E. 409, 192 N.C. 139. Mandamus ⚷ 74(1)

Candidate was not entitled to mandamus for second primary where he did not establish the facts required by statute to entitle him thereto (C.S. § 6045). Umstead v. Board of Elections of Durham County, 1926, 134 S.E. 409, 192 N.C. 139. Mandamus ⚷ 74(1)

Mandamus is remedy to place name on ticket where Legislature has enacted a statute conferring on successful candidates for nominations in a primary specified rights, and enjoined upon an official board ministerial duties designed to effect such rights. Johnston v. Board of Elections of Wake County, 1916, 90 S.E. 143, 172 N.C. 162. Mandamus ⚷ 74(3)

§ 163–112. Death of candidate before primary; vacancy in single office

(a) Death of One of Two Candidates within 30 Days after the Filing Period Closes.—If at the time the filing period closes, only

two persons have filed notice of candidacy for nomination by a political party to a single office, and one of the candidates dies within 30 days after the filing period closes, then the proper board of elections shall, upon notice of the death, reopen the filing period for that party contest, for an additional three days. Should no candidate file during the three days, the board of elections shall certify the remaining candidate as the nominee of his party as provided in G.S. 163-110.

(b) Death of One of More Than Two Candidates within 30 Days after the Filing Period Closes. —If at the close of the filing period more than two candidates have filed for a single-seat office, and within 30 days after the filing period closes the board of elections receives notice of a candidate's death, the board shall immediately open the filing period for that party contest, for three additional days in order for candidates to file for that office. The name of the deceased candidate shall not be printed on the ballot.

In the event a candidate's death occurs more than 30 days after the closing of the original filing period, the names of the remaining candidates shall be printed on the ballot. If the ballots have been printed at the time death occurs, the ballots shall not be reprinted and any votes cast for a deceased candidate shall not be counted or considered for any purpose. In the event the death of a candidate or candidates leaves only one candidate, then such candidate shall be certified as the party's nominee for that office.

(c) Vacancy in Group Offices within 30 Days after the Filing Period Closes.—If at the time the filing period closes more persons have filed notice of candidacy for nomination by a political party to an office constituting a group than there are positions to be filled, and a candidate or candidates die within 30 days after the filing period closes, and there remains only the number of candidates equal to or fewer than the number of positions to be filled, the appropriate board of elections shall reopen the filing period for that party contest, for three days for that office. Should no persons file during the three-day period, then those candidates already filed shall be certified as the party nominees for that office.

(d) Vacancy in Group Offices More Than 30 Days after the Filing Period Closes.—In the event a candidate or candidates death occurs more than 30 days after the original filing period closes for an office constituting a group, then regardless of the number of candidates filed for nomination, the board of elections shall be governed as follows:

(1) If the ballots have not been printed at the time the board of elections receives notice of the death, the deceased candidate's name shall not be printed on the ballot.

(2) If the ballots have been printed at the time the board of elections receives notice of the death, the ballots shall not

be reprinted but votes cast for the deceased candidate shall not be counted for any purpose.

(3) In the event the death of a candidate or candidates results in the number of candidates being equal to or less than the number of positions to be filled for that office, then the remaining candidates shall be certified as the party nominees for that office and no primary shall be held for that office.

(4) If death or disqualification of candidates results in the number of candidates being less than the number of positions to be filled for that office, then the appropriate party executive committee shall, in accordance with G.S. 163–114, make nominations of persons equal to the number of positions to be filled and no primary shall be held and those names shall be printed on the general election ballot.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1981, c. 434; Laws 1993, c. 553, § 60, eff. July 24, 1993; S.L. 2001–466, § 1(f); S.L. 2003–278, § 4, eff. June 27, 2003; S.L. 2003–434 (Ex. Sess.), § 5(e), eff. Nov. 25, 2003; S.L. 2004–127, § 13, eff. July 26, 2004.

Historical and Statutory Notes

2001 Legislation

S.L. 2001–466, § 1(f), provides:

''For the 2002 primary election only, G.S. 163–112 shall be applied by substituting '10 days' for '30 days' wherever it appears.''

2002 Legislation

S.L. 2002–21 (Ex. Sess.), §§ 1(a) to 2, eff. July 16, 2002, provide:

''Section 1.(a) Notwithstanding G.S. 163–1(b), the date of the primary election in 2002 shall be September 10, 2002.

''Section 1.(b) In order to accommodate the scheduling of the 2002 primary on September 10, 2002, and in order to comply with the requirements of Section 5 of the Voting Rights Act of 1965 and any court orders, and in order to comply with any objections interposed under Section 5, the State Board of Elections may issue temporary orders that may change, modify, delete, amend, or add to any statute contained in Chapter 163 of the General Statutes, any rules contained in Title 8 of the North Carolina Administrative Code, or any other election regulation or guideline that may affect the 2002 primaries and general elections. These temporary orders are only effective for the 2002 primary and 2002 general election. These orders shall include a primary election schedule.

''Section 1.(c) Notwithstanding G.S. 163–111 or any local act, in 2002 only, the result of the primary shall be determined by a plurality and no second primary shall be held. Any runoff election for local office that might by local act have been held on the date of the second primary shall instead be held on the date of the general election. If there is a tie in a primary in 2002, the result shall be determined in accordance with G.S. 163–111(f) under the same rule as if there had been a tie in a second primary.

''Section 1.(d) The authority to adopt orders also extends to any elections originally scheduled to be held on May 7, 2002, any elections ordered by the State Board of Elections to be held on the date of a county primary that were originally scheduled to be held on May 7, 2002, or any elections to be held on the date of the second primary. If any municipality had its election scheduled under G.S. 160A–23.1(d)(2) to be on the date of the second primary in 2002, the election shall instead be held on the date of the general election in 2002.

''Section 1.(e) The orders shall provide for candidate filing for member of the State Senate and State House of

Representatives to open as soon as practicable.

''Section 1.(f) The State Board of Elections may set a period of time for unaffiliated candidates who wish to obtain ballot access by petition, under the provisions of G.S. 163–122, for legislative races in districts used in new legislative filings, to obtain and submit signed petitions for such purpose. Any unaffiliated candidate for a legislative seat, in a district used under a previously approved legislative redistricting plan, who had submitted a petition in a timely manner under the provisions of G.S. 163–122, shall have the right under any State Board plan to have any valid voter signatures contained in the previously approved petition, that meet the residency requirements of the new district, to be considered a part of any new petition to obtain ballot access for a legislative seat in that new district.

''Section 1.(g) The authority granted by this section shall be exercised only when needed to ensure the orderly and timely operations of the electoral process, the public good, and any valid interest of voters, candidates, and officeholders in order to accommodate the compressed schedule necessitated by holding the primary elections at such a late date. All orders of the State Board issued under this section shall be presumed to be reasonable and to serve the public interest.

''Section 1.(h) Orders issued under this section are not rules subject to the provisions of Chapter 150B of the General Statutes. Orders issued under this section shall, however, be published in the North Carolina Register as quickly as possible.

''Section 1.(i) The times to publish notice of a bond referendum required by G.S. 159–61(c) shall not apply to any bond referendum held on the date of the 2002 statewide primary. The local government unit holding the bond referendum on that date shall comply with the times to publish notice of the election prescribed by the State Board of Elections pursuant to this section.

''Section 1.(j) The provisions of G.S. 159–61(b) that provide that a bond referendum may not be held within 30 days before or 10 days after a statewide primary, election, or referendum shall not apply to any bond referendum previously called to be conducted on a date that is within 30 days before or 10 days after the date selected as the date for the 2002 statewide primary.

''Section 1.(k) As used in this section, ''order'' also includes guidelines and directives.

''Section 1.(*l*) Any orders issued under this section become void 10 days after the final certification of all elections that were originally scheduled to be held in 2002.

''This section expires 10 days after the final certification of all elections that were originally scheduled to be held in 2002.

''Section 1.1. Notwithstanding G.S. 163–106(h), any person who filed a notice of candidacy under G.S. 163–106(c) during the filing period in 2002 for an office other than member of the State Senate or member of the State House of Representatives and did not withdraw that notice of candidacy before the filing deadline may not file a notice of candidacy as a member of the State Senate or member of the State House of Representatives unless either of the following applies:

''(1) If that person was declared the nominee of the party under G.S. 163–110, that person resigns the nomination (in which case the vacancy in nomination shall be filled in accordance with G.S. 163–114).

''(2) If that person is in a contested primary, that person withdraws the notice of candidacy. That notice of candidacy may be withdrawn notwithstanding the requirements of G.S. 163–106(e) that it be withdrawn prior to the filing deadline for that office. In the case of any such withdrawal, the appropriate board of election shall reopen filing for three days under the usual procedures of G.S. 163–112 notwithstanding the time of and reason for the withdrawal.

''Section 2. If any members of any county board of education are elected at the primary election and take office under a local act in July after the primary, in 2002 only, they shall instead take office on the same day in December after the primary, and the terms of any such member which would otherwise expire in July of 2002 are extended accordingly.''

2003 Legislation

S.L. 2003–278, § 4, eff. June 27, 2003, in the introductory paragraph of subsec. (b), in the first sentence, substituted ''single-seat'' for ''single''.

S.L. 2003–434 (Ex. Sess.), § 5(e), eff. Nov. 25, 2003, for the 2004 primary election only, substituted ''10 days'' for ''30 days'' throughout the section.

S.L. 2003–434 (Ex. Sess.), § 5(f), provides:

''Section 5.(f) The provisions of this section apply during the 2004 election year only.''

2004 Legislation

S.L. 2004–127, § 13, eff. July 26, 2004, in subd. (d)(4), deleted '', resignation'' following ''death''.

Local Modifications

Anson County Board of Commissioners: Laws 1991 (Reg. Sess., 1992), c. 781, § 6.

Cross References

County Board of Elections littering notification, see § 163–33.3.
Notices of candidacy, generally, see § 163–106.
State Board of Elections littering notification, see § 163–22.3.

§ 163–113. Nominee's right to withdraw as candidate

A person who has been declared the nominee of a political party for a specified office under the provisions of G.S. 163–182.15 or G.S. 163–110, shall not be permitted to resign as a candidate unless, at least 30 days before the general election, he submits to the board of elections which certified his nomination a written request that he be permitted to withdraw.

Added by Laws 1967, c. 775, § 1. Amended by S.L. 2001–398, § 6, eff. Jan. 1, 2002.

Historical and Statutory Notes

2001 Legislation

S.L. 2001–398, § 6, eff. Jan. 1, 2002, substituted ''163–182.15'' for ''163–175, G.S. 163–192,''.

§ 163–114. Filling vacancies among party nominees occurring after nomination and before election

If any person nominated as a candidate of a political party for one of the offices listed below (either in a primary or convention or by virtue of having no opposition in a primary) dies, resigns, or for any reason becomes ineligible or disqualified before the date of the ensuing general election, the vacancy shall be filled by appointment according to the following instructions:

Position	
President Vice President	Vacancy is to be filled by appointment of national executive committee of political party in which vacancy occurs
Presidential elector or alternate elector Any elective State office United States Senator	Vacancy is to be filled by appointment of State executive committee of political party in which vacancy occurs
A district office, including: Member of the United States House of Representatives District Attorney State Senator in a multi-county senatorial district	Appropriate district executive committee of political party in which vacancy occurs

Member of State House of Representatives in a multi-county representative district	
State Senator in a single-county senatorial district	County executive committee of political party in which vacancy occurs, provided, in the case of the State Senator or State Representative in a single-county district where not all the county is located in that district, then in voting, only those members of the county executive committee who reside within the district shall vote
Member of State House of Representatives in a single-county representative district	
Any elective county office	

The party executive making a nomination in accordance with the provisions of this section shall certify the name of its nominee to the chairman of the board of elections, State or county, that has jurisdiction over the ballot item under G.S. 163–182.4. If at the time a nomination is made under this section the general election ballots have already been printed, the provisions of G.S. 163–165.3(c) shall apply. If a vacancy occurs in a nomination of a political party and that vacancy arises from a cause other than death and the vacancy in nomination occurs more than 120 days before the general election, the vacancy in nomination may be filled under this section only if the appropriate executive committee certifies the name of the nominee in accordance with this paragraph at least 75 days before the general election.

In a county not all of which is located in one congressional district, in choosing the congressional district executive committee member or members from that area of the county, only the county convention delegates or county executive committee members who reside within the area of the county which is within the congressional district may vote.

In a county which is partly in a multi-county senatorial district or which is partly in a multi-county House of Representatives district, in choosing that county's member or members of the senatorial district executive committee or House of Representatives district executive committee for the multi-county district, only the county convention delegates or county executive committee members who reside within the area of the county which is within that multi-county district may vote.

An individual whose name appeared on the ballot in a primary election preliminary to the general election shall not be eligible to be nominated to fill a vacancy in the nomination of another party for the same office in the same year.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1973, c. 793, § 45; Laws 1987, c. 509, § 10; Laws 1987, c. 526; Laws 1987 (Reg. Sess., 1988), c. 1037, § 126.1; Laws 1991, c. 727, § 8; Laws 1996 (2nd Ex. Sess.), c. 9, § 13; S.L. 2001–353, § 1, eff. Aug. 10, 2001; S.L. 2001–403, § 8, eff. Jan. 1, 2002; S.L. 2001–460, § 4, eff. Jan. 1. 2002; S.L. 2003–142, § 1, eff. June 4, 2003; S.L. 2006–234, § 6, eff. Jan. 1, 2007.

Historical and Statutory Notes

Laws 1996, 2 Ex. Sess., c. 9, § 24, provides, in part, that part 2 of this act ''becomes effective with respect to elections conducted in 1998 and thereafter''.

2001 Legislation

S.L. 2001–353, § 1, eff. Aug. 10, 2001, rewrote the section, which prior thereto read:

''If any person nominated as a candidate of a political party for one of the offices listed below (either in a primary or convention or by virtue of having no opposition in a primary) dies, resigns, or for any reason becomes ineligible or disqualified before the date of the ensuing general election, the vacancy shall be filled by appointment according to the following instructions:

''Position	
Any elective State office United States Senator	Vacancy is to be filled by appointment of State executive committee of political party in which vacancy occurs
A district office, including: Member of the United States House of Representatives Judge of superior court Judge of district court District Attorney State Senator in a multi-county senatorial district Member of State House of Representatives in a multi-county representative district	Appropriate district executive committee of political party in which vacancy occurs
State Senator in a single-county senatorial district Member of State House of Representatives in a single-county representative district Any elective county office	County executive committee of political party in which vacancy occurs, provided in the case of the State Senator or State Representative in a single-county district where not all the county is located in that district, then in voting, only those members of the county executive committee who reside within the district shall vote

''The party executive making a nomination in accordance with the provisions of this section shall certify the name of its nominee to the chairman of the board of elections, State or county, charged with the duty of printing the ballots on which the name is to appear. If at the time a nomination is made under this section the general election ballots have already been printed, the provisions of G.S. 163–139 shall apply. If any person nominated as a candidate of a political party vacates such nomination and such vacancy arises from a cause other than death and the vacancy in nomination occurs more than 120 days before the general election, the vacancy in nomination may be filled under this section only if the appropriate executive committee certifies the name of the nominee in accordance with this paragraph at least 75 days before the general election.

''In a county not all of which is located in one congressional district, in choosing the congressional district executive committee member or members from that area of the county, only the county convention delegates or county executive committee members who reside within the area of the county which is within the congressional district may vote.

''In a county which is partly in a multi-county senatorial district or which is partly in a multi-county House of Representatives district, in choosing that county's member or members of the senatorial district executive committee or House of Representatives district executive committee for the multi-county district, only the county convention delegates or county executive committee members who reside within the area of the county which is within that multi-county district may vote.''.

S.L. 2001–403, § 8, eff. Jan. 1, 2002, in the table, deleted ''Judge of district court'' following ''United States House of Representatives''.

S.L. 2001–460, § 4, eff. Jan. 1, 2002, in the second sentence of the second paragraph, substituted ''163–165.3(c)'' for ''163–139''.

2003 Legislation

S.L. 2003–142, § 1, eff. June 4, 2003, in the first sentence of the second paragraph, substituted ''that has jurisdiction over the ballot item under G.S. 163–182.4'' for ''charged with the duty of printing the ballots on which the name is to appear''.

2006 Legislation

S.L. 2006–234, § 6, eff. Jan. 1, 2007, added the last paragraph of this section.

S.L. 2006–234, § 7, provides:

''This act becomes effective January 1, 2007, and applies to all primaries and elections held on or after that date.''

Cross References

Application of lobbying regulations, see § 120C–104.
Confidentiality of date of birth, see § 163–82.10B.
County Board of Elections littering notification, see § 163–33.3.
District attorneys and prosecutorial districts, see § 7A–60.
Preparation of official ballots, see § 163–165.3
Prohibitions on campaign contributions, see § 120C–302.
State Board of Elections littering notification, see § 163–22.3.
Statement of economic interests, filing required, see § 138A–22.

§ 163–115. Special provisions for obtaining nominations when vacancies occur in certain offices

(a) If a vacancy occurs in the office of the clerk of superior court, otherwise than by expiration of the term, or if the people fail to elect, the vacancy shall be filled as provided in Sec. 9(3) of Article IV of the North Carolina Constitution. If the vacancy occurs after the time for filing notice of candidacy in the primary has expired in a year when a regular election is not being held to elect a clerk of the superior court by expiration of term, then the county executive committee of each political party shall nominate a candidate whose name shall appear on the general election ballot. The candidate elected in the general election shall serve the unexpired portion of the term of the person causing the vacancy.

(b) In the event a special election is called to fill a vacancy in the State's delegation in the United States House of Representatives, the provisions of G.S. 163-13 shall apply.

(c) If a vacancy occurs in an elective State or district office (other than member of the United States House of Representatives) during the period opening 10 days before the filing period for the office ends and closing 30 days before the ensuing general election, a nomination shall be made by the proper executive committee of each political party as provided in G.S. 163-114, and the names of the nominees shall be printed on the general election ballots.

(d) If a vacancy occurs on a county board of commissioners and G.S. 153A-27 or G.S. 153A-27.1 requires that a person shall be

elected to the seat vacated for the remainder of the unexpired term, and the vacancy occurs:

(1) Beginning on the tenth day before the filing period ends under G.S. 163-106(c), a nomination shall be made by the county executive committee of each political party and the names of the nominees shall be printed on the general election ballots.

(2) Prior to the tenth day before the filing period ends under G.S. 163-106(c), nominations shall be made by primary election as provided by this Article.

(e) If a vacancy occurs in the office of United States Senator, and the vacancy occurs:

(1) Beginning on the tenth day before the filing period ends under G.S. 163-106(c), a nomination shall be made by the State executive committee of each political party and the names of the nominees shall be printed on the general election ballots.

(2) Prior to the tenth day before the filing period ends under G.S. 163-106(c), nominations shall be made by primary election as provided by this Article.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1973, c. 793, § 46; Laws 1985, c. 563, §§ 7, 7.1; Laws 1985, c. 759, § 1; S.L. 1997–456, § 27, eff. Aug. 29, 1997.

Notes of Decisions

Construction and application 1

1. Construction and application

If a county commissioner who is holding office in the first two years of a four-year term dies on a date following the close of the filing period for the upcoming primary and general election, party nominees are to be selected for the purpose of running in the next general election, absent any applicable provision of law, under N.C. Gen. Stat. § 163–115. 53 Op.Atty.Gen. 67, Johnston, Feb. 24, 1984.

§§ 163–116 to 163–118. Repealed by Laws 1973, c. 793, §§ 47 to 49

Historical and Statutory Notes

Repealed § 163–116 pertained to agreements for rotation of candidates in senatorial districts of more than one county; § 163–117 required numbering of seats within state senate and representative districts; and, § 163–118 provided that numbers assigned to the senate or house seats be designated by the state board of elections.

§ 163–119. Voting by unaffiliated voter in party primary

If a political party has, by action of its State Executive Committee reported to the State Board of Elections by resolution delivered no later than the first day of December preceding a primary, provided that unaffiliated voters may vote in the primary of that party, an unaffiliated voter may vote in the primary of that party

by announcing that intention under G.S. 163–166.7(a). For a party to withdraw its permission, it must do so by action of its State Executive Committee, similarly reported to the State Board of Elections no later than the first day of December preceding the primary where the withdrawal is to become effective.

Added by Laws 1993 (Reg. Sess., 1994), c. 762, § 7, eff. Jan. 1, 1995. Amended by S.L. 2002–159, § 21(a), eff. Oct. 11, 2002.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

"Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences." [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

2002 Legislation

S.L. 2002–159, § 21(a), eff. Oct. 11, 2002, in the first sentence, substituted "G.S. 163–166.7(a)." for "G.S. 163–150(a)."

Cross References

Absentee voting in primary, see § 163–226.1.
Voting in presidential preference primary, ballots, persons registered as Unaffiliated, see § 163–213.7.

Notes of Decisions

Validity 1

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1. Validity

North Carolina statute permitting political party to allow unaffiliated voters to participate in its primary election was not an unconstitutional abridgment of candidate's First Amendment right of free association. Hole v. North Carolina Bd. of Elections, 2000, 112 F.Supp.2d 475. Constitutional Law ⚷ 1468; Elections ⚷ 24

§§ 163–120, 163–121. Reserved

Article 11

Nomination by Petition

Section

163–122. Unaffiliated candidates nominated by petition.
163–123. Declaration of intent and petitions for write-in candidates in partisan elections.
163–124. Reserved.

§ 163–122. Unaffiliated candidates nominated by petition

(a) Procedure for Having Name Printed on Ballot as Unaffiliated Candidate. —Any qualified voter who seeks to have his name printed on the general election ballot as an unaffiliated candidate shall:

(1) If the office is a statewide office, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the State equal in number to two percent (2%) of the total number of voters who voted in the most recent general election for Governor. Also, the petition must be signed by at least 200 registered voters from each of four congressional districts in North Carolina. No later than 5:00 p.m. on the fifteenth day preceding the date the petitions are due to be filed with the State Board of Elections, each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained. Provided the petitions are timely submitted, the chairman shall examine the names on the petition and place a check mark on the petition by the name of each signer who is qualified and registered to vote in his county and shall attach to the petition his signed certificate. Said certificates shall state that the signatures on the petition have been checked against the registration records and shall indicate the number of signers to be qualified and registered to vote in his county. The chairman shall return each petition, together with the certificate required in this section, to the person who presented it to him for checking. Verification by the chairman of the county board of elections shall be completed within two weeks from the date such petitions are presented.

(2) If the office is a district office under the jurisdiction of the State Board of Elections under G. S. 163–182.4(b), file written petitions with the State Board of Elections supporting that voter's candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the district equal in number to four percent (4%) of the total number of registered voters in the district as reflected by the voter registration records of the State Board of Elections as of January 1 of the year in which the general election is to be held. Each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained. The chairman shall examine the names on the petition and the procedure for certification and deadline for submission to the county board shall be the same as specified in (1) above.

(3) If the office is a county office or a single county legislative district, file written petitions with the chairman or director of the county board of elections supporting his candidacy for a specified county office. These petitions must be filed with the county board of elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the county equal in number to four percent (4%) of the total number of registered voters in the county as reflected by the voter registration records of the State Board of Elections as of January 1 of the year in which the general election is to be held, except if the office is for a district consisting of less than the entire county and only the voters in that district vote for that office, the petitions must be signed by qualified voters of the district equal in number to four percent (4%) of the total number of voters in the district according to the voter registration records of the State Board of Elections as of January 1 of the year in which the general election is to be held. Each petition shall be presented to the chairman or director of the county board of elections. The chairman shall examine, or cause to be examined, the names on the petition and the procedure for certification shall be the same as specified in (1) above.

(4) If the office is a partisan municipal office, file written petitions with the chairman or director of the county board of elections in the county wherein the municipality is located supporting his candidacy for a specified municipal office. These petitions must be filed with the county board of elections on or before the time and date specified in G.S. 163–296 and must be signed by the number of qualified voters specified in G.S. 163–296. The procedure for certification shall be the same as specified in (1) above.

Upon compliance with the provisions of (1), (2), (3), or (4) of this subsection, the board of elections with which the petitions have been timely filed shall cause the unaffiliated candidate's name to be printed on the general election ballots in accordance with Article 14A of this Chapter.

An individual whose name appeared on the ballot in a primary election preliminary to the general election shall not be eligible to have his name placed on the general election ballot as an unaffiliated candidate for the same office in that year.

(b) Form of Petition. — Petitions requesting an unaffiliated candidate to be placed on the general election ballot shall contain on the heading of each page of the petition in bold print or in all capital letters the words: ''THE UNDERSIGNED REGISTERED VOTERS IN _____ COUNTY HEREBY PETITION ON BEHALF OF _____ AS AN UNAFFILIATED CANDI-

DATE FOR THE OFFICE OF _____ IN THE NEXT GENERAL ELECTION. THE UNDERSIGNED HEREBY PETITION THAT SUBJECT CANDIDATE BE PLACED ON THE APPROPRIATE BALLOT UPON COMPLIANCE WITH THE PROVISIONS CONTAINED IN G.S. 163–122.''

(c) This section does not apply to elections under Article 25 of this Chapter.

(d) When any person files a petition with a board of elections under this section, the board of elections shall, immediately upon receipt of the petition, inspect the registration records of the county and cancel the petition of any person who does not meet the constitutional or statutory qualifications for the office, including residency.

The board shall give notice of cancellation to any person whose petition has been cancelled under this subsection by mail or by having the notice served on that person by the sheriff and to any other candidate filing for the same office. A person whose petition has been cancelled or another candidate for the same office affected by a substantiation under this subsection may request a hearing on the issue of constitutional or statutory qualifications for the office. If the person requests a hearing, the hearing shall be conducted in accordance with Article 11B of Chapter 163 of the General Statutes.

(e) Any candidate seeking to have that candidate's name printed on the general election ballot under this section shall pay a filing fee equal to that provided for candidates for the office in G.S. 163–107 or comply with the alternative available to candidates for the office in G.S. 163–107.1.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1973, c. 793, § 50; Laws 1977, c. 408, § 3; Laws 1979, c. 23, § 1; Laws 1979, c. 23, § 3; Laws 1979, c. 534, § 2; Laws 1981, c. 637; Laws 1991, c. 297, § 1; Laws 1995, c. 243, § 1, eff. Jan. 1, 1996; Laws 1996 (2nd Ex. Sess.), c. 9, § 14; S.L. 1999–424, § 5(b), eff. Aug. 5, 1999; S.L. 2002–159, § 21(b), eff. Oct. 11, 2002; S.L. 2004–127, § 8(a), eff. July 26, 2004; S.L. 2006–155, § 3, eff. Jan. 1, 2007; S.L. 2006–234, §§ 4, 5, eff. Jan. 1, 2007; S.L. 2007–391, § 8(a), eff. Aug. 19, 2007; S.L. 2007–484, § 21, eff. Aug. 30, 2007.

Historical and Statutory Notes

Laws 1995, c. 243, § 1, provides:

''Wherever the term 'supervisor' appears in the General Statutes of North Carolina or in any local act in reference to the county supervisor of elections as provided in G.S. 163–35, the term is changed to read 'director.' ''

Laws 1996, 2 Ex. Sess., c. 9, § 24, provides, in part, that part 2 of this act ''becomes effective with respect to elections conducted in 1998 and thereafter''.

2002 Legislation

S.L. 2002–21 (Ex. Sess.), §§ 1(a) to 2, eff. July 16, 2002, provide:

''Section 1.(a) Notwithstanding G.S. 163–1(b), the date of the primary election in 2002 shall be September 10, 2002.

''Section 1.(b) In order to accommodate the scheduling of the 2002 primary on September 10, 2002, and in order to comply with the requirements of Section 5 of the Voting Rights Act of 1965

and any court orders, and in order to comply with any objections interposed under Section 5, the State Board of Elections may issue temporary orders that may change, modify, delete, amend, or add to any statute contained in Chapter 163 of the General Statutes, any rules contained in Title 8 of the North Carolina Administrative Code, or any other election regulation or guideline that may affect the 2002 primaries and general elections. These temporary orders are only effective for the 2002 primary and 2002 general election. These orders shall include a primary election schedule.

''Section 1.(c) Notwithstanding G.S. 163–111 or any local act, in 2002 only, the result of the primary shall be determined by a plurality and no second primary shall be held. Any runoff election for local office that might by local act have been held on the date of the second primary shall instead be held on the date of the general election. If there is a tie in a primary in 2002, the result shall be determined in accordance with G.S. 163–111(f) under the same rule as if there had been a tie in a second primary.

''Section 1.(d) The authority to adopt orders also extends to any elections originally scheduled to be held on May 7, 2002, any elections ordered by the State Board of Elections to be held on the date of a county primary that were originally scheduled to be held on May 7, 2002, or any elections to be held on the date of the second primary. If any municipality had its election scheduled under G.S. 160A–23.1(d)(2) to be on the date of the second primary in 2002, the election shall instead be held on the date of the general election in 2002.

''Section 1.(e) The orders shall provide for candidate filing for member of the State Senate and State House of Representatives to open as soon as practicable.

''Section 1.(f) The State Board of Elections may set a period of time for unaffiliated candidates who wish to obtain ballot access by petition, under the provisions of G.S. 163–122, for legislative races in districts used in new legislative filings, to obtain and submit signed petitions for such purpose. Any unaffiliated candidate for a legislative seat, in a district used under a previously approved legislative redistricting plan, who had submitted a petition in a timely manner under the provisions of G.S. 163–122, shall have the right under any State Board plan to have any valid voter signatures contained in the previously approved petition, that meet the residency requirements of the new district, to be considered a part of any new petition to obtain ballot access for a legislative seat in that new district.

''Section 1.(g) The authority granted by this section shall be exercised only when needed to ensure the orderly and timely operations of the electoral process, the public good, and any valid interest of voters, candidates, and officeholders in order to accommodate the compressed schedule necessitated by holding the primary elections at such a late date. All orders of the State Board issued under this section shall be presumed to be reasonable and to serve the public interest.

''Section 1.(h) Orders issued under this section are not rules subject to the provisions of Chapter 150B of the General Statutes. Orders issued under this section shall, however, be published in the North Carolina Register as quickly as possible.

''Section 1.(i) The times to publish notice of a bond referendum required by G.S. 159–61(c) shall not apply to any bond referendum held on the date of the 2002 statewide primary. The local government unit holding the bond referendum on that date shall comply with the times to publish notice of the election prescribed by the State Board of Elections pursuant to this section.

''Section 1.(j) The provisions of G.S. 159–61(b) that provide that a bond referendum may not be held within 30 days before or 10 days after a statewide primary, election, or referendum shall not apply to any bond referendum previously called to be conducted on a date that is within 30 days before or 10 days after the date selected as the date for the 2002 statewide primary.

''Section 1.(k) As used in this section, ''order'' also includes guidelines and directives.

''Section 1.(*l*) Any orders issued under this section become void 10 days after the final certification of all elections that were originally scheduled to be held in 2002.

''This section expires 10 days after the final certification of all elections that were originally scheduled to be held in 2002.

''Section 1.1. Notwithstanding G.S. 163–106(h), any person who filed a notice of candidacy under G.S. 163–106(c)

during the filing period in 2002 for an office other than member of the State Senate or member of the State House of Representatives and did not withdraw that notice of candidacy before the filing deadline may not file a notice of candidacy as a member of the State Senate or member of the State House of Representatives unless either of the following applies:

''(1) If that person was declared the nominee of the party under G.S. 163–110, that person resigns the nomination (in which case the vacancy in nomination shall be filled in accordance with G.S. 163–114).

''(2) If that person is in a contested primary, that person withdraws the notice of candidacy. That notice of candidacy may be withdrawn notwithstanding the requirements of G.S. 163–106(e) that it be withdrawn prior to the filing deadline for that office. In the case of any such withdrawal, the appropriate board of election shall reopen filing for three days under the usual procedures of G.S. 163–112 notwithstanding the time of and reason for the withdrawal.

''Section 2. If any members of any county board of education are elected at the primary election and take office under a local act in July after the primary, in 2002 only, they shall instead take office on the same day in December after the primary, and the terms of any such member which would otherwise expire in July of 2002 are extended accordingly.''

S.L. 2002–159, § 21(b), eff. Oct. 11, 2002, in subsec. (b), inserted ''FOR THE OFFICE OF _____''.

2004 Legislation

S.L. 2004–127, § 8(a), eff. July 26, 2004, in subsec. (a), rewrote subds. (1) to (3), which prior thereto read:

''(1) If the office is a statewide office, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the State equal in number to two percent (2%) of the total number of registered voters in the State as reflected by the most recent statistical report issued by the State Board of Elections. No later than 5:00 p.m. on the fifteenth day preceding the date the petitions are due to be filed with the State Board of Elections, each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained. Provided the petitions are timely submitted, the chairman shall examine the names on the petition and place a check mark on the petition by the name of each signer who is qualified and registered to vote in his county and shall attach to the petition his signed certificate. Said certificates shall state that the signatures on the petition have been checked against the registration records and shall indicate the number of signers to be qualified and registered to vote in his county. The chairman shall return each petition, together with the certificate required in this section, to the person who presented it to him for checking. Verification by the chairman of the county board of elections shall be completed within two weeks from the date such petitions are presented.

''(2) If the office is a district office comprised of two or more counties, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the district equal in number to four percent (4%) of the total number of registered voters in the district as reflected by the latest statistical report issued by the State Board of Elections. Each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained. The chairman shall examine the names on the petition and the procedure for certification and deadline for submission to the county board shall be the same as specified in (1) above.

''(3) If the office is a county office or a single county legislative district, file written petitions with the chairman or director of the county board of elections supporting his candidacy for a specified county office. These petitions must be filed with the county board of elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the county equal in number to four percent (4%) of the total number of registered voters in the county as reflected by the most recent statistical report issued by the State Board of Elections, except if the office is for a district consisting of less than the entire county

and only the voters in that district vote for that office, the petitions must be signed by qualified voters of the district equal in number to four percent (4%) of the total number of voters in the district according to the most recent figures certified by the State Board of Elections. Each petition shall be presented to the chairman or director of the county board of elections. The chairman shall examine, or cause to be examined, the names on the petition and the procedure for certification shall be the same as specified in (1) above.''

2006 Legislation

S.L. 2006–155, § 3, eff. Jan. 1, 2007, added subsec. (d).

S.L. 2006–155, §§ 7 and 8, provide:

''Section. 7. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

''Section 8. This act becomes effective January 1, 2007, and applies to actions filed on or after that date.''

S.L. 2006–234, § 4, eff. Jan. 1, 2007, amended subd. (a)(1) by substituting ''votes who voted in the most recent general election for Governor. Also, the petition must be signed by at least 200 registered voters form each of four congressional districts in North Carolina'' for ''registered votes in the State as reflected by the voter registration records of the State Board of Elections as of January 1 of the year in which the general election is to be held''.

S.L. 2006–234, § 5, eff. Jan. 1, 2007, added subsec. (d). This subsec. was renumbered as (e) pursuant to the direction of the Revisor of Statutes.

S.L. 2006–234, § 7, provides:

''This act becomes effective January 1, 2007, and applies to all primaries and elections held on or after that date.''

2007 Legislation

S.L. 2007–391, § 8(a), in subd. (a)(2), in the first sentence substituted ''under the jurisdiction of the State Board of Elections under G. S. 163–182.4(b)'' for ''comprised of two or more counties'' and ''the voter's'' for ''his''.

S.L. 2007–484, § 21, in subsec. (a), in the first undesignated paragraph, substituted ''Article 14A of this Chapter'' for ''G.S. 163–140''.

Local Modifications

Avery County: S.L. 1997–99.

Anson County Board of Commissioners: Laws 1991 (Reg. Sess., 1992), c. 781, § 6.

Cross References

Confidentiality of date of birth, see § 163–82.10B.
Contents of official ballots, see § 163–165.5.
Statement of economic interests, filing required, see § 138A–22.
Time of regular elections and primaries, § 163–1.
Unaffiliated and new-party candidates, eligibility for revenues from Voter-Owned Elections Fund, see § 163–278.99C.

Notes of Decisions

Actions 3
Construction and application 2
Validity 1

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1. Validity

North Carolina statute was void for vagueness, in violation of First Amendment, when it required candidate for governor not affiliated with political party to obtain signatures equal in number to two percent of registered voters, ''as reflected by the most recent statistical report issued by the State Board of Elections;'' report could be one or more ''close of books'' reports prepared at time polls were closed for primary or general elections, or current voter registration, updated electronically and available on website. Delaney v. Bartlett, 2004, 370 F.Supp.2d 373. Constitutional Law ⚷ 1467; Elections ⚷ 21

First and Fourteenth Amendment rights of unaffiliated candidate for governor, and his supporters, were violated by North Carolina statute requiring candidate to obtain signatures of two percent of registered voters, when candidates representing new political parties were required to obtain signatures equal to two percent of number of voters for governor in most recent election, representing approximately 32,000 few-

er signatures. Delaney v. Bartlett, 2004, 370 F.Supp.2d 373. Constitutional Law ⚷ 1467; Elections ⚷ 21

North Carolina statute requiring unaffiliated candidate for county commissioner to file petition signed by ten percent of registered voters in county infringes on candidate's rights to associate for advancement of political beliefs and to cast votes effectively, violates state and federal equal protection clauses, and violates state constitutional right to free elections. Obie v. North Carolina State Bd. of Elections, 1991, 762 F.Supp. 119. Constitutional Law ⚷ 1464; Constitutional Law ⚷ 3644; Counties ⚷ 41

That portion of state election statute which required an independent candidate for President to file written petition signed by qualified voters equal in number of ten percent of those who voted for Governor in the last gubernatorial election was an unconstitutional infringement upon plaintiffs' rights to associate for the advancement of political beliefs, to cast their votes effectively, and to enjoy equal protection under law, in that in 1980 statute required independent candidates to produce over 166,000 signatures, while group of voters seeking a place on the ballot as a new party and candidate desiring to run in Presidential primary had to submit petitions signed by only 10,000 voters, and state asserted no rational basis, much less any compelling interest, for such disparate treatment. Greaves v. State Bd. of Elections of North Carolina, 1980, 508 F.Supp. 78. Constitutional Law ⚷ 1464; Constitutional Law ⚷ 3644; Elections ⚷ 21

Filing deadline contained in state election law, under which independent candidate's petitions had to be submitted to State Board of Elections by the last Friday in April before the general election, did not serve a compelling state interest and was an unconstitutional restriction on plaintiffs' rights to associate for advancement of political beliefs, to cast their votes effectively, and to enjoy equal protection under law, in that early filing deadline was not necessary to preserve integrity of either direct party primary or general election ballot, and no interest was asserted, compelling or otherwise, which justified disparity in treatment of independent and party candidates. Greaves v. State Bd. of Elections of North Carolina, 1980, 508 F.Supp. 78. Constitutional Law ⚷ 1464; Constitutional Law ⚷ 3644; Elections ⚷ 21

2. Construction and application

Under North Carolina law, three ways exist for candidate to secure spot on general election ballot for any federal, state, county, or municipal office; candidate may secure spot by becoming nominee of major political party selected by primary election, by becoming nominee of ''new'' political party selected at that party's state convention, or by being nominated by petition as unaffiliated candidate. McLaughlin v. North Carolina Bd. of Elections, 1995, 65 F.3d 1215, certiorari denied 116 S.Ct. 1320, 517 U.S. 1104, 134 L.Ed.2d 472. Elections ⚷ 126(1); Elections ⚷ 128; Elections ⚷ 141

3. Actions

Independent candidate for President had standing to challenge state filing deadline where his petition was submitted before the filing deadline but with less than the statutorily required number of signatures, in that the deadline curtailed candidate's ability to collect the required number of signatures, and the injury to candidate was not necessarily cured by district court's declaration that the statutory requirement for signatures was unconstitutional. Greaves v. State Bd. of Elections of North Carolina, 1980, 508 F.Supp. 78. Constitutional Law ⚷ 703

Alternative means of access to the general election ballot, by means of running as an independent or third-party candidate or conducting a write-in campaign to obtain nomination, did not vitiate constitutional challenge to North Carolina statute which restricted access to primary election ballot by requiring payment of filing fee. Brown v. North Carolina State Bd. of Elections, 1975, 394 F.Supp. 359. Elections ⚷ 21

§ 163–123. Declaration of intent and petitions for write-in candidates in partisan elections

(a) Procedure for Qualifying as a Write-In Candidate.—Any qualified voter who seeks to have write-in votes for him counted in a general election shall file a declaration of intent in accordance

with subsection (b) of this section and petition(s) in accordance with subsection (c) of this section.

(b) Declaration of Intent.—The applicant for write-in candidacy shall file his declaration of intent at the same time and with the same board of elections as his petition, as set out in subsection (c) of this section. The declaration shall contain:

(1) Applicant's name,
(2) Applicant's residential address,
(3) Declaration of applicant's intent to be a write-in candidate,
(4) Title of the office sought,
(5) Date of the election,
(6) Date of the declaration,
(7) Applicant's signature.

(c) Petitions for Write-in Candidacy.—An applicant for write-in candidacy shall:

(1) If the office is a statewide office, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions shall be filed on or before noon on the 90th day before the general election. They shall be signed by 500 qualified voters of the State. No later than 5:00 p.m. on the fifteenth day preceding the date the petitions are due to be filed with the State Board of Elections, each petition shall be presented to the board of elections of the county in which the signatures were obtained. A petition presented to a county board of elections shall contain only names of voters registered in that county. Provided the petitions are timely submitted, the chairman of the county board of elections shall examine the names on the petition and place a check mark by the name of each signer who is qualified and registered to vote in his county. The chairman of the county board shall attach to the petition his signed certificate. On his certificate the chairman shall state that the signatures on the petition have been checked against the registration records and shall indicate the number of signers who are qualified and registered to vote in his county and eligible to vote for that office. The chairman shall return each petition, together with the certificate required in this section, to the person who presented it to him for checking. The chairman of the county board shall complete the verification within two weeks from the date the petition is presented.
(2) If the office is a district office under the jurisdiction of the State Board of Elections under G.S. 163–182.4(b), file written petitions with the State Board of Elections supporting that applicant's candidacy for a specified office.

These petitions must be filed with the State Board of Elections on or before noon on the 90th day before the general election and must be signed by 250 qualified voters. Before being filed with the State Board of Elections, each petition shall be presented to the board of elections of the county in which the signatures were obtained. A petition presented to a county board of elections shall contain only names of voters registered in that county who are eligible to vote for that office. The chairman of the county board shall examine the names on the petition and the procedure for certification shall be the same as specified in subdivision (1).

(3) If the office is a county office, or is a school administrative unit office elected on a partisan basis, or is a legislative district consisting of a single county or a portion of a county, file written petitions with the county board of elections supporting his candidacy for a specified office. A petition presented to a county board of elections shall contain only names of voters registered in that county. These petitions must be filed on or before noon on the 90th day before the general election and must be signed by 100 qualified voters who are eligible to vote for the office, unless fewer than 5,000 persons are eligible to vote for the office as shown by the most recent records of the appropriate board of elections. If fewer than 5,000 persons are eligible to vote for the office, an applicant's petition must be signed by not less than one percent (1%) of those registered voters. Before being filed with the county board of elections, each petition shall be presented to the county board of elections for examination. The chairman of the county board of elections shall examine the names on the petition and the procedure for certification shall be the same as specified in subdivision (1).

(d) Form of Petition.—Petitions requesting the qualification of a write-in candidate in a general election shall contain on the heading of each page of the petition in bold print or in capital letters the words: ''THE UNDERSIGNED REGISTERED VOTERS IN ..... COUNTY HEREBY PETITION ON BEHALF OF ..... AS A WRITE-IN CANDIDATE IN THE NEXT GENERAL ELECTION. THE UNDERSIGNED HEREBY PETITION THAT SUBJECT CANDIDATE BE PLACED ON THE LIST OF QUALIFIED WRITE-IN CANDIDATES WHOSE VOTES ARE TO BE COUNTED AND RECORDED IN ACCORDANCE WITH G.S. 163–123.''

(e) Defeated Primary Candidate.—No person whose name appeared on the ballot in a primary election preliminary to the general election shall be eligible to have votes counted for him as a write-in candidate for the same office in that year.

(f) Counting and Recording of Votes. – If a qualified voter has complied with the provisions of subsections (a), (b), and (c) and is not excluded by subsection (e), the board of elections with which petition has been filed shall count votes for him according to the procedures set out in G.S. 163–182.1, and the appropriate board of elections shall record those votes on the official abstract. Write-in votes for names other than those of qualified write-in candidates shall not be counted for any purpose and shall not be recorded on the abstract.

(f1) When any person files a petition with a board of elections under this section, the board of elections shall, immediately upon receipt of the petition, inspect the registration records of the county and cancel the petition of any person who does not meet the constitutional or statutory qualifications for the office, including residency.

The board shall give notice of cancellation to any person whose petition has been cancelled under this subsection by mail or by having the notice served on that person by the sheriff. A person whose petition has been cancelled or another candidate for the same office affected by a substantiation under this subsection may request a hearing on the issue of constitutional or statutory qualifications for the office. If the person requests a hearing, the hearing shall be conducted in accordance with Article 11B of Chapter 163 of the General Statutes.

(g) Municipal and Nonpartisan Elections Excluded. — This section does not apply to municipal elections conducted under Subchapter IX of Chapter 163 of the General Statutes, and does not apply to nonpartisan elections except for elections under Article 25 of this Chapter.

Added by Laws 1959, c. 1203, § 6. Amended by Laws 1987, c. 393, § 1; S.L. 1999–424, § 5(b), eff. Aug. 5, 1999; S.L. 2001–319, § 9(a), eff. July 28, 2001; S.L. 2001–398, § 7, eff. Jan. 1, 2002; S.L. 2001–403, § 12, eff. Jan. 1, 2002; S.L. 2002–158, § 13, eff. Jan. 1, 2004; S.L. 2004–127, § 7, eff. July 26, 2004; S.L. 2006–155, § 4, eff. Jan. 1, 2007; S.L. 2007–391, § 8(b), eff. Aug. 19, 2007.

Historical and Statutory Notes

2001 Legislation

S.L. 2001–319, § 9(a), eff. July 28, 2001, in subsec. (g), inserted ''elections except for superior court judge elections under Article 25 of this Chapter.''

S.L. 2001–398, § 7, eff. Jan. 1, 2002, in the first sentence of subsec. (f), substituted ''163–182.1'' for ''163–170(5)''.

S.L. 2001–403, § 12, eff. Jan. 1, 2002, in subsec. (g), inserted ''and district court judge''.

2002 Legislation

S.L. 2002–158, § 13, eff. Jan. 1, 2004, in subsec. (g), deleted ''superior court judge'' after ''except for''.

S.L. 2002–158, § 16, provides:

''Section 1 of this act is effective when it becomes law, provided that distributions from the Fund shall begin in the 2004 election year. Section 2 becomes effective January 1, 2003. Section 3 becomes effective July 1, 2003. Sections 4 and 6(a) become effective for taxable years beginning on or after January 1, 2003. Section 5 becomes effec-

tive January 1, 2003. Sections 7 through 13 become effective with respect to primaries and elections held on or after January 1, 2004. Except as otherwise provided in this act, this act is effective when it becomes law.''

2004 Legislation

S.L. 2004–127, § 7, eff. July 26, 2004, in subsec. (g), deleted ''and district court judge'' following ''except for''.

2006 Legislation

S.L. 2006–155, § 4, eff. Jan. 1, 2007, added subsec. (f1).

S.L. 2006–155, §§ 7 and 8, provide:

''Section. 7. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

''Section 8. This act becomes effective January 1, 2007, and applies to actions filed on or after that date.''

2007 Legislation

S.L. 2007–391, § 8(b), in subd. (c)(2), in the first sentence substituted ''under the jurisdiction of the State Board of Elections under G.S. 163–182.4(b)'' for ''comprising all or part of two or more counties'' and ''that applicant's'' for ''his''.

Cross References

Arrangement of official ballots, see § 163–165.6.
Confidentiality of date of birth, see § 163–82.10B.
Contents of official ballots, see § 163–165.5.
Counting official ballots, see § 163–182.1.
Counting of write-in votes, see § 163–182.1.

§ 163–124. Reserved

Article 11A

Resign-to-Run [Repealed]

Section

163–125. Repealed.
163–126, 163–127. Reserved.

§ 163–125. Repealed by Laws 1995, c. 379, § 18, eff. July 6, 1995

Historical and Statutory Notes

Article 11A was comprised of § 163–125 and §§ 163–126 and 163–127 were reserved for future codification.

Laws 1995, c. 379, § 20, provides that this act ''does not affect pending litigation''.

§§ 163–126, 163–127. Reserved

Article 11B

Challenge to a Candidacy

Section

163–127.1. Definitions.
163–127.2. When and how a challenge to a candidate may be made.
163–127.3. Panel to conduct the hearing on a challenge.
163–127.4. Conduct of hearing by panel.

Section
163–127.5. Burden of proof.
163–127.6. Appeals.

§ 163–127.1. Definitions

As used in this Article, the following terms mean:

(1) Board. — State Board of Elections.

(2) Candidate. — A person having filed a notice of candidacy under the appropriate statute for any elective office in this State.

(3) Challenger. — Any qualified voter registered in the same district as the office for which the candidate has filed or petitioned.

(4) Office. — The elected office for which the candidate has filed or petitioned.

Added by S.L. 2006–155, § 1, eff. Jan. 1, 2007. Amended by S.L. 2006–259, § 48(a), eff. Jan. 1, 2007.

Historical and Statutory Notes

2006 Legislation

S.L. 2006–155, §§ 7 and 8, provide:

''Section. 7. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

''Section 8. This act becomes effective January 1, 2007, and applies to actions filed on or after that date.''

S.L. 2006–259, § 48(a), eff. Jan. 1, 2007, amended subd. (2) by substituting ''the appropriate statute for any elective office in this State'' for ''Article 10 of Chapter 163 of the General Statutes of having filed a petition under Article 11 of Chapter 163 of the General Statutes''.

S.L. 2006–259, § 48(b), provides:

''This section becomes effective on January 1, 2007.''

§ 163–127.2. When and how a challenge to a candidate may be made

(a) When. — A challenge to a candidate may be filed under this Article with the board of elections receiving the notice of the candidacy or petition no later than 10 business days after the close of the filing period for notice of candidacy or petition.

(b) How. — The challenge must be made in a verified affidavit by a challenger, based on reasonable suspicion or belief of the facts stated. Grounds for filing a challenge are that the candidate does not meet the constitutional or statutory qualifications for the office, including residency.

(c) If Defect Discovered After Deadline, Protest Available. — If a challenger discovers one or more grounds for challenging a candidate after the deadline in subsection (a) of this section, the grounds may be the basis for a protest under G.S. 163–182.9.

Added by S.L. 2006–155, § 1, eff. Jan. 1, 2007.

Historical and Statutory Notes

2006 Legislation
S.L. 2006–155, §§ 7 and 8, provide:

''Section. 7. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

''Section 8. This act becomes effective January 1, 2007, and applies to actions filed on or after that date.''

§ 163–127.3. Panel to conduct the hearing on a challenge

(a) Upon filing of a challenge, a panel shall hear the challenge, as follows:

(1) Single county. — If the district for the office subject to the challenge covers territory in all or part of only one county, the panel shall be the county board of elections of that county.

(2) Multicounty but less than entire State. — If the district for the office subject to the challenge contains territory in more than one county but is less than the entire State, the Board shall appoint a panel within two business days after the challenge is filed. The panel shall consist of at least one member of the county board of elections in each county in the district of the office. The panel shall have an odd number of members, no fewer than three and no more than five. In appointing members to the panel, the Board shall appoint members from each county in proportion to the relative total number of registered voters of the counties in the district for the office. If the district for the office subject to the challenge covers more than five counties, the panel shall consist of five members with at least one member from the county receiving the notice of candidacy or petition and at least one member from the county of residency of the challenger. The Board shall, to the extent possible, appoint members affiliated with different political parties in proportion to the representation of those parties on the county boards of elections in the district for the office. The Board shall designate a chair for the panel. A meeting of the Board to appoint a panel under this subdivision shall be treated as an emergency meeting for purposes of G.S. 143–318.12.

(3) Entire State. — If the district for the office subject to the challenge consists of the entire State, the panel shall be the Board.

Added by S.L. 2006–155, § 1, eff. Jan. 1, 2007.

Historical and Statutory Notes

2006 Legislation
S.L. 2006–155, §§ 7 and 8, provide:

''Section. 7. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does

not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

''Section 8. This act becomes effective January 1, 2007, and applies to actions filed on or after that date.''

§ 163–127.4. Conduct of hearing by panel

(a) The panel conducting a hearing under this Article shall do all of the following:

(1) Within five business days after the challenge is filed, designate and announce the time of the hearing and the facility where the hearing will be held. The hearing shall be held at a location in the district reasonably convenient to the public, and shall preferably be held in the county receiving the notice of the candidacy or petition. If the district for the office covers only part of a county, the hearing shall be at a location in the county convenient to residents of the district, but need not be in the district.

(2) Allow for depositions prior to the hearing, if requested by the challenger or candidate before the time of the hearing is designated and announced.

(3) Issue subpoenas for witnesses or documents, or both, upon request of the parties or upon its own motion.

(4) Render a written decision within 20 business days after the challenge is filed and serve that written decision on the parties.

(b) Notice of Hearing. — The panel shall give notice of the hearing to the challenger, to the candidate, other candidates filing or petitioning to be elected to the same office, to the county chair of each political party in every county in the district for the office, and to those persons who have requested to be notified. Each person given notice shall also be given a copy of the challenge or a summary of its allegations.

Failure to comply with the notice requirements in this subsection shall not delay the holding of a hearing nor invalidate the results if the individuals required by this section to be notified have been notified.

(c) Conduct of Hearing. — The hearing under this Article shall be conducted as follows:

(1) The panel may allow evidence to be presented at the hearing in the form of affidavits supporting documents, or it may examine witnesses. The chair or any two members of the panel may subpoena witnesses or documents. The parties shall be allowed to issue subpoenas for witnesses or documents, or both, including a subpoena of the candidate. Each witness must be placed under oath before testifying. The Board shall provide the wording of the oath to the panel.

(2) The panel may receive evidence at the hearing from any person with information concerning the subject of the challenge, and such presentation of evidence shall be subject to Chapter 8C of the General Statutes. The challenger shall be permitted to present evidence at the hearing, but the challenger shall not be required to testify unless subpoenaed by a party. The panel may allow evidence to be presented by a person who is present.

(3) The hearing shall be recorded by a reporter or by mechanical means, and the full record of the hearing shall be preserved by the panel until directed otherwise by the Board.

(d) Findings of Fact and Conclusions of Law by Panel. — The panel shall make a written decision on each challenge by separately stating findings of facts, conclusions of law, and an order.

(e) Rules by Board. — The Board shall adopt rules providing for adequate notice to parties, scheduling of hearings, and the timing of deliberations and issuance of decisions.

Added by S.L. 2006–155, § 1, eff. Jan. 1, 2007.

Historical and Statutory Notes

2006 Legislation

S.L. 2006–155, §§ 7 and 8, provide:

''Section. 7. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

''Section 8. This act becomes effective January 1, 2007, and applies to actions filed on or after that date.''

§ 163–127.5. Burden of proof

(a) The burden of proof shall be upon the candidate, who must show by a preponderance of the evidence of the record as a whole that he or she is qualified to be a candidate for the office.

(b) If the challenge is based upon a question of residency, the candidate must show all of the following:

(1) An actual abandonment of the first domicile, coupled with an intent not to return to the first domicile.

(2) The acquisition of a new domicile by actual residence at another place.

(3) The intent of making the newer domicile a permanent domicile.

Added by S.L. 2006–155, § 1, eff. Jan. 1, 2007.

Historical and Statutory Notes

2006 Legislation

S.L. 2006–155, §§ 7 and 8, provide:

''Section. 7. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so

declared to be unconstitutional or invalid.

''Section 8. This act becomes effective January 1, 2007, and applies to actions filed on or after that date.''

§ 163–127.6. Appeals

(a) Appeals from Single or Multicounty Panel. — The decision of a panel created under G.S. 163–127.3(a)(1) or G.S. 163–127.3(a)(2) may be appealed as of right to the Board by any of the following:

(1) The challenger.

(2) A candidate adversely affected by the panel's decision.

Appeal must be taken within two business days after the panel serves the written decision on the parties. The written appeal must be delivered or deposited in the mail to the Board by the end of the second business day after the written decision was filed by the panel. The Board shall prescribe forms for filing appeals from a panel's decision in a challenge. The Board shall base its appellate decision on the whole record of the hearing conducted by the panel and render its opinion on an expedited basis. From the final order or decision by the Board under this subsection, appeal as of right lies directly to the Court of Appeals. Appeal shall be filed no later than two business days after the Board files its final order or decision in its office.

(b) Appeals from Statewide Panel. — The decision of a panel created under G.S. 163–127.3(a)(3) may be appealed as of right to the Court of Appeals by any of the following:

(1) The challenger.

(2) A candidate adversely affected by the panel's decision.

Appeal must be taken within two business days after the panel files the written decision. The written appeal must be delivered or deposited in the mail to the Court of Appeals by the end of the second business day after the written decision was filed by the panel.

Added by S.L. 2006–155, § 1, eff. Jan. 1, 2007.

Historical and Statutory Notes

2006 Legislation

S.L. 2006–155, §§ 7 and 8, provide:

''Section. 7. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

''Section 8. This act becomes effective January 1, 2007, and applies to actions filed on or after that date.''

Cross References

Appeals of right from certain administrative agencies, see § 7A–29.

SUBCHAPTER VI. CONDUCT OF PRIMARIES AND ELECTIONS

Article 12

Precincts and Voting Places

Section

163–128. Election precincts and voting places established or altered.
163–129. Structure at voting place; marking off limits of voting place.
163–130. Satellite voting places.
163–130.1. Out-of-precinct voting places.
163–130.2. Temporary use of two voting places for certain precincts.
163–131. Accessible polling places.
163–132. Reserved.

§ 163–128. Election precincts and voting places established or altered

(a) Each county shall be divided into a convenient number of precincts for the purpose of voting. Upon a resolution adopted by the county board of elections and approved by the Executive Director of the State Board of Elections voters from a given precinct may be temporarily transferred, for the purpose of voting, to an adjacent precinct. Any such transfers shall be for the period of time equal only to the term of office of the county board of elections making such transfer. When such a resolution has been adopted by the county board of elections to assign voters from more than one precinct to the same precinct, then the county board of elections shall maintain separate registration and voting records, consistent with the procedure prescribed by the State Board of Elections, so as to properly identify the precinct in which such voters reside. The polling place for a precinct shall be located within the precinct or on a lot or tract adjoining the precinct.

Except as provided by Article 12A of this Chapter, the county board of elections shall have power from time to time, by resolution, to establish, alter, discontinue, or create such new election precincts or voting places as it may deem expedient. Upon adoption of a resolution establishing, altering, discontinuing, or creating a precinct or voting place, the board shall give 45 days' notice thereof prior to the next primary or election. Notice shall be given by advertisement in a newspaper having general circulation in the county, by posting a copy of the resolution at the courthouse door and at the office of the county board of elections, and by mailing a copy of the resolution to the chairman of every political party in the county. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice. No later

than 30 days prior to the primary or election, the county board of elections shall mail a notice of precinct change to each registered voter who as a result of the change will be assigned to a different voting place.

(b) Each county board of elections shall prepare a map of the county on which the precinct boundaries are drawn or described, shall revise the map when boundaries are changed, and shall keep a copy of the current map on file and posted for public inspection at the office of the Board of Elections, and shall file a copy with the State Board of Elections.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1969, c. 570; Laws 1973, c. 793, §§ 51 to 53; Laws 1975, c. 798, § 2; Laws 1979, c. 785; Laws 1981, c. 515, § 1; Laws 1985, c. 757, § 205(b); Laws 1989, c. 93, § 4; Laws 1989, c. 440, § 1; Laws 1993 (Reg. Sess., 1994), c. 762, § 33, eff. Jan. 1, 1995; Laws 1995, c. 423, § 1, eff. Jan. 12, 1995; S.L. 2001–353, § 2, eff. Aug. 10, 2001; S.L. 2006–264, § 20, eff. Aug. 27, 2006.

Historical and Statutory Notes

Laws 1993, c, 762, § 73, provides:

''Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.'' [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

2001 Legislation

S.L. 2001–319, § 11, eff. July 28, 2001, substituted ''Executive Director'' for ''Executive Secretary-Director'' and ''State Executive Secretary-Director'' throughout this section.

S.L. 2001–353, § 2, eff. Aug. 10, 2001, in the second paragraph of subsec. (a), in the third sentence, inserted ''door and at the office of the county board of elections,'', and added the fifth sentence.

2006 Legislation

S.L. 2006–264, § 20, eff. Aug. 27, 2006, amended subsec. (a) by substituting ''Executive Director'' for ''Secretary Director''.

Local Modifications

Avery County: S.L. 1997–99; S.L. 1997–217.

Cabarrus County: Laws 1983, c. 225.

Caswell County: Laws 1989, c. 284, § 1.

Catawba County: Laws 1981, c. 850.

Cleveland County: Laws 1989, c. 411.

Davidson County: Laws 1989, c. 70.

Granville County: Laws 1989, c. 282, § 1.

Hertford County: Laws 1981, c. 204.

Mecklenburg County: Laws 1981, c. 433.

Montgomery County: Laws 1991 (Reg. Sess., 1992), c. 866.

Moore County: Laws 1987, c. 549, § 6.8.

Pitt County: Laws 1987, c. 411.

Randolph County: Laws 1985 (Reg. Sess., 1986), c. 827.

Sampson County: Laws 1989, c. 474, § 1.

Stanley County: Laws 1981, c. 433.

Stokes County: Laws 1983, c. 225.

City of Rocky Mount: Laws 1969, c. 1051.

Mitchell County Board of Elections: S.L. 1997–183, § 1.

Cross References

Powers and duties, county boards of elections, see § 163–33.
Superior court divisions and districts; judges, see § 7A–41.

§ 163–129. Structure at voting place; marking off limits of voting place

At the voting place in each precinct established under the provisions of G.S. 163–128, the county board of elections shall provide or procure by lease or otherwise a suitable structure or part of a structure in which registration and voting may be conducted. To this end, the county board of elections shall be entitled to demand and use any school or other State, county, or municipal building, or a part thereof, or any other building, or a part thereof, which is supported or maintained, in whole or in part by or through tax revenues provided, however, that this section shall not be construed to permit any board of elections to demand and use any tax exempt church property for such purposes without the express consent of the individual church involved, for the purpose of conducting registration and voting for any primary or election, and it may require that the requisitioned premises, or a part thereof, be vacated for these purposes.

If a county board of elections requires that a tax-supported building be used as a voting place, that county board of elections may require that those in control of that building provide parking that is adequate for voters at the precinct, as determined by the county board of elections.

The county board of elections shall inspect each precinct voting place to ascertain how it should be arranged for voting purposes, and shall direct the chief judge and judges of any precinct to define the voting place by roping off the area or otherwise enclosing it or by marking its boundaries. The boundaries of the voting place shall at any point lie no more than 100 feet from each ballot box or voting machine. The space so roped off or enclosed or marked for the voting place may contain area both inside and outside the structure in which registration and voting are to take place.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1973, c. 793, § 54; Laws 1983, c. 411, § 3; Laws 1993 (Reg. Sess., 1994), c. 762, §§ 5, 34, eff. Jan. 1, 1995; S.L. 1999–426, § 5(a), eff. Jan. 1, 2000.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

"Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those

prosecutions or sentences.'' [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

§ 163–130. Satellite voting places

A county board of elections may, upon approval of a request submitted in writing to the State Board of Elections, establish a plan whereby elderly or disabled voters in a precinct may vote at designated sites within the precinct other than the regular voting place for that precinct. The State Board of Elections shall approve a county board's proposed plan if:

(1) All the satellite voting places to be used are listed in the county's written request;

(2) The plan will in the State Board's judgment overcome a barrier to voting by the elderly or disabled;

(3) Adequate security against fraud is provided for; and

(4) The plan does not unfairly favor or disfavor voters with regard to race or party affiliation.

Added by Laws 1991 (Reg. Sess., 1992), c. 1032, § 10. Amended by S.L. 1999–426, § 3(a), eff. Jan. 1, 1999.

§ 163–130.1. Out-of-precinct voting places

A county board of elections, by unanimous vote of all its members, may establish a voting place for a precinct that is located outside that precinct. The county board's proposal is subject to approval by the Executive Director of the State Board of Elections. The county board shall submit its proposal in writing to the Executive Director. Approval by the Executive Director of the county's proposed plan shall be conditioned upon the county board of elections' demonstrating that:

(1) No facilities adequate to serve as a voting place are located in the precinct;

(2) Adequate notification and publicity are provided to notify voters in the precinct of the new polling location;

(3) The plan does not unfairly favor or disfavor voters with regard to race or party affiliation;

(4) The new voting place meets all requirements for voting places including accessibility for elderly and disabled voters; and

(5) The proposal provides adequately for security against fraud.

Any approval granted by the Executive Director for a voting place outside the precinct is effective only for one primary and election and must be reevaluated by the county board of elections

and the Executive Director annually to determine whether it is still the only available alternative for that precinct.

Added by S.L. 1999–426, § 3(a), eff. Aug. 5, 1999. Amended by S.L. 2001–319, § 11, eff. July 28, 2001.

Historical and Statutory Notes

1999 Legislation

This section was redesignated from § 163–130A by the Revisor of Statutes.

S.L. 1999–426, § 3.(b) provides:

''This section is effective when this act becomes law.'' [Amended by S.L. 2001–319, § 3(a), eff. July 28, 2001, deleting an expiration date for this section of Jan. 1, 2002.]

2001 Legislation

S.L. 2001–319, § 11, eff. July 28, 2001, substituted ''Executive Director'' for ''Executive Secretary-Director'' and ''State Executive Secretary-Director'' throughout this section.

§ 163–130.2. Temporary use of two voting places for certain precincts

A county board of elections, by unanimous vote of all its members, may propose to designate two voting places to be used temporarily for the same precinct. The temporary designation of a voting place shall continue only for the term of office of the county board of elections making the designation. For any precinct that is temporarily given two voting places, the county board shall assign every voter to one or the other of those voting places.

The county board's proposal is subject to approval by the Executive Director of the State Board of Elections. The county board shall submit its proposal in writing to the Executive Director. The Executive Director shall approve that proposal only if it finds all of the following:

(1) That the precinct has more registered voters than can adequately be accommodated by any single potential voting place available for the precinct.

(2) That no boundary line that complies with Article 12A of this Chapter can be identified that adequately divides the precinct.

(3) That the county board can account for, by street address number, the location of every registered voter in the precinct and fix that voter's residence with certainty on a map.

(4) That no more than three other precincts in the same county will have two voting places.

(5) That both voting places for the precinct would have adequate facilities for the elderly and disabled.

(6) That the proposal provides adequately for security against fraud.

(7) That the proposal does not unfairly favor or disfavor voters with regard to race or party affiliation.

The county board shall designate a full set of precinct officials, in the manner set forth in Article 5 of this Chapter, for each voting place designated for the precinct.

Added by S.L. 1999–426, § 4(a), eff. Jan. 2, 2000. Amended by S.L. 2001–319, §§ 4(a), 11, eff. July 28, 2001.

Historical and Statutory Notes

This section was redesignated from § 163–130B by the Revisor of Statutes.

1999 Legislation

S.L. 1999–426, § 4.(b) provides:

''This section becomes effective January 2, 2000. The Executive Secretary–Director of the State Board of Elections shall study the operation and consequences of the pilot program created by this section and report findings and recommendations to the 2001 General Assembly by February 1, 2001.'' [Amended by S.L. 2001–319, § 4(b), eff. July 28, 2001, deleting an expiration date for this section of Jan. 2, 2002.]

2001 Legislation

S.L. 2001–319, § 4(a), eff. July 28, 2001, in the second paragraph, deleted ''The Executive Secretary Director may approve a proposal under this section in not more than three counties, to be a pilot program.''.

S.L. 2001–319, § 11, eff. July 28, 2001, substituted ''Executive Director'' for ''Executive Secretary-Director'' and ''State Executive Secretary-Director'' throughout this section.

§ 163–131. Accessible polling places

(a) The State Board of Elections shall promulgate rules to assure that any disabled or elderly voter assigned to an inaccessible polling place, upon advance request of such voter, will be assigned to an accessible polling place. Such rules should allow the request to be made in advance of the day of the election.

(b) Words in this section have the meanings prescribed by P.L. 98–435, except that the term ''disabled'' in this section has the same meaning as ''handicapped'' in P.L. 98–435.

Added by S.L. 1999–424, § 3(b), eff. Aug. 5, 1999.

§ 163–132. Reserved

Article 12A

Precinct Boundaries

Section

163–132.1. Repealed.
163–132.1B. Participation in 2010 Census Redistricting Data Program of the United States Bureau of the Census.
163–132.1A, 163–132.2. Repealed.
163–132.3. Alterations to approved precinct boundaries.
163–132.3A. Alterations to precinct names.
163–132.4. Directives.
163–132.5. Cooperation of State and local agencies.
163–132.5A. Repealed.
163–132.5B. Exemption from Administrative Procedure Act.
163–132.5C. Local acts and township lines.
163–132.5D. Retention of precinct maps.
163–132.5E. Repealed.

Section

163–132.5F. U.S. Census data by voting tabulation district.
163–132.5G. Voting data maintained by voting tabulation district.
163–132.6. Repealed.
163–133, 163–134. Reserved.

Cross References

Cities and towns; extension of corporate limits; effective date of certain annexation ordinances adopted under Article 4A of Chapter 160A, see § 160A–58.9A.

§ 163–132.1. Repealed by S.L. 2006–264, § 75.5, eff. Aug. 27, 2006

Historical and Statutory Notes

The repealed section, which related to participation in the 2010 Census Redistricting Data Program, was derived from:

Laws 1985, c. 757, § 205(a).
Laws 1987, c. 1074, § 2.
Laws 1993 (Reg. Sess., 1994), c. 762, § 69, eff. July 16, 1994.
Laws 1995, c. 423, § 2, eff. July 12, 1995.
S.L. 1999–227, § 1, eff. June 25, 1999.
S.L. 2000–140, § 81, eff. July 21, 2000.
S.L. 2001–319, § 11, eff. July 28, 2001.
S.L. 2005–428, § 16, eff. Sept. 22, 2005.

See, now, § 163–132.1B.

§ 163–132.1B. Participation in 2010 Census Redistricting Data Program of the United States Bureau of the Census

(a) Purpose. — The State of North Carolina shall participate in the 2010 Census Redistricting Data Program, conducted pursuant to P.L. 94–171, of the United States Bureau of the Census, so that the State will receive 2010 Census data by voting precinct and be able to revise districts at all levels without splitting precincts and in compliance with the United States and North Carolina Constitutions and the Voting Rights Act of 1965, as amended.

(a1) Reporting of Voting Tabulation Districts.—The Executive Director of the State Board of Elections shall report to the Bureau of the Census as this State's voting tabulation districts the voting precincts as of January 1, 2008. In reporting the precincts, the Executive Director may make to the precincts the minimum of adjustments necessary to assure accurate election administration and the consistent reporting of election results from the precincts as they existed on January 1, 2008. Before making that report, the Executive Director shall consult with the Legislative Services Office concerning the accuracy of the voting precincts to be reported. The Legislative Services Office shall submit to the Executive Director its opinion as to whether the description of the precincts to be reported to the Bureau of the Census is accurate. The Executive Director shall submit the report to the Bureau of the Census in time to comply with the deadlines of that Bureau for the 2010 Census Redistricting Data Program. The Executive Director, with the assistance of the county boards of elections, shall

participate in the Census Bureau's verification program and notify the Census Bureau of any errors in the entry of the voting tabulation districts in time for the Census Bureau to correct those errors.

(a2) Reporting From Unchanged Voting Tabulation Districts.— After January 1, 2008, every county board of elections shall report all election returns by voting tabulation districts as required by G.S. 163–132.5G. For purposes of this section and G.S. 163–132.5G, ''voting tabulation districts'' shall be the precincts as of January 1, 2008, as modified by the Executive Director of the State Board of Elections in reports to the Census Bureau in accordance with subsection (a1) of this section. No county board of elections may alter the voting tabulation districts. The county board of elections may change the boundaries of the county's precincts so that those precincts differ from the county's voting tabulation districts, but only to the extent permitted by G.S. 163–132.3.

(b) Additional Rules. — In addition to directives promulgated by the Executive Director of the State Board of Elections under G.S. 163–132.4, the Legislative Services Commission may promulgate rules to implement this section.

Added by S.L. 2006–264, § 75.5(b), eff. Aug. 27, 2006. Amended by S.L. 2007–391, § 6(a), eff. Aug. 19, 2007; S.L. 2009–541, § 17, eff. Aug. 28, 2009.

Historical and Statutory Notes

2007 Legislation

S.L. 2007–391, § 6(a), added subsecs. (a1) and (a2).

S.L. 2007–391, § 6(g), provides:

''This section becomes effective only if any funds necessary to implement it are appropriated.''

The General Assembly fully funded Section 6 of S.L. 2007–391.

2009 Legislation

S.L. 2009–541, § 17, in subsec. (a1), added the second and sixth sentences; in subsec. (a2), in the second sentence, added ''as modified by the Executive Director of the State Board of Elections in reports to the Census Bureau in accordance with subsection (a1) of this section'', and deleted ''reported to the Census Bureau by the Executive Director of the State Board of Elections'' after ''voting tabulation districts''.

§§ 163–132.1A, 163–132.2. Repealed by S.L. 1999–227, § 1, eff. June 25, 1999

Historical and Statutory Notes

The repealed sections provided for precinct boundaries for certain counties.

§ 163–132.3. Alterations to approved precinct boundaries

(a) No county board of elections may change any precinct boundary unless the Executive Director of the State Board of

Elections determines that the county board has a current capability of complying with G.S. 163–132.1B(a2) by reporting all election returns by voting tabulation district as required by G.S. 163–132.5G. If the Executive Director so determines, the county board may make any changes to precinct boundaries, provided that all proposed new precincts shall consist solely of contiguous territory. The State Board of Elections may set uniform standards for precinct boundaries, which the county boards of elections shall follow. The county board of elections shall report every change in precinct boundary to the Executive Director in a format required by the Executive Director.

The county boards of elections shall report precinct boundary changes to the Executive Director in the manner the Executive Director directs. No newly created or altered precinct boundary is effective until approved by the Executive Director of the State Board as being in compliance with this section.

(b) The Executive Director of the State Board of Elections shall examine the maps of the proposed new or altered precincts and any required written descriptions. If the Executive Director of the State Board determines that all precinct boundaries are in compliance with this section, the Executive Director of the State Board shall approve the maps and written descriptions as filed and these precincts shall be the official precincts.

(c) If the Executive Director of the State Board determines that the proposed precinct boundaries are not in compliance with subsection (a) of this section, the Executive Director shall not approve those precinct boundaries. The Executive Director shall notify the county board of elections of his disapproval specifying the reasons. The county board of elections may then resubmit new precinct maps and written descriptions to cure the reasons for their disapproval.

(d) Repealed by S.L. 2004–127, § 1(a), eff. Aug. 15, 2004, and applicable to precincts established or changed on or after that date.

Added by Laws 1985, c. 757, § 205(a). Amended by Laws 1987 (Reg. Sess., 1988), c. 1074, § 2; Laws 1991 (Reg. Sess., 1992), c. 927, § 1; Laws 1993, c. 352, § 3, eff. July 15, 1993; Laws 1993 (Reg. Sess., 1994), c. 762, § 71, eff. July 16, 1994; Laws 1995, c. 423, § 2, eff. July 12, 1995; S.L. 1999–227, § 1, eff. June 25, 1999; S.L. 2001–319, §§ 10.1, 11, eff. July 28, 2001; S.L. 2001–487, § 96, eff. Dec. 16, 2001; S.L. 2002–159, § 56, eff. Oct. 11, 2002; S.L. 2003–434 (Ex. Sess.), § 13, eff. Nov. 25, 2003; S.L. 2004–127, § 1(a), eff. Aug. 15, 2004; S.L. 2007–391, § 6(b), eff. Jan. 1, 2008.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

"Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon

ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.'' [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

S.L. 1999–227, § 2, provides:

''Notwithstanding the provisions of Sections 2 and 3 of Chapter 423 of the 1995 Session Laws, the version of G.S. 163–132.3 contained in Section 1 of this act is effective upon this act's becoming law and does not expire. To the extent it is inconsistent with the provisions of this act, Section 3 of Chapter 423 of the 1995 Session Laws is repealed.''

2001 Legislation

S.L. 2001–319, § 10.1, eff. July 28, 2001, rewrote the section, which prior thereto read:

''(a) No county board of elections may change any precinct boundary unless the proposed new precinct consists solely of contiguous territory and its new boundaries are coterminous with those of:

''(1) Townships, as certified by the county manager, or the chairman of the board of county commissioners if there is not a county manager, on the official map of the county;

''(2) The census blocks established under the latest U.S. Census or the boundaries contained on the latest preliminary U.S. Census maps, issued under P.L. 94–171, whichever occurs later;

''(3) The following visible physical features, readily distinguishable upon the ground:

''a. Roads or streets;

''b. Water features or drainage features;

''c. Ridgelines;

''d., e. Deleted by S.L.1999-227, 1, eff. June 25, 1999.

''f. Rail features;

''g. Major above-ground power lines; or

''h. Major footpaths as certified by the North Carolina Department of Transportation on its highway maps or the county manager of the relevant county or, if there is no county manager, the chair of the county board of commissioners, on official county maps.

''(4) Municipalities, as certified by the city clerk on the official map of the city; or

''(5) A combination of these boundaries.

''The county boards of elections shall report precinct boundary changes by filing with the Legislative Services Office on current official census maps or maps certified by the North Carolina Department of Transportation or the county's planning department or on other maps or electronic databases approved by the Executive Secretary-Director the new boundaries of these precincts. The Executive Secretary-Director may require a county board of elections to file a written description of the boundaries of any precinct or part thereof. No newly created or altered precinct boundary is effective until approved by the Executive Secretary-Director of the State Board as being in compliance with this subsection. No precinct may be changed under this section between the date its boundaries become effective under G.S. 163-132.1(c) and January 2, 2002. Any changes to precincts during that period shall be made as provided in G.S. 163-132.1(d).

''(b) The Executive Secretary-Director of the State Board of Elections and the Legislative Services Office shall examine the maps of the proposed new or altered precincts and any required written descriptions. After its examination of the maps and their written descriptions, the Legislative Services Office shall submit to the Executive Secretary-Director of the State Board of Elections its opinion as to whether all of the proposed precinct boundaries are in compliance with subsection (a) of this section, with notations as to where those boundaries do not comply with these standards. If the Executive Secretary-Director of the State Board determines that all precinct boundaries are in compliance with this section, the Executive Secretary-Director of the State Board shall approve the maps and written descriptions as filed and these precincts shall be the official precincts.

''(c) If the Executive Secretary-Director of the State Board determines that the proposed precinct boundaries are not in compliance with subsection (a) of this section, he shall not approve those precinct boundaries. He shall no-

tify the county board of elections of his disapproval specifying the reasons. The county board of elections may then resubmit new precinct maps and written descriptions to cure the reasons for their disapproval.''

S.L. 2001–319, § 11, eff. July 28, 2001, substituted ''Executive Director'' for ''Executive Secretary-Director'' and ''State Executive Secretary-Director'' throughout this section.

S.L. 2001–487, § 96, eff. Dec. 16, 2001, in sub-subd. (d)(1)a., substituted ''Census.'' for ''Census''.

2002 Legislation

S.L. 2002–159, § 56, eff. Oct. 11, 2002, added subsec. (e).

2003 Legislation

S.L. 2003–434 (Ex. Sess.), § 13, eff. Nov. 25, 2003, in the first sentence of subsec. (e), substituted ''2004'' for ''2003''.

S.L. 2003–434 (Ex. Sess.), § 16, provides:

''Sections 1, 2, 3, 4, and 5 of this act are effective when it becomes law. The remainder of this act is effective when it becomes law and applies to any case pending on or filed after that date, to any case regardless of when the case was filed, and to any action of a court affecting the validity of an act apportioning or redistricting State legislative or congressional districts.''

2004 Legislation

S.L. 2004–127, § 1(a), eff. Aug. 15, 2004, rewrote the section, which prior thereto read:

''(a) No county board of elections may change any precinct boundary unless the proposed new precinct consists solely of contiguous territory and its new boundaries are coterminous with those of census blocks established under the latest U.S. Census.

''(1) to (5) Repealed by S.L. 2001–319, § 10.1, eff. July 28, 2001.

''The county boards of elections shall report precinct boundary changes by filing with the Legislative Services Office on current official census maps or maps certified by the North Carolina Department of Transportation or the county's planning department or on other maps or electronic databases approved by the Executive Director the new boundaries of these precincts. The Executive Director may require a county board of elections to file a written description of the boundaries of any precinct or part thereof. No newly created or altered precinct boundary is effective until approved by the Executive Director of the State Board as being in compliance with this subsection. No precinct may be changed under this section between the date its boundaries become effective under G.S. 163–132.1(c) and January 2, 2002. Any changes to precincts during that period shall be made as provided in G.S. 163–132.1(d).

''(b) The Executive Director of the State Board of Elections and the Legislative Services Office shall examine the maps of the proposed new or altered precincts and any required written descriptions. After its examination of the maps and their written descriptions, the Legislative Services Office shall submit to the Executive Director of the State Board of Elections its opinion as to whether all of the proposed precinct boundaries are in compliance with subsection (a) of this section, with notations as to where those boundaries do not comply with these standards. If the Executive Director of the State Board determines that all precinct boundaries are in compliance with this section, the Executive Director of the State Board shall approve the maps and written descriptions as filed and these precincts shall be the official precincts.

''(c) If the Executive Director of the State Board determines that the proposed precinct boundaries are not in compliance with subsection (a) of this section, the Executive Director shall not approve those precinct boundaries. The Executive Director shall notify the county board of elections of his disapproval specifying the reasons. The county board of elections may then resubmit new precinct maps and written descriptions to cure the reasons for their disapproval.

''(d) Upon a determination that restricting the county board to using Census block boundaries would force the county board to draw a precinct without an adequate voting place or otherwise to draw a precinct in such a way that the administration of elections would be seriously hindered, the Executive Director may permit a county board of elections to designate a precinct boundary on a line that is not a Census block boundary of the most recent federal decennial Census if both the following conditions exist:

''(1) The feature desired by the county board to be the precinct boundary meets at least one of the following:

''a. Is likely to be designated by the Census Bureau as a block boundary in the next federal decennial Census.

''b. Is a visible physical feature, readily distinguishable upon the ground, as certified by the North Carolina Department of Transportation on its highway maps or by the county manager of the relevant county or if there is no county manager the chair of the county board of commissioners on official county maps, of the following nature:

''1. Roads or streets.

''2. Water features or drainage features.

''3. Ridgelines.

''4. Rail features.

''5. Major aboveground power lines.

''6. Major footpaths.

''c. Is a municipalities boundary, as certified by the city clerk on the official map of the city.

''d. Is a township boundary, as certified by the county manager, or the chair of the county board of commissioners if there is no county manager, on the official map of the county.

''(2) All the following are true:

''a. The precincts of which the line is a boundary which could be combined into a unit whose outer boundaries would be Census blocks, similar to the Combined Reporting Unit permitted by G.S. 163–132.1(c)(6).

''b. That combined unit would be reasonable in size.

''c. That combined unit, together with all other such combined units, would not undermine the coverage of the State's precincts in the next Census.

''(e) During the period beginning October 1, 2002, and ending December 31, 2004, no county board of elections may change any precinct boundary. However, a county that has a precinct line that does not follow a 2000 Census Block Boundary may change that precinct line to conform to the way that precinct is shown on the General Assembly's redistricting database, provided the total population of the area moved from one precinct to another is not greater than ten percent (10%) of the total population of either precinct. A county board of elections proposing a change to a precinct during this period shall submit that change to the Legislative Services Office, which shall examine the proposed change and give its opinion of its compliance with this subsection to the Executive Director of the State Board of Elections. If the proposed change is in compliance with this subsection, the Executive Director shall approve it.''

S.L. 2004–127, § 1(c), provides:

''This section becomes effective August 15, 2004, and applies to precincts established or changed on or after that date. Any changes to precincts proposed for the 2004 election shall be completed by September 17, 2004.''

2007 Legislation

S.L. 2007–391, § 6(b), rewrote this section, which prior thereto read:

''(a) No county board of elections may change any precinct boundary except in one of the following ways:

''(1) By dividing an existing precinct into one or more new precincts, without involving other existing precincts. The lines on which the precincts are divided shall follow census blocks established under the latest U.S. Census.

''(2) By combining one or more existing precincts into a new precinct. If one or more precincts are combined into a single precinct, the new precinct shall not be divided until at least four years after the effective date of the combination.

''(3) By moving a precinct boundary that does not follow a census block boundary established under the latest U.S. Census so that that precinct boundary does follow such a census block boundary.

''(4), (5) Repealed by S.L. 2001–319, § 10.1, eff. July 28, 2001.

''All proposed new precincts shall consist solely of contiguous territory.

''This section does not prohibit a county from continuing to use precincts that were allowed under the Combined Reporting Unit provisions of G.S. 163–132.1(c)(6).

''The county boards of elections shall report precinct boundary changes by filing with the Legislative Services Office on current official census maps or on other maps or electronic databases approved by the Executive Director the new boundaries of these precincts. The Executive Director may require a county board of elections to file a written description of the boundaries of any precinct or part thereof. No newly created or altered precinct boundary is effective until approved by the Executive Director of the State Board as being in compliance with this section.

''(b) The Executive Director of the State Board of Elections and the Legislative Services Office shall examine the maps of the proposed new or altered precincts and any required written descriptions. After its examination of the maps and their written descriptions, the Legislative Services Office shall submit to the Executive Director of the State Board of Elections its opinion as to whether all of the proposed precinct boundaries are in compliance with subsection (a) of this section, with notations as to where those boundaries do not comply with these standards. If the Executive Director of the State Board determines that all precinct boundaries are in compliance with this section, the Executive Director of the State Board shall approve the maps and written descriptions as filed and these precincts shall be the official precincts.

''(c) If the Executive Director of the State Board determines that the proposed precinct boundaries are not in compliance with subsection (a) of this section, the Executive Director shall not approve those precinct boundaries. The Executive Director shall notify the county board of elections of his disapproval specifying the reasons. The county board of elections may then resubmit new precinct maps and written descriptions to cure the reasons for their disapproval.

''(d) Repealed by S.L. 2004–127, § 1(a), eff. Aug. 15, 2004.

''(e) During the period beginning October 1, 2002, and ending August 15, 2004, no county board of elections may change any precinct boundary. However, a county that has a precinct line that does not follow a 2000 Census Block Boundary may change that precinct line to conform to the way that precinct is shown on the General Assembly's redistricting database, provided the total population of the area moved from one precinct to another is not greater than ten percent (10%) of the total population of either precinct. A county board of elections proposing a change to a precinct during this period shall submit that change to the Legislative Services Office, which shall examine the proposed change and give its opinion of its compliance with this subsection to the Executive Director of the State Board of Elections. If the proposed change is in compliance with this subsection, the Executive Director shall approve it.''

S.L. 2007–391, §§ 6(f) and 6(g), provide:

''Section 6.(f). Subsections 7(b) through 7(e) of this section become effective January 1, 2008. The remainder of this section is effective when this act becomes law.

''Section 6.(g) This section becomes effective only if any funds necessary to implement it are appropriated.''

Subsection 6(f) quoted above was probably referring to subsections 6(b) through 6(e); S.L. 2007–391 does not contain subsections 7(b) through 7(e).

The General Assembly fully funded Section 6 of S.L. 2007–391.

§ 163–132.3A. Alterations to precinct names

No county board of elections shall assign to any precinct a name that has been used after January 1, 1999, for a precinct comprising different territory. That requirement does not apply to a precinct change made under G.S. 163–132.3(a)(3). The county board of elections shall submit to the Executive Director of the State Board of Elections for approval every proposed change to a precinct name, and the Executive Director shall approve a name change only if it complies with this section.

Added by S.L. 2004–127, § 1(b), eff. Aug. 15, 2004.

Historical and Statutory Notes

2004 Legislation

S.L. 2004–127, § 1(c), provides:

''This section becomes effective August 15, 2004, and applies to precincts established or changed on or after that date. Any changes to precincts proposed for the 2004 election shall be completed by September 17, 2004.''

§ 163–132.4. Directives

The Executive Director of the State Board of Elections may promulgate directives concerning its duties and those of the county boards of elections under this Article.

Added by Laws 1985, c. 757, § 205(a). Amended by Laws 1987 (Reg. Sess., 1988), c. 1074, § 2; S.L. 1999–227, § 1, eff. June 25, 1999; S.L. 2001–319, § 11, eff. July 28, 2001.

Historical and Statutory Notes

2001 Legislation

S.L. 2001–319, § 11, eff. July 28, 2001, substituted ''Executive Director'' for ''Executive Secretary-Director'' and ''State Executive Secretary-Director'' throughout this section.

Cross References

Powers and duties of county boards of elections, see § 163–33.

§ 163–132.5. Cooperation of State and local agencies

The Office of State Budget and Management, the Department of Transportation and county and municipal planning departments shall cooperate and assist the Legislative Services Office, the Executive Director of the State Board of Elections and the county boards of elections in the implementation of this Article.

Added by Laws 1985, c. 757, § 205(a). Amended by Laws 1987 (Reg. Sess., 1988), c. 1074, § 2; S.L. 1999–227, § 1, eff. June 25, 1999; S.L. 2000–140, § 93.1(c), eff. July 1, 2000; S.L. 2001–319, § 11, eff. July 28, 2001; S.L. 2001–424, § 12.2(b), eff. July 1, 2001.

Historical and Statutory Notes

2000 Legislation

S.L. 2000–140, §93.1(c), eff. July 1, 2000, substituted ''Office of State Budget, Planning, and Management'' for ''State Budget Office''.

2001 Legislation

S.L. 2001–319, § 11, eff. July 28, 2001, substituted ''Executive Director'' for ''Executive Secretary-Director'' and ''State Executive Secretary-Director'' throughout this section.

S.L. 2001–424, § 12.2(b), eff. July 1, 2001, substituted ''Office of State Budget and Management'' for ''Office of State Budget, Planning, and Management''.

§ 163–132.5A. Repealed by Laws 1991 (Reg. Sess., 1992), c. 927, § 1

§ 163–132.5B. Exemption from Administrative Procedure Act

The State Board of Elections is exempt from the provisions of Chapter 150B of the General Statutes while acting under the authority of this Article. Appeals from a final decision of the Executive Director of the State Board of Elections under this Article shall be taken to the State Board of Elections within 30 days of that decision. The State Board shall approve, disapprove or modify the Executive Director's decision within 30 days of receipt of notice of appeal. Failure of the State Board to act

within 30 days of receipt of notice of appeal shall constitute a final decision approving that of the Executive Director. Appeals from a final decision of the State Board under this Article shall be taken to the Superior Court of Wake County.

Added by Laws 1987, c. 715, § 4. Amended by Laws 1987 (Reg. Sess., 1988), c. 1074, § 2; S.L. 1999–227, § 1, eff. June 25, 1999; S.L. 2001–319, § 11, eff. July 28, 2001.

Historical and Statutory Notes

2001 Legislation

S.L. 2001–319, § 11, substituted ''Executive Director'' for ''Executive Secretary-Director'' wherever appearing. Also, ''Executive Director'' was substituted for ''Executive Secretary'' in two places per the Revisor of Statutes.

§ 163–132.5C. Local acts and township lines

(a) Notwithstanding the provisions of any local act, a county board of elections need not have the approval of any other county board or commission to make precinct boundary changes required by this Article.

(b) Precinct boundaries established, retained or changed under this Article, or changed to follow a district line where a precinct has been divided in a districting plan, may cross township lines.

Added by Laws 1987, c. 715, § 4. Amended by Laws 1989, c. 440, § 5; Laws 1995, c. 423, § 2, eff. July 12, 1995; S.L. 1999–227, § 1, eff. June 25, 1999.

§ 163–132.5D. Retention of precinct maps

The Executive Director of the State Board of Elections shall retain the maps and written descriptions which he approves pursuant to G.S. 163–132.3.

Added by Laws 1991 (Reg. Sess., 1992), c. 927, § 1. Amended by S.L. 1999–227, § 1, eff. June 25, 1999; S.L. 2001–319, § 11, eff. July 28, 2001.

Historical and Statutory Notes

2001 Legislation

S.L. 2001–319, § 11, eff. July 28, 2001, substituted ''Executive Director'' for ''Executive Secretary-Director'' and ''State Executive Secretary-Director'' throughout this section.

§ 163–132.5E. Repealed by S.L. 1999–227, § 1, eff. June 25, 1999

Historical and Statutory Notes

The repealed section related to precinct maps and voter statistics filed with the Legislative Services Office.

§ 163–132.5F. U.S. Census data by voting tabulation district

The State shall request the U.S. Bureau of the Census for each decennial census to provide summaries of census data by voting

tabulation district and shall participate in any U.S. Bureau of the Census' program to effectuate this provision.

Added by Laws 1991 (Reg. Sess., 1992), c. 927, § 1. Amended by S.L. 1999–227, § 1, eff. June 25, 1999; S.L. 2007–391, § 6(e), eff. Jan. 1, 2008.

Historical and Statutory Notes

2007 Legislation

S.L. 2007–391, § 6(e), substituted ''Bureau of the Census'' for ''Census Bureau'' preceding ''for each decennial''; and substituted ''voting tabulation district'' for ''precinct'' throughout.

S.L. 2007–391, §§ 6(f) and 6(g), provide:

''Section 6.(f). Subsections 7(b) through 7(e) of this section become effective January 1, 2008. The remainder of this section is effective when this act becomes law.

''Section 6.(g) This section becomes effective only if any funds necessary to implement it are appropriated.''

Subsection 6(f) quoted above was probably referring to subsections 6(b) through 6(e); S.L. 2007–391 does not contain subsections 7(b) through 7(e).

The General Assembly fully funded Section 6 of S.L. 2007–391.

§ 163–132.5G. Voting data maintained by voting tabulation district

Each county board of elections shall maintain voting data by voting tabulation district as provided in G.S. 163–132.1B so that voting tabulation district returns for each item on the ballot shall include the votes cast by all residents of the voting tabulation district who voted, regardless of where they voted. The county board shall not be required to report returns by voting tabulation district for voters who voted other than at their precinct voting place on election day until 60 days after the election. In reporting returns, the county board shall not compromise the secrecy of an individual's ballot. The 60–day deadline for reporting returns by voting tabulation district does not relieve the county board of the duty to report all returns as soon as practicable after the election according to other categories specified by the State Board of Elections. The State Board of Elections shall adopt rules for the enforcement of this section.

Added by S.L. 2001–466, § 2, eff. Nov. 16, 2001. Amended by S.L. 2003–183, § 1, eff. June 12, 2003; S.L. 2005–323, § 1(e), eff. Aug. 26, 2005; S.L. 2007–391, § 6(c), eff. Jan. 1, 2008.

Historical and Statutory Notes

2003 Legislation

S.L. 2003–183, § 1, eff. June 12, 2003, added the fifth sentence.

2005 Legislation

S.L. 2005–323, § 1(e), eff. Aug. 26, 2005, rewrote the section, which prior thereto read:

''To the extent that it can do so without compromising the secrecy of an individual's ballot, each county board of elections shall maintain voting data by precinct so that precinct returns for each item on the ballot shall include the votes cast by residents of the precinct who voted by absentee ballot, both mail and one-stop. The county board shall not be required to report absentee voting data by precinct until 60 days after the election. The State Board of Elections shall adopt rules for the enforcement of this section with the goal that all voting data shall be reported by precinct by the 2006 election. Those rules shall provide for exemptions where the expense of compliance would place a

financial hardship on a county. Those rules shall provide for compliance by 2004 for counties the State Board determines are capable of complying by that year.''

S.L. 2005–323, § 10, provides:

''The requirement for testing a voting system in an election provided in G.S. 163–165.9(a)(3), as enacted in Section 4 of this act, does not apply to any voting system acquired before January 1, 2008, as long as the voting system is demonstrated in a public forum in the county. Notwithstanding G.S. 163–132.5G, as amended by this act, voting data by precinct shall be reported for the general elections of 2006 by March 1, 2007, and for the primary elections of 2006 by May 1, 2007. Except as otherwise provided in this act, the remainder of this act is effective when it becomes law.''

2007 Legislation

S.L. 2007–391, § 6(c), rewrote this section, which prior thereto read:

''§ 163–132.5G. Voting data maintained by precinct

''To the extent that it can do so without compromising the secrecy of an individual's ballot, each county board of elections shall maintain voting data by precinct so that precinct returns for each item on the ballot shall include the votes cast by residents of the precinct who voted by provisional ballot and by absentee ballot, both mail and one-stop. The county board shall not be required to report provisional and absentee voting data by precinct until 60 days after the election. The State Board of Elections shall adopt rules for the enforcement of this section with the goal that all voting data shall be reported by precinct by the 2006 election.''

S.L. 2007–391, §§ 6(f) and 6(g), provide:

''Section 6.(f). Subsections 7(b) through 7(e) of this section become effective January 1, 2008. The remainder of this section is effective when this act becomes law.

''Section 6.(g) This section becomes effective only if any funds necessary to implement it are appropriated.''

Subsection 6(f) quoted above was probably referring to subsections 6(b) through 6(e); S.L. 2007–391 does not contain subsections 7(b) through 7(e).

The General Assembly fully funded Section 6 of S.L. 2007–391.

Cross References

Powers and duties of State Board of Elections, voting systems, see § 163–165.7.

§ 163–132.6. Repealed by Laws 1991 (Reg. Sess., 1992), c. 927, § 1

Historical and Statutory Notes

The repealed section provided for the applicability of the article.

§§ 163–133, 163–134. Reserved

Article 13

General Instructions [Repealed]

Section

163–135 to 163–140.1. Repealed.
163–140.2. Recodified.
163–140.3, 163–140.4. Recodified.
163–141 to 163–153. Repealed.
163–154. Repealed.
163–155, 163–156. Repealed.
163–157 to 163–159. Reserved.

§§ 163–135 to 163–140.1. Repealed by S.L. 2001–460, § 1, eff. Jan. 1, 2002

Historical and Statutory Notes

Repealed § 163–135, which related to applicability of this Article, was derived from:

Laws 1967, c. 775, § 1.
Laws 1975, c. 798, § 1.
Laws 1996 (2nd Ex. Sess.), c. 9, § 15.
S.L. 2001–403, § 9.
S.L. 2001–460, § 11.

Repealed § 163–136, which related to preparation, distribution and financing of ballots, was derived from:

Laws 1967, c. 775, § 1.
Laws 1967, c. 952, § 2.
Laws 1973, c. 793, § 55.
Laws 1973, c. 1135.
Laws 1975, c. 844, § 4.
Laws 1995, c. 324, § 14.

Repealed § 163–137, which related to general, special and primary election ballots, names and questions to be printed thereon, and distribution, was derived from:

Laws 1967, c. 775, § 1.
Laws 1973, c. 536, § 3.
Laws 1975, c. 149, § 1.
Laws 1975, c. 844, § 5.
Laws 1977, c. 408, § 4.
Laws 1979, c. 797, § 6.
Laws 1996 (2nd Ex. Sess.), c. 9, § 16.

Repealed § 163–138, which related to instructions for printing names on primary and election ballots, and distribution, was derived from:

Laws 1967, c. 775, § 1.
Laws 1985, c. 558, § 2.
Laws 1993, c. 553, § 61.
Laws 1996 (2nd Ex. Sess.), c. 9, § 17.

Repealed § 163–139, which related to reprinting ballots when substitute candidate is named, was derived from Laws 1967, c. 775, § 1.

Repealed § 163–140, which related to kinds of ballots, what they shall contain and arrangement, was derived from:

Laws 1967, c. 775, § 1.
Laws 1973, c. 793, § 56, 57.
Laws 1977, c. 265, § 10.
Laws 1977, c. 408, § 5.
Laws 1987, c. 491, § 1.
Laws 1987, c. 504.
Laws 1987, c. 580.
Laws 1987, c. 713, § 1.
Laws 1987, c. 713, §§ 8 to 12.
Laws 1991, c. 641, §§ 1 to 4.
Laws 1991, c. 761, §§ 32, 32.1.
Laws 1991 (Reg. Sess., 1992), c. 782, § 3.
Laws 1993, c. 553, §§ 62, 63.
Laws 1996 (2nd Ex. Sess.), c. 9, §§ 3 to 5, 11, 18, 19.
S.L. 2001–403, §§ 6, 10.
S.L. 2001–460, § 11.

Repealed § 163–140.1, which related to political party alignment on ballots, was derived from Laws 1975, c. 809.

See, generally, § 163–165 et seq.

§ 163–140.2. Recodified as §§ 163–165.5A by S.L. 2001–288, § 2, eff. Aug. 1, 2001

Historical and Statutory Notes

2001 Legislation

S.L. 2001–288, §§ 2, 3, provide:

''Section 2. If Senate Bill 17 of the 2001 Session of the General Assembly is enacted, then G.S. 163–140.2, as enacted by Section 1 of this act, is recodified as G.S. 163–165.5A. [S.B. 17 was adopted as S.L. 2001–460.]

''Section 3. This act becomes effective with respect to all primaries, elections, and referenda held on or after August 1, 2001. This act expires January 1, 2012, unless extended by legislation enacted before that date.''

§§ 163–140.3, 163–140.4. Recodified as §§ 163–165.4A, 163–165.4B, respectively, by S.L. 2001–311, § 3, eff. July 28, 2001

Historical and Statutory Notes

2001 Legislation

S.L. 2001–310, §§ 3, 4, provide:

''Section 3. If Senate Bill 17, 2001 Regular Session of the General Assembly, becomes law, then effective January

1, 2002, G.S. 163–140.3, as enacted by this act, is recodified as G.S. 163–165.4A, and G.S. 163–140.4, as enacted by this act, is recodified as G.S. 163–165.4B. [S.B. 17 was adopted as S.L. 2001–460.]

''Section 4. Section 1 of this act is effective when it becomes law and applies to primaries, elections, and referenda conducted on or after that date. Nothing in this act shall obligate the General Assembly to appropriate funds to implement this act. The remainder of this act is effective when it becomes law.''

§§ 163–141 to 163–153. Repealed by S.L. 2001–460, § 1, eff. Jan. 1, 2002

Historical and Statutory Notes

Repealed § 163–141, which related to sample ballots, was derived from Laws 1967, c. 775, § 1 and Laws 1993 (Reg. Sess., 1994), c. 762, §§ 5, 35.

Repealed § 163–142, which related to the number of ballots to be furnished each voting place, packaging, date of delivery, receipt for ballots, and accounting for ballots, was derived from:

Laws 1967, c. 775, § 1.
Laws 1985, c. 472, § 3.
Laws 1989, c. 635, § 3.
Laws 1993 (Reg. Sess., 1994), c. 762, §§ 5, 36.

Repealed § 163–143, which related to providing ballot boxes at each voting place, the date of delivery, and receipt for boxes, was derived from Laws 1967, c. 775, § 1 and Laws 1993 (Reg. Sess., 1994), c. 762, §§ 5, 37.

Repealed § 163–144, which related to the replacement and reporting of lost, destroyed, damaged, and stolen ballots, was derived from:

Laws 1967, c. 775, § 1.
Laws 1993 (Reg. Sess., 1994), c. 762, §§ 5, 38.
Laws 1995, c. 509, § 116.

Repealed § 163–145, which provided a description of voting booths, was derived from Laws 1967, c. 775, § 1 and S.L. 2001–353, § 8.

Repealed § 163–146, which related to voting enclosure at voting place, furnishings and arrangement, was derived from:

Laws 1967, c. 775, § 1.
Laws 1973, c. 793, § 58.
Laws 1973, c. 793, § 94.
Laws 1993 (Reg. Sess., 1994), c. 762, §§ 5, 39.

Repealed § 163–147, which provided no loitering or electioneering at voting place, was derived from:

Laws 1967, c. 775, § 1.
Laws 1971, c. 537.
Laws 1993, c. 236, § 1.
Laws 1993 (Reg. Sess., 1994), c. 762, §§ 5, 40.

Repealed § 163–148, which related to procedures at voting place before polls are opened, was derived from:

Laws 1967, c. 775, § 1.
Laws 1973, c. 793, §§ 59, 94.
Laws 1993 (Reg. Sess., 1994), c. 762, §§ 5, 41.

Repealed § 163–149, which related to protection of ballots, ballot boxes, pollbook, and registration records on day of primary or election, was derived from Laws 1967, c. 775, § 1.

Repealed § 163–150, which related to voting procedures, was derived from:

Laws 1967, c. 775, § 1.
Laws 1973, c. 793, § 60, 61.
Laws 1973, c. 1223, § 7,
Laws 1973, c. 1344, §§ 2, 3.
Laws 1979, c. 60, § 1.
Laws 1987, c. 408, §§ 2, 3.
Laws 1993 (Reg. Sess., 1994), c. 762, §§ 5, 42.
S.L. 1999–424, § 7(f), 7(g).

Repealed § 163–151, which related to marking ballots in primary and election, was derived from:

Laws 1967, c. 1016.
Laws 1969, c. 190.
Laws 1969, c. 917.
Laws 1969, c. 1253.
Laws 1971, c. 807.
Laws 1973, c. 793, § 62.
Laws 1979, c. 802, § 1.
Laws 1983, c. 324, § 4.
Laws 1987, c. 713, § 5.

Repealed § 163–152, which related to assistance to voters in primaries and general elections, was derived from:

Laws 1967, c. 775, § 1.
Laws 1973, c. 793, § 63.
Laws 1977, c. 345, § 1.
Laws 1985, c. 563, §§ 16 to 16.4.
Laws 1985 (Reg. Sess., 1986), c. 900, § 1.
Laws 1987, c. 565, § 3.
Laws 1993, c. 539, § 1099.

Laws 1993 (Reg. Sess., 1994), c. 762, §§ 5, 43.
Laws 1994 (1st Ex. Sess.), c. 24, § 14(c).

Repealed § 163–152.1, which related to assistance to blind voters in primaries and general elections, was derived from:

Laws 1969, c. 175.
Laws 1973, c. 476, § 143.
Laws 1985, c. 563, §§ 16.5, 16.6.
Laws 1993 (Reg. Sess., 1994), c. 762, §§ 5, 44.
S.L. 1997–443, § 11A.118(a).

Repealed § 163–153, which related to access to voting enclosure, was derived from:

Laws 1967, c. 775, § 1.
Laws 1969, c. 1280, § 1.
Laws 1973, c. 793, § 64.
Laws 1973, c. 793, § 94.
Laws 1979, c. 357, § 5.
Laws 1983, c. 411, § 4.
Laws 1993, c. 236, § 2.
Laws 1993 (Reg. Sess., 1994), c. 762, §§ 5, 45.
Laws 1995, c. 243, § 1.
S.L. 2001–292, § 1.

See, generally, § 163–165 et seq.

§ 163–154. Repealed by Laws 1981, c. 559

Historical and Statutory Notes

The repealed section pertained to posting lists of civilian and military absentee voters as well as new resident presidential election voters.

§§ 163–155, 163–156. Repealed by S.L. 2001–460, § 1, eff. Jan. 1, 2002

Historical and Statutory Notes

Repealed § 163–155, which provided aged and disabled persons allowed to vote outside voting enclosure, was derived from:

Laws 1971, c. 746, § 1.
Laws 1973, c. 793, § 65.
Laws 1979, c. 425, § 1.
Laws 1987, c. 300.
Laws 1987, c. 565, § 4.
Laws 1993, c. 539, § 1100.
Laws 1993 (Reg. Sess., 1994), c. 762, §§ 5, 46.
Laws 1994 (1st Ex. Sess.), c. 24, § 14(c).
S.L. 1999–455, § 18.

Repealed § 163–155, which related to rules when vacancies for superior court judge are to be voted on, was derived from:

Laws 1985 (Reg. Sess., 1986), c. 986, § 1.
Laws 1985 (Reg. Sess., 1986), c. 987, § 1.
Laws 1987, c. 485, § 3.
Laws 1987, c. 509, § 9.
Laws 1987 (Reg. Sess., 1988), c. 1037, § 125.
Laws 1996 (2nd Ex. Sess.), c. 9, §§ 19.1, 22.

See, generally, § 163–165 et seq.

§§ 163–157 to 163–159. Reserved

Article 14

Voting Systems [Repealed]

Section

163–160 to 163–162. Repealed.
163–162.1. Expired.
163–163, 163–164. Repealed.

§§ 163–160 to 163–162. Repealed by S.L. 2001–460, § 1, eff. Jan. 1, 2002

Historical and Statutory Notes

Repealed § 163–160, which related to approval of voting systems and rules and regulations, was derived from:

Laws 1967, c. 775, § 1.
Laws 1975, c. 149, § 3.
Laws 1987, c. 106, § 1.

Repealed § 163–160.1, which related to the definition of voting systems, was derived from Laws 1987, c. 106, § 1.

Repealed § 163–161, which related to adoption of voting systems by local governments, was derived from Laws 1987, c. 106, § 1.

Laws 1967, c. 775, § 1.
Laws 1987, c. 106, § 1.
Laws 1989, c. 635, § 4.

Repealed § 163–162, which related to use of paper ballots where voting systems are used, was derived from:

Laws 1967, c. 775, § 1.
Laws 1973, c. 793, § 66.
Laws 1975, c. 149, § 2.
Laws 1981, c. 630.
Laws 1987, c. 106, § 1.

See, generally, § 163–165 et seq.

§ 163–162.1. Expired

Historical and Statutory Notes

Laws 1979, 2nd Sess. c. 1325, which enacted this section, provided for its expiration on January 1, 1981.

§§ 163–163, 163–164. Repealed by S.L. 2001–460, § 1, eff. Jan. 1, 2002

Historical and Statutory Notes

Repealed § 163–163, which related to standardized straight-party designation, was derived from Laws 1987, c. 36, § 1.

Repealed § 163–164, which related to use of paper ballots in multi-candidate contests where optical scan ballot counters cannot be used, was derived from Laws 1987, c. 549, § 6.12.

See, generally, § 163–165 et seq.

Article 14A

Voting

Part 1. Definitions

Section

163–165. Definitions.

Part 2. Ballots and Voting Systems

163–165.1. Scope and general rules.
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163–165.9. Voting systems: powers and duties of county board of elections.
163–165.9A. Voting systems: requirements for voting systems vendors; penalties.
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163–166. Repealed.
163–166.01. Hours for voting.
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163–166.2. Arrangement of the voting enclosure.
163–166.3. Limited access to the voting enclosure.
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163–166.5. Procedures at voting place before voting begins.
163–166.6. Designation of tasks.
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163–166.7A. Voter education and information.
163–166.8. Assistance to voters.
163–166.9. Curbside voting.
163–166.10. Procedures after the close of voting.
163–166.11. Provisional voting requirements.
163–166.12. Requirements for certain voters who register by mail.
163–167. Reserved.

Part 1. Definitions

§ 163–165. Definitions

In addition to the definitions stated below, the definitions set forth in Article 15A of Chapter 163 of the General Statutes also apply to this Article. As used in this Article:

(1) ''Ballot'' means an instrument on which a voter indicates a choice so that it may be recorded as a vote for or against a certain candidate or referendum proposal. The term ''ballot' ' may include a paper ballot to be counted by hand, a paper ballot to be counted on an electronic scanner, the face of a lever voting machine, the image on a direct record electronic unit, or a ballot used on any other voting system.

(2) ''Ballot item'' means a single item on a ballot in which the voters are to choose between or among the candidates or proposals listed.

(3) ''Ballot style'' means the version of a ballot within a jurisdiction that an individual voter is eligible to vote. For example, in a county that uses essentially the same official ballot, a group office such as county commissioner may be divided into districts so that different voters in the same county vote for commissioner in different districts. The different versions of the county's official ballot containing

only those district ballot items one individual voter may vote are the county' s different ballot styles.

(4) ''Election'' means the event in which voters cast votes in ballot items concerning proposals or candidates for office in this State or the United States. The term includes primaries, general elections, referenda, and special elections.

(5) ''Official ballot'' means a ballot that has been certified by the State Board of Elections and produced by or with the approval of the county board of elections. The term does not include a sample ballot or a specimen ballot.

(6) ''Provisional official ballot'' means an official ballot that is voted and then placed in an envelope that contains an affidavit signed by the voter certifying identity and eligibility to vote. Except for its envelope, a provisional official ballot shall not be marked to make it identifiable to the voter.

(7) ''Referendum'' means the event in which voters cast votes for or against ballot questions other than the election of candidates to office.

(8) ''Voting booth'' means the private space in which a voter is to mark an official ballot.

(9) ''Voting enclosure'' means the room within the voting place that is used for voting.

(10) ''Voting place'' means the building or area of the building that contains the voting enclosure.

(11) ''Voting system'' means a system of casting and tabulating ballots. The term includes systems of paper ballots counted by hand as well as systems utilizing mechanical and electronic voting equipment.

Added by S.L. 2001–460, § 3, eff. Jan. 1, 2002; S.L. 2001–466, §§ 3(a), 3(b), eff. Nov. 16, 2001. Amended by S.L. 2006–262, § 4, eff. Jan. 1, 2007.

Historical and Statutory Notes

2001 Legislation

S.L. 2001–466, § 3(a), eff. Nov. 16, 2001, in subd. (9), deleted ''or connected rooms'' following ''means the room''.

S.L. 2001–466, § 3(b), eff. Nov. 16, 2001, in subd. (10), inserted ''or area of the building''.

2006 Legislation

S.L. 2006–262, § 4, eff. Jan. 1, 2007, amended subd. (6) by inserting ''Except for its envelope, a provisional official ballot shall not be marked to make it identifiable to the voter.''

S.L. 2006–262, § 5, provides:

''Section 4 of this act becomes effective January 1, 2007. The remainder of this act is effective when it becomes law, except that any criminal penalty resulting from this act becomes effective October 1, 2006. Prosecutions for offenses committed before October 1, 2006, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.''

Part 2. Ballots and Voting Systems

§ 163–165.1. Scope and general rules

(a) Scope. – This Article shall apply to all elections in this State.

(b) Requirements of Official Ballots in Voting. – In any election conducted under this Article:

(1) All voting shall be by official ballot.

(2) Only votes cast on an official ballot shall be counted.

(c) Compliance With This Article. – All ballots shall comply with the provisions of this Article.

(d) Other Uses Prohibited. – An official ballot shall not be used for any purpose not authorized by this Article.

(e) Voted ballots and paper and electronic records of individual voted ballots shall be treated as confidential, and no person other than elections officials performing their duties may have access to voted ballots or paper or electronic records of individual voted ballots except by court order or order of the appropriate board of elections as part of the resolution of an election protest or investigation of an alleged election irregularity or violation. Voted ballots and paper and electronic records of individual voted ballots shall not be disclosed to members of the public in such a way as to disclose how a particular voter voted, unless a court orders otherwise. Any person who has access to an official voted ballot or record and knowingly discloses in violation of this section how an individual has voted that ballot is guilty of a Class 1 misdemeanor.

Added by S.L. 2001–460, § 3, eff. Jan. 1, 2002. Amended by S.L. 2002–159, § 55(*o*), eff. Oct. 11, 2002; S.L. 2005–323, § 1(f), eff. Aug. 26, 2005; S.L. 2007–391, § 9(a), eff. Dec. 1, 2007.

Historical and Statutory Notes

2002 Legislation

S.L. 2002–159, § 55(*o*), eff. Oct. 11, 2002, added subsec. (e).

2005 Legislation

S.L. 2005–323, § 1(f), eff. Aug. 26, 2005, amended subsec. (e) by inserting ''or paper records of individual voted ballots'' in three places.

S.L. 2005–323, § 10, provides:

''The requirement for testing a voting system in an election provided in G.S. 163–165.9(a)(3), as enacted in Section 4 of this act, does not apply to any voting system acquired before January 1, 2008, as long as the voting system is demonstrated in a public forum in the county. Notwithstanding G.S. 163–132.5G, as amended by this act, voting data by precinct shall be reported for the general elections of 2006 by March 1, 2007, and for the primary elections of 2006 by May 1, 2007. Except as otherwise provided in this act, the remainder of this act is effective when it becomes law.''

2007 Legislation

S.L. 2007–391, § 9(a), in subsec. (e), in the first and second sentences, inserted ''and electronic'' following ''and paper''; in the first sentence, inserted ''or electronic'' following ''or paper''; and added the third sentence relating to criminal penalty.

§ 163–165.2. Sample ballots

(a) County Board to Produce and Distribute Sample Ballots. – The county board of elections shall produce sample ballots, in all

the necessary ballot styles of the official ballot, for every election to be held in the county. The sample ballots shall be given an appearance that clearly distinguishes them from official ballots. The county board shall distribute sample ballots to the chief judge of every precinct in which the election is to be conducted. The chief judge shall post a sample ballot in the voting place and may use it for instructional purposes. The county board of elections may use the sample ballot for other informational purposes.

(b) Document Resembling an Official Ballot to Contain Disclaimer. – No person other than a board of elections shall produce or disseminate a document substantially resembling an official ballot unless the document contains on its face a prominent statement that the document was not produced by a board of elections and is not an official ballot.

Added by S.L. 2001–460, § 3, eff. Jan. 1, 2002.

§ 163–165.3. Responsibilities for preparing official ballots

Text of subsec. (a) eff. until July 1, 2010.

(a) State Board Responsibilities.—The State Board of Elections shall certify the official ballots and voter instructions to be used in every election that is subject to this Article. In conducting its certification, the State Board shall adhere to the following:

(1) No later than January 31 of every calendar year, the State Board shall establish a schedule for the certification of all official ballots and instructions during that year. The schedule shall include a time for county boards of elections to submit their official ballots and instructions to the State Board for certification and times for the State Board to complete the certification.

(2) The State Board of Elections shall compose model ballot instructions, which county boards of elections may amend subject to approval by the State Board as part of the certification process. The State Board of Elections may permit a county board of elections to place instructions elsewhere than on the official ballot itself, where placing them on the official ballot would be impractical.

(3) With regard only to multicounty ballot items on the official ballot, the State Board shall certify the accuracy of the content on the official ballot.

(4) With regard to the entire official ballot, the State Board shall certify that the content and arrangement of the official ballot are in substantial compliance with the provisions of this Article and standards adopted by the State Board.

(5) The State Board shall proofread the official ballot of every county, if practical, prior to final production.

(6) The State Board is not required to certify or review every official ballot style in the county but may require county boards to submit and may review a composite official ballot showing races that will appear in every district in the county.

The State Board shall be responsible for all ballot coding and shall contract with a qualified vendor or supervise trained election staff to produce the data necessary for equipment programming.

Text of subsec. (a) eff. July 1, 2010.

(a) State Board Responsibilities.—The State Board of Elections shall certify the official ballots and voter instructions to be used in every election that is subject to this Article. In conducting its certification, the State Board shall adhere to the following:

(1) No later than January 31 of every calendar year, the State Board shall establish a schedule for the certification of all official ballots and instructions during that year. The schedule shall include a time for county boards of elections to submit their official ballots and instructions to the State Board for certification and times for the State Board to complete the certification.

(2) The State Board of Elections shall compose model ballot instructions, which county boards of elections may amend subject to approval by the State Board as part of the certification process. The State Board of Elections may permit a county board of elections to place instructions elsewhere than on the official ballot itself, where placing them on the official ballot would be impractical.

(3) With regard only to multicounty ballot items on the official ballot, the State Board shall certify the accuracy of the content on the official ballot.

(4) With regard to the entire official ballot, the State Board shall certify that the content and arrangement of the official ballot are in substantial compliance with the provisions of this Article and standards adopted by the State Board.

(5) The State Board shall proofread the official ballot of every county, if practical, prior to final production.

(6) The State Board is not required to certify or review every official ballot style in the county but may require county boards to submit and may review a composite official ballot showing races that will appear in every district in the county.

The State Board shall be responsible for oversight of all ballot coding. In order to produce the data necessary for equipment programming, each county shall either contract with a qualified

vendor certified by the State Board orbe certified by the State Board to produce the data.

(b) County Board Responsibilities.—Each county board of elections shall prepare and produce official ballots for all elections in that county. The county board of elections shall submit the format of each official ballot and set of instructions to the State Board of Elections for review and certification in accordance with the schedule established by the State Board. The county board of elections shall follow the directions of the State Board in placing candidates, referenda, and other material on official ballots and in placing instructions.

(c) Late Changes in Ballots.—The State Board shall promulgate rules for late changes in ballots. The rules shall provide for the reprinting, where practical, of official ballots as a result of replacement candidates to fill vacancies in accordance with G.S. 163–114 or other late changes. If an official ballot is not reprinted, a vote for a candidate who has been replaced in accordance with G.S. 163–114 will count for the replacement candidate.

(d) Special Ballots.—The State Board of Elections, with the approval of a county board of elections, may produce special official ballots, such as those for disabled voters, where production by the State Board would be more practical than production by the county board.

Added by S.L. 2001–460, § 3, eff. Jan. 1, 2002. Amended by S.L. 2007–391, § 24(a), eff. July 1, 2007; S.L. 2009–541, § 18(a), eff. July 1, 2010.

Historical and Statutory Notes

2007 Legislation

S.L. 2007–391, § 24(a), in subsec. (a), in the introductory paragraph, substituted ''Responsibilities'' for ''to Certify Official Ballots and Instructions to Voters'' and added the undesignated paragraph relating to ballot coding and contracting; and in subsec. (b), substituted ''Responsibilities'' for ''to Prepare and Produce Official Ballots and Instructions''.

S.L. 2007–391, § 24(b), provides:

''This section becomes effective only if any funds necessary to implement it are appropriated.''

Funds were appropriated in S.L. 2007–323, § 25.1(a)(3).

2009 Legislation

S.L. 2009–541, § 18(a), rewrote the second undesignated paragraph of subsec. (a), which formerly read:

''The State Board shall be responsible for all ballot coding and shall contract with a qualified vendor or supervise trained election staff to produce the data necessary for equipment programming.''

Cross References

Filing vacancies; post nomination and prior to elections, see § 163–114.

Administrative Code References

Ballots, see 8 NCAC 6B.0101 et seq.

§ 163–165.4. Standards for official ballots

The State Board of Elections shall seek to ensure that official ballots throughout the State have all the following characteristics:

(1) Are readily understandable by voters.

(2) Present all candidates and questions in a fair and nondiscriminatory manner.

(3) Allow every voter to cast a vote in every ballot item without difficulty.

(4) Facilitate an accurate vote count.

(5) Are uniform in content and format, subject to varied presentations required or made desirable by different voting systems.

Added by S.L. 2001–460, § 3, eff. Jan. 1, 2002.

Administrative Code References

Ballots, see 8 NCAC 6B.0101 et seq.

§ 163–165.4A. Punch-card ballots and lever machines

(a) No ballot may be used in any referendum, primary, or other election as an official ballot if it requires the voter to punch out a hole with a stylus or other tool.

(a1) No lever machine voting system may be used in any referendum, primary, or other election as a means of voting the official ballot. A ''lever machine voting system'' is a voting system on which the voter casts a vote by pressing a lever and the vote is mechanically recorded by the machine.

(b) In any counties that used punch-card ballots as official ballots or lever machines in the election of November 2000, and in any municipalities located in those counties, this section becomes effective January 1, 2006. It is the intent of the General Assembly that any county that uses county funds to replace voting equipment to satisfy this section shall be given priority in appropriations to counties for voting equipment.

Added by S.L. 2001–310, § 1, eff. July 28, 2001. Recodified from § 163–140.3 by S.L. 2001–310, § 3, eff. July 28, 2001. Amended by S.L. 2003–226, § 12, eff. June 19, 2003.

Historical and Statutory Notes

2001 Legislation

S.L. 2001–310, §§ 3 and 4, provide:

''Section 3. If Senate Bill 17, 2001 Regular Session of the General Assembly, becomes law, then effective January 1, 2002, G.S. 163–140.3, as enacted by this act, is recodified as G.S. 163–165.4A, and G.S. 163–140.4, as enacted by this act, is recodified as G.S. 163–165.4B. [S.B. 17 was adopted as S.L. 2001–460.]

''Section 4. Section 1 of this act is effective when it becomes law and applies to primaries, elections, and referenda conducted on or after that date. Nothing in this act shall obligate the General Assembly to appropriate funds to implement this act. The remainder

of this act is effective when it becomes law.''

2003 Legislation

S.L. 2003–226, § 12, eff. Jan. 1, 2004, rewrote the section, which prior thereto read:

''§ 163-165.4A. Punch-Card ballots

''(a) No ballot may be used in any referendum, primary, or other election as an official ballot if it requires the voter to punch out a hole with a stylus or other tool.

''(b) In any counties that used punch-card ballots as official ballots in the election of November 2000, and in any municipalities located in those counties, this section becomes effective January 1, 2006. It is the intent of the General Assembly that any county that uses county funds to replace voting equipment to satisfy this section shall be given priority in appropriations to counties for voting equipment.''

S.L. 2003–226, §§ 1 and 22, eff. June 19, 2003, provide:

''Section 1. The purpose of this act is to ensure that the State of North Carolina has a system for all North Carolina elections that complies with the requirements for federal elections set forth in the federal Help America Vote Act of 2002, Public Law 107–252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481–15485.

''The General Assembly finds that the education and training of election officials as required by G.S. 163–82.34 has met and continues to meet the mandate for the education and training of precinct officials and other election officials in section 254(a)(3) of the Help America Vote Act of 2002. The General Assembly further finds that the establishment, development, and continued operation of the statewide list maintenance program for voter registration set forth in G.S. 163–82.14 has met and continues to meet the mandates of section 303(a)(2) of the Help America Vote Act of 2002.

''In certain other areas of the election statutes and other laws, the General Assembly finds that the statutes must be amended to comply with the Help America Vote Act.''

''Section 22. Sections 1, 3, 4, 5, 12, 18, 21, and 22 of this act are effective when this act becomes law. Sections 11 and 13 of this act become effective January 1, 2006. The remainder of this act becomes effective January 1, 2004. All sections of this act apply with respect to all primaries and elections held on or after the date they become effective.''

§ 163–165.4B. Butterfly ballots

No butterfly ballot may be used as an official ballot in any referendum, primary, or other election. The term ''butterfly ballot'' means a ballot having more than one column listing ballot choices that share a common column for designating those choices.

Added by S.L. 2001–310, § 2, eff. July 28, 2001. Recodified from § 163–140.4 by S.L. 2001–310, § 3, eff. July 28, 2001.

Historical and Statutory Notes

2001 Legislation

S.L. 2001–310, §§ 3 and 4, provide:

''Section 3. If Senate Bill 17, 2001 Regular Session of the General Assembly, becomes law, then effective January 1, 2002, G.S. 163–140.3, as enacted by this act, is recodified as G.S. 163–165.4A, and G.S. 163–140.4, as enacted by this act, is recodified as G.S. 163–165.4B. [S.B. 17 was adopted as S.L. 2001–460.]

''Section 4. Section 1 of this act is effective when it becomes law and applies to primaries, elections, and referenda conducted on or after that date. Nothing in this act shall obligate the General Assembly to appropriate funds to implement this act. The remainder of this act is effective when it becomes law.''

§ 163–165.5. Contents of official ballots

Each official ballot shall contain all the following elements:

(1) The heading prescribed by the State Board of Elections. The heading shall include the term ''Official Ballot''.

(2) The title of each office to be voted on and the number of seats to be filled in each ballot item.

(3) The names of the candidates as they appear on their notice of candidacy filed pursuant to G.S. 163–106 or G.S. 163–323, or on petition forms filed in accordance with G.S. 163–122. No title, appendage, or appellation indicating rank, status, or position shall be printed on the official ballot in connection with the candidate's name. Candidates, however, may use the title Mr., Mrs., Miss, or Ms. Nicknames shall be permitted on an official ballot if used in the notice of candidacy or qualifying petition, but the nickname shall appear according to standards adopted by the State Board of Elections. Those standards shall allow the presentation of legitimate nicknames in ways that do not mislead the voter or unduly advertise the candidacy. In the case of candidates for presidential elector, the official ballot shall not contain the names of the candidates for elector but instead shall contain the nominees for President and Vice President which the candidates for elector represent. The State Board of Elections shall establish a review procedure that local boards of elections shall follow to ensure that candidates' names appear on the official ballot in accordance with this subdivision.

(4) Party designations in partisan ballot items.

(5) A means by which the voter may cast write-in votes, as provided in G.S. 163–123. No space for write-ins is required unless a write-in candidate has qualified under G.S. 163–123 or unless the ballot item is exempt from G.S. 163–123.

(6) Instructions to voters, unless the State Board of Elections allows instructions to be placed elsewhere than on the official ballot.

(7) The printed title and facsimile signature of the chair of the county board of elections.

Added by S.L. 2001–460, § 3, eff. Jan. 1, 2002. Amended by S.L. 2003–209, § 1, eff. June 19, 2003; S.L. 2007–391, § 10, eff. Aug. 19, 2007.

Historical and Statutory Notes

2003 Legislation

S.L. 2003–209, § 1, eff. June 19, 2003, in subd. (3), added the last sentence.

2007 Legislation

S.L. 2007–391, § 10, in subd. (5), added the second sentence relating to space for write-ins.

Administrative Code References

Voting places, setting up polling place prior to voting, see 8 NCAC 10B.0102.

Notes of Decisions

Name on the ballot 2
Validity 1

1. Validity

Statutes requiring candidate for public office to file notice of candidacy, to sign a pledge to abide by the results of primary, to pay a filing fee equal to one per cent. of annual salary of office sought, and providing that only those who complied with such provisions should have their names printed on official ballot, did not conflict with any provisions of the state or federal constitution. McLean v. Durham County Board of Elections, 1942, 21 S.E.2d 842, 222 N.C. 6. Elections ⚷ 21

2. Name on the ballot

Under the statutes regulating primaries and elections, only those who have been legally nominated for county office under the law applicable to the county in which the nomination is made are entitled to have their names appear on the official ballot. McLean v. Durham County Board of Elections, 1942, 21 S.E.2d 842, 222 N.C. 6. Elections ⚷ 126(5)

One who failed to file notice of his candidacy or to sign pledge to abide by results of primary or to pay filing fee required by statute, was not the ''nominee'' of any political party within meaning of primary law and was not entitled to have his name placed on the official ballot. McLean v. Durham County Board of Elections, 1942, 21 S.E.2d 842, 222 N.C. 6. Elections ⚷ 126(5)

§ 163–165.5A. Ballot instructions in English and Spanish

In every county or municipality where the Hispanic population exceeds six percent (6%), in accordance with the most recent decennial federal census, all instructions to the voter for ballots shall be printed in both English and Spanish. The State Board of Elections shall prepare a Spanish translation of ballot instructions for local boards of elections.

Added by S.L. 2001–288, § 1, eff. Aug. 1, 2001. Recodified from § 163–140.2 by S.L. 2001–288, § 2.

Historical and Statutory Notes

2001 Legislation

S.L. 2001–288, §§ 2 and 3, provide:

''Section 2. If Senate Bill 17 of the 2001 Session of the General Assembly is enacted, then G.S. 163–140.2, as enacted by Section 1 of this act, is recodified as G.S. 163–165.5A. [S.B. 17 was adopted as S.L. 2001–460.]

''Section 3. This act becomes effective with respect to all primaries, elections, and referenda held on or after August 1, 2001. This act expires January 1, 2012, unless extended by legislation enacted before that date.''

§ 163–165.5B. Ballots may be combined

Notwithstanding any other statute or local act, a county board of elections, with the approval of the State Board of Elections, may combine ballot items on the same official ballot.

Added by S.L. 2007–391, § 7, eff. Aug. 19, 2007.

§ 163–165.6. Arrangement of official ballots

(a) Order of Precedence Generally. – Candidate ballot items shall be arranged on the official ballot before referenda.

(b) Order of Precedence for Candidate Ballot Items. – The State Board of Elections shall promulgate rules prescribing the order of

offices to be voted on the official ballot. Those rules shall adhere to the following guidelines:

(1) Federal offices shall be listed before State and local offices. Member of the United States House of Representatives shall be listed immediately after United States Senator.

(2) State and local offices shall be listed according to the size of the electorate.

(3) Partisan offices, regardless of the size of the constituency, shall be listed before nonpartisan offices.

(4) When offices are in the same class, they shall be listed in alphabetical order by office name, or in numerical or alphabetical order by district name. Governor and Lieutenant Governor, in that order, shall be listed before other Council of State offices. Mayor shall be listed before other citywide offices. Chair of a board, where elected separately, shall be listed before other board seats having the same electorate. Chief Justice shall be listed before Associate Justices.

(5) Ballot items for full terms of an office shall be listed before ballot items for partial terms of the same office.

(c) Order of Candidates on Primary Official Ballots. – The order in which candidates shall appear on a county's official ballots in any primary ballot item shall be determined by the county board of elections using a process designed by the State Board of Elections for random selection.

(d) Order of Party Candidates on General Election Official Ballot. – Candidates in any ballot item on a general election official ballot shall appear in the following order:

(1) Nominees of political parties that reflect at least five percent (5%) of statewide voter registration, according to the most recent statistical report published by the State Board of Elections, in alphabetical order by party and in alphabetical order within the party.

(2) Nominees of other political parties, in alphabetical order by party and in alphabetical order within the party.

(3) Unaffiliated candidates, in alphabetical order.

(e) Straight-Party Voting. – Each official ballot shall be arranged so that the voter may cast one vote for a party's nominees for all offices except President and Vice President. A vote for President and Vice President shall be cast separately from a straight-party vote. The official ballot shall be prepared so that a voter may cast a straight-party vote, but then make an exception to that straight-party vote by voting for a candidate not nominated by that party or by voting for fewer than all the candidates nominated by that party. Instructions for general election ballots shall clearly advise

voters of the rules in this subsection and of the statutes providing for the counting of ballots.

(f) Write-In Voting. – Each official ballot shall be so arranged so that voters may cast write-in votes for candidates except where prohibited by G.S. 163–123 or other statutes governing write-in votes. Instructions for general election ballots shall clearly advise voters of the rules of this subsection and of the statutes governing write-in voting.

(g) Order of Precedence for Referenda. – The referendum questions to be voted on shall be arranged on the official ballot in the following order:

(1) Proposed amendments to the North Carolina Constitution, in the chronological order in which the proposals were approved by the General Assembly.

(2) Other referenda to be voted on by all voters in the State, in the chronological order in which the proposals were approved by the General Assembly.

(3) Referenda to be voted on by fewer than all the voters in the State, in the chronological order of the acts by which the referenda were properly authorized.

Added by S.L. 2001–460, § 3, eff. Jan. 1, 2002. Amended by S.L. 2002–158, § 14, eff. Oct. 10, 2002.

Historical and Statutory Notes

2002 Legislation

S.L. 2002–158, § 14, eff. Oct. 10, 2002, in subd. (3) of subsec. (b), inserted ‘‘, regardless of the size of the constituency,’’.

Administrative Code References

Approval and operation of voting systems, see 8 NCAC 4.0303.

Ballot rotation rules for primary election ballots, candidate names to be rotated for paper ballots and some voting systems, see 8 NCAC 10.0103.

Notes of Decisions

Construction and application 2
Due process 3
Validity 1

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1. Validity

One man, one vote rule does not apply to state judiciary, and in absence of arbitrary or invidious action between citizens and voters, mere showing of disparity among voters or in population figures of district would not be sufficient to strike down election procedure. Holshouser v. Scott, 1971, 335 F.Supp. 928, affirmed 93 S.Ct. 43, 409 U.S. 807, 34 L.Ed.2d 68. Constitutional Law ⚷ 3658(10); Judges ⚷ 3

State constitutional provisions requiring election of judges by districts or statewide as prescribed by legislature, or that state be divided into divisions and districts and judges rotate among districts, or that judges reside in their respective districts are valid. Holshouser v. Scott, 1971, 335 F.Supp. 928, affirmed 93 S.Ct. 43, 409 U.S. 807, 34 L.Ed.2d 68. Judges ⚷ 3

2. Construction and application

Statute prescribing that regular judges be nominated in primary election conducted in their respective districts but elected in general election by statewide vote was valid. Holshouser v.

Scott, 1971, 335 F.Supp. 928, affirmed 93 S.Ct. 43, 409 U.S. 807, 34 L.Ed.2d 68. Judges ⚷ 3

Where elections statute violated by failure to provide sufficient space to permit voters to write-in persons of their choice for county commissioner did not expressly condition validity of election on compliance with statute's terms, State Board of Elections properly ruled that a new election was not required in view of its finding that violation did not alter election's outcome. In re Cleveland County Com'rs: Protest of Crawford, 1982, 287 S.E.2d 451, 56 N.C.App. 187. Elections ⚷ 186(1)

3. Due process

Failure of ballots to comply fully with statutory requirements by failing to divide ballots into parallel columns separated by distinct black lines, failure to print party names in large type at head of each party column, and failure to print instructions in heavy black type did not constitute violation of due process clause, because there was no indication that failure was other than simple negligence on part of election officials, and because ballots used in election sufficiently complied with state law so that voters should not have been confused or deceived. Hendon v. North Carolina State Bd. of Elections, 1983, 710 F.2d 177. Constitutional Law ⚷ 4232

§ 163–165.7. Voting systems: powers and duties of State Board of Elections

(a) Only voting systems that have been certified by the State Board of Elections in accordance with the procedures and subject to the standards set forth in this section and that have not been subsequently decertified shall be permitted for use in elections in this State. Those certified voting systems shall be valid in any election held in the State or in any county, municipality, or other electoral district in the State. Subject to all other applicable rules adopted by the State Board of Elections and, with respect to federal elections, subject to all applicable federal regulations governing voting systems, paper ballots marked by the voter and counted by hand shall be deemed a certified voting system. The State Board of Elections shall certify optical scan voting systems, optical scan with ballot markers voting systems, and direct record electronic voting systems if any of those systems meet all applicable requirements of federal and State law. The State Board may certify additional voting systems only if they meet the requirements of the request for proposal process set forth in this section and only if they generate either a paper ballot or a paper record by which voters may verify their votes before casting them and which provides a backup means of counting the vote that the voter casts. Those voting systems may include optical scan and direct record electronic (DRE) voting systems. In consultation with the Office of Information Technology Services, the State Board shall develop the requests for proposal subject to the provisions of this Chapter and other applicable State laws. Among other requirements, the request for proposal shall require at least all of the following elements:

(1) That the vendor post a bond or letter of credit to cover damages resulting from defects in the voting system. Damages shall include, among other items, any costs of conducting a new election attributable to those defects.

(2) That the voting system comply with all federal requirements for voting systems.

(3) That the voting system must have the capacity to include in voting tabulation district returns the votes cast by voters outside of the voter's voting tabulation district as required by G.S. 163–132.5G.

(4) With respect to electronic voting systems, that the voting system generate a paper record of each individual vote cast, which paper record shall be maintained in a secure fashion and shall serve as a backup record for purposes of any hand-to-eye count, hand-to-eye recount, or other audit. Electronic systems that employ optical scan technology to count paper ballots shall be deemed to satisfy this requirement.

(5) With respect to DRE voting systems, that the paper record generated by the system be viewable by the voter before the vote is cast electronically, and that the system permit the voter to correct any discrepancy between the electronic vote and the paper record before the vote is cast.

(6) With respect to all voting systems using electronic means, that the vendor provide access to all of any information required to be placed in escrow by a vendor pursuant to G.S. 163–165.9A for review and examination by the State Board of Elections; the Office of Information Technology Services; the State chairs of each political party recognized under G.S. 163–96; the purchasing county; and designees as provided in subdivision (9) of subsection (d) of this section.

(7) That the vendor must quote a statewide uniform price for each unit of the equipment.

(8) That the vendor must separately agree with the purchasing county that if it is granted a contract to provide software for an electronic voting system but fails to debug, modify, repair, or update the software as agreed or in the event of the vendor having bankruptcy filed for or against it, the source code described in G.S. 163–165.9A(a) shall be turned over to the purchasing county by the escrow agent chosen under G.S. 163–165.9A(a)(1) for the purposes of continuing use of the software for the period of the contract and for permitting access to the persons described in subdivision (6) of this subsection for the purpose of reviewing the source code.

In its request for proposal, the State Board of Elections shall address the mandatory terms of the contract for the purchase of the voting system and the maintenance and training related to that voting system.

If a voting system was acquired or upgraded by a county before August 1, 2005, the county shall not be required to go through the purchasing process described in this subsection if the county can demonstrate to the State Board of Elections compliance with the requirements in subdivisions (1) through (6) and subdivision (8) of this subsection, where those requirements are applicable to the type of voting system involved. If the county cannot demonstrate to the State Board of Elections that the voting system is in compliance with those subdivisions, the county board shall not use the system in an election during or after 2006, and the county shall be subject to the purchasing requirements of this subsection.

(a1) Federal Assistance. — The State Board may use guidelines, information, testing reports, certification, decertification, recertification, and any relevant data produced by the Election Assistance Commission, its Standards Board, its Board of Advisors, or the Technical Guidelines Development Committee as established in Title II of the Help America Vote Act of 2002 with regard to any action or investigation the State Board may take concerning a voting system. The State Board may use, for the purposes of voting system certification, laboratories accredited by the Election Assistance Commission under the provisions of section 231(2) of the Help America Vote Act of 2002.

(b) The State Board may also, upon notice and hearing, decertify types, makes, and models of voting systems. Upon decertifying a type, make, or model of voting system, the State Board shall determine the process by which the decertified system is discontinued in any county. A county may appeal a decision by the State Board concerning the process by which the decertified system is discontinued in that county to the Superior Court of Wake County. The county has 30 days from the time it receives notice of the State Board's decision on the process by which the decertified system is discontinued in that county to make that appeal.

(c) Prior to certifying a voting system, the State Board of Elections shall review, or designate an independent expert to review, all source code made available by the vendor pursuant to this section and certify only those voting systems compliant with State and federal law. At a minimum, the State Board's review shall include a review of security, application vulnerability, application code, wireless security, security policy and processes, security/privacy program management, technology infrastructure and security controls, security organization and governance, and operational effectiveness, as applicable to that voting system. Any portion of the report containing specific information related to any trade secret as designated pursuant to G.S. 132–1.2 shall be confidential and shall be accessed only under the rules adopted pursuant to subdivision (9) of subsection (d) of this section. The State Board

may hear and discuss the report of any such review under G.S. 143–318.11(a)(1).

(d) Subject to the provisions of this Chapter, the State Board of Elections shall prescribe rules for the adoption, handling, operation, and honest use of certified voting systems, including all of the following:

(1) Procedures for county boards of elections to utilize when recommending the purchase of a certified voting system for use in that county.

(2) Form of official ballot labels to be used on voting systems.

(3) Operation and manner of voting on voting systems.

(4) Instruction of precinct officials in the use of voting systems.

(5) Instruction of voters in the use of voting systems.

(6) Assistance to voters using voting systems.

(7) Duties of custodians of voting systems.

(8) Examination and testing of voting systems in a public forum in the county before and after use in an election.

(9) Notwithstanding G.S. 132–1.2, procedures for the review and examination of any information placed in escrow by a vendor pursuant to G.S. 163–165.9A by only the following persons:

a. State Board of Elections.

b. Office of Information Technology Services.

c. The State chairs of each political party recognized under G.S. 163–96.

d. The purchasing county.

Each person listed in sub-subdivisions a. through d. of this subdivision may designate up to three persons as that person's agents to review and examine the information. No person shall designate under this subdivision a business competitor of the vendor whose proprietary information is being reviewed and examined. For purposes of this review and examination, any designees under this subdivision and the State party chairs shall be treated as public officials under G.S. 132–2.

(10) With respect to electronic voting systems, procedures to maintain the integrity of both the electronic vote count and the paper record. Those procedures shall at a minimum include procedures to protect against the alteration of the paper record after a machine vote has been recorded and procedures to prevent removal by the voter from the voting enclosure of any paper record or copy of an individually voted ballot or of any other device or item whose removal from the voting enclosure could permit

compromise of the integrity of either the machine count or the paper record.

(11) Compliance with section 301 of the Help America Vote Act of 2002.

Any rules adopted under this subsection shall be in conjunction with procedures and standards adopted under G.S. 163–182.1, are exempt from Chapter 150B of the General Statutes, and are subject to the same procedures for notice and publication set forth in G.S. 163–182.1.

(e) The State Board of Elections shall facilitate training and support of the voting systems utilized by the counties. The training may be conducted through the use of videoconferencing or other technology.

Added by S.L. 2001–460, § 3, eff. Jan. 1, 2002. Amended by S.L. 2003–226, § 11, eff. Jan. 1, 2006; S.L. 2005–323, § 1(a), eff. Aug. 1, 2005; S.L. 2005–323, §§ 1(c), 1(d), eff. Jan. 1, 2006; S.L. 2006–264, § 76(a), eff. Aug. 23, 2006; S.L. 2007–391, § 6(d), eff. Jan. 1, 2008; S.L. 2009–541, § 19, eff. Aug. 28, 2009.

Historical and Statutory Notes

2003 Legislation

S.L. 2003–226, §§ 1 and 22, eff. June 19, 2003, provide:

''Section 1. The purpose of this act is to ensure that the State of North Carolina has a system for all North Carolina elections that complies with the requirements for federal elections set forth in the federal Help America Vote Act of 2002, Public Law 107–252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481–15485.

''The General Assembly finds that the education and training of election officials as required by G.S. 163–82.34 has met and continues to meet the mandate for the education and training of precinct officials and other election officials in section 254(a)(3) of the Help America Vote Act of 2002. The General Assembly further finds that the establishment, development, and continued operation of the statewide list maintenance program for voter registration set forth in G.S. 163–82.14 has met and continues to meet the mandates of section 303(a)(2) of the Help America Vote Act of 2002.

''In certain other areas of the election statutes and other laws, the General Assembly finds that the statutes must be amended to comply with the Help America Vote Act.''

''Section 22. 1, 3, 4, 5, 12, 18, 21, and 22 of this act are effective when this act becomes law. Sections 11 and 13 of this act become effective January 1, 2006. The remainder of this act becomes effective January 1, 2004. All sections of this act apply with respect to all primaries and elections held on or after the date they become effective.''

S.L. 2003–226, § 11, eff. Jan. 1, 2006, was repealed by S.L. 2005–323, § 1(b), eff. Aug. 26, 2006, prior to repeal the section would have read:

''The State Board of Elections shall have authority to approve types, makes, and models of voting systems for use in elections and referenda held in this State. Only voting systems that have been approved by the State Board shall be used to conduct elections under this Chapter, and the approved systems shall be valid in any election or referendum held in any county or municipality. The State Board may use guidelines, information, testing reports, certification, decertification, recertification, and any relevant data produced by the Election Assistance Commission, its Standards Board, its Board of Advisors, or the Technical Guidelines Development Committee as established in Title II of the Help America Vote Act of 2002 with regard to any action or investigation the State Board may take concerning a voting system. The State Board may use, for the purposes of voting system certification, laboratories accredited by the Election Assistance Commission under the provisions of section 231(2) of the Help America Vote Act of 2002. The

State Board may, upon request of a local board of elections, authorize the use of a voting system not approved for general use. The State Board may also, upon notice and hearing, disapprove types, makes, and models of voting systems. Upon disapproving a type, make, or model of voting system, the State Board shall determine the process by which the disapproved system is discontinued in any county. If a county makes a showing that discontinuance would impose a financial hardship upon it, the county shall be given up to four years from the time of State Board disapproval to replace the system. A county may appeal a decision by the State Board concerning discontinuance of a voting system to the superior court in that county or to the Superior Court of Wake County. The county has 30 days from the time of the State Board's decision on discontinuance to make that appeal.

''Subject to the provisions of this Chapter, the State Board of Elections shall prescribe rules for the adoption, handling, operation, and honest use of voting systems, including, but not limited to, the following:

''(1) Types, makes, and models of voting systems approved for use in this State.

''(2) Form of official ballot labels to be used on voting systems.

''(3) Operation and manner of voting on voting systems.

''(4) Instruction of precinct officials in the use of voting systems.

''(5) Instruction of voters in the use of voting systems.

''(6) Assistance to voters using voting systems.

''(7) Duties of custodians of voting systems.

''(8) Examination of voting systems before use in an election.

''(9) Compliance with section 301 of the Help America Vote Act of 2002.''

2005 Legislation

S.L. 2005–323, § 1(a), eff. Aug. 1, 2005, rewrote the section, which prior thereto read:

''The State Board of Elections shall have authority to approve types, makes, and models of voting systems for use in elections and referenda held in this State. Only voting systems that have been approved by the State Board shall be used to conduct elections under this Chapter, and the approved systems shall be valid in any election or referendum held in any county or municipality. The State Board may, upon request of a local board of elections, authorize the use of a voting system not approved for general use. The State Board may also, upon notice and hearing, disapprove types, makes, and models of voting systems. Upon disapproving a type, make, or model of voting system, the State Board shall determine the process by which the disapproved system is discontinued in any county. If a county makes a showing that discontinuance would impose a financial hardship upon it, the county shall be given up to four years from the time of State Board disapproval to replace the system. A county may appeal a decision by the State Board concerning discontinuance of a voting system to the superior court in that county or to the Superior Court of Wake County. The county has 30 days from the time of the State Board's decision on discontinuance to make that appeal.

''Subject to the provisions of this Chapter, the State Board of Elections shall prescribe rules for the adoption, handling, operation, and honest use of voting systems, including, but not limited to, the following:

''(1) Types, makes, and models of voting systems approved for use in this State.

''(2) Form of official ballot labels to be used on voting systems.

''(3) Operation and manner of voting on voting systems.

''(4) Instruction of precinct officials in the use of voting systems.

''(5) Instruction of voters in the use of voting systems.

''(6) Assistance to voters using voting systems.

''(7) Duties of custodians of voting systems.

''(8) Examination of voting systems before use in an election.''

S.L. 2005–323, § 1(a), provides:

''Effective August 1, 2005, and applicable to any voting systems upgraded or acquired on or after that date and to all voting systems used in the State during any election during or after 2006,''

S.L. 2005–323, §§ 1(c), 1(d), eff. Jan. 1, 2006, added subsec. (a1) and subd. (d)(11).

S.L. 2005–323, §§ 9 and 10 provide:

''Section 9. The State Board of Elections may conduct, for primaries and

elections in 2006 only, experiments with voting systems that use a means in addition to paper to fulfill the backup record and voter verification requirements of G.S. 163–165.7(a)(4) and G.S. 163–165.7(a)(5), as enacted by this act. The pilot program may be conducted in no more than nine counties. The county boards of elections shall cooperate in conducting the pilot program. The pilot program shall be conducted according to the following requirements:

''(1) The experiment may be conducted in no more than two voting sites per county. The voting sites may include election-day voting places or one-stop sites.

''(2) At each voting site in which the experiment is conducted, voters must have a choice of voting on the experimental voting system or on a voting system that is not part of the experiment.

''(3) Each experimental voting system shall include an additional means for the voter to verify the choices that the voter makes in the electronically cast ballot, which means shall also provide for an additional count. That additional means may utilize audio technology, digital scanners, or some other material or technology that shall record the voters' choices but shall not record any image of any part of the voter.

''(4) On each voting machine or unit used in the experiment, the voting system shall comply with all the applicable requirements of G.S. 163–165.7, including the requirement in G.S. 163–165.7(a)(4) that a DRE system must generate a paper backup record of each individual vote cast electronically and the requirement in G.S. 163–165.7(a)(5) that the paper record generated by the DRE system must be viewable by the voter before the vote is cast electronically and that the system allow the voter to correct any discrepancy between the electronic vote and the paper record before the vote is cast. On every machine or unit, the experimental means to fulfill those functions shall be used in addition to, rather than instead of, the required paper means.

''(5) For all votes cast on an experimental voting system under the pilot, there shall be, in addition to an electronic count, a full hand-to-eye paper count and a full comparison count of the experimental verification technology.

''The State Board of Elections shall report the results of the pilot program, together with its recommendations, to the 2007 General Assembly and to the Joint Legislative Commission on Governmental Operations by February 1, 2007.

''Section 10. he requirement for testing a voting system in an election provided in G.S. 163–165.9(a)(3), as enacted in Section 4 of this act, does not apply to any voting system acquired before January 1, 2008, as long as the voting system is demonstrated in a public forum in the county. Notwithstanding G.S. 163–132.5G, as amended by this act, voting data by precinct shall be reported for the general elections of 2006 by March 1, 2007, and for the primary elections of 2006 by May 1, 2007. Except as otherwise provided in this act, the remainder of this act is effective when it becomes law.''

2006 Legislation

S.L. 2006–264, § 76(a), eff. Aug. 27, 2006, amended subsec. (a) by rewriting the last paragraph of that subsec., which prior thereto read:

''No voting system acquired or upgraded by a county before August 1, 2005, shall be used in an election during or after 2006 unless the county can demonstrate to the State Board of Elections compliance with the requirements in subdivisions (1) through (8) of this subsection, where those requirements are applicable to the type of voting system involved.''

2007 Legislation

S.L. 2007–391, § 6(d), in subd. (a)(3) substituted ''voting tabulation district'' for ''precinct'' in two locations.

S.L. 2007–391, §§ 6(f) and 6(g), provide:

''Section 6.(f). Subsections 7(b) through 7(e) of this section become effective January 1, 2008. The remainder of this section is effective when this act becomes law.

''Section 6.(g) This section becomes effective only if any funds necessary to implement it are appropriated.''

Subsection 6(f) quoted above was probably referring to subsections 6(b) through 6(e); S.L. 2007–391 does not contain subsections 7(b) through 7(e).

The General Assembly fully funded section 6 of S.L. 2007–391.

2009 Legislation

S.L. 2009–541, § 19, in subsec. (e), added the second sentence.

Administrative Code References

Approval and operation of voting systems, see 8 NCAC 4.0301 et seq.
Ballot rotation rules for primary election ballots, candidate names to be rotated for paper ballots and some voting systems, see 8 NCAC 10.0103.

§ 163–165.8. Voting systems: powers and duties of board of county commissioners

The board of county commissioners, with the approval of the county board of elections, may adopt and acquire only a voting system of a type, make, and model certified by the State Board of Elections for use in some or all voting places in the county at some or all elections.

The board of county commissioners may decline to adopt and acquire any voting system recommended by the county board of elections but may not adopt and acquire any voting system that has not been approved by the county board of elections. Article 8 of Chapter 143 of the General Statutes does not apply to the purchase of a voting system certified by the State Board of Elections.

Added by S.L. 2001–460, § 3, eff. Jan. 1, 2002. Amended by S.L. 2005–323, § 3, eff. Aug. 1, 2005.

Historical and Statutory Notes

2005 Legislation

S.L. 2005–323, § 3, eff. Aug. 1, 2005, rewrote section, which prior thereto read:

''The board of county commissioners, with the approval of the county board of elections, may adopt and purchase or lease a voting system of a type, make, and model approved by the State Board of Elections for use in some or all voting places in the county at some or all elections.

''The board of county commissioners may decline to adopt and purchase or lease any voting system recommended by the county board of elections but may not adopt and purchase or lease any voting system that has not been approved by the county board of elections.''

S.L. 2005–323, § 10, provides:

''The requirement for testing a voting system in an election provided in G.S. 163–165.9(a)(3), as enacted in Section 4 of this act, does not apply to any voting system acquired before January 1, 2008, as long as the voting system is demonstrated in a public forum in the county. Notwithstanding G.S. 163–132.5G, as amended by this act, voting data by precinct shall be reported for the general elections of 2006 by March 1, 2007, and for the primary elections of 2006 by May 1, 2007. Except as otherwise provided in this act, the remainder of this act is effective when it becomes law.''

§ 163–165.9. Voting systems: powers and duties of county board of elections

(a) Before approving the adoption and acquisition of any voting system by the board of county commissioners, the county board of elections shall do all of the following:

(1) Recommend to the board of county commissioners which type of voting system should be acquired by the county.

(2) Witness a demonstration, in that county or at a site designated by the State Board of Elections, of the type of voting

system to be recommended and also witness a demonstration of at least one other type of voting system certified by the State Board of Elections.

(3) Test, during an election, the proposed voting system in at least one precinct in the county where the voting system would be used if adopted.

(b) After the acquisition of any voting system, the county board of elections shall comply with any requirements of the State Board of Elections regarding training and support of the voting system by completing all of the following:

(1) The county board of elections shall comply with all specifications of its voting system vendor for ballot printers. The county board of elections is authorized to contract with noncertified ballot printing vendors, so long as the noncertified ballot printing vendor meets all specifications and all quality assurance requirements as set by the State Board of Elections.

(2) The county board of elections shall annually maintain software license and maintenance agreements necessary to maintain the warranty of its voting system. The State Board of Elections shall not provide routine maintenance to any county board of elections that does not maintain the warranty of its voting system. If the State Board of Elections provides any maintenance to a county that has not maintained the warranty of its voting system, the county shall reimburse the State for the cost.

(3) The county board of elections shall not replace any voting system, or any portion thereof, without approval of the State Board of Elections.

(4) The county board of elections may have its voting system repaired pursuant to its maintenance agreement but shall notify the State Board of Elections at the time of every repair, according to guidelines that shall be provided by the State Board of Elections.

Added by S.L. 2001–460, § 3, eff. Jan. 1, 2002. Amended by S.L. 2005–323, § 4, eff. Aug. 1, 2005; S.L. 2007–391, § 25, eff. Aug. 19, 2007; S.L. 2009–541, § 20, eff. Aug. 28, 2009.

Historical and Statutory Notes

2005 Legislation

S.L. 2005–323, § 4, eff. Aug. 1, 2005, rewrote the section, which prior thereto read:

''Before approving the adoption and purchase or lease of any voting system by the board of county commissioners, the county board of elections shall do all of the following:

''(1) Obtain a current financial statement from the proposed vendor or lessor of the voting system and send copies of the statement to the county attorney and the chief county financial officer.

''(2) Witness a demonstration, in that county or at a site designated by the State Board of Elections, of the voting system by the proposed vendor or lessor and also witness a demonstration of at

least one other type of voting system approved by the State Board of Elections.

''(3) Test, during an election, the proposed voting system in at least one precinct in the county where the system would be used if adopted.''

S.L. 2005–323, § 10, provides:

''The requirement for testing a voting system in an election provided in G.S. 163–165.9(a)(3), as enacted in Section 4 of this act, does not apply to any voting system acquired before January 1, 2008, as long as the voting system is demonstrated in a public forum in the county. Notwithstanding G.S. 163–132.5G, as amended by this act, voting data by precinct shall be reported for the general elections of 2006 by March 1, 2007, and for the primary elections of 2006 by May 1, 2007. Except as otherwise provided in this act, the remainder of this act is effective when it becomes law.''

2007 Legislation

S.L. 2007–391, § 25, in the introductory paragraph of subsec. (b), substituted ''system by completing all of the following:'' for ''system.'' and added subds. (b)(1) and (b)(2).

2009 Legislation

S.L. 2009–541, § 20, in subd. (b)(2), inserted ''annually'' after ''The county board of elections shall'' and added the second and third sentences; and added subds. (b)(3) and (b)(4).

§ 163–165.9A. Voting systems: requirements for voting systems vendors; penalties

(a) Duties of Vendor. — Every vendor that has a contract to provide a voting system in North Carolina shall do all of the following:

(1) The vendor shall place in escrow with an independent escrow agent approved by the State Board of Elections all software that is relevant to functionality, setup, configuration, and operation of the voting system, including, but not limited to, a complete copy of the source and executable code, build scripts, object libraries, application program interfaces, and complete documentation of all aspects of the system including, but not limited to, compiling instructions, design documentation, technical documentation, user documentation, hardware and software specifications, drawings, records, and data. The State Board of Elections may require in its request for proposal that additional items be escrowed, and if any vendor that agrees in a contract to escrow additional items, those items shall be subject to the provisions of this section. The documentation shall include a list of programmers responsible for creating the software and a sworn affidavit that the source code includes all relevant program statements in low-level and high-level languages.

(2) The vendor shall notify the State Board of Elections of any change in any item required to be escrowed by subdivision (1) of this subsection.

(3) The chief executive officer of the vendor shall sign a sworn affidavit that the source code and other material in escrow is the same being used in its voting systems in this State. The chief executive officer shall ensure that the statement is true on a continuing basis.

(4) The vendor shall promptly notify the State Board of Elections and the county board of elections of any county using its voting system of any decertification of the same system in any state, of any defect in the same system known to have occurred anywhere, and of any relevant defect known to have occurred in similar systems.

(5) The vendor shall maintain an office in North Carolina with staff to service the contract.

(b) Penalties. — Willful violation of any of the duties in subsection (a) of this section is a Class G felony. Substitution of source code into an operating voting system without notification as provided by subdivision (a)(2) of this section is a Class I felony. In addition to any other applicable penalties, violations of this section are subject to a civil penalty to be assessed by the State Board of Elections in its discretion in an amount of up to one hundred thousand dollars ($100,000) per violation. A civil penalty assessed under this section shall be subject to the provisions of G.S. 163–278.34(e).

Added by S.L. 2005–323, § 2(a), eff. Aug. 1, 2005.

Historical and Statutory Notes

2005 Legislation

S.L. 2005–323, §§ 2(b) and 10, provide:

''Section 2(b). This section applies with respect to purchase or upgrade of any voting system on or after August 1, 2005.''

''Section 10. The requirement for testing a voting system in an election provided in G.S. 163–165.9(a)(3), as enacted in Section 4 of this act, does not apply to any voting system acquired before January 1, 2008, as long as the voting system is demonstrated in a public forum in the county. Notwithstanding G.S. 163–132.5G, as amended by this act, voting data by precinct shall be reported for the general elections of 2006 by March 1, 2007, and for the primary elections of 2006 by May 1, 2007. Except as otherwise provided in this act, the remainder of this act is effective when it becomes law.''

Cross References

Powers and duties of State Board of Elections, voting systems, see § 163–165.7.

§ 163–165.10. Adequacy of voting system for each precinct

The county board of elections shall make available for each precinct voting place an adequate quantity of official ballots or equipment. When the board of county commissioners has decided to adopt and purchase or lease a voting system for voting places under the provisions of G.S. 165–165.8, the board of county commissioners shall, as soon as practical, provide for each of those voting places sufficient equipment of the approved voting system in complete working order. If it is impractical to furnish each voting place with the equipment of the approved voting system, that which has been obtained may be placed in voting places chosen by the county board of elections. In that case, the county board of elections shall choose the voting places and

allocate the equipment in a way that as nearly as practicable provides equal access to the voting system for each voter. The county board of elections shall appoint as many voting system custodians as may be necessary for the proper preparation of the system for each election and for its maintenance, storage, and care. The Executive Director of the State Board of Elections may permit a county board of elections to provide more than one type of voting system in a precinct, but only upon a finding that doing so is necessary to comply with federal or State law.

Added by S.L. 2001–460, § 3, eff. Jan. 1, 2002. Amended by S.L. 2005–428, § 2, eff. Sept. 22, 2005.

Historical and Statutory Notes

2005 Legislation

S.L. 2005–428, § 2, eff. Sept. 22, 2005, amended section by deleting ''so that all voters qualified to vote at the precinct may do so'' after ''ballots or equipment'' in the first sentence and added the last sentence of section.

S.L. 2005–428, § 18, provides:

''Sections 2, 6, 7, 8, 10, 12, 13, 14, 15, and 16 of this act are effective when this act becomes law and apply to all primaries and elections held on or after that date. The remainder of this act becomes effective January 1, 2006, and applies to all primaries and elections held on or after that date.''

Part 3. Procedures at the Voting Place

§ 163–166. Repealed by S.L. 1997–443, § 31.1, eff. July 1, 1997

Historical and Statutory Notes

The repealed section provided for allocation of voting systems.

§ 163–166 as enacted by S.L. 2001–460, § 3, was redesignated as § 163–166.01 pursuant to the direction of the Revisor of Statutes.

§ 163–166.01. Hours for voting

In every election, the voting place shall be open at 6:30 A.M. and shall be closed at 7:30 P.M. In extraordinary circumstances, the county board of elections may direct that the polls remain open until 8:30 P.M. If any voter is in line to vote at the time the polls are closed, that voter shall be permitted to vote. No voter shall be permitted to vote who arrives at the voting place after the closing of the polls.

Any voter who votes after the statutory poll closing time of 7:30 P.M. by virtue of a federal or State court order or any other lawful order, including an order of a county board of elections, shall be allowed to vote, under the provisions of that order, only by using a provisional official ballot. Any special provisional official ballots cast under this section shall be separated, counted, and held apart from other provisional ballots cast by other voters not under the effect of the order extending the closing time of the voting place.

If the court order has not been reversed or stayed by the time of the county canvass, the total for that category of provisional ballots shall be added to the official canvass.

Added by S.L. 2001–460, § 3, eff. Jan. 1, 2002. Amended by S.L. 2003–226, § 14, eff. Jan. 1, 2004.

Historical and Statutory Notes

This section, added as G.S. § 163–166, was recodified as § 163–166.01 by the Revisor of Statutes.

2003 Legislation

S.L. 2003–226, §§ 1 and 22, eff. June 19, 2003, provide:

''Section 1. The purpose of this act is to ensure that the State of North Carolina has a system for all North Carolina elections that complies with the requirements for federal elections set forth in the federal Help America Vote Act of 2002, Public Law 107–252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481–15485.

''The General Assembly finds that the education and training of election officials as required by G.S. 163–82.34 has met and continues to meet the mandate for the education and training of precinct officials and other election officials in section 254(a)(3) of the Help America Vote Act of 2002. The General Assembly further finds that the establishment, development, and continued operation of the statewide list maintenance program for voter registration set forth in G.S. 163–82.14 has met and continues to meet the mandates of section 303(a)(2) of the Help America Vote Act of 2002.

''In certain other areas of the election statutes and other laws, the General Assembly finds that the statutes must be amended to comply with the Help America Vote Act.''

''Section 22. Sections 1, 3, 4, 5, 12, 18, 21, and 22 of this act are effective when this act becomes law. Sections 11 and 13 of this act become effective January 1, 2006. The remainder of this act becomes effective January 1, 2004. All sections of this act apply with respect to all primaries and elections held on or after the date they become effective.''

Derivation:

G.S. § 163–2, as added by Laws 1967, c. 775, § 1.
Laws 1971, c. 416.
Laws 1971, c. 1093, § 18.1.
Laws 1973, c. 793, § 1.
Laws 1991, c. 727, § 2.

Administrative Code References

Ballot rotation rules for primary election ballots, candidate names to be rotated for paper ballots and some voting systems, see 8 NCAC 10.0103.

Notes of Decisions

Construction and application 1
Federal Voting Rights Act requirements 2

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1. Construction and application

Evidence that at least five precincts in county had only one registration book on election day, causing very long lines to register and causing some voters to leave without being able to register and vote, but that election supervisor did not feel that lines were as bad as in some previous elections, raised question for trier of fact as to whether plaintiffs' conduct in seeking temporary restraining order extending polling hours amounted to wrongful restraint justifying damages. Democratic Party of Guilford County v. Guilford County Bd. of Elections, 1995, 117 N.C.App. 633, 453 S.E.2d 243, review allowed 340 N.C. 567, 460 S.E.2d 317, affirmed in part, reversed in part 342 N.C. 856, 467 S.E.2d 681, rehearing denied 343 N.C. 517, 473 S.E.2d 608. Injunction ⚷ 150

2. Federal Voting Rights Act requirements

Court order extending polling hours in covered jurisdiction did not violate preclearance requirements of the Voting Rights Act, where order extended hours for same length of time allowed by precleared statute without imposing

additional restrictions. Lake v. State Bd. of Elections of North Carolina, 1992, 798 F.Supp. 1199. Elections ⚷ 12(8)

§ 163–166.1. Duties of county board of elections

The county board of elections shall:

(1) Provide for the timely delivery to each voting place of the supplies, records, and equipment necessary for the conduct of the election.

(2) Ensure that adequate procedures are in place at each voting place for a safe, secure, fair, and honest election.

(3) Respond to precinct officials' questions and problems where necessary.

(4) Provide adequate technical support for the voting system, which shall be done in conjunction with the State Board of Elections.

Added by S.L. 2001–460, § 3, eff. Jan. 1, 2002. Amended by S.L. 2009–541, § 21, eff. Aug. 28, 2009.

Historical and Statutory Notes

2009 Legislation
S.L. 2009–541, § 21, added subd. (4).

§ 163–166.2. Arrangement of the voting enclosure

Each voting enclosure shall contain at a minimum:

(1) A sufficient number of private spaces for all voters to mark their official ballots in secrecy.

(2) Adequate space and furniture for the separate functions of:

a. The checking of voter registration records.

b. The distribution of official ballots.

c. Private discussion with voters concerning irregular situations.

(3) A telephone or some facility for communication with the county board of elections.

The equipment and furniture in the voting enclosure shall be arranged so that it can be generally seen from the public space of the enclosure.

Added by S.L. 2001–460, § 3, eff. Jan. 1, 2002.

§ 163–166.3. Limited access to the voting enclosure

(a) Persons Who May Enter Voting Enclosure.—During the time allowed for voting in the voting place, only the following persons may enter the voting enclosure:

(1) An election official.

(2) An observer appointed pursuant to G.S. 163–45.

(2a) A runner appointed pursuant to G.S. 163–45, but only to the extent necessary to announce that runner's presence and to receive the voter list as provided in G.S. 163–45.

(3) A person seeking to vote in that voting place on that day but only while in the process of voting or seeking to vote.

(4) A voter in that precinct while entering or explaining a challenge pursuant to G.S. 163–87 or G.S. 163–88.

(5) A person authorized under G.S. 163–166.8 to assist a voter but, except as provided in subdivision (6) of this section, only while assisting that voter.

(6) Minor children of the voter under the age of 18, or minor children under the age of 18 in the care of the voter, but only while accompanying the voter and while under the control of the voter.

(7) Persons conducting or participating in a simulated election within the voting place or voting enclosure, if that simulated election is approved by the county board of elections.

(8) Any other person determined by election officials to have an urgent need to enter the voting enclosure but only to the extent necessary to address that need.

(b) Photographing Voters Prohibited.—No person shall photograph, videotape, or otherwise record the image of any voter within the voting enclosure, except with the permission of both the voter and the chief judge of the precinct. If the voter is a candidate, only the permission of the voter is required. This subsection shall also apply to one-stop sites under G.S. 163–227.2. This subsection does not apply to cameras used as a regular part of the security of the facility that is a voting place or one-stop site.

(c) Photographing Voted Ballot Prohibited.—No person shall photograph, videotape, or otherwise record the image of a voted official ballot for any purpose not otherwise permitted under law.

Added by S.L. 2001–460, § 3, eff. Jan. 1, 2002. Amended by S.L. 2005–428, § 1(b), eff. Jan. 1, 2006; S.L. 2007–391, § 23, eff. Aug. 19, 2007.

Historical and Statutory Notes

2005 Legislation

S.L. 2005–428, § 1(b), eff. Jan. 1, 2006, added subd. (2a).

S.L. 2005–428, § 18, provides:

''Sections 2, 6, 7, 8, 10, 12, 13, 14, 15, and 16 of this act are effective when this act becomes law and apply to all primaries and elections held on or after that date. The remainder of this act becomes effective January 1, 2006, and applies to all primaries and elections held on or after that date.''

2007 Legislation

S.L. 2007–391, § 23, designated the introductory paragraph as (a), and added subsecs. (b) and (c).

§ 163–166.4. Limitation on activity in the voting place and in a buffer zone around it

Text of section eff. until Jan. 1, 2010. See, also, section eff. Jan. 1, 2010.

(a) Buffer Zone and Adjacent Area for Election–Related Activity. — No person or group of persons shall hinder access, harass others, distribute campaign literature, place political advertising, solicit votes, or otherwise engage in election-related activity in the voting place or in a buffer zone which shall be prescribed by the county board of elections around the voting place. In determining the dimensions of that buffer zone for each voting place, the county board of elections shall, where practical, set the limit at 50 feet from the door of entrance to the voting place, measured when that door is closed, but in no event shall it set the limit at more than 50 feet or at less than 25 feet. Except as provided in subsection (b), the county board of elections shall also provide an area adjacent to the buffer zone for each voting place in which persons or groups of persons may distribute campaign literature, place political advertising, solicit votes, or otherwise engage in election-related activity.

(b) Special Agreements About Election–Related Activity. — The Executive Director of the State Board of Elections may grant special permission for a county board of elections to enter into an agreement with the owners or managers of a nonpublic building to use the building as a voting place on the condition that election-related activity as described in subsection (a) of this section not be permitted on their property adjacent to the buffer zone, if the Executive Director finds all of the following:

(1) That no other suitable voting place can be secured for the precinct.

(2) That the county board will require the chief judge of the precinct to monitor the grounds around the voting place to ensure that the restriction on election-related activity shall apply to all candidates and parties equally.

(3) That the pattern of voting places subject to agreements under this subsection does not disproportionately favor any party, racial or ethnic group, or candidate.

An agreement under this subsection shall be valid for as long as the nonpublic building is used as a voting place.

(c) Notice About Buffer Zone. — No later than 30 days before each election, the county board of elections shall make available to the public the following information concerning each voting place:

(1) The door from which the buffer zone is measured.

(2) The distance the buffer zone extends from that door.

(3) Any available information concerning where political activity, including sign placement, is permitted beyond the buffer zone.

(d) Buffer Zone at One–Stop Sites.—The provisions of this section shall apply to one-stop voting sites in G.S. 163–227.2, except that the notice in subsection (c) of this section shall be provided no later than 10 days before the opening of one-stop voting at the site.

Added by S.L. 2001–460, § 3, eff. Jan. 1, 2002. Amended by S.L. 2003–365, § 1, eff. Jan. 1, 2004; S.L. 2007–391, § 13, eff. Aug. 19, 2007.

§ 163–166.4. Limitation on activity in the voting place and in a buffer zone around it

Text of section eff. Jan. 1, 2010. See, also, section eff. until Jan. 1, 2010.

(a) Buffer Zone.—No person or group of persons shall hinder access, harass others, distribute campaign literature, place political advertising, solicit votes, or otherwise engage in election-related activity in the voting place or in a buffer zone which shall be prescribed by the county board of elections around the voting place. In determining the dimensions of that buffer zone for each voting place, the county board of elections shall, where practical, set the limit at 50 feet from the door of entrance to the voting place, measured when that door is closed, but in no event shall it set the limit at more than 50 feet or at less than 25 feet.

(a1) Area for Election–Related Activity.—Except as provided in subsection (b) of this section, the county board of elections shall also provide an area adjacent to the buffer zone for each voting place in which persons or groups of persons may distribute campaign literature, place political advertising, solicit votes, or otherwise engage in election-related activity.

(b) Special Agreements About Election–Related Activity.—The Executive Director of the State Board of Elections may grant special permission for a county board of elections to enter into an agreement with the owners or managers of a nonpublic building to use the building as a voting place on the condition that election-related activity as described in subsection (a1) of this section not be permitted on their property adjacent to the buffer zone, if the Executive Director finds all of the following:

(1) That no other suitable voting place can be secured for the precinct.

(2) That the county board will require the chief judge of the precinct to monitor the grounds around the voting place to ensure that the restriction on election-related activity shall apply to all candidates and parties equally.

(3) That the pattern of voting places subject to agreements under this subsection does not disproportionately favor any party, racial or ethnic group, or candidate.

An agreement under this subsection shall be valid for as long as the nonpublic building is used as a voting place.

(c) Notice About Buffer Zone and Area for Election–Related Activity.—No later than 30 days before each election, the county board of elections shall make available to the public the following information concerning each voting place:

(1) The door from which the buffer zone is measured.

(2) The distance the buffer zone extends from that door.

(3) Any available information concerning where political activity, including sign placement, is permitted beyond the buffer zone.

(d) Buffer Zone and Area for Election–Related Activity at One–Stop Sites.—Except as modified in this subsection, the provisions of this section shall apply to one-stop voting sites in G. S. 163–227.2.

(1) Subsection (b) of this section shall not apply.

(2) The notice in subsection (c) of this section shall be provided no later than 10 days before the opening of one-stop voting at the site.

Added by S.L. 2001–460, § 3, eff. Jan. 1, 2002. Amended by S.L. 2003–365, § 1, eff. Jan. 1, 2004; S.L. 2007–391, § 13, eff. Aug. 19, 2007; S.L. 2009–541, § 22(a), eff. Jan. 1, 2010.

Historical and Statutory Notes

2003 Legislation

S.L. 2003–365, § 1, eff. Jan. 1, 2004, rewrote the section, which prior thereto read:

''No person or group of persons shall hinder access, harass others, distribute campaign literature, place political advertising, solicit votes, or otherwise engage in election-related activity in the voting place or in a buffer zone which shall be prescribed by the county board of elections around the voting place. In determining the dimensions of that buffer zone for each voting place, the county board of elections shall, where practical, set the limit at 50 feet from the door of entrance to the voting place, measured when that door is closed, but in no event shall it set the limit at less than 25 feet. The county board of elections shall also, where practical, provide an area adjacent to the buffer zone for each voting place in which persons or groups of persons may distribute campaign literature, place political advertising, solicit votes, or otherwise engage in election-related activity. No later than 30 days before each election, the county board of elections shall make available to the public the following information concerning each voting place:

''(1) The door from which the buffer zone is measured.

''(2) The distance the buffer zone extends from that door.

''(3) Any available information concerning political activity, including sign placement, that is permitted beyond the buffer zone.''

2007 Legislation

S.L. 2007–391, § 13, added subsec. (d).

2009 Legislation

S.L. 2009–541, § 22(a), in subsec. (a), deleted ''and Adjacent Area for Election Related Activity'' following ''Buffer'' in the subsection heading; designated the third sentence of subsec. (a) as subsec. (a1), added the subsection heading

''Area for Election-Related Activity'' and made a nonsubstantive change; in subsec. (b), in the introductory paragraph, substituted ''subsection (a1)'' for ''subsection (a)''; in subsec. (c), added ''and Area for Election-Related Activity'' to the subsection heading; and rewrote subsec. (d), which prior thereto read:

''(d) Buffer Zone at One–Stop Sites.—The provisions of this section shall apply to one-stop voting sites in G.S. 163–227.2, except that the notice in subsection (c) of this section shall be provided no later than 10 days before the opening of one-stop voting at the site.''

Notes of Decisions

Federal Voting Rights Act 2
Validity 1

1. Validity

North Carolina statutory amendment which extended prohibition against electioneering from 50 feet from voting place to 500 feet and which was applicable to only 6 of the 100 counties in state denied equal protection of laws, in absence of showing why the 6 counties should be treated differently from the others. Clayton v. North Carolina State Bd. of Elections, 1970, 317 F.Supp. 915. Constitutional Law ⚷ 3652; Elections ⚷ 24

2. Federal Voting Rights Act

Amendment of North Carolina statute extending prohibition against electioneering from 50 feet within voting place to 500 feet in 6 counties was a change in ''standard, practice, or procedure with respect to voting,'' within Voting Rights Act and was unenforceable in 4 of the counties which were covered by the Act for failure to obtain prior approval of United States District Court for the District of Columbia or to submit amendment to Attorney General of United States. Clayton v. North Carolina State Bd. of Elections, 1970, 317 F.Supp. 915. Elections ⚷ 24

Where Voting Rights Act vested in three-judge district court jurisdiction of action challenging amendment to state voting law as to 4 of 6 counties affected by the amendment, court would in its discretion exercise jurisdiction over controversy as to other two counties under doctrine of pendent jurisdiction, especially since burden of deciding equal protection argument as to the two counties was inconsequential and prompt decision was necessary because of imminence of general election. Clayton v. North Carolina State Bd. of Elections, 1970, 317 F.Supp. 915. Federal Courts ⚷ 1013

§ 163–166.5. Procedures at voting place before voting begins

The State Board of Elections shall promulgate rules for precinct officials to set up the voting place before voting begins. Those rules shall emphasize:

(1) Continual participation or monitoring by officials of more than one party.

(2) Security of official ballots, records, and equipment.

(3) The appearance as well as the reality of care, efficiency, impartiality, and honest election administration.

The county boards of elections and precinct officials shall adhere to those procedures.

Added by S.L. 2001–460, § 3, eff. Jan. 1, 2002.

§ 163–166.6. Designation of tasks

The State Board of Elections shall promulgate rules for the delegation of tasks among the election officials at each precinct. Those rules shall emphasize:

(1) The need to place primary managerial responsibility upon the chief judge.

(2) The need to have maximum multiparty participation in all duties where questions of partisan partiality might be raised.

(3) The need to provide flexibility of management to the county board of elections and to the chief judge, in consideration of different abilities of officials, the different availability of officials, and the different needs of voters precinct by precinct.

Added by S.L. 2001–460, § 3, eff. Jan. 1, 2002.

Administrative Code References

Voting places, see 8 NCAC 10B.0101 et seq.

§ 163–166.7. Voting procedures

(a) Checking Registration. —A person seeking to vote shall enter the voting enclosure through the appropriate entrance. A precinct official assigned to check registration shall at once ask the voter to state current name and residence address. The voter shall answer by stating current name and residence address. In a primary election, that voter shall also be asked to state, and shall state, the political party with which the voter is affiliated or, if unaffiliated, the authorizing party in which the voter wishes to vote. After examination, that official shall state whether that voter is duly registered to vote in that precinct and shall direct that voter to the voting equipment or to the official assigned to distribute official ballots. If a precinct official states that the person is duly registered, the person shall sign the pollbook, other voting record, or voter authorization document in accordance with subsection (c) of this section before voting.

(b) Distribution of Official Ballots. —If the voter is found to be duly registered and has not been successfully challenged, the official assigned to distribute the official ballots shall hand the voter the official ballot that voter is entitled to vote, or that voter shall be directed to the voting equipment that contains the official ballot. No voter in a primary shall be permitted to vote in more than one party's primary. The precinct officials shall provide the voter with any information the voter requests to enable that voter to vote as that voter desires.

(c) The State Board of Elections shall promulgate rules for the process of voting. Those rules shall emphasize the appearance as well as the reality of dignity, good order, impartiality, and the convenience and privacy of the voter. Those rules, at a minimum, shall include procedures to ensure that all the following occur:

(1) The voting system remains secure throughout the period voting is being conducted.

(2) Only properly voted official ballots or paper records of individual voted ballots are introduced into the voting system.

(3) Except as provided by G.S. 163–166.9, no official ballots leave the voting enclosure during the time voting is being conducted there. The rules shall also provide that during that time no one shall remove from the voting enclosure any paper record or copy of an individually voted ballot or of any other device or item whose removal from the voting enclosure could permit compromise of the integrity of either the machine count or the paper record.

(4) All improperly voted official ballots or paper records of individual voted ballots are returned to the precinct officials and marked as spoiled.

(5) Voters leave the voting place promptly after voting.

(6) Voters not clearly eligible to vote in the precinct but who seek to vote there are given proper assistance in voting a provisional official ballot or guidance to another voting place where they are eligible to vote.

(7) Information gleaned through the voting process that would be helpful to the accurate maintenance of the voter registration records is recorded and delivered to the county board of elections.

(8) The registration records are kept secure. The State Board of Elections shall permit the use of electronic registration records in the voting place in lieu of or in addition to a paper pollbook or other registration record.

(9) Party observers are given access as provided by G.S. 163–45 to current information about which voters have voted.

(10) The voter, before voting, shall sign that voter's name on the pollbook, other voting record, or voter authorization document. If the voter is unable to sign, a precinct official shall enter the person's name on the same document before the voter votes.

Added by S.L. 2001–460, § 3, eff. Jan. 1, 2002. Amended by S.L. 2003–226, § 14.1, eff. Jan. 1, 2004; S.L. 2005–323, § 1(a1), eff. Aug. 26, 2005; S.L. 2005–428, § 12, eff. Sept. 22, 2005.

Historical and Statutory Notes

2003 Legislation

S.L. 2003–226, § 14.1, eff. Jan. 1, 2004, in subsec. (a), added the last sentence, and added subd. (c)(10).

S.L. 2003–226, §§ 1 and 22, eff. June 19, 2003, provide:

"Section 1. The purpose of this act is to ensure that the State of North Carolina has a system for all North Carolina elections that complies with the requirements for federal elections set forth in the federal Help America Vote Act of 2002, Public Law 107–252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481–15485.

''The General Assembly finds that the education and training of election officials as required by G.S. 163–82.34 has met and continues to meet the mandate for the education and training of precinct officials and other election officials in section 254(a)(3) of the Help America Vote Act of 2002. The General Assembly further finds that the establishment, development, and continued operation of the statewide list maintenance program for voter registration set forth in G.S. 163–82.14 has met and continues to meet the mandates of section 303(a)(2) of the Help America Vote Act of 2002.

''In certain other areas of the election statutes and other laws, the General Assembly finds that the statutes must be amended to comply with the Help America Vote Act.''

''Section 22. Sections 1, 3, 4, 5, 12, 18, 21, and 22 of this act are effective when this act becomes law. Sections 11 and 13 of this act become effective January 1, 2006. The remainder of this act becomes effective January 1, 2004. All sections of this act apply with respect to all primaries and elections held on or after the date they become effective.''

2005 Legislation

S.L. 2005–323, § 1(a1), eff. Aug. 26, 2005, amended subds. (c)(2) and (3) by inserting ''or paper records of individual voted ballots'' and in subd. (c)(3), added the second sentence.

S.L. 2005–323, § 10, provides:

''The requirement for testing a voting system in an election provided in G.S. 163–165.9(a)(3), as enacted in Section 4 of this act, does not apply to any voting system acquired before January 1, 2008, as long as the voting system is demonstrated in a public forum in the county. Notwithstanding G.S. 163–132.5G, as amended by this act, voting data by precinct shall be reported for the general elections of 2006 by March 1, 2007, and for the primary elections of 2006 by May 1, 2007. Except as otherwise provided in this act, the remainder of this act is effective when it becomes law.''

S.L. 2005–428, § 12, eff. Sept. 22, 2005, amended subd. (c)(8) by adding the last sentence.

S.L. 2005–428, § 18, provides:

''Sections 2, 6, 7, 8, 10, 12, 13, 14, 15, and 16 of this act are effective when this act becomes law and apply to all primaries and elections held on or after that date. The remainder of this act becomes effective January 1, 2006, and applies to all primaries and elections held on or after that date.''

Cross References

Voting by unaffiliated voter in party primary, see § 163–119.

Administrative Code References

Voting places, see 8 NCAC 10B.0103 et seq.

Notes of Decisions

Challenge to election results 2
Construction and application 1

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1. Construction and application

Law does not contemplate that watcher or any other person may take charge when he challenges voter at polls and conduct hearing with respect to voter's right to vote but inquiry with respect to voter's qualifications rests with election officials, and when challenged voter is permitted to vote, he must write his name on ballot for identification, as required by statute, in event that any action should be later taken in regard to his right to vote. Overton v. Mayor and City Com'rs of City of Hendersonville, 1960, 116 S.E.2d 808, 253 N.C. 306. Elections ⚷ 223

The privilege of voting a secret ballot, given by Const. Art. 6, § 6, is entirely a personal one, and a secret ballot is not compulsory, so far as the voter is concerned, under Consol.St. § 5979. Jenkins v. State Board of Elections of North Carolina, 1920, 104 S.E. 346, 180 N.C. 169, 14 A.L.R. 1247. Elections ⚷ 213

Code, § 2687, providing for separate ballots for each of the various classes of officers to be voted for, viz. state, congressional, judicial, legislative, and county, is not violated because the voter hands in his ballots for the different classes rolled together and secured by a band, and the judges distribute them

among the boxes. State v. Nicholson, 1889, 9 S.E. 545, 102 N.C. 465. Elections ⚷ 221

The fact that one of the officers of election absented himself from the voting place for a short time for dinner is not material, where it appears that no one voted while he was gone, and that there was no opportunity for tampering with the ballot boxes. State v. Nicholson, 1889, 9 S.E. 545, 102 N.C. 465. Elections ⚷ 227(4)

2. Challenge to election results

Failure of election officials to administer oath to many persons who registered for election, conduct of an election judge in marking ballots of voters without being requested to do so and registration of voters by persons other than registrar constituted irregularities insufficient to upset result of special election held on question of sale of beer or wine in municipality, in absence of showing that result of election was affected thereby. Overton v. Mayor and City Com'rs of City of Hendersonville, 1960, 116 S.E.2d 808, 253 N.C. 306. Intoxicating Liquors ⚷ 34(1); Intoxicating Liquors ⚷ 34(4)

Under principle that fraudulent conduct of third parties, in absence of evidence to effect that election officials participated therein and in absence of showing that, as result of fraudulent conduct, sufficient number of illegal votes were cast to change result of election, will not vitiate election, conduct of two individuals in giving money and orders for chickens to voters could not vitiate election. Overton v. Mayor and City Com'rs of City of Hendersonville, 1960, 116 S.E.2d 808, 253 N.C. 306. Elections ⚷ 230

§ 163–166.7A. Voter education and information

(a) Posting the Information. —For each election that involves candidates for federal or State office, each county board of elections shall post at each active voting place the following information in a manner and format approved by the State Board of Elections:

(1) A sample ballot as required by G.S. 163–165.2.

(2) The date of the election and the hours the voting place will be open.

(3) Instructions on how to vote, including how to cast a vote or correct a vote on the voting systems available for use in that voting place.

(4) Instructions on how to cast a provisional ballot.

(5) Instructions to mail-in registrants and first-time voters on how to comply with the requirements in section 303(b) of the Help America Vote Act of 2002 [1] concerning voter identifications.

(6) General information on voting rights under applicable federal and State law, including information on the right of an individual to cast a provisional ballot and instructions on how to contact the appropriate officials if the voter believes those rights have been violated.

(7) General information on federal and State laws that prohibit acts of fraud and misrepresentation as to voting and elections.

(b) Intent. —The posting required by subsection (a) of this section is intended to meet the mandate of the voting information

requirements in section 302(b) of the Help America Vote Act of 2002. [2]

Added by S.L. 2003–226, § 8, eff. Jan. 1, 2004.

[1] 42 U.S.C.A. § 15483(b).
[2] 42 U.S.C.A. § 15482(b).

Historical and Statutory Notes

2003 Legislation

S.L. 2003–226, §§ 1 and 22, eff. June 19, 2003, provide:

''Section 1. The purpose of this act is to ensure that the State of North Carolina has a system for all North Carolina elections that complies with the requirements for federal elections set forth in the federal Help America Vote Act of 2002, Public Law 107–252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481–15485.

''The General Assembly finds that the education and training of election officials as required by G.S. 163–82.34 has met and continues to meet the mandate for the education and training of precinct officials and other election officials in section 254(a)(3) of the Help America Vote Act of 2002. The General Assembly further finds that the establishment, development, and continued operation of the statewide list maintenance program for voter registration set forth in G.S. 163–82.14 has met and continues to meet the mandates of section 303(a)(2) of the Help America Vote Act of 2002.

''In certain other areas of the election statutes and other laws, the General Assembly finds that the statutes must be amended to comply with the Help America Vote Act.''

''Section 22. Sections 1, 3, 4, 5, 12, 18, 21, and 22 of this act are effective when this act becomes law. Sections 11 and 13 of this act become effective January 1, 2006. The remainder of this act becomes effective January 1, 2004. All sections of this act apply with respect to all primaries and elections held on or after the date they become effective.''

§ 163–166.8. Assistance to voters

(a) Any registered voter qualified to vote in the election shall be entitled to assistance with entering and exiting the voting booth and in preparing ballots in accordance with the following rules:

(1) Any voter is entitled to assistance from the voter's spouse, brother, sister, parent, grandparent, child, grandchild, mother-in-law, father-in-law, daughter-in-law, son-in-law, stepparent, or stepchild, as chosen by the voter.

(2) A voter in any of the following four categories is entitled to assistance from a person of the voter's choice, other than the voter's employer or agent of that employer or an officer or agent of the voter's union:

a. A voter who, on account of physical disability, is unable to enter the voting booth without assistance.

b. A voter who, on account of physical disability, is unable to mark a ballot without assistance.

c. A voter who, on account of illiteracy, is unable to mark a ballot without assistance.

d. A voter who, on account of blindness, is unable to enter the voting booth or mark a ballot without assistance.

(b) A qualified voter seeking assistance in an election shall, upon arriving at the voting place, request permission from the chief

judge to have assistance, stating the reasons. If the chief judge determines that such assistance is appropriate, the chief judge shall ask the voter to point out and identify the person the voter desires to provide such assistance. If the identified person meets the criteria in subsection (a) of this section, the chief judge shall request the person indicated to render the assistance. The chief judge, one of the judges, or one of the assistants may provide aid to the voter if so requested, if the election official is not prohibited by subdivision (a)(2) of this section. Under no circumstances shall any precinct official be assigned to assist a voter qualified for assistance, who was not specified by the voter.

(c) A person rendering assistance to a voter in an election shall be admitted to the voting booth with the voter being assisted. The State Board of Elections shall promulgate rules governing voter assistance, and those rules shall adhere to the following guidelines:

(1) The person rendering assistance shall not in any manner seek to persuade or induce any voter to cast any vote in any particular way.

(2) The person rendering assistance shall not make or keep any memorandum of anything which occurs within the voting booth.

(3) The person rendering assistance shall not, directly or indirectly, reveal to any person how the assisted voter marked ballots, unless the person rendering assistance is called upon to testify in a judicial proceeding for a violation of the election laws.

Added by S.L. 2001–460, § 3, eff. Jan. 1, 2002.

Cross References

Counting official ballots, see § 163–182.1.

Administrative Code References

Voting places, assistance to voters in primaries and general elections, see 8 NCAC 10B.0107.

§ 163–166.9. Curbside voting

In any election or referendum, if any qualified voter is able to travel to the voting place, but because of age or physical disability and physical barriers encountered at the voting place is unable to enter the voting enclosure to vote in person without physical assistance, that voter shall be allowed to vote either in the vehicle conveying that voter or in the immediate proximity of the voting place. The State Board of Elections shall promulgate rules for the administration of this section.

Added by S.L. 2001–460, § 3, eff. Jan. 1, 2002.

§ 163–166.10. Procedures after the close of voting

The State Board of Elections shall promulgate rules for closing the voting place and delivering voting information to the county board of elections for counting, canvassing, and record maintenance. Those rules shall emphasize the need for the appearance as well as the reality of security, accuracy, participation by representatives of more than one political party, openness of the process to public inspection, and honesty. The rules, at a minimum, shall include procedures to ensure all of the following:

(1) The return and accurate accounting of all official ballots, regular, provisional, voted, unvoted, and spoiled, according to the provisions of Article 15A of this Chapter.

(2) The certification of ballots and voter-authorization documents by precinct officials of more than one political party.

(3) The delivery to the county board of elections of registration documents and information gleaned through the voting process that would be helpful in the accurate maintenance of the voter registration records.

(4) The return to the county board of all issued equipment.

(5) The restoration of the voting place to the condition in which it was found.

Added by S.L. 2001–460, § 3, eff. Jan. 1, 2002. Amended by S.L. 2001–460, § 3.1, eff. Jan. 1, 2002.

Historical and Statutory Notes

2001 Legislation

S.L. 2001–460, § 3.1, eff. Jan. 1, 2002, in subd. (1), substituted ''Article 15A'' for ''Articles 15 and 16''.

The introductory language of S.L. 2001–460, § 3.1, provides:

''If Senate Bill 14, 2001 Session, becomes law, then G.S. 163–166.10(1) as enacted by Section 3 of this act reads as rewritten:''. [S.B. 14 was adopted as S.L. 2001–398.]

Administrative Code References

Voting places, see 8 NCAC 10B.0105 et seq.

§ 163–166.11. Provisional voting requirements

If an individual seeking to vote claims to be a registered voter in a jurisdiction as provided in G.S. 163–82.1 and though eligible to vote in the election does not appear on the official list of eligible registered voters in the voting place, that individual may cast a provisional official ballot as follows:

(1) An election official at the voting place shall notify the individual that the individual may cast a provisional official ballot in that election.

(2) The individual may cast a provisional official ballot at that voting place upon executing a written affirmation before

an election official at the voting place, stating that the individual is a registered voter in the jurisdiction as provided in G.S. 163–82.1 in which the individual seeks to vote and is eligible to vote in that election.

(2a) A voter who has moved within the county more than 30 days before election day but has not reported the move to the board of elections shall not be required on that account to vote a provisional ballot at the one-stop site, as long as the one-stop site has available all the information necessary to determine whether a voter is registered to vote in the county and which ballot the voter is eligible to vote based on the voter's proper residence address. The voter with that kind of unreported move shall be allowed to vote the same kind of absentee ballot as other one-stop voters as provided in G.S. 163–227.2(e2).

(3) At the time the individual casts the provisional official ballot, the election officials shall provide the individual written information stating that anyone casting a provisional official ballot can ascertain whether and to what extent the ballot was counted and, if the ballot was not counted in whole or in part, the reason it was not counted. The State Board of Elections or the county board of elections shall establish a system for so informing a provisional voter. It shall make the system available to every provisional voter without charge, and it shall build into it reasonable procedures to protect the security, confidentiality, and integrity of the voter's personal information and vote.

(4) The cast provisional official ballot and the written affirmation shall be secured by election officials at the voting place according to guidelines and procedures adopted by the State Board of Elections. At the close of the polls, election officials shall transmit the provisional official ballots cast at that voting place to the county board of elections for prompt verification according to guidelines and procedures adopted by the State Board of Elections.

(5) The county board of elections shall count the individual's provisional official ballot for all ballot items on which it determines that the individual was eligible under State or federal law to vote.

Added by S.L. 2003–226, § 15, eff. Jan. 1, 2004. Amended by S.L. 2005–2, § 4, eff. March 2, 2005; S.L. 2005–428, § 6(b), eff. Sept. 22, 2005.

Historical and Statutory Notes

2003 Legislation

S.L. 2003–226, §§ 1 and 22, eff. June 19, 2003, provide:

"Section 1. The purpose of this act is to ensure that the State of North

Carolina has a system for all North Carolina elections that complies with the requirements for federal elections set forth in the federal Help America Vote Act of 2002, Public Law 107–252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481–15485.

''The General Assembly finds that the education and training of election officials as required by G.S. 163–82.34 has met and continues to meet the mandate for the education and training of precinct officials and other election officials in section 254(a)(3) of the Help America Vote Act of 2002. The General Assembly further finds that the establishment, development, and continued operation of the statewide list maintenance program for voter registration set forth in G.S. 163–82.14 has met and continues to meet the mandates of section 303(a)(2) of the Help America Vote Act of 2002.

''In certain other areas of the election statutes and other laws, the General Assembly finds that the statutes must be amended to comply with the Help America Vote Act.''

''Section 22. Sections 1, 3, 4, 5, 12, 18, 21, and 22 of this act are effective when this act becomes law. Sections 11 and 13 of this act become effective January 1, 2006. The remainder of this act becomes effective January 1, 2004. All sections of this act apply with respect to all primaries and elections held on or after the date they become effective.''

2005 Legislation

S.L. 2005–2, § 4, eff. March 2, 2005, in the introductory paragraph and in subd. (2), inserted ''as provided in G.S. 163–82.1''.

S.L. 2005–2, §§ 1 and 7, provide:

''Section 1. The General Assembly makes the following findings:

''(1) In 2003, the General Assembly enacted S.L. 2003–226, which contained a number of changes to the State's election laws, designed in part to implement provisions of the federal Help America Vote Act of 2002 (HAVA) in such a way as to avoid having separate laws for federal and State elections and otherwise to encourage and expand the exercise of the franchise. One such enactment was codified as G.S. 163–166.11, which spells out procedures for the casting of provisional official ballots. A voter's eligibility to cast a provisional official ballot depends on being a registered voter in the jurisdiction in which the voter seeks to vote. The 'jurisdiction' in which a voter in North Carolina registers to vote is the county. This is the unmistakable meaning of G.S. 163–82.1 and has not heretofore been challenged or questioned.

''(2) In S.L. 2003–226, the General Assembly expressly stated its intent to 'ensure that the State of North Carolina has a system for all elections that complies with the requirements for federal elections set forth in' HAVA. It was then and is now the intent of the General Assembly that the provisions of HAVA be broadly construed and that they be implemented in North Carolina in a manner to ensure a unified system of federal and State elections in compliance with HAVA.

''(3) When it enacted G.S. 163–166.11, it was then and is now the intent of the General Assembly that any individual who is a registered voter in a county but whose name does not appear on the official list of registered voters at the voting place at which that voter appears be allowed to cast a provisional official ballot.

''(4) When it enacted G.S. 163–166.11, it was then and is now the intent of the General Assembly that all provisional ballots be counted for all those ballot items for which a voter was eligible to vote. In enacting G.S. 163–166.11 in 2003, the General Assembly was fully mindful of and intended to reinforce the fact that prior statutory enactments in 2001 had already recognized the right of a voter to cast a provisional ballot and to have that ballot counted for all items for which that voter was eligible to vote. See G.S. 163–182.2(a)(4). Even prior to 2003, the General Statutes recognized the right of a registered voter to cast a provisional ballot and to have that ballot counted for all those items for which the voter was duly qualified to vote.

''(5) When it enacted G.S. 163–166.11, it was then and is now the intent of the General Assembly that the State Board of Elections act in a manner that would result in a single system for federal and State elections, rather than one system for federal elections and another for State elections. In enacting G.S. 163–166.11 in 2003, the General Assembly was mindful of and intended to reinforce the fact that it had already provided in 2001 in G.S. 163–166.7(c)(6) that the State Board of Elections would adopt rules to ensure that voters 'not clearly eligible to vote in

the precinct but who seek to vote there are given proper assistance in voting a provisional official ballot or guidance to another voting place where they are eligible to vote.' The possibility of out-of-precinct provisional voting was thus recognized by the General Assembly as early as 2001.

''(6) The law regarding provisional ballots does not rest solely on G.S. 163–82.15(e), which addresses the narrow circumstance of 'Unreported Move[s] to Another Precinct Within the County.' Though that statute mentions two ways in which precinct officials may process registrants, it is not exclusive. G.S. 163–82.15(e) is part of the statutory Article on voter registration, rather than on voting, and should be read in that context. It was enacted in 1994, before provisional voting was codified in North Carolina. The enactment of G.S. 163–166.7(c)(6) in 2001 is the authority giving the State Board of Elections the duty to apply the broader laws of provisional voting, including G.S. 163–166.11. Any reading of G.S. 163–166.11 that would limit that statute's provisions to the narrower class of voting situations governed by the earlier enacted provisions of G.S. 163–82.15(e) would ignore the long-standing principle of statutory construction that statutes relating to the same subject matter should be reconciled in such a manner as to effect the scope and meaning of the later enactment and read in a manner that would tend most completely to secure the rights of all persons affected by the legislation. It was then and is now the intent of the General Assembly in enacting G.S. 163–166.11 to expand the exercise of the franchise, not to limit it or to restrict it by the terms of earlier and narrower enactments.

''(7) The State Board of Elections and all county boards of elections were following the intent of the General Assembly when they administered G.S. 163–166.11 and the earlier enacted statutes in G.S. 163–182.2(a)(4) and G.S. 163–166.7(c)(6) to count in whole or in part ballots cast by registered voters in the county who voted outside their resident precincts in the July 20, 2004, Primary, the August 17, 2004, Second Primary, and the November 2, 2004, General Election.

''(8) Several hundred thousand registered North Carolina voters cast ballots outside their resident precincts during the one-stop absentee balloting ('early voting') period pursuant to G.S. 163–227.2 prior to the General Election in November 2004, during the two primaries in 2004, and then on the date of the General Election in November 2004. There is no statutory basis upon which to distinguish out-of-precinct voting that occurred on the date of the General Election in November 2004 from out-of-precinct voting that occurred during the First and Second Primaries in 2004 or that occurred during the period of one-stop absentee ('early') voting prior to the General Election of 2004.

''(9) The General Assembly takes note of the fact that of those registered voters who happened to vote provisional ballots outside their resident precincts on the day of the November 2004 General Election, a disproportionately high percentage were African-American.

''(10) The General Assembly notes that in addition to provisional voting on the date of the General Election pursuant to G.S. 163–166.11, the General Statutes abound with provisions that allow voters to cast votes outside their resident precincts:

''a. Civilian absentee voting by mail, G.S. 163–226.

''b. Military and overseas citizens absentee voting, G.S. 163–245.

''c. One-stop absentee (early) voting, G.S. 163–227.2.

''d. Voting in a voting place on a lot adjacent to the precinct, G.S. 163–128.

''e. Temporarily voting in an adjacent precinct, G.S. 163–128.

''f. Voting in a precinct outside the voting place where no suitable facility exists inside it or adjacent to it, G.S. 163–130.1.

''g. Voting at a central location in the county by voters who no longer live in the precinct where their name is listed on registration lists, G.S. 163–82.15(e).

''All those provisions were enacted prior to G.S. 163–166.11. Most were enacted decades before. As many as 1,000,000 people in North Carolina may have cast out-of-precinct votes using all out-of-precinct methods in 2004.

''(11) It would be fundamentally unfair to discount the provisional official ballots cast by properly registered and duly qualified voters voting and acting in reliance on the statutes adopted by the General Assembly and administered by the State Board of Elections in accordance with its intent. Moreover, to subtract such ballots only from the

count for the General Election of 2004 without also doing so for the First or Second Primaries of 2004 would create a bizarre result in which out-of-precinct provisional ballots are allowed to count for some elections but not others. The General Assembly did not and does not now intend to create such a system.

''(12) Even if the State Board of Elections had misread the language and intent of the General Statutes concerning provisional voting, which it did not do, it has been the long-standing and hitherto unquestioned law of this State, confirmed by prior decisions of the North Carolina Supreme Court, that an innocent voter's ballot shall not be disqualified because of errors or omissions by elections officials. This fundamental principle was adopted by Justice Samuel J. Ervin Jr. in the case of *Owens v. Chaplin*, 228 N.C. 705 (1948) using the following language:

'' 'We can conceive of no principle which permits the disfranchisement of innocent voters for the mistake, or even the willful misconduct, of election officials in performing the duty cast upon them. The object of elections is to ascertain the popular will, and not to thwart it. The object of election laws is to secure the rights of duly-qualified electors, and not to defeat them.'

''See also *Appeal of Judicial Review by Republican Candidates for Election in Clay County*, 45 N.C. App. 556 (1980).

''The General Assembly endorses and reaffirms this fundamental principle.

''(13) It is the will of the people, as expressed through their representatives in the General Assembly, that the validity of the primaries and elections conducted in 2004 and certified by a county board of elections or the State Board of Elections, not be called into question by retroactively revisiting the propriety of provisional ballots cast by duly registered voters of a county.

''(14) To avoid all doubt and remove any possible future question as to the General Assembly's plain intent with respect to the subject of provisional voting, and to avoid misinterpretation of any other statute, the General Assembly enacts Sections 2 through 5 of this act.''

''Section 7. This act is effective when it becomes law and, being declaratory of existing law, applies to all elections held after January 1, 2004, the effective date of G.S. 163–166.11.''

S.L. 2005–428, § 6(b), eff. Sept. 22, 2005, added subd. (2a).

S.L. 2005–428, § 18, provides:

''Sections 2, 6, 7, 8, 10, 12, 13, 14, 15, and 16 of this act are effective when this act becomes law and apply to all primaries and elections held on or after that date. The remainder of this act becomes effective January 1, 2006, and applies to all primaries and elections held on or after that date.''

Cross References

Action when challenge sustained, overruled, or dismissed, see § 163–90.2.
Change of address within the county, see § 163–82.15.
Initial counting of official ballots, see § 163–182.2.

§ 163–166.12. Requirements for certain voters who register by mail

(a) Voting in Person.—An individual who has registered to vote by mail on or after January 1, 2003, and has not previously voted in an election that includes a ballot item for federal office in North Carolina, shall present to a local election official at a voting place before voting there one of the following:

(1) A current and valid photo identification.

(2) A copy of one of the following documents that shows the name and address of the voter: a current utility bill, bank statement, government check, paycheck, or other government document.

(b) Voting Mail–In Absentee.—An individual who has registered to vote by mail on or after January 1, 2003, and has not previously

voted in an election that includes a ballot item for federal office in North Carolina, in order to cast a mail-in absentee vote, shall submit with the mailed-in absentee ballot one of the following:

(1) A copy of a current and valid photo identification.

(2) A copy of one of the following documents that shows the name and address of the voter: a current utility bill, bank statement, government check, paycheck, or other government document.

(b1) The county board of elections shall note the type of identification proof submitted by the voter under the provisions of subsection (a) or (b) of this section and may dispose of the tendered copy of identification proof as soon as the type of proof is noted in the voter registration records.

(b2) Voting When Identification Numbers Do Not Match.—Regardless of whether an individual has registered by mail or by another method, if the individual has provided with the registration form a drivers license number or last four digits of a Social Security number but the computer validation of the number as required by G.S. 163–82.12 did not result in a match, and the number has not been otherwise validated by the board of elections, in the first election in which the individual votes that individual shall submit with the ballot the form of identification described in subsection (a) or subsection (b) of this section, depending upon whether the ballot is voted in person or absentee. If that identification is provided and the board of elections does not determine that the individual is otherwise ineligible to vote a ballot, the failure of identification numbers to match shall not prevent that individual from registering to vote and having that individual's vote counted. If the individual registers and votes under G.S. 163–82.6A, the identification documents required in that section, rather than those described in subsection (a) or (b) of this section, apply.

(c) The Right to Vote Provisionally.—If an individual is required under subsection (a), (b), or (b2) of this section to present identification in order to vote, but that individual does not present the required identification, that individual may vote a provisional official ballot. If the voter is at the voting place, the voter may vote provisionally there without unnecessary delay. If the voter is voting by mail-in absentee ballot, the mailed ballot without the required identification shall be treated as a provisional official ballot.

(d) Exemptions.—This section does not apply to any of the following:

(1) An individual who registers by mail and submits as part of the registration application either of the following:

a. A copy of a current and valid photo identification.

b. A copy of one of the following documents that shows the name and address of the voter: a current utility bill, bank statement, government check, paycheck, or other government document.

(2) An individual who registers by mail and submits as part of the registration application the individual's drivers license number or at least the last four digits of the individual's social security number where an election official matches either or both of the numbers submitted with an existing State identification record bearing the same number, name, and date of birth contained in the submitted registration. If any individual's number does not match, the individual shall provide identification as required in subsection (b2) of this section in the first election in which the individual votes.

(3) An individual who is entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act.

(4) An individual who is entitled to vote otherwise than in person under section 3(b)(2)(B)(ii) of the Voting Accessibility for the Elderly and Handicapped Act.

(5) An individual who is entitled to vote otherwise than in person under any other federal law.

Added by S.L. 2003–226, § 16, eff. Jan. 1, 2004. Amended by S.L. 2004–127, § 3, eff. July 26, 2004; S.L. 2007–391, § 21(a), eff. Aug. 19, 2007.

Historical and Statutory Notes

2003 Legislation

S.L. 2003–226, §§ 1 and 22, eff. June 19, 2003, provide:

''Section 1. The purpose of this act is to ensure that the State of North Carolina has a system for all North Carolina elections that complies with the requirements for federal elections set forth in the federal Help America Vote Act of 2002, Public Law 107–252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481–15485.

''The General Assembly finds that the education and training of election officials as required by G.S. 163–82.34 has met and continues to meet the mandate for the education and training of precinct officials and other election officials in section 254(a)(3) of the Help America Vote Act of 2002. The General Assembly further finds that the establishment, development, and continued operation of the statewide list maintenance program for voter registration set forth in G.S. 163–82.14 has met and continues to meet the mandates of section 303(a)(2) of the Help America Vote Act of 2002.

''In certain other areas of the election statutes and other laws, the General Assembly finds that the statutes must be amended to comply with the Help America Vote Act.''

''Section 22. Sections 1, 3, 4, 5, 12, 18, 21, and 22 of this act are effective when this act becomes law. Sections 11 and 13 of this act become effective January 1, 2006. The remainder of this act becomes effective January 1, 2004. All sections of this act apply with respect to all primaries and elections held on or after the date they become effective.''

2004 Legislation

S.L. 2004–127, § 3, eff. July 26, 2004, rewrote subsec. (b), which prior thereto read:

''(b) Voting Mail-In Absentee. — An individual who has registered to vote by mail on or after January 1, 2003, and

has not previously voted in an election that includes a ballot item for federal office in North Carolina, in order to cast a mail-in absentee vote, shall submit with the mailed-in absentee ballot one of the following:

''(1) A copy of a current and valid photo identification.

''(2) A copy of one of the following documents that shows the name and address of the voter: a current utility bill, bank statement, government check, paycheck, or other government document.

''The county board of elections shall note the type of identification proof submitted by the voter and may dispose of the tendered copy of identification proof as soon as the type of proof is noted in the voter registration records.

''This subsection shall not apply to persons entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act.'';

and inserted subsec. (b1).

2007 Legislation

S.L. 2007–391, § 21(a), added subsec. (b2); in subsec. (c), substituted ''(a), (b), or (b2)'' for ''(a) or (b)''; and in subd. (d)(2), added the second sentence relating to providing identification where a number does not match.

§ 163–167. Reserved

Article 15

Counting Ballots, Canvassing Votes, and Certifying Results in Precinct and County [Repealed]

Section

163–168 to 163–177.1. Repealed.
163–178. Repealed.
163–179 to 163–181. Repealed.

§§ 163–168 to 163–177.1. Repealed by S.L. 2001–398, § 1, eff. Jan. 1, 2002

Historical and Statutory Notes

Repealed § 163–168, which related to proceedings when polls are closed, was derived from:

Laws 1967, c. 775, § 1.
Laws 1973, c. 793, § 67.
Laws 1993 (Reg. Sess., 1994), c. 762, §§ 5, 47.
S.L. 1999–456, § 59.

Repealed § 163–169, which related to counting ballots at precincts and unofficial report of precinct vote to county board of elections, was derived from:

Laws 1967, c. 775, § 1.
Laws 1973, c. 793, § 94.
Laws 1977, c. 265, § 12.
Laws 1979, c. 802, § 2.
Laws 1983, c. 411, § 5.
Laws 1993 (Reg. Sess., 1994), c. 762, §§ 5, 48.
S.L. 1999–455, § 19.

Repealed § 163–170, which related to rules for counting ballots, was derived from:

Laws 1967, c. 775, § 1.
Laws 1973, c. 793, § 68.
Laws 1979, c. 802, § 3.
Laws 1983, c. 324, § 5.
Laws 1987, c. 713, § 3, 4.
Laws 1987, c. 713, §§ 6, 7.
Laws 1993, c. 553, § 64.

Repealed § 163–170.1, which related to counting of ballots in multi-seat races where voter votes straight-party ticket and for individual candidates of that party but not for individual candidates of another party, was derived from Laws 1987, c. 713, § 12.1 and Laws 1987 (Reg. Sess., 1988), c. 1028, § 13.

Repealed § 163–171, which related to preservation of ballots, locking and sealing ballot boxes, and signing certificates, was derived from:

Laws 1967, c. 775, § 1.
Laws 1981, c. 124.
Laws 1987, c. 416.
Laws 1991, c. 727, § 4.
Laws 1993, c. 539, § 1101.
Laws 1993 (Reg. Sess., 1994), c. 762, §§ 5, 49.

Laws 1994 (1st Ex. Sess.), c. 24, § 14(c).

Repealed § 163–172, which related to the State Board of Elections to preparing and distributing abstract forms and printing by counties, was derived from Laws 1967, c. 775, § 1 and Laws 1975, c. 844, § 6.

Repealed § 163–173, which related to how precinct returns are to be made, was derived from:

Laws 1967, c. 775, § 1.
Laws 1981, c. 153.
Laws 1993, c. 539, § 1102.
Laws 1993 (Reg. Sess., 1994), c. 762, §§ 5, 50.
Laws 1994 (1st Ex. Sess.), c. 24, § 14(c).
Laws 1995, c. 243, § 1.

Repealed § 163–174, which related to registration and pollbooks to be returned to chairman of county board of elections, was derived from:

Laws 1967, c. 775, § 1.
Laws 1981, c. 152.
Laws 1993 (Reg. Sess., 1994), c. 762, § 51.

Repealed § 163–175, which related to county board of elections to canvass returns, was derived from:

Laws 1967, c. 775, § 1.
Laws 1977, c. 265, § 13.
Laws 1981, c. 304.
Laws 1987, c. 491, § 4.
Laws 1995 (Reg. Sess., 1996), c. 553, § 1.

Repealed § 163–176, which related to preparation of original abstracts and place of filing, was derived from Laws 1967, c. 775, § 1 and Laws 1969, c. 971, § 1.

Repealed § 163–177, which related to disposition of duplicate abstracts, was derived from:

Laws 1967, c. 775, § 1.
Laws 1969, c. 44, § 86.
Laws 1969, c. 971, § 2.
Laws 1973, c. 47, § 2.
Laws 1973, c. 793, § 69.
Laws 1975, c. 844, § 7.
Laws 1977, c. 265, § 14.
Laws 1987, c. 565, § 5.
Laws 1993, c. 539, § 1103.
Laws 1994 (1st Ex. Sess.), c. 24, § 14(c).

Repealed § 163–177.1, which related to the responsibility of chairman, was derived from Laws 1975, c. 844, § 8.

See, § 163–182 et seq.

§ 163–178. Repealed by Laws 1981, c. 564, § 1

Historical and Statutory Notes

The repealed section mandated that clerk of superior court send statement of votes to secretary of state.

§§ 163–179 to 163–181. Repealed by S.L. 2001–398, § 1, eff. Jan. 1, 2002

Historical and Statutory Notes

Repealed § 163–179, which related to declarations of election results by county board, was derived from Laws 1967, c. 775, § 1 and Laws 1973, c. 793, § 70.

Repealed § 163–179.1, which related to mandatory recounts, was derived from Laws 1987, c. 642, § 1 and Laws 1989, c. 89, § 1.

Repealed § 163–180, which provided the chairman of county board of elections was to furnish certificate of election, was derived from Laws 1967, c. 775, § 1 and Laws 1977, c. 265, § 15.

Repealed § 163–181, which related to the appeal process when election is contested, was derived from:

Laws 1967, c. 775, § 1.
Laws 1975, c. 844, § 9.
Laws 1977, c. 661, § 4.
Laws 1983, c. 329.
S.L. 1999–424, § 2.

See, § 163–182 et seq.

Article 15A

Counting Official Ballots, Canvassing Votes, Hearing Protests, and Certifying Results

Section

163–182. Definitions.
163–182.1. Principles and rules for counting official ballots.
163–182.2. Initial counting of official ballots.
163–182.3. Responsibility of chief judge.
163–182.4. Jurisdiction for certain ballot items.
163–182.5. Canvassing votes.
163–182.6. Abstracts.
163–182.7. Ordering recounts.
163–182.7A. Additional provisions for hand-to-eye recounts.
163–182.8. Determining result in case of a tie.
163–182.9. Filing an election protest.
163–182.10. Consideration of protest by county board of elections.
163–182.11. Appeal of a protest decision by the county board to the State Board of Elections.
163–182.12. Authority of State Board of Elections over protests.
163–182.13. New elections.
163–182.13A. Contested elections for Council of State offices.
163–182.14. Appeal of a final decision to superior court; appeal to the General Assembly or a house thereof.
163–182.15. Certificate of nomination or election, or certificate of the results of a referendum.
163–182.16. Governor to issue commissions for certain offices.
163–182.17. Summary of officials' duties under this Article.
163–183 to 163–186. Reserved.

§ 163–182. Definitions

In addition to the definitions stated below, the definitions set forth in Article 13A of Chapter 163 of the General Statutes also apply to this Article. As used in this Article, the following definitions apply:

(1) ''Abstract'' means a document signed by the members of the board of elections showing the votes for each candidate and ballot proposal on the official ballot in the election. The abstract shall show a total number of votes for each candidate in each precinct and a total for each candidate in the county. It shall also show the number of votes for each candidate among the absentee official ballots, among the provisional official ballots, and in any other category of official ballots that is not otherwise reported.

(2) ''Certificate of election'' means a document prepared by the official or body with the legal authority to do so, conferring upon a candidate the right to assume an elective office as a result of being elected to it.

(3) ''Composite abstract'' means a document signed by the members of the State Board of Elections showing the total

number of votes for each candidate and ballot proposal and the number of votes in each county. A composite abstract does not include precinct returns.

(4) ''Protest'' means a complaint concerning the conduct of an election which, if supported by sufficient evidence, may require remedy by one or more of the following:

a. A correction in the returns.

b. A discretionary recount as provided in G.S. 163–182.7.

c. A new election as provided in G.S. 163–182.13.

Added by S.L. 2001–398, § 3, eff. Jan. 1, 2002.

Historical and Statutory Notes

The Revisor of Statutes redesignated subd. (2), Composite abstract, as subd. (3) and redesignated subd. (3), Certificate of election, as subd. (2).

§ 163–182.1. Principles and rules for counting official ballots

(a) General Principles That Shall Apply. —The following general principles shall apply in the counting of official ballots, whether the initial count or any recount:

(1) Only official ballots shall be counted.

(2) No official ballot shall be rejected because of technical errors in marking it, unless it is impossible to clearly determine the voter's choice.

(3) If it is impossible to clearly determine a voter's choice in a ballot item, the official ballot shall not be counted for that ballot item, but shall be counted in all other ballot items in which the voter's choice can be clearly determined.

(4) If an official ballot is marked in a ballot item with more choices than there are offices to be filled or propositions that may prevail, the official ballot shall not be counted for that ballot item, but shall be counted in all other ballot items in which there is no overvote and the voter's choice can be clearly determined.

(5) If an official ballot is rejected by a scanner or other counting machine, but human counters can clearly determine the voter's choice, the official ballot shall be counted by hand and eye.

(6) Write-in votes shall not be counted in party primaries or in referenda, but shall be counted in general elections if all of the following are true:

a. The write-in vote is written by the voter or by a person authorized to assist the voter pursuant to G.S. 163–166.8.

b. The write-in vote is not cast for a candidate who has failed to qualify under G.S. 163–123 as a write-in candidate.

c. The voter's choice can be clearly determined.

(7) Straight-party ticket and split-ticket votes shall be counted in general elections according to the following guidelines:

a. If a voter casts a vote for a straight-party ticket, that vote shall be counted for all the candidates of that party, other than those for President and Vice President, in the partisan ballot items on that official ballot except as otherwise provided in this subdivision.

b. If a voter casts a vote for a straight-party ticket and also votes in a partisan ballot item for a candidate not of that party, the official ballot shall be counted in that ballot item only for the individually marked candidate. In partisan ballot items where no mark is made for an individual candidate, the official ballot shall be counted for the candidates of the party whose straight ticket the voter voted.

c. If a voter casts a vote for a straight-party ticket and also casts a write-in vote in any partisan ballot item, the straight-party ticket vote shall not control the way the official ballot is counted in that ballot item, except to the extent it would control in the case of crossover voting under this subdivision. The following principles shall apply:

1. If the write-in vote is proper under subdivision (6) of this subsection, that write-in candidate shall receive a vote.

2. If the write-in vote is not proper under subdivision (6) of this subsection and no other candidate is individually marked in that ballot item, then no vote shall be counted in that ballot item.

3. If the straight-ticket voter casts both write-in votes and individually marked votes for ballot candidates in a ballot item, then the write-in and individually marked votes shall be counted unless the write-in is not proper under subdivision (6) of this subsection or an overvote results.

(b) Procedures and Standards. — The State Board of Elections shall adopt uniform and nondiscriminatory procedures and standards for voting systems. The standards shall define what constitutes a vote and what will be counted as a vote for each category of voting system used in the State. The State Board shall adopt those procedures and standards at a meeting occurring not earlier than 15 days after the State Board gives notice of the meeting. The procedures and standards adopted shall apply to all elections occurring in the State and shall be subject to amendment or repeal by the State Board acting at any meeting where notice that the action has been proposed has been given at least 15 days before

the meeting. These procedures and standards shall not be considered to be rules subject to Article 2A of Chapter 150B of the General Statutes. However, the State Board shall publish in the North Carolina Register the procedures and standards and any changes to them after adoption, with that publication noted as information helpful to the public under G.S. 150B–21.17(a)(6). Copies of those procedures and standards shall be made available to the public upon request or otherwise by the State Board. For optical scan and direct record electronic voting systems, and for any other voting systems in which ballots are counted other than on paper by hand and eye, those procedures and standards shall do both of the following:

(1) Provide for a sample hand-to-eye count of the paper ballots or paper records of a statewide ballot item in every county. The presidential ballot item shall be the subject of the sampling in a presidential election. If there is no statewide ballot item, the State Board shall provide a process for selecting district or local ballot items to adequately sample the electorate. The State Board shall approve in an open meeting the procedure for randomly selecting the sample precincts for each election. The random selection of precincts for any county shall be done publicly after the initial count of election returns for that county is publicly released or 24 hours after the polls close on election day, whichever is earlier. The sample chosen by the State Board shall be of one or more full precincts, full counts of mailed absentee ballots, full counts of one or more one-stop early voting sites, or a combination. The size of the sample of each category shall be chosen to produce a statistically significant result and shall be chosen after consultation with a statistician. The actual units shall be chosen at random. In the event of a material discrepancy between the electronic or mechanical count and a hand-to-eye count, the hand-to-eye count shall control, except where paper ballots or records have been lost or destroyed or where there is another reasonable basis to conclude that the hand-to-eye count is not the true count. If the discrepancy between the hand-to-eye count and the mechanical or electronic count is significant, a complete hand-to-eye count shall be conducted.

(2) Provide that if the voter selects votes for more than the number of candidates to be elected or proposals to be approved in a ballot item, the voting system shall do all the following:

a. Notify the voter that the voter has selected more than the correct number of candidates or proposals in the ballot item.

b. Notify the voter before the vote is accepted and counted of the effect of casting overvotes in the ballot item.

c. Provide the voter with the opportunity to correct the official ballot before it is accepted and counted.

Added by S.L. 2001–398, § 3, eff. Jan. 1, 2002. Amended by S.L. 2003–226, § 13, eff. Jan. 1, 2006; S.L. 2005–323, § 5(a), eff. Jan. 1, 2006; S.L. 2006–192, § 7(a), eff. Aug. 3, 2006; S.L. 2006–264, § 76(b), eff. Aug. 27, 2006.

Historical and Statutory Notes

2003 Legislation

S.L. 2003–226, § 13, eff. Jan. 1, 2006, rewrote subsec. (b), which prior thereto read:

''(b) Rules and Directions by State Board of Elections. – The State Board of Elections shall promulgate rules where necessary to apply the principles in subsection (a) of this section to each voting system in use in the State. The rules shall prescribe procedures and standards for each type of voting system. Those procedures and standards shall be followed uniformly throughout the State in all places where that type of voting system is used. The State Board shall direct the county boards of elections in the application of the principles and rules in individual circumstances.''

S.L. 2003–226, §§ 1 and 22, eff. June 19, 2003, provide:

''Section 1. The purpose of this act is to ensure that the State of North Carolina has a system for all North Carolina elections that complies with the requirements for federal elections set forth in the federal Help America Vote Act of 2002, Public Law 107–252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481–15485.

''The General Assembly finds that the education and training of election officials as required by G.S. 163–82.34 has met and continues to meet the mandate for the education and training of precinct officials and other election officials in section 254(a)(3) of the Help America Vote Act of 2002. The General Assembly further finds that the establishment, development, and continued operation of the statewide list maintenance program for voter registration set forth in G.S. 163–82.14 has met and continues to meet the mandates of section 303(a)(2) of the Help America Vote Act of 2002.

''In certain other areas of the election statutes and other laws, the General Assembly finds that the statutes must be amended to comply with the Help America Vote Act.''

''Section 22. Sections 1, 3, 4, 5, 12, 18, 21, and 22 of this act are effective when this act becomes law. Sections 11 and 13 of this act become effective January 1, 2006. The remainder of this act becomes effective January 1, 2004. All sections of this act apply with respect to all primaries and elections held on or after the date they become effective.''

2005 Legislation

S.L. 2005–323, § 5(a), eff. Jan. 1, 2006, rewrote subsec. (b), which prior thereto read:

''(b) Procedures and Standards. — The State Board of Elections shall adopt uniform and nondiscriminatory procedures and standards for voting systems. The standards shall define what constitutes a vote and what will be counted as a vote for each category of voting system used in the State. The State Board shall adopt those procedures and standards at a meeting occurring not earlier than 15 days after the State Board gives notice of the meeting. The procedures and standards adopted shall apply to all elections occurring in the State and shall be subject to amendment or repeal by the State Board acting at any meeting where notice that the action has been proposed has been given at least 15 days before the meeting. These procedures and standards shall not be considered to be rules subject to Article 2A of Chapter 150B of the General Statutes. However, the State Board shall publish in the North Carolina Register the procedures and standards and any changes to them after adoption, with that publication noted as information helpful to the public under G.S. 150B–21.17(a)(6). Copies of those procedures and standards shall be made available to the public upon request or otherwise by the State Board. For optical scan and direct record systems, those procedures and standards shall

provide that if the voter selects votes for more than the number of candidates to be elected or proposals to be approved in a ballot item, the voting system shall do all the following:

''(1) Notify the voter that the voter has selected more than the correct number of candidates or proposals in the ballot item.

''(2) Notify the voter before the vote is accepted and counted of the effect of casting overvotes in the ballot item.

''(3) Provide the voter with the opportunity to correct the official ballot before it is accepted and counted.''

S.L. 2005–323, § 5(d), provides:

''This section becomes effective January 1, 2006.''

S.L. 2005–323, § 10, provides:

''The requirement for testing a voting system in an election provided in G.S. 163–165.9(a)(3), as enacted in Section 4 of this act, does not apply to any voting system acquired before January 1, 2008, as long as the voting system is demonstrated in a public forum in the county. Notwithstanding G.S. 163–132.5G, as amended by this act, voting data by precinct shall be reported for the general elections of 2006 by March 1, 2007, and for the primary elections of 2006 by May 1, 2007. Except as otherwise provided in this act, the remainder of this act is effective when it becomes law.''

2006 Legislation

S.L. 2006–192, § 7(a), eff. Aug. 3, 2006, amended subd. (b)(1) by adding ''The State Board shall approve in an open meeting the procedure for randomly selecting the sample precincts for each election. The random selection of precincts for any county shall be done publicly after the initial count of election returns for that county is publicly released or 24 hours after the polls close on election day, whichever is earlier.''

S.L. 2006–192, § 19, provides:

''Sections 2 through 5 of this act are effective January 1, 2007, and apply to all primaries and elections conducted on or after that date. Sections 8 and 9 of this act are effective when this act becomes law and apply to vacancies occurring on or after that date. Section 17 of this act and the portion of Section 15 of this act that affects G.S. 163–278.13(e3) become effective January 1, 2007, and apply to contributions made or accepted on or after that date. Section 18 of this act becomes effective for taxable years beginning on or after January 1, 2006. The remainder of this act is effective when it becomes law.''

S.L. 2006–264, § 76(b), eff. Aug. 27, 2006, amended subd. (b)(1) by inserting ''one or more'' in two places, inserting '''mailed'', '', or a combination'', and other minor changes.

Cross References

Declaration of intent for write-in candidates, see § 163–123.
Powers and duties of State Board of Elections, voting systems, see § 163–165.7.

Administrative Code References

Ballots, see 8 NCAC 6B.0105.

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1. Validity of prior law

North Carolina statute mandating that ballot marked for straight party ticket and for individual candidate of another party, whether by mark or write-in, shall be counted for straight party ticket was unconstitutional as an arbitrary subversion of electoral process serving no compelling state interest. Hendon v. North Carolina State Bd. of Elections, 1983, 710 F.2d 177. Elections ⚷ 22

Unsuccessful candidate, his reelection committee and registered voter were not entitled to recount ballots in election, despite unconstitutionality of North Carolina statute mandating that ballot for straight party ticket and for individual candidate of another party be counted for straight party ticket, where no evidence was introduced of any reason why constitutionality could not have been challenged before election. Hendon v. North Carolina State Bd. of Elections, 1983, 710 F.2d 177. Declaratory Judgment ⚷ 384

2. Construction and application

Thirty-six ballots which had no name written on them could not be counted for write-in candidate in election, since they did not express intention of voter's choice. In re Protest by Rocky Midgette of 2 Nov. 1993 Manteo Town Election, 1994, 117 N.C.App. 213, 450 S.E.2d 519. Elections ⚷ 239

The disqualifications of electors will not affect the validity of the officer elected. Wilson v. Peterson, 1873, 69 N.C. 113. Elections ⚷ 229

3. Evidence, generally

In determining if it is impossible to ascertain voter's choice, due to error in following write-in procedures, court will generally look to face of ballot, and if write-in candidate's name is on ballot, but not in exact accordance of mandatory statutory requirements, to extrinsic evidence to see if voter's choice can be determined. In re Protest by Rocky Midgette of 2 Nov. 1993 Manteo Town Election, 1994, 117 N.C.App. 213, 450 S.E.2d 519. Elections ⚷ 293(5)

No name at all was written on 36 ballots, and thus court would not consider any extrinsic evidence in attempting to ascertain voter intent, as ballots were tantamount to technical errors in following "write-in" vote procedures which made it impossible to determine voter's choice. In re Protest by Rocky Midgette of 2 Nov. 1993 Manteo Town Election, 1994, 117 N.C.App. 213, 450 S.E.2d 519. Elections ⚷ 293(4)

There was some evidence of voter intent on five ballots in election, which contained variations of write-in candidate's name, and thus it was appropriate to look at extrinsic evidence in attempting to ascertain voter intent. In re Protest by Rocky Midgette of 2 Nov. 1993 Manteo Town Election, 1994, 117 N.C.App. 213, 450 S.E.2d 519. Elections ⚷ 293(4)

4. Validity of votes

Under statutes regarding marking of ballots in primaries and elections and counting of ballots, although voter must write in name of person not on ballot in order for the vote to be counted, any technical errors in following procedure will not make ballot invalid unless it is impossible to determine voter's choice. In re Protest by Rocky Midgette of 2 Nov. 1993 Manteo Town Election, 1994, 117 N.C.App. 213, 450 S.E.2d 519. Elections ⚷ 158; Elections ⚷ 227(8)

It was not impossible to tell voter's choice from five ballots, and thus State Board of Elections correctly ordered County Board of Elections to count ballots for write-in candidate, where they were marked with variations of write-in candidate's name, write-in candidate was only person actively campaigning as write-in candidate, and no other person with similar name was running as candidate in town election or otherwise actively seeking votes for town office. In re Protest by Rocky Midgette of 2 Nov. 1993 Manteo Town Election, 1994, 117 N.C.App. 213, 450 S.E.2d 519. Elections ⚷ 239

State Board of Elections properly refrained from counting ballots in election for county commissioners on which voters marked straight Democratic circle and also wrote in some, but less than three, names for office of county commissioner since it was impossible to determine voters' choices for the three county commissioner seats. In re Cleveland County Com'rs: Protest of Crawford, 1982, 287 S.E.2d 451, 56 N.C.App. 187. Elections ⚷ 186(4)

Under Revisal 1905, § 4347, ballot validly indicating choice for register, but containing unmarked names of two persons, instead of one, for the office of recorder, held valid vote for register. Bray v. Baxter, 1915, 86 S.E. 163, 171 N.C. 6. Elections ⚷ 186(4)

Under Revisal 1905, § 4347, a ballot properly indicating a choice for register of deeds, but containing unmarked names of four persons for county commissioner, though only three were to be elected, was a proper vote for the register. Bray v. Baxter, 1915, 86 S.E. 163, 171 N.C. 6. Elections ⚷ 186(4)

Where a voter tore off the top part of the ballot, casting the balance intact, the vote held valid for the indicated candidates. Bray v. Baxter, 1915, 86 S.E. 163, 171 N.C. 6. Elections ⚷ 190

§ 163–182.2. Initial counting of official ballots

(a) The initial counting of official ballots shall be conducted according to the following principles:

(1) Vote counting at the precinct shall occur immediately after the polls close and shall be continuous until completed.

(2) Vote counting at the precinct shall be conducted with the participation of precinct officials of all political parties then present. Vote counting at the county board of elections shall be conducted in the presence or under the supervision of board members of all political parties then present.

(3) Any member of the public wishing to witness the vote count at any level shall be allowed to do so. No witness shall interfere with the orderly counting of the official ballots. Witnesses shall not participate in the official counting of official ballots.

(4) Provisional official ballots shall be counted by the county board of elections before the canvass. If the county board finds that an individual voting a provisional official ballot is not eligible to vote in one or more ballot items on the official ballot, the board shall not count the official ballot in those ballot items, but shall count the official ballot in any ballot items for which the individual is eligible to vote. Eligibility shall be determined by whether the voter is registered in the county as provided in G.S. 163–82.1 and whether the voter is qualified by residency to vote in the election district as provided in G.S. 163–55 and G.S. 163–57. If a voter was properly registered to vote in the election by the county board, no mistake of an election official in giving the voter a ballot or in failing to comply with G.S. 163–82.15 or G.S. 163–166.11 shall serve to prevent the counting of the vote on any ballot item the voter was eligible by registration and qualified by residency to vote. Eligibility shall be determined by whether the voter is registered in the county as provided in G.S. 163–82.1 and whether the voter is qualified by residency to vote in the election district as provided in G.S. 163–55 and G.S. 163–57. If a voter was properly registered to vote in the election by the county board, no mistake of an election official in giving the voter a ballot or in failing to comply with G.S. 163–82.15 or G.S. 163–166.11 shall serve to prevent the counting of the vote on any ballot item the voter was eligible by registration and qualified by residency to vote.

(5) Precinct officials shall provide a preliminary report of the vote counting to the county board of elections as quickly as possible. The preliminary report shall be unofficial and has no binding effect upon the official county canvass to follow.

(6) In counties that use any certified mechanical or electronic voting system, subject to the sample counts under G.S. 163–182.1 and subdivision (1a) of subsection (b) of this section, and of a hand-to-eye recount under G.S.

163–182.7 and G.S. 163–182.7A, a board of elections shall rely in its canvass on the mechanical or electronic count of the vote rather than the full hand-to-eye count of the paper ballots or records. In the event of a material discrepancy between the electronic or mechanical count and a hand-to-eye count or recount, the hand-to-eye count or recount shall control, except where paper ballots or records have been lost or destroyed or where there is another reasonable basis to conclude that the hand-to-eye count is not the true count.

(b) The State Board of Elections shall promulgate rules for the initial counting of official ballots. All election officials shall be governed by those rules. In promulgating those rules, the State Board shall adhere to the following guidelines:

(1) For each voting system used, the rules shall specify the role of precinct officials and of the county board of elections in the initial counting of official ballots.

(1a) For optical scan and direct record electronic voting systems, and for any other voting systems in which ballots are counted other than on paper by hand and eye, those rules shall provide for a sample hand-to-eye count of the paper ballots or paper records of a sampling of a statewide ballot item in every county. The presidential ballot item shall be the subject of the sampling in a presidential election. If there is no statewide ballot item, the State Board shall provide a process for selecting district or local ballot items to adequately sample the electorate. The State Board shall approve in an open meeting the procedure for randomly selecting the sample precincts for each election. The random selection of precincts for any county shall be done publicly after the initial count of election returns for that county is publicly released or 24 hours after the polls close on election day, whichever is earlier. The sample chosen by the State Board shall be of one or more full precincts, full counts of mailed absentee ballots, and full counts of one or more one-stop early voting sites. The size of the sample of each category shall be chosen to produce a statistically significant result and shall be chosen after consultation with a statistician. The actual units shall be chosen at random. In the event of a material discrepancy between the electronic or mechanical count and a hand-to-eye count, the hand-to-eye count shall control, except where paper ballots or records have been lost or destroyed or where there is another reasonable basis to conclude that the hand-to-eye count is not the true count. If the discrepancy between the hand-to-eye count and the mechanical or electronic count is significant, a complete hand-to-eye

count shall be conducted. The sample count need not be done on election night.

(2) The rules shall provide for accurate unofficial reporting of the results from the precinct to the county board of elections with reasonable speed on the night of the election.

(3) The rules shall provide for the prompt and secure transmission of official ballots from the voting place to the county board of elections.

The State Board shall direct the county boards of elections in the application of the principles and rules in individual circumstances.

Added by S.L. 2001–398, § 3, eff. Jan. 1, 2002. Amended by S.L. 2005–2, § 5; S.L. 2005–323, § 5(b), eff. Jan. 1, 2006; S.L. 2006–192, § 7(b), eff. Aug. 3, 2006; S.L. 2006–264, § 76(c), eff. Aug. 27, 2006.

Historical and Statutory Notes

2005 Legislation

S.L. 2005–2, § 5, in subd. (a)(4) added the third and fourth sentences.

S.L. 2005–2, § 7, provides:

''This act is effective when it becomes law and, being declaratory of existing law, applies to all elections held after January 1, 2004, the effective date of G.S. 163–166.11.''

S.L. 2005–323, § 5(a), eff. Jan. 1, 2006, rewrote the section, which prior thereto read:

''(a) The initial counting of official ballots shall be conducted according to the following principles:

''(1) Vote counting at the precinct shall occur immediately after the polls close and shall be continuous until completed.

''(2) Vote counting at the precinct shall be conducted with the participation of precinct officials of all political parties then present. Vote counting at the county board of elections shall be conducted in the presence or under the supervision of board members of all political parties then present.

''(3) Any member of the public wishing to witness the vote count at any level shall be allowed to do so. No witness shall interfere with the orderly counting of the official ballots. Witnesses shall not participate in the official counting of official ballots.

''(4) Provisional official ballots shall be counted by the county board of elections before the canvass. If the county board finds that an individual voting a provisional official ballot is not eligible to vote in one or more ballot items on the official ballot, the board shall not count the official ballot in those ballot items, but shall count the official ballot in any ballot items for which the individual is eligible to vote. Eligibility shall be determined by whether the voter is registered in the county as provided in G.S. 163–82.1 and whether the voter is qualified by residency to vote in the election district as provided in G.S. 163–55 and G.S. 163–57. If a voter was properly registered to vote in the election by the county board, no mistake of an election official in giving the voter a ballot or in failing to comply with G.S. 163–82.15 or G.S. 163–166.11 shall serve to prevent the counting of the vote on any ballot item the voter was eligible by registration and qualified by residency to vote.

''(5) Precinct officials shall provide a preliminary report of the vote counting to the county board of elections as quickly as possible. The preliminary report shall be unofficial and has no binding effect upon the official county canvass to follow.

''(b) The State Board of Elections shall promulgate rules for the initial counting of official ballots. All election officials shall be governed by those rules. In promulgating those rules, the State Board shall adhere to the following guidelines:

''(1) For each voting system used, the rules shall specify the role of precinct officials and of the county board of elections in the initial counting of official ballots.

''(2) The rules shall provide for accurate unofficial reporting of the results from the precinct to the county board of elections with reasonable speed on the night of the election.

''(3) The rules shall provide for the prompt and secure transmission of official ballots from the voting place to the county board of elections.

''The State Board shall direct the county boards of elections in the application of the principles and rules in individual circumstances.''

S.L. 2005–323, §§ 5(d) and 10, provide:

''Section 5. This section becomes effective January 1, 2006.''

''Section 10. The requirement for testing a voting system in an election provided in G.S. 163–165.9(a)(3), as enacted in Section 4 of this act, does not apply to any voting system acquired before January 1, 2008, as long as the voting system is demonstrated in a public forum in the county. Notwithstanding G.S. 163–132.5G, as amended by this act, voting data by precinct shall be reported for the general elections of 2006 by March 1, 2007, and for the primary elections of 2006 by May 1, 2007. Except as otherwise provided in this act, the remainder of this act is effective when it becomes law.''

2006 Legislation

S.L. 2006–192, § 7(b), eff. Aug. 3, 2006, amended subd. (b)(1a) by adding ''The State Board shall approve in an open meeting the procedure for randomly selecting the sample precincts for each election. The random selection of precincts for any county shall be done publicly after the initial count of election returns for that county is publicly released or 24 hours after the polls close on election day, whichever is earlier.''

S.L. 2006–192, § 19, provides:

''Sections 2 through 5 of this act are effective January 1, 2007, and apply to all primaries and elections conducted on or after that date. Sections 8 and 9 of this act are effective when this act becomes law and apply to vacancies occurring on or after that date. Section 17 of this act and the portion of Section 15 of this act that affects G.S. 163–278.13(e3) become effective January 1, 2007, and apply to contributions made or accepted on or after that date. Section 18 of this act becomes effective for taxable years beginning on or after January 1, 2006. The remainder of this act is effective when it becomes law.''

S.L. 2006–264, § 76(c), eff. Aug. 27, 2006, amended subd. (b)(1a) by inserting ''one or more'' in two places, inserting '''mailed'' and ''The sample count need not be done on election night.''

Cross References

Municipal elections, see § 163–299.

Administrative Code References

Ballots, see 8 NCAC 6B.0101 et seq.

§ 163–182.3. Responsibility of chief judge

The chief judge of each precinct shall be responsible for the adherence of the precinct officials to the State Board rules for counting, reporting, and transmitting official ballots.

Added by S.L. 2001–398, § 3, eff. Jan. 1, 2002.

§ 163–182.4. Jurisdiction for certain ballot items

(a) Jurisdiction of County Board of Elections. – As used in this Article, the county board of elections shall have jurisdiction over the following:

(1) Offices of that county, including clerk of superior court and register of deeds.

(2) Membership in either house of the General Assembly from a district lying entirely within that county.

(3) Offices of municipalities, unless the municipality has a valid board of election.

(4) Referenda in which only residents of that county are eligible to vote.

(b) Jurisdiction of State Board of Elections. – As used in this Article, the State Board of Elections shall have jurisdiction over the following:

(1) National offices.

(2) State offices.

(3) District offices (including General Assembly seats) in which the district lies in more than one county.

(4) Superior court judge, district court judge, and district attorney, regardless of whether the district lies entirely in one county or in more than one county.

(5) Referenda in which residents of more than one county are eligible to vote.

(c) For the purposes of this Article, having jurisdiction shall mean that the appropriate board shall do all of the following with regard to the ballot item:

(1) Canvass for the entire electorate for the ballot item.

(2) Prepare abstracts or composite abstracts for the entire electorate for the ballot item.

(3) Issue certificates of nomination and election.

Added by S.L. 2001–398, § 3, eff. Jan. 1, 2002.

Cross References

Conduct of presidential primary election, see § 163–213.3.
Filing vacancies; post nomination and prior to elections, see § 163–114.
General Assembly members, initiating a contest, see § 120–10.3.

§ 163–182.5. Canvassing votes

(a) The Canvass. – As used in this Article, the term ''canvass'' means the entire process of determining that the votes have been counted and tabulated correctly, culminating in the authentication of the official election results. The board of elections conducting a canvass has authority to send for papers and persons and to examine them and pass upon the legality of disputed ballots.

(b) Canvassing by County Board of Elections. — The county board of elections shall meet at 11:00 A.M. on the tenth day after every election held on the same day as a general election in November of the even-numbered year, and at 11:00 A.M. on the seventh day after every other election, to complete the canvass of votes cast and to authenticate the count in every ballot item in the county by determining that the votes have been counted and tabulated correctly. If, despite due diligence by election officials, the initial counting of all the votes has not been completed by that

time, the county board may hold the canvass meeting a reasonable time thereafter. The canvass meeting shall be at the county board of elections office, unless the county board, by unanimous vote of all its members, designates another site within the county. The county board shall examine the returns from precincts, from absentee official ballots, from the sample hand-to-eye paper ballot counts, and from provisional official ballots and shall conduct the canvass.

(c) Canvassing by State Board of Elections. –After each general election, the State Board of Elections shall meet at 11:00 A.M. on the Tuesday three weeks after election day to complete the canvass of votes cast in all ballot items within the jurisdiction of the State Board of Elections and to authenticate the count in every ballot item in the county by determining that the votes have been counted and tabulated correctly. After each primary, the State Board shall fix the date of its canvass meeting. If, by the time of its scheduled canvass meeting, the State Board has not received the county canvasses, the State Board may adjourn for not more than 10 days to secure the missing abstracts. In obtaining them, the State Board is authorized to secure the originals or copies from the appropriate clerks of superior court or county boards of elections, at the expense of the counties.

Added by S.L. 2001–398, § 3, eff. Jan. 1, 2002. Amended by S.L. 2003–278, § 10(a), eff. Jan. 1, 2004; S.L. 2005–323, § 5(c), eff. Jan. 1, 2006; S.L. 2005–428, § 11(a), eff. Jan. 1, 2006.

Historical and Statutory Notes

2003 Legislation

S.L. 2003–278, § 10(a), eff. Jan. 1, 2004, in the first sentence of subsec. (b), substituted ''seventh day'' for ''third day (Sunday excepted)''.

2005 Legislation

S.L. 2005–323, § 5(c), eff. Jan. 1, 2006, amended subsec. (b) by inserting ''from the sample hand-to-eye paper ballot counts,''.

S.L. 2005–323, §§ 5(d) and 10, provide:

''Section 5(d). This section becomes effective January 1, 2006.''

''Section 10. The requirement for testing a voting system in an election provided in G.S. 163–165.9(a)(3), as enacted in Section 4 of this act, does not apply to any voting system acquired before January 1, 2008, as long as the voting system is demonstrated in a public forum in the county. Notwithstanding G.S. 163–132.5G, as amended by this act, voting data by precinct shall be reported for the general elections of 2006 by March 1, 2007, and for the primary elections of 2006 by May 1, 2007. Except as otherwise provided in this act, the remainder of this act is effective when it becomes law.''

S.L. 2005–428, § 11(a), eff. Jan. 1, 2006, amended subsec. (b) by substituting ''tenth'' for ''seventh'' and inserting ''held on the same day as a general election in November of the even-numbered year, and at 11:00 A.M. on the seventh day after each other election,''.

S.L. 2005–428, § 18, provides:

''Sections 2, 6, 7, 8, 10, 12, 13, 14, 15, and 16 of this act are effective when this act becomes law and apply to all primaries and elections held on or after that date. The remainder of this act becomes effective January 1, 2006, and applies to all primaries and elections held on or after that date.''

Cross References

Certificates of election, municipalities, see § 163–301.

Conduct of presidential primary election, see § 163–213.3.
General Assembly members, initiating a contest, see § 120–10.3.

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1. Construction and application

Statute, which was enacted in 1915, and which provides that when, on account of errors in tabulating returns and filling out blanks, result of election in any one or more precincts cannot be accurately known, county board of elections and state board of elections shall be allowed access to ballot boxes to make recount and declare results under such rules as state board of elections shall establish to protect integrity of election and rights of voters, to extent of conflict therewith, was repealed or superseded by statute, which was enacted in 1933, and providing that county board of elections shall have power and authority to pass judicially on all facts relative to election and judicially determine and declare results of election. Strickland v. Hill, 1960, 116 S.E.2d 463, 253 N.C. 198. Elections ⚷ 236

Fact that persons not legally qualified to do so acted as counters and tabulators at primary election would not invalidate the vote of any qualified elector. Strickland v. Hill, 1960, 116 S.E.2d 463, 253 N.C. 198. Elections ⚷ 158

The provisions of election law setting up machinery to be followed in ascertaining and declaring successful candidate in an election are applicable to all municipal elections. Ledwell v. Proctor, 1942, 19 S.E.2d 234, 221 N.C. 161. Elections ⚷ 236

An unmarked ballot containing the name of only one candidate for one office should be counted in his favor, the voter's purpose being clear. Britt v. Board of Canvassers of Buncombe County, 1916, 90 S.E. 1005, 172 N.C. 797. Elections ⚷ 180(1)

2. Powers and proceedings as to returns, generally

When protest has been filed challenging legality of returns certified by county board of elections, state board of elections can go behind returns as certified and its duty is not restricted to computation and tabulation of returns as certified by various county boards. Ponder v. Joslin, 1964, 138 S.E.2d 143, 262 N.C. 496. Elections ⚷ 259

State board of elections is not limited merely to investigating frauds and irregularities in any county for sole purpose of making report of such frauds and irregularities to attorney general or solicitor for further investigation and prosecution. Ponder v. Joslin, 1964, 138 S.E.2d 143, 262 N.C. 496. Elections ⚷ 259

County board of elections is proper agency to canvass returns in primary for selection of party nominees for county offices as well as general election to fill such offices. Ponder v. Joslin, 1964, 138 S.E.2d 143, 262 N.C. 496. Elections ⚷ 126(7)

State board of elections is appropriate agency to canvass and judicially declare results of primary for nomination of candidate in senatorial district composed of more than one county. Ponder v. Joslin, 1964, 138 S.E.2d 143, 262 N.C. 496. Elections ⚷ 126(7)

County board of elections in multiple county senatorial district has no power to canvass election returns and determine judicially nominee in such district but such power is vested exclusively in state board. Ponder v. Joslin, 1964, 138 S.E.2d 143, 262 N.C. 496. Elections ⚷ 126(7)

In canvassing election returns and judicially determining the result, the board of canvassers must pass upon legality of any disputed ballots. Ledwell v. Proctor, 1942, 19 S.E.2d 234, 221 N.C. 161. Elections ⚷ 259

The board of elections has authority, judicial in its nature, to examine the election returns and decide upon their regularity, correctness and sufficiency, and to accept or reject them. Ledwell v. Proctor, 1942, 19 S.E.2d 234, 221 N.C. 161. Elections ⚷ 259

County canvassers judicially determine return of election but not result. Harkrader v. Lawrence, 1925, 130 S.E. 35, 190 N.C. 441. Elections ⚷ 259

Where, pursuant to C.S. §§ 6018–6055, an election was held to select a party nominee, the county board of elections, under sections 6042 and 6048, are vested with ministerial powers only, which consist of tabulating the returns and forwarding the same to the state board, and where required, and in case of county officers in forthwith declaring the result without altering the returns, and they have no power to pass on the legality or illegality of ballots, as under section 6031 that power is vested in the precinct registrars and judges of elections. Rowland v. Board of Elections of Vance County, 1922, 113 S.E. 629, 184 N.C. 78. Elections ⚷ 126(7)

Revisal 1908, § 4350, providing that the board of county canvassers shall open and canvass and "judicially" determine the returns, stating the number of legal votes cast for each officer, and that it shall have power to "judicially" pass on all facts relative to the election, and "judicially" determine and declare the result of the same, and to send for papers and persons and examine the same, does not make the board a court, whose decisions are judgments, with consequent effect as to mode of attack. Barnett v. Midgett, 1909, 65 S.E. 441, 151 N.C. 1. Elections ⚷ 259

3. Correction or amendment of returns

Where in primary election registrar and election judges threw out, by mistake, ballots cast for candidate for county office held their request to amend return to include such ballots, made before county board of elections declared result, and before it signed abstract of votes, should have been granted, under C.S. § 5924 et seq., and sections 5983, 6018, 6020, 6032, 6036; board not being functus officio. Bell v. Board of Elections of Bertie County, 1924, 124 S.E. 311, 188 N.C. 311. Elections ⚷ 126(7)

So-called supplemental election returns ought not to be considered, if made up after the registrars and pollholders had fully performed their duties and without calling them together in a body for approval of such returns. Britt v. Board of Canvassers of Buncombe County, 1916, 90 S.E. 1005, 172 N.C. 797. Elections ⚷ 254

4. Recount of votes

Affidavit of unsuccessful candidate at primary election providing that on closing of polls in four named precincts the ballot boxes were immediately opened and counting and tabulation of ballots were begun, and that no one who assisted or aided in counting tabulation was sworn as required by statute and that in all the precincts there were counters and tabulators who were not electors of the precinct, and that they were not instructed on how differently marked ballots should be counted and tabulated, and that unsuccessful candidate believed that if counting and tabulation of votes in the four precincts had been done in accordance with law, result would have been materially different and that unsuccessful candidate would have been successful candidate, constituted sufficient basis for county board of elections, in exercise of its judgment and discretion, to order and conduct a recount of the ballots and to declare and certify the unsuccessful candidate as nominee in accordance with recount. Strickland v. Hill, 1960, 116 S.E.2d 463, 253 N.C. 198. Elections ⚷ 126(7)

Rule of state board of elections that when sufficient evidence is presented, in apt time by affidavit tending to show errors in canvassing of votes by county board of elections, either because of error in tabulation thereof or because of counting of alleged illegal ballots, in amount alleged to be sufficient to change results of nomination or election, county board shall thereupon meet to consider demand for recount, does not purport to provide that county board may not meet and consider a demand for recount in absence of affidavit in compliance therewith. Strickland v. Hill, 1960, 116 S.E.2d 463, 253 N.C. 198. Elections ⚷ 260

5. Conclusiveness, operation, and effect of certificate of election

While returns certified to state board of elections or county board of elections, nothing else appearing, will be deemed prima facie correct, such certification is not conclusive and returns certified by county board may be collaterally attacked. Ponder v. Joslin, 1964, 138 S.E.2d 143, 262 N.C. 496. Elections ⚷ 267

Although a certificate of election issued by board of elections is prima facie correct, resort, in proper instance, may be had to the court to pass upon cor-

rectness and sufficiency of the return and to determine true result of election as it affects right of parties before the court. Ledwell v. Proctor, 1942, 19 S.E.2d 234, 221 N.C. 161. Elections ⚷ 267

6. Objections, investigations and contests

State board of elections is quasi-judicial agency and may, in primary or election in multiple county district, investigate alleged frauds and irregularities in any county upon appeal from county board or upon protest filed in apt time with state board and may take such action as findings of fact may justify, and may direct county board to amend returns in accordance therewith. Ponder v. Joslin, 1964, 138 S.E.2d 143, 262 N.C. 496. Elections ⚷ 153; Elections ⚷ 259

Whenever protest is filed before county board of elections in multiple county senatorial district, charging fraud and misconduct in connection with primary or election, and there is appeal from board or upon protest filed in apt time with state board, state board has right and duty to investigate charges and determine actual total of valid ballots cast and to require county board to amend returns accordingly, and, based upon its findings and amended returns, to determine which candidate is entitled to be certified as nominee in multiple county senatorial district. Ponder v. Joslin, 1964, 138 S.E.2d 143, 262 N.C. 496. Elections ⚷ 126(7); Elections ⚷ 259; Elections ⚷ 260

Where only protest before state board of elections involving returns from multiple county senatorial districts related to one county, when amended returns from that county were certified in accordance with findings of fact and conclusions of law of state board, it would have legal duty to declare results of primary election and to certify nominee. Ponder v. Joslin, 1964, 138 S.E.2d 143, 262 N.C. 496. Elections ⚷ 153

Rule of state board of elections is invalid to extent it is in conflict with statute giving county board of elections power and authority to pass judicially on all facts relative to election, and judicially determine and declare result thereof, and power and authority to send for papers and persons and examine them, and pass on legality of any disputed ballots transmitted by any precinct officer. Strickland v. Hill, 1960, 116 S.E.2d 463, 253 N.C. 198. Elections ⚷ 260

By Primary Law, Legislature did not vest courts with power to investigate whether registrar and judges of election wrongfully refused to receive votes of qualified voters intending to vote for plaintiff, candidate for Democratic nomination for sheriff; section 11 of statute vesting in registrar and judges decision of question of good faith of challenged voter. Brown v. Costen, 1918, 96 S.E. 659, 176 N.C. 63. Elections ⚷ 154(1)

Referee in action involving title to office should determine which is the original return required by Revisal 1905, § 4348, and one so found to be original is prima facie correct. Jones v. Flynt, 1912, 74 S.E. 817, 159 N.C. 87. Reference ⚷ 86

7. Jurisdiction of court

When state board of elections obtains jurisdiction of election protest on appeal from single county in multiple county senatorial district, or by filing in apt time of protest directly with state board, its decision can be reviewed only as provided in statute, and superior court has no original jurisdiction to hear and determine the controversy. Ponder v. Joslin, 1964, 138 S.E.2d 143, 262 N.C. 496. Elections ⚷ 275

Superior Court of Madison county was without jurisdiction to review order of state board of elections. Ponder v. Joslin, 1964, 138 S.E.2d 143, 262 N.C. 496. Elections ⚷ 275

Superior court has jurisdiction to inquire into regularity of election. Harkrader v. Lawrence, 1925, 130 S.E. 35, 190 N.C. 441. Elections ⚷ 275

8. Sufficiency of evidence

The declaration of board of elections of result of an election as judicially determined, and the certificate issued thereon must be taken as "prima facie" correct. Ledwell v. Proctor, 1942, 19 S.E.2d 234, 221 N.C. 161. Elections ⚷ 267

The result of an election for sheriff as declared by the county board of canvassers in accordance with their duty under C.S. § 5896, must be taken as prima facie correct. Robertson v. Jackson, 1922, 110 S.E. 593, 183 N.C. 695. Elections ⚷ 295(1)

A determination of the board of county canvassers under Revisal 1905, § 4356, that a candidate was elected,

held to make out a prima facie case in an action involving title to office. Jones v. Flynt, 1912, 74 S.E. 817, 159 N.C. 87. Elections ⚷ 295(1)

A party commencing an action to recover an office, alleging that he received a majority of the votes cast, but that defendant is in possession of the office has the burden of proving these allegations. Jones v. Flynt, 1912, 74 S.E. 817, 159 N.C. 87. Elections ⚷ 291

9. Injunction

Contestant claiming to be entitled to be certified as party nominee for state senator in multiple county district was not entitled to have state board of elections restrained in order to keep board from completing investigation of protest filed, finding facts with respect thereto, and making conclusions of law based thereon. Ponder v. Joslin, 1964, 138 S.E.2d 143, 262 N.C. 496. Injunction ⚷ 80

Where an action was brought by certain citizens against county commissioners to vacate a liquor election resulting in favor of license, and the answer squarely denied the allegations of the bill relating to the regularity of the election, a temporary injunction restraining the issuance of licenses was properly dissolved; it being presumed that the election was regular until the contrary had been determined. Wallace v. Salisbury, 1908, 60 S.E. 713, 147 N.C. 58. Injunction ⚷ 172

10. Quo warranto

A certificate of election is not subject to attack except in a civil action in the nature of quo warranto. Ledwell v. Proctor, 1942, 19 S.E.2d 234, 221 N.C. 161. Elections ⚷ 267

Quo warranto is proper method of settling controversy between rival claimants for office. Harkrader v. Lawrence, 1925, 130 S.E. 35, 190 N.C. 441. Quo Warranto ⚷ 11

A civil action in the nature of quo warranto is the appropriate remedy for trying title to office, and therein the correctness of the result of the election as declared by the board of canvassers can be investigated. Barnett v. Midgett, 1909, 65 S.E. 441, 151 N.C. 1. Quo Warranto ⚷ 11

11. Mandamus

The courts are slow to interfere with the action of officers appointed by law to conduct elections and to declare the result, and will not do so except in extreme cases and when the duty is clear. Britt v. Board of Canvassers of Buncombe County, 1916, 90 S.E. 1005, 172 N.C. 797. Mandamus ⚷ 74(1)

While mandamus may issue to compel the reassembling of a board of election which has adjourned, it can be done only for the purpose of requiring completion of its labor, but not for compelling reconsideration. Britt v. Board of Canvassers of Buncombe County, 1916, 90 S.E. 1005, 172 N.C. 797. Mandamus ⚷ 74(4)

Under Revisal 1905, § 4350, requiring the county board of canvassers to openly canvass and judicially determine the returns, the board is vested with discretion which cannot be controlled by mandamus. Britt v. Board of Canvassers of Buncombe County, 1916, 90 S.E. 1005, 172 N.C. 797. Mandamus ⚷ 74(4)

In mandamus to compel certification of congressional election returns, the question is not the title to the office, since the court, under Const. U.S. Art. 1, § 5, would have no jurisdiction in the matter, nor is the question who is entitled to the certificate of election. Britt v. Board of Canvassers of Buncombe County, 1916, 90 S.E. 1005, 172 N.C. 797. Mandamus ⚷ 172

12. Judicial review

Findings of fact and conclusions of law made by state board of elections may be reviewed in action instituted in Superior Court of Wake county under statute; and in such an action appellant is not entitled to a jury trial. Ponder v. Joslin, 1964, 138 S.E.2d 143, 262 N.C. 496. Elections ⚷ 269; Jury ⚷ 19(1)

The court will not permit itself to be substituted for board of elections in the first instance for purpose of canvassing election returns from precinct officials and declaring the result thereof, but contesting candidates must first use machinery at hand before applying to court for relief. Ledwell v. Proctor, 1942, 19 S.E.2d 234, 221 N.C. 161. Elections ⚷ 271

In action to have relator declared a duly elected alderman of town, complaint which did not allege that returns of precinct officials had been canvassed, or that result of election had been judicially determined, or that a certificate of election had been issued to relator, or that board acted arbitrarily or in bad faith in refusing to issue certificate, failed to state a cause of action. Led-

well v. Proctor, 1942, 19 S.E.2d 234, 221 N.C. 161. Elections ⚷ 285(1)

Making objection to counting of ballots not condition precedent to bringing action in superior court, or trying title to office. Harkrader v. Lawrence, 1925, 130 S.E. 35, 190 N.C. 441. Elections ⚷ 271; Quo Warranto ⚷ 26

Though rulings, counting the votes of two electors for a candidate notwithstanding a statement that the court could not find for whom they voted, were apparently inconsistent with rulings refusing to count the votes of other electors for the same reason, the appellate court must assume that the votes were correctly counted, where there was some evidence to support the count in one case and the refusal in the other. Robertson v. Jackson, 1922, 110 S.E. 593, 183 N.C. 695. Elections ⚷ 305(7)

The findings or rulings of the referee are prima facie correct, and in the absence of any objection or exception thereto may be properly adopted as the findings of the court. Robertson v. Jackson, 1922, 110 S.E. 593, 183 N.C. 695. Reference ⚷ 100(7)

In absence of statute, courts of equity have no power to interfere with political parties in choice of candidates, nor to regulate or control methods and agencies by which they are selected; courts having jurisdiction only by appropriate legal remedies to enforce performance of ministerial duties or protection of legal rights. Brown v. Costen, 1918, 96 S.E. 659, 176 N.C. 63. Constitutional Law ⚷ 2587

§ 163–182.6. Abstracts

(a) Abstracts to Be Prepared by County Board of Elections. – As soon as the county canvass has been completed, the county board of elections shall prepare abstracts of all the ballot items in a form prescribed by the State Board of Elections. The county board shall prepare those abstracts in triplicate originals. The county board shall retain one of the triplicate originals, and shall distribute one each to the clerk of superior court for the county and the State Board of Elections. The State Highway Patrol may, upon request of the State Board of Elections, be responsible for the delivery of the abstracts from each county to the State Board of Elections. The State Board of Elections shall forward the original abstract it receives to the Secretary of State.

(b) Composite Abstracts to Be Prepared by the State Board of Elections. – As soon as the State canvass has been completed, the State Board shall prepare composite abstracts of all those ballot items. It shall prepare those composite abstracts in duplicate originals. It shall retain one of the originals and shall send the other original to the Secretary of State.

(c) Duty of the Secretary of State. – The Secretary of State shall maintain the certified copies of abstracts received from the county and State boards of elections. The Secretary shall keep the abstracts in a form readily accessible and useful to the public.

(d) Forms by State Board of Elections. – The State Board of Elections shall prescribe forms for all abstracts. Those forms shall be uniform and shall, at a minimum, state the name of each candidate and the office sought and each referendum proposal, the number of votes cast for each candidate and proposal, the candidate or proposal determined to have prevailed, and a statement authenticating the count.

Added by S.L. 2001–398, § 3, eff. Jan. 1, 2002.

Cross References

Disposition of duplicate abstracts in municipal elections, see § 163–300.

Notes of Decisions

Admissibility of evidence 1

1. Admissibility of evidence

In action in the nature of quo warranto by private citizens against candidates for office of sheriff to determine conflicting claims of the candidates, returns made by registrars and judges of election and abstract of votes for county officers prepared by county board of elections in compliance with statute, were properly admitted as substantive evidence, where properly authenticated. State ex rel. Freeman v. Ponder, 1951, 67 S.E.2d 292, 234 N.C. 294. Evidence ⚷ 383(3)

§ 163–182.7. Ordering recounts

(a) Discretionary Recounts. — The county board of elections or the State Board of Elections may order a recount when necessary to complete the canvass in an election. The county board may not order a recount where the State Board of Elections has already denied a recount to the petitioner.

(b) Mandatory Recounts for Ballot Items Within the Jurisdiction of the County Board of Elections. — In a ballot item within the jurisdiction of the county board of elections, a candidate shall have the right to demand a recount of the votes if the difference between the votes for that candidate and the votes for a prevailing candidate is not more than one percent (1%) of the total votes cast in the ballot item, or in the case of a multiseat ballot item not more than one percent (1%) of the votes cast for those two candidates. The demand for a recount must be made in writing and must be received by the county board of elections by 5:00 P.M. on the first business day after the canvass. The recount shall be conducted under the supervision of the county board of elections.

(c) Mandatory Recounts for Ballot Items Within the Jurisdiction of the State Board of Elections. — In a ballot item within the jurisdiction of the State Board of Elections, a candidate shall have the right to demand a recount of the votes if the difference between the votes for that candidate and the votes for a prevailing candidate are not more than the following:

(1) For a nonstatewide ballot item, one percent (1%) of the total votes cast in the ballot item, or in the case of a multiseat ballot item, one percent (1%) of the votes cast for those two candidates.

(2) For a statewide ballot item, one-half of one percent (0.5%) of the votes cast in the ballot item or 10,000 votes, whichever is less.

The demand for a recount must be in writing and must be received by the State Board of Elections by noon on the second business day after the county canvass. If at that time the available returns

show a candidate not entitled to a mandatory recount, but the Executive Director determines subsequently that the margin is within the threshold set out in this subsection, the Executive Director shall notify the eligible candidate immediately and that candidate shall be entitled to a recount if that candidate so demands within 48 hours of notice. The recount shall be conducted under the supervision of the State Board of Elections.

(d) Rules for Conducting Recounts. — The State Board of Elections shall promulgate rules for conducting recounts. Those rules shall be subject to the following guidelines:

(1) The rules shall specify, with respect to each type of voting system, when and to what extent the recount shall consist of machine recounts and hand-to-eye recounts. Hand-to-eye recounts shall also be ordered as provided by G.S. 163–182.7A.

(2) The rules shall provide guidance in interpretation of the voter's choice.

(3) The rules shall specify how the goals of multipartisan participation, opportunity for public observation, and good order shall be balanced.

Added by S.L. 2001–398, § 3, eff. Jan. 1, 2002. Amended by S.L. 2003–278, §§ 10(b), 10(c), eff. Jan. 1, 2004; S.L. 2005–323, § 6(a), eff. Jan. 1, 2006; S.L. 2005–428, § 11(b), eff. Jan. 1, 2006.

Historical and Statutory Notes

2003 Legislation

S.L. 2003–278, § 10(b), eff. Jan. 1, 2004, in the second sentence of subsec. (b), substituted ''5:00 P. M. on the first day'' for ''noon on the fourth''.

S.L. 2003–278, § 10(c), eff. Jan. 1, 2004, in the second paragraph of subsec. (c), substituted ''Thursday'' for ''Wednesday'' in two places.

2005 Legislation

S.L. 2005–323, § 6(a), eff. Jan. 1, 2006, amended subd. (c)(2) by deleting ''or in the case of a multiseat ballot item, one half of one percent (0.5%) of the votes case for those two candidates, '' after ''item,'' and before '' or 10,000'' and amended subd. (d)(1) by adding ''Hand-to-eye recounts shall also be ordered as provided by G.S. 163–182.7A.''

S.L. 2005–323, §§ 6(c) and 10, provide:

''Section 6(c). This section becomes effective January 1, 2006.''

''Section 10. The requirement for testing a voting system in an election provided in G.S. 163–165.9(a)(3), as enacted in Section 4 of this act, does not apply to any voting system acquired before January 1, 2008, as long as the voting system is demonstrated in a public forum in the county. Notwithstanding G.S. 163–132.5G, as amended by this act, voting data by precinct shall be reported for the general elections of 2006 by March 1, 2007, and for the primary elections of 2006 by May 1, 2007. Except as otherwise provided in this act, the remainder of this act is effective when it becomes law.''

S.L. 2005–428, § 11(b), eff. Jan. 1, 2006, amended subsec. (b) by inserting ''business'' and amended subsec. (c) by substituting ''business day after the county canvass'' for ''Thursday after election'', and substituting ''at that time'' for ''on that Thursday''.

S.L. 2005–428, § 18, provides:

''Sections 2, 6, 7, 8, 10, 12, 13, 14, 15, and 16 of this act are effective when this act becomes law and apply to all primaries and elections held on or after that date. The remainder of this act becomes effective January 1, 2006, and applies to all primaries and elections held on or after that date.''

Administrative Code References

Conduct of vote recounts, see 8 NCAC 9.0106 et seq.

§ 163–182.7A. Additional provisions for hand-to-eye recounts

(a) The rules promulgated by the State Board of Elections for recounts shall provide that if the initial recount is not hand-to-eye, and if the recount does not reverse the results, the candidate who had originally been entitled to a recount may, within 24 hours of the completion of the first recount, demand a second recount on a hand-to-eye basis in a sample of precincts. If the initial recount was not hand-to-eye and it reversed the results, the candidate who had initially been the winner shall have the same right to ask for a hand-to-eye recount in a sample of precincts.

That sample shall be all the ballots in three percent (3%) of the precincts casting ballots in each county in the jurisdiction of the office, rounded up to the next whole number of precincts. For the purpose of that calculation, each one-stop (early) voting site shall be considered to be a precinct. The precincts to be recounted by a hand-to-eye count shall be chosen at random within each county. If the results of the hand-to-eye recount differ from the previous results within those precincts to the extent that extrapolating the amount of the change to the entire jurisdiction (based on the proportion of ballots recounted to the total votes cast for that office) would result in the reversing of the results, then the State Board of Elections shall order a hand-to-eye recount of the entire jurisdiction in which the election is held. There shall be no cost to the candidate for that recount in the entire jurisdiction.

(b) Recounts under this section shall be governed by rules adopted under G.S. 163–182.7(d).

(c) No complete hand-to-eye recount shall be conducted under this section if one has already been done under another provision of law.

Added by S.L. 2005–323, § 6(b), eff. Jan. 1, 2006.

Historical and Statutory Notes

2005 Legislation

S.L. 2005–323, §§ 6(c) and 10, provide:

''Section 6(c). This section becomes effective January 1, 2006.''

''Section 10. The requirement for testing a voting system in an election provided in G.S. 163–165.9(a)(3), as enacted in Section 4 of this act, does not apply to any voting system acquired before January 1, 2008, as long as the voting system is demonstrated in a public forum in the county. Notwithstanding G.S. 163–132.5G, as amended by this act, voting data by precinct shall be reported for the general elections of 2006 by March 1, 2007, and for the primary elections of 2006 by May 1, 2007. Except as otherwise provided in this act, the remainder of this act is effective when it becomes law.''

Cross References

Ordering recounts, see § 163–182.7.

§ 163–182.8. Determining result in case of a tie

If the count, upon completion of canvass by the proper board of elections, shows a tie vote other than in a primary, the tie shall be resolved as follows:

(1) If more than 5,000 voters cast official ballots in the ballot item, the State Board of Elections shall order a new election in which only the candidates or positions tied will be on the official ballot. The State Board of Elections shall set the schedule for publication of the notice, preparation of absentee official ballots, and the other actions necessary to conduct the election. Eligibility to vote in the new election shall be determined by the voter's eligibility at the time of the new election.

(2) If 5,000 or fewer voters cast official ballots in the ballot item, the board of elections with jurisdiction to certify the election shall break the tie by a method of random selection to be determined by the State Board of Elections.

Added by S.L. 2001–398, § 3, eff. Jan. 1, 2002.

Cross References

General Assembly members, contested elections, basis for decision, see § 120–10.9.

§ 163–182.9. Filing an election protest

(a) Who May File a Protest With County Board. – A protest concerning the conduct of an election may be filed with the county board of elections by any registered voter who was eligible to vote in the election or by any person who was a candidate for nomination or election in the election.

(b) How Protest May Be Filed. – The following principles shall apply to the filing of election protests with the county board of elections:

(1) The protest shall be in writing and shall be signed by the protester. It shall include the protester's name, address, and telephone number and a statement that the person is a registered voter in the jurisdiction or a candidate.

(2) The protest shall state whether the protest concerns the manner in which votes were counted and results tabulated or concerns some other irregularity.

(3) The protest shall state what remedy the protester is seeking.

(4) The timing for filing a protest shall be as follows:

a. If the protest concerns the manner in which votes were counted or results tabulated, the protest shall be filed before the beginning of the county board of election's canvass meeting.

b. If the protest concerns the manner in which votes were counted or results tabulated and the protest states good cause for delay in filing, the protest may be filed until 5:00 P.M. on the second business day after the county board of elections has completed its canvass and declared the results.

c. If the protest concerns an irregularity other than vote counting or result tabulation, the protest shall be filed no later than 5:00 P.M. on the second business day after the county board has completed its canvass and declared the results.

d. If the protest concerns an irregularity on a matter other than vote counting or result tabulation and the protest is filed before election day, the protest proceedings shall be stayed, unless a party defending against the protest moves otherwise, until after election day if any one of the following conditions exists:

1. The ballot has been printed.
2. The voter registration deadline for that election has passed.
3. Any of the proceedings will occur within 30 days before election day.

(c) State Board to Prescribe Forms. – The State Board of Elections shall prescribe forms for filing protests.

Added by S.L. 2001–398, § 3, eff. Jan. 1, 2002. Amended by S.L. 2005–428, § 4, eff. Jan. 1, 2006.

Historical and Statutory Notes

2005 Legislation

S.L. 2005–428, § 4, eff. Jan. 1, 2006, amended subd. (b)(4) by inserting ''business'' after ''second'' and before ''day'' in two places and substituting ''5:00'' for ''6:00'' in two places.

S.L. 2005–428, § 18, provides:

''Sections 2, 6, 7, 8, 10, 12, 13, 14, 15, and 16 of this act are effective when this act becomes law and apply to all primaries and elections held on or after that date. The remainder of this act becomes effective January 1, 2006, and applies to all primaries and elections held on or after that date.''

Cross References

Timing and process for challenging a candidate, see § 163–127.2.

Administrative Code References

Election protests, see 8 NCAC 2.0111.

Notes of Decisions

Time for filing 1

1. Time for filing

Candidates' failure to challenge counting of out-of-precinct provisional ballots before election did not render plaintiffs' election protests untimely; response of general counsel of State Board of Elections, as to whether Board planned to count out-of-precinct provisional ballots, failed to indicate that

Board would count out-of-precinct provisional ballots, and response, coupled with absence of any clear statutory or regulatory directive that such action would be taken, failed to provide plaintiffs with adequate notice that election officials would count 11,310 ballots at issue. James v. Bartlett, 2005, 359 N.C. 260, 607 S.E.2d 638, reconsideration denied 359 N.C. 633, 613 S.E.2d 691. Elections ⚷ 271

§ 163–182.10. Consideration of protest by county board of elections

(a) Preliminary Consideration. – The following principles shall apply to the initial consideration of election protests by the county board of elections:

(1) The county board shall, as soon as possible after the protest is filed, meet to determine whether the protest substantially complies with G.S. 163–182.9 and whether it establishes probable cause to believe that a violation of election law or irregularity or misconduct has occurred. If the board determines that one or both requirements are not met, the board shall dismiss the protest. The board shall notify both the protester and the State Board of Elections. The protester may file an amended protest or may appeal to the State Board. If the board determines that both requirements are met, it shall schedule a hearing.

(2) If a protest was filed before the canvass and concerns the counting and tabulating of votes, the county board shall resolve the protest before the canvass is completed. If necessary to provide time to resolve the protest, the county board may recess the canvass meeting, but shall not delay the completion of the canvass for more than three days unless approved by the State Board of Elections. Resolution of the protest shall not delay the canvass of ballot items unaffected by the protest. The appeal of a dismissal shall not delay the canvass.

(3) If a protest concerns an irregularity other than the counting or tabulating of votes, that protest shall not delay the canvass.

(b) Notice of Hearing. – The county board shall give notice of the protest hearing to the protester, any candidate likely to be affected, any election official alleged to have acted improperly, and those persons likely to have a significant interest in the resolution of the protest. Each person given notice shall also be given a copy of the protest or a summary of its allegations. The manner of notice shall be as follows:

(1) If the protest concerns the manner in which the votes were counted or the results tabulated, the protester shall be told at the time of filing that the protest will be heard at

the time of the canvass. Others shall be notified as far in advance of the canvass as time permits.

(2) If the protest concerns a matter other than the manner in which votes were counted or results tabulated, the county board shall comply with rules to be promulgated by the State Board of Elections concerning reasonable notice of the hearing.

Failure to comply with the notice requirements in this subsection shall not delay the holding of a hearing nor invalidate the results if it appears reasonably likely that all interested persons were aware of the hearing and had an opportunity to be heard.

(c) Conduct of Hearing. – The following principles shall apply to the conduct of a protest hearing before the county board of elections:

(1) The county board may allow evidence to be presented at the hearing in the form of affidavits or it may examine witnesses. The chair or any two members of the board may subpoena witnesses or documents. Each witness must be placed under oath before testifying.

(2) The county board may receive evidence at the hearing from any person with information concerning the subject of the protest. The person who made the protest shall be permitted to present allegations and introduce evidence at the hearing. Any other person to whom notice of hearing was given, if present, shall be permitted to present evidence. The board may allow evidence by affidavit. The board may permit evidence to be presented by a person to whom notice was not given, if the person apparently has a significant interest in the resolution of the protest that is not adequately represented by other participants.

(3) The hearing shall be recorded by a reporter or by mechanical means, and the full record of the hearing shall be preserved by the county board until directed otherwise by the State Board.

(d) Findings of Fact and Conclusions of Law by County Board. – The county board shall make a written decision on each protest which shall state separately each of the following:

(1) Findings of fact. – The findings of fact shall be based exclusively on the evidence and on matters officially noticed. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting them.

(2) Conclusions of law. – The conclusions the county board may state, and their consequences for the board's order, are as follows:

a. ''The protest should be dismissed because it does not substantially comply with G.S. 163–182.9.'' If the board makes this conclusion, it shall order the protest dismissed.

b. ''The protest should be dismissed because there is not substantial evidence of a violation of the election law or other irregularity or misconduct.'' If the county board makes this conclusion, it shall order the protest dismissed.

c. ''The protest should be dismissed because there is not substantial evidence of any violation, irregularity, or misconduct sufficient to cast doubt on the results of the election.'' If the county board makes this conclusion, it shall order the protest dismissed.

d. ''There is substantial evidence to believe that a violation of the election law or other irregularity or misconduct did occur, and might have affected the outcome of the election, but the board is unable to finally determine the effect because the election was a multicounty election.'' If the county board makes this conclusion, it shall order that the protest and the county board's decision be sent to the State Board for action by it.

e. ''There is substantial evidence to believe that a violation of the election law or other irregularity or misconduct did occur and that it was sufficiently serious to cast doubt on the apparent results of the election.'' If the county board makes this conclusion, it may order any of the following as appropriate:

1. That the vote total as stated in the precinct return or result of the canvass be corrected and new results declared.
2. That votes be recounted.
3. That the protest and the county board's decision be sent to the State Board for action by it.
4. Any other action within the authority of the county board.

(3) An order. – Depending on the conclusion reached by the county board, its order shall be as directed in subdivision (c)(2). If the county board is not able to determine what law is applicable to the Findings of Fact, it may send its findings of fact to the State Board for it to determine the applicable law.

(e) Rules by State Board of Elections. – The State Board of Elections shall promulgate rules providing for adequate notice to

parties, scheduling of hearings, and the timing of deliberations and issuance of decision.

Added by S.L. 2001–398, § 3, eff. Jan. 1, 2002.

Administrative Code References

Election protests, see 8 NCAC 2.0110.

§ 163–182.11. Appeal of a protest decision by the county board to the State Board of Elections

(a) Notice and Perfection of Appeal. – The decision by the county board of elections on an election protest may be appealed to the State Board of Elections by any of the following:

(1) The person who filed the protest.

(2) A candidate or elected official adversely affected by the county board's decision.

(3) Any other person who participated in the hearing and has a significant interest adversely affected by the county board's decision.

Written notice of the appeal must be given to the county board within 24 hours after the county board files the written decision at its office. The appeal to the State Board must be in writing. The appeal must be delivered or deposited in the mail, addressed to the State Board, by the appropriate one of the following: (i) the end of the second day after the day the decision was filed by the county board in its office, if the decision concerns a first primary; or (ii) the end of the fifth day after the day the decision was filed in the county board office, if the decision concerns an election other than a first primary.

The State Board shall prescribe forms for filing appeals from the county board.

(b) Consideration of Appeal by State Board. –In its consideration of an appeal from a decision of a county board of elections on a protest, the State Board of Elections may do any of the following:

(1) Decide the appeal on the basis of the record from the county board, as long as the county board has made part of the record a transcript of the evidentiary hearing.

(2) Request the county board or any interested person to supplement the record from the county board, and then decide the appeal on the basis of that supplemented record.

(3) Receive additional evidence and then decide the appeal on the basis of the record and that additional evidence.

(4) Hold its own hearing on the protest and resolve the protest on the basis of that hearing.

(5) Remand the matter to the county board for further proceedings in compliance with an order of the State Board.

The State Board shall follow the procedures set forth in subsections (c) and (d) of G.S. 163–182.10 except where they are clearly inapplicable.

The State Board shall give notice of its decision as required by G.S. 163–182.14, and may notify the county board and other interested persons in its discretion.

Added by S.L. 2001–398, § 3, eff. Jan. 1, 2002.

Administrative Code References

Election protests, see 8 NCAC 2.0112.

§ 163–182.12. Authority of State Board of Elections over protests

The State Board of Elections may consider protests that were not filed in compliance with G.S. 163–182.9, may initiate and consider complaints on its own motion, may intervene and take jurisdiction over protests pending before a county board, and may take any other action necessary to assure that an election is determined without taint of fraud or corruption and without irregularities that may have changed the result of an election. Where a known group of voters cast votes that were lost beyond retrieval or where a known group of voters was given an incorrect ballot style, the State Board of Elections may authorize a county board of elections to allow those voters to recast their votes during a period of two weeks after the canvass by the State Board of Elections required in G.S. 163–182.5(c). If there is no State Board canvass after the election, the State Board may authorize the county board to allow the recasting of votes during the two weeks after the county canvass set in G.S. 163–182.5(a). If the State Board approves a recasting of votes under this section, any procedures the county board uses to contact those voters and allow them to recast their votes shall be subject to approval by the State Board. Those recast votes shall be added to the returns and included in the canvass. The recasting of those votes shall not be deemed a new election for purposes of G.S. 163–182.13.

Added by S.L. 2001–398, § 3, eff. Jan. 1, 2002. Amended by S.L. 2005–428, § 17, eff. Jan. 1, 2006; S.L. 2007–391, § 12, eff. Aug. 19, 2007.

Historical and Statutory Notes

2005 Legislation

S.L. 2005–428, § 17, eff. Jan. 1, 2006, renamed and rewrote the section, which prior thereto read:

''The State Board of Elections may consider protests that were not filed in compliance with G.S. 163–182.9, may initiate and consider complaints on its own motion, may intervene and take jurisdiction over protests pending before a county board, and may take any other action necessary to assure that an election is determined without taint of fraud or corruption.''

S.L. 2005–428, § 18, provides:

''Sections 2, 6, 7, 8, 10, 12, 13, 14, 15, and 16 of this act are effective when this act becomes law and apply to all primaries and elections held on or after that date. The remainder of this act becomes effective January 1, 2006, and applies to all primaries and elections held on or after that date.''

2007 Legislation

S.L. 2007–391, § 12, rewrote the second sentence, which prior thereto read, ''Where a known group of voters cast votes that were lost beyond retrieval, the State Board of Elections may authorize a county board of elections to allow those voters to recast their ballots during a period of two weeks after the election.''; and inserted the third sentence relating to procedures if there is no canvass after the election.

§ 163–182.13. New elections

(a) When State Board May Order New Election. —The State Board of Elections may order a new election, upon agreement of at least four of its members, in the case of any one or more of the following:

(1) Ineligible voters sufficient in number to change the outcome of the election were allowed to vote in the election, and it is not possible from examination of the official ballots to determine how those ineligible voters voted and to correct the totals.

(2) Eligible voters sufficient in number to change the outcome of the election were improperly prevented from voting.

(3) Other irregularities affected a sufficient number of votes to change the outcome of the election.

(4) Irregularities or improprieties occurred to such an extent that they taint the results of the entire election and cast doubt on its fairness.

(b) State Board to Set Procedures. – The State Board of Elections shall determine when a new election shall be held and shall set the schedule for publication of the notice, preparation of absentee official ballots, and the other actions necessary to conduct the election.

(c) Eligibility to Vote in New Election. – Eligibility to vote in the new election shall be determined by the voter's eligibility at the time of the new election, except that in a primary, no person who voted in the initial primary of one party shall vote in the new election in the primary of another party. The State Board of Elections shall promulgate rules to effect the provisions of this subsection.

(d) Jurisdiction in Which New Election Held. – The new election shall be held in the entire jurisdiction in which the original election was held.

(e) Which Candidates to Be on Official Ballot.—All the candidates who were listed on the official ballot in the original election shall be listed in the same order on the official ballot for the new election, except in either of the following:

(1) If a candidate dies or otherwise becomes ineligible between the time of the original election and the new election, that candidate may be replaced in the same manner as if the vacancy occurred before the original election.

(2) If the election is for a multiseat office, and the irregularities could not have affected the election of one or more of the candidates, the new election, upon agreement of at least four members of the State Board, may be held among only those candidates whose election could have been affected by the irregularities.

(f) Tie Votes. – If ineligible voters voted in an election and it is possible to determine from the official ballots the way in which those votes were cast and to correct the results, and consequently the election ends in a tie, the provisions of G.S. 163–182.8 concerning tie votes shall apply.

Added by S.L. 2001–398, § 3, eff. Jan. 1, 2002. Amended by S.L. 2003–278, § 8(a), eff. June 27, 2003; S.L. 2008–150, § 2(a), eff. Aug. 2, 2008.

Historical and Statutory Notes

2003 Legislation

S.L. 2003–278, § 8(a), eff. June 27, 2003, in subd. (a)(4), deleted ‘‘, although it is not possible to determine whether those irregularities or improprieties affected the outcome of the election,’’ after ‘‘extent that’’.

2008 Legislation

S.L. 2008, § 2(a), in subsec. (e)(2), preceding ‘‘the new election’’, substituted ‘‘candidates’’ for ‘‘leading vote getters’’ and preceding ‘‘candidates whose election’’, deleted ‘‘remaining’’.

Administrative Code References

Election protests, see 8 NCAC 2.0113.

Notes of Decisions

In general 1

1. In general

Upon order for new election for two town council seats on grounds that the removal of eighteen unqualified votes and the addition of two qualified votes could change the outcome of the election, all the candidates who were listed on the official ballot in the original election were to be listed in the same order on the official ballot for the new election, where vote tabulation indicated that the three leading votes getters were within eighteen votes of each other, such that there were no leading vote-getters who could not have been affected by the voting irregularity. In re Protest of Atchison, 2008, 2008 WL 2966954, opinion withdrawn. Elections ⚷ 298(3)

All candidates who were listed on ballot in election for town council were required to be listed on ballot for new election, pursuant to statute governing new elections, after new election was ordered because 18 unqualified voters had been allowed to vote and two qualified voters had been excluded, where three leading vote getters were within 18 votes of each other; since there were no leading vote getters who could not have been affected by the voting irregularity, statute required all candidates to be listed for new election. In re Protest of Atchison, 2008, 666 S.E.2d 209. Elections ⚷ 298(3)

§ 163–182.13A. Contested elections for Council of State offices

(a) Application of Procedures. — A contested election for any elective office established by Article III of the Constitution shall be determined by joint ballot of both houses of the General Assembly under Article VI, Section 5 of the Constitution in accordance with the provisions of this section. Except as provided by this section, the provisions of Article 3 of Chapter 120 shall apply to contested elections under this section and shall govern standing, notice of intent to contest, answers, service of process, evidence, the petition, procedures, grounds, and relief except as provided in this section. All filings shall be with the Principal Clerk of the House of Representatives.

(b) Notice of Intent. — Notice of the intent to contest the election under this section shall be filed with the Principal Clerk of the House of Representatives as if it were a contested election for the House of Representatives as prescribed in Article 3 of Chapter 120.

(c) Jurisdiction. — When a contest arises out of the general election, the General Assembly elected at the same time shall hear and decide it. Any other contest shall be heard by the General Assembly sitting at the time of the election.

(d) Committee. — A contest filed under this section shall initially be heard before a select committee consisting of five Senators appointed by the President Pro Tempore and five Representatives appointed by the Speaker of the House of Representatives. Not more than three members of the Senate appointed by the President Pro Tempore shall be members of the same political party. Not more than three members of the House of Representatives appointed by the Speaker shall be members of the same political party. That committee shall have the same power as a committee under Article 3 of Chapter 120 and may adopt supplemental rules as necessary to govern its proceedings. The committee shall report its findings as to the law and the facts and make recommendations to the General Assembly for its action.

(e) Final Determination. — The final determination on the recommendations of the committee shall be made by the General Assembly, both houses sitting in joint session in the Hall of the House of Representatives, with the Speaker of the House of Representatives presiding. The vote shall be taken as provided by Article VI, Section 5 of the Constitution. In order to find for the contestant or contestee and order the contestant or contestee elected, the vote on the joint ballot must include the affirmative vote of a majority of the members of the General Assembly voting

on the issue. The ballots shall be in writing and are subject to the provisions of G.S. 143–318.13(b).

(f) Basis for Decision. —

(1) If the contest is as to the eligibility or qualifications of the contestee, the General Assembly shall determine if the contestee is eligible and qualified. If it determines that the contestee is not eligible or not qualified, it shall order a new election.

(2) If the contest is as to the conduct or results of the election, the General Assembly shall determine which candidate received the highest number of votes. If it can determine which candidate received the highest number of votes, it shall declare that candidate to be elected. If it cannot determine which candidate received the highest number of votes, it may order a new election, or may order such other relief as may be necessary and proper. If it determines that two or more candidates shall be equal and highest in votes, the provisions of G.S. 147–4 shall apply.

(g) Final Determination. — A copy of the final determination of the General Assembly under this section shall be filed with the Secretary of State and with the State Board of Elections.

(h) Copies. — The Principal Clerk of the House of Representatives shall make copies of any filings and transmit them to the Principal Clerk for the Senate.

(i) Applicability. — This section applies only to a general or special election and does not apply to the primary or any other part of the nominating process.

(j) Judicial Proceedings Abated. — Notwithstanding any other provision of law, upon the initiation of a contest under this Article, any judicial proceedings involving either the contestant or the contestee encompassing the issues set forth in the notice of intent or an answer thereto concerning the election that is the subject of the contest shall abate. The clerk shall file a copy of the notice of intent and final determination with the court in any judicial proceeding pending prior to the filing of the notice of intent.

(k) General Assembly Determination Not Reviewable. — The decision of the General Assembly in determining the contest of the election pursuant to this section may not be reviewed by the General Court of Justice.

(*l*) Definition. — As used in this section, ''contest'' means a challenge to the apparent election for any elective office established by Article III of the Constitution or to request the decision of an undecided election to any elective office established by Article III of the Constitution, where the challenge or the request

is filed in accordance with the timing and procedures of this section.

Added by S.L. 2005–3, § 3(a), eff. March 10, 2005.

Historical and Statutory Notes

2005 Legislation

S.L. 2005–3, § 3(b), provides:

''Section 3(b). For any election in 2004, notice of the intent to contest the election shall be filed within 10 days of this act becoming law, notwithstanding the deadlines established under subsection (a) of this section. Any notice, pleadings, or other papers, submitted by a person who could be eligible to be a contestant or contestee under this act, received by the House or Senate Principal Clerk prior to this act becoming law, shall be deemed to be a notice of intent under G.S. 120–10.3 or G.S. 163–182.13A, as applicable, and may be refiled within 10 days of this act becoming law, in the form and manner specified in G.S. 120–10.3 or G.S. 163–182.13A, as applicable, in order to comply with the provisions of this act.''

§ 163–182.14. Appeal of a final decision to superior court; appeal to the General Assembly or a house thereof

(a) Final Decision.—A copy of the final decision of the State Board of Elections on an election protest shall be served on the parties personally or through delivery by U.S. mail or a designated delivery service authorized under 26 U.S.C. § 7502(f)(2) if that delivery provides a record of the date and time of delivery to the address provided by the party. A decision to order a new election is considered a final decision for purposes of seeking review of the decision.

(b) Timing of Right of Appeal.—Except in the case of a general or special election to either house of the General Assembly or to an office established by Article III of the Constitution, an aggrieved party has the right to appeal the final decision to the Superior Court of Wake County within 10 days of the date of service.

After the decision by the State Board of Elections has been served on the parties, the certification of nomination or election or the results of the referendum shall issue pursuant to G.S. 163–182.15 unless an appealing party obtains a stay of the certification from the Superior Court of Wake County within 10 days after the date of service. The court shall not issue a stay of certification unless the petitioner shows the court that the petitioner has appealed the decision of the State Board of Elections, that the petitioner is an aggrieved party, and that the petitioner is likely to prevail in the appeal.

If service is by mail or a designated delivery service, the additional time after service provided in Rule 6(e) of the North Carolina Rules of Civil Procedure shall apply to both the time for appeal and the time to obtain a stay under this subsection.

(c) Contests for General Assembly and Executive Branch Offices.—In the case of a general or special election to either house of the General Assembly or to an office established by Article III of

the Constitution, an unsuccessful candidate has the right to appeal the final decision to the General Assembly in accordance with Article 3 of Chapter 120 and G.S. 163–182.13A, as appropriate.

After the decision by the State Board of Elections has been served on the parties, the certification of nomination or election shall issue pursuant to G.S. 163–182.15 unless a contest of the election is initiated pursuant to Article 3 of Chapter 120 or G.S. 163–182.13A, as appropriate.

(d) Attorney's fees shall not be awarded against the State Board of Elections in any election protest brought under this Article.

Added by S.L. 2001–398, § 3, eff. Jan. 1, 2002. Amended by S.L. 2003–278, § 8(b), eff. June 27, 2003; S.L. 2005–3, § 4, eff. March 10, 2005; S.L. 2008–150, § 4(a), eff. Oct. 1, 2008; S.L. 2009–541, § 27, eff. Aug. 28, 2009.

Historical and Statutory Notes

2003 Legislation

S.L. 2003–278, § 8(b), eff. June 27, 2003, rewrote the second paragraph, which prior thereto read:

''After the decision by the State Board of Elections has been served on the parties, the certification of nomination or election or the results of the referendum shall issue pursuant to G.S. 163-182.15 unless an appealing party obtains a stay of the certification from the Superior Court of Wake County within 10 days after the date of service. The court shall not issue a stay of certification unless the petitioner shows the court that the petitioner has appealed the decision of the State Board of Elections, that the petitioner is an aggrieved party, that the petitioner is likely to prevail, and that the results of the election would be changed in the petitioner's favor. Mere irregularities in the election which would not change the results of the election shall not be sufficient for the court to issue a stay of certification.''

2005 Legislation

S.L. 2005–3, § 4, eff. March 10, 2005, rewrote the section, which prior thereto read:

''§ 163–182.14. Appeal of a final decision to superior court

''A copy of the final decision of the State Board of Elections on an election protest shall be served on the parties personally or by certified mail. A decision to order a new election is considered a final decision for purposes of seeking review of the decision. An aggrieved party has the right to appeal the final decision to the Superior Court of Wake County within 10 days of the date of service.

''After the decision by the State Board of Elections has been served on the parties, the certification of nomination or election or the results of the referendum shall issue pursuant to G.S. 163–182.15 unless an appealing party obtains a stay of the certification from the Superior Court of Wake County within 10 days after the date of service. The court shall not issue a stay of certification unless the petitioner shows the court that the petitioner has appealed the decision of the State Board of Elections, that the petitioner is an aggrieved party, and that the petitioner is likely to prevail in the appeal.''

2008 Legislation

S.L. 2008–150, § 4(a), in subsec. (a), in the first sentence, substituted ''through delivery by U.S. mail or a designated delivery service authorized under 26 U.S.C. § 7502(f)(2) if that delivery provides a record of the date and time of delivery to the address provided by the party'' for ''certified mail''; in subsec. (b), added the third paragraph.

2009 Legislation

S.L. 2009–541, § 27, added subsec. (d).

Cross References

Certificates of election, municipalities, see § 163–301.

Notes of Decisions

Jurisdiction 1

1. Jurisdiction

Supreme Court had jurisdiction to review orders of trial court issued in election protests, where section of state constitution granted Court authority to exercise appellate review of any decision of courts below, upon any matter of law or legal inference. James v. Bartlett, 2005, 359 N.C. 260, 607 S.E.2d 638, reconsideration denied 359 N.C. 633, 613 S.E.2d 691. Elections ⚷ 305(1)

§ 163–182.15. Certificate of nomination or election, or certificate of the results of a referendum

(a) Issued by County Board of Elections. — In ballot items within the jurisdiction of the county board of elections, the county board shall issue a certificate of nomination or election, or a certificate of the results of the referendum, as appropriate. The certificate shall be issued by the county board six days after the completion of the canvass pursuant to G.S. 163–182.5, unless there is an election protest pending. If there is an election protest, the certificate of nomination or election or the certificate of the result of the referendum shall be issued in one of the following ways, as appropriate:

(1) The certificate shall be issued five days after the protest is dismissed or denied by the county board of elections, unless that decision has been appealed to the State Board of Elections.

(2) The certificate shall be issued on the tenth day after the final decision of the State Board, unless the State Board has ordered a new election or the issuance of the certificate is stayed by the Superior Court of Wake County pursuant to G.S. 163–182.14.

(3) If the decision of the State Board has been appealed to the Superior Court of Wake County and the court has stayed the certification, the certificate shall be issued five days after the entry of a final order in the case in the Superior Court of Wake County, unless that court or an appellate court orders otherwise.

(4) No certificate of election need be issued for any member of the General Assembly following a contest of the election pursuant to Article 3 of Chapter 120.

(b) Issued by State Board of Elections. — In ballot items within the jurisdiction of the State Board of Elections, the State Board of Elections shall issue a certificate of nomination or election, or a certificate of the results of the referendum, as appropriate. The certificate shall be issued by the State Board six days after the completion of the canvass pursuant to G.S. 163–182.5, unless there is an election protest pending. If there is an election protest, the certificate of nomination or election or the certificate of the result

of the referendum shall be issued in one of the following ways, as appropriate:

(1) The certificate shall be issued 10 days after the final decision of the State Board on the election protest, unless the State Board has ordered a new election or the issuance of the certificate is stayed by the Superior Court of Wake County pursuant to G.S. 163–182.14.

(2) If the decision of the State Board has been appealed to the Superior Court of Wake County and the court has stayed the certification, the certificate shall be issued five days after the entry of a final order in the case in the Superior Court of Wake County, unless that court or an appellate court orders otherwise.

(3) The certificate shall be issued immediately upon the filing of a copy of the determination of the General Assembly with the State Board of Elections in contested elections involving any elective office established by Article III of the Constitution.

(4) No certificate of election need be issued for any member of the General Assembly following a contest of the election pursuant to Article 3 of Chapter 120.

(c) Copy to Secretary of State. — The State Board of Elections shall provide to the Secretary of State a copy of each certificate of nomination or election, or certificate of the results of a referendum, issued by it. The Secretary shall keep the certificates in a form readily accessible and useful to the public.

(d) Determining Results. — In a primary for party nomination, the results shall be determined in accordance with G.S. 163–111. In a general election, the individuals having the highest number of votes for each office shall be declared elected to the office, and the certificate shall be issued accordingly. In a referendum, the ballot proposal receiving the highest number of votes shall be declared to have prevailed, and the certificate shall be issued accordingly.

Added by S.L. 2001–398, § 3, eff. Jan. 1, 2002. Amended by S.L. 2003–278, § 10(k), eff. Jan. 1, 2004; S.L. 2005–3, § 5, eff. March 10, 2005; S.L. 2005–428, § 13, eff. Sept. 22, 2005; S.L. 2007–391, § 11, eff. Aug. 19, 2007; S.L. 2007–484, § 22, eff. Aug. 30, 2007.

Historical and Statutory Notes

2003 Legislation

S.L. 2003–278, § 10(k), eff. Jan. 1, 2004, in the second sentences of subsecs. (a) and (b), substituted ''six'' for ''five''.

2005 Legislation

S.L. 2005–3, § 5, eff. March 10, 2005, renamed subsec. (a), added subd. (a)(4) and in subsec. (b), added subds. (b)(3) and (b)(4).

S.L. 2005–428, § 12, eff. Sept. 22, 2005, amended section by adding subsec. (d).

S.L. 2005–428, § 18, provides:

''Sections 2, 6, 7, 8, 10, 12, 13, 14, 15, and 16 of this act are effective when this act becomes law and apply to all primaries and elections held on or after that date. The remainder of this act

becomes effective January 1, 2006, and applies to all primaries and elections held on or after that date.''

2007 Legislation

S.L. 2007–391, § 11, in subd. (2), substituted ''on the tenth day'' for ''10 days''.

S.L. 2007–484, § 22, in subd. (b)(1), substituted ''G.S. 163–182.14'' for ''G.S. 163–14''.

Cross References

Governor's duty to proclaim results of State's vote for President and Vice-President upon certification, see § 163–210.

Nominee's right to withdraw as candidate, see § 163–113.

§ 163–182.16. Governor to issue commissions for certain offices

The Secretary of State shall send a notice to the Governor that a certificate of election has been issued for any of the following offices, and upon receiving the notice, the Governor shall provide to each such elected official a commission attesting to that person's election:

(1) Members of the United States House of Representatives.

(2) Justices, judges, and district attorneys of the General Court of Justice.

Added by S.L. 2001–398, § 3, eff. Jan. 1, 2002.

§ 163–182.17. Summary of officials' duties under this Article

(a) This Section a Summary. – The provisions of this section provide a nonexclusive summary of the duties given to officials under this Article. The legal duty is contained, not in this section, but in the other sections of this Article.

(b) Duties of the Precinct Officials. – Precinct officials, in accordance with rules of the State Board of Elections and under the supervision of the county board of elections, shall perform all of the following:

(1) Count votes when votes are required to be counted at the voting place. G.S. 163–182.2.

(2) Make an unofficial report of returns to the county board of elections. G.S. 163–182.2.

(3) Certify the integrity of the vote and the security of the official ballots at the voting place. G.S. 163–182.2.

(4) Return official ballots and equipment to the county board of elections. G.S. 163–182.2.

(c) Duties of the County Board of Elections. – The county board of elections, in accordance with rules of the State Board of Elections, shall perform all of the following:

(1) Count absentee and provisional official ballots and other official ballots required to be initially counted by the county board of elections. G.S. 163–182.2.

(2) Canvass results in all ballot items on the official ballot in the county. G.S. 163–182.5.

(3) Order a recount in any ballot item on the official ballot in the county, where necessary to complete the canvass, and where not prohibited from doing so. G.S. 163–182.7.

(4) Conduct any recount that has been ordered by the county board of elections or the State Board of Elections or that has been properly demanded in accordance with G.S. 163–182.7(b).

(5) Conduct hearings in election protests as provided in G.S. 163–182.10.

(6) Prepare abstracts of returns in all the ballot items in the county. G.S. 163–182.6.

(7) Retain one original abstract and distribute the other two originals as follows:

a. One to the clerk of superior court in the county.

b. One to the State Board of Elections. G.S. 163–182.6.

(8) Issue a certificate of nomination or election or a certificate of the results of a referendum in each ballot item within the jurisdiction of the county board of elections. Provide a copy of the certificate to the clerk of court. G.S. 163–182.15.

(d) Duties of the State Board of Elections. – The State Board of Elections shall perform all the following:

(1) Promulgate rules as directed in this Article. G.S. 163–182.1, 163–182.2, 163–182.7, 163–182.10, and 163–182.13.

(2) Provide supervisory direction to the county boards of elections as provided in this Article. G.S. 163–182.1 and G.S. 163–182.2.

(3) Canvass the results in ballot items within the jurisdiction of the State Board of Elections. G.S. 163–182.5.

(4) Order and supervise a recount in any ballot item within the jurisdiction of the State Board of Elections, where necessary to complete the canvass. G.S. 163–182.7.

(5) Hear and decide appeals from decisions of county boards of elections in election protests. G.S. 163–182.11.

(6) Order new elections in accordance with G.S. 163–182.15.

(7) Prepare, in duplicate originals, composite abstracts of ballot items within the jurisdiction of the State Board of Elections. G.S. 163–182.6.

(8) Retain one original of the composite abstract and deliver to the Secretary of State the other original composite abstract of the results of ballot items within the jurisdiction of the State Board of Elections. G.S. 163–182.6.

(9) Certify the results of any election within the jurisdiction of the State Board of Elections and provide a copy to the Secretary of State. G.S. 163–182.15.

(e) Duties of the Secretary of State. – The Secretary of State shall retain and compile in a useful form all the abstracts and returns provided by the county boards of elections and the State Board of Elections. G.S. 163–182.6.

(f) Duty of the Governor. – The Governor shall issue a commission to any person elected to an office listed in G.S. 163–182.16 upon notification from the Secretary of State that a certificate of election has been issued to the person. G.S. 163–182.16.

Added by S.L. 2001–398, § 3, eff. Jan. 1, 2002.

Notes of Decisions

Construction and application 1

1. Construction and application

Statute governing preservation of ballots, under which ballot boxes could be opened only upon the written order of county board of elections or upon a proper order of court, provided the sole method for obtaining access to ballots cast in election and, thus, unsuccessful mayoral candidate was not entitled to ballot information under Public Records Act. In re Decision of State Bd. of Elections Dated November 19, 1999 v. North Carolina State Bd. of Elections, 2002, 153 N.C.App. 804, 570 S.E.2d 897, review denied 356 N.C. 671, 577 S.E.2d 114. Elections ⚷ 255

§§ 163–183 to 163–186. Reserved

Article 16

Canvass of Returns for Higher Offices and Preparation of State Abstracts [Repealed]

Section

163–187 to 163–195. Repealed.
163–196 to 163–200. Reserved.

§§ 163–187 to 163–195. Repealed by S.L. 2001–398, § 1, eff. Jan. 1, 2002

Historical and Statutory Notes

Repealed § 163–187, which provided for the State Board of Elections to canvass returns for higher offices, was derived from Laws 1967, c. 775, § 1.

Repealed § 163–188, which related to meetings of State Board of Elections to canvass returns of primary and election, was derived from:

Laws 1967, c. 775, § 1.
Laws 1975, c. 844, § 10.
Laws 1977, c. 661, § 5.
Laws 1981, c. 35, § 2.

Repealed § 163–189, which related to meetings of State Board of Elections to canvass returns of a special election for United States Senator or Representative, was derived from Laws 1967, c. 775, § 1.

Repealed § 163–190, which provided that the State Board of Elections may refer to ballot boxes to resolve doubts, was derived from Laws 1967, c. 775, § 1.

Repealed § 163–191, which related to contested primaries and elections and how ties are broken, was derived from:

Laws 1967, c. 775, § 1.

Laws 1971, c. 219, § 1, 2.
Laws 1996 (2nd Ex. Sess.), c. 9, § 20.

S.L. 2001–403, § 11, amended § 163–191. S.L. 2001–403, § 11, was repealed by S.L. 2001–403, § 12.1, upon S.B. 14 becoming law. [S.B. 14 was adopted as S.L. 2001–398.]

Repealed § 163–192, which provided that the State Board of Elections was to prepare abstracts and declare results of primaries and elections, was derived from:

Laws 1967, c. 775, § 1.
Laws 1969, c. 44, § 87.
Laws 1987, c. 491, § 2, 3.
Laws 1987 (Reg. Sess., 1988), c. 1037, § 126.
Laws 1991 (Reg. Sess., 1992), c. 927, § 2.
Laws 1993, c. 553, § 65.
Laws 1996 (2nd Ex. Sess.), c. 9, § 6.

Repealed § 163–192.1, which related to mandatory recounts, was derived from:

Laws 1987, c. 642, § 2.
Laws 1989, c. 89, § 2.
S.L. 2001–319, § 11.
S.L. 2001–353, § 7.

Repealed § 163–193, which related to results of election certified to Secretary of State and certificates of election, was derived from Laws 1967, c. 775, § 1.

Repealed § 163–194, which provided that the Governor was to issue commissions to certain elected officials, was derived from Laws 1967, c. 775, § 1 and Laws 1969, c. 44, § 88.

Repealed § 163–195, which provided that the Secretary of State was to record abstracts and general election results, was derived from:

Laws 1967, c. 775, § 1.
Laws 1991, c. 428, § 1.
Laws 1991 (Reg. Sess., 1992), c. 927, § 4.

See, § 163–182 et seq.

§§ 163–196 to 163–200. Reserved

Article 17

Members of United States House of Representatives

Section

163–201. Congressional districts specified.
163–201.1. Severability of congressional apportionment acts.
163–201.2. Dividing precincts in congressional apportionment acts restricted.
163–202. Election after reapportionment of members of House of Representatives.
163–203 to 163–207. Reserved.

§ 163–201. Congressional districts specified

(a) For purposes of nominating and electing members of the House of Representatives of the Congress of the United States in 2002 and every two years thereafter; the State of North Carolina shall be divided into 13 districts as follows:

District 1: Bertie County, Chowan County, Edgecombe County, Gates County, Greene County, Halifax County, Hertford County, Martin County, Northampton County, Pasquotank County, Perquimans County, Warren County, Washington County, Beaufort County: Precinct BLOUNTS CREEK, Precinct AURORA, Precinct CHOCOWINITY, Precinct EDWARD, Precinct PS JONES WARD 3, Precinct WASHINGTON WARD 1, Precinct WASHINGTON WARD 2; Craven County: Precinct RHEMS, Precinct CLARKS, Precinct JASPER, Precinct COVE CITY, Precinct DOVER, Pre-

cinct FORT BARNWELL, Precinct WEST HAVELOCK: Tract 9611: Block Group 1: Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1996; Block Group 2: Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050, Block 2051, Block 2052, Block 2053, Block 2054, Block 2055, Block 2062, Block 2063, Block 2064, Block 2065, Block 2066, Block 2067, Block 2068, Block 2069, Block 2070, Block 2071, Block 2072, Block 2073, Block 2074, Block 2075, Block 2076, Block 2077, Block 2078, Block 2079, Block 2080, Block 2081, Block 2082, Block 2083, Block 2084, Block 2085, Block 2086, Block 2087, Block 2088, Block 2997, Block 2998, Block 2999; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3998, Block 3999; Tract 9612:

Block Group 1: Block 1000, Block 1001, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1992, Block 1993, Block 1995, Block 1996, Block 1997, Block 1998, Block 1999; Tract 9613: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1999; Block Group 6: Block 6047, Block 6048, Block 6049; Precinct GEORGE STREET, Precinct FORT TOTTEN, Precinct H J McDONALD, Precinct GLENBURNIE PARK; Granville County: Precinct CREDLE, Precinct EAST OXFORD, Precinct SALEM, Precinct SOUTH OXFORD, Precinct WEST OXFORD ELEMENTARY; Jones County: Precinct POLLOCKSVILLE:

Tract 9801: Block Group 1: Block 1005, Block 1006, Block 1007, Block 1012, Block 1013, Block 1014, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037,

Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1055, Block 1056, Block 1057, Block 1058, Block 1059, Block 1060, Block 1061, Block 1062, Block 1063, Block 1064, Block 1065, Block 1066, Block 1067, Block 1068, Block 1069, Block 1070, Block 1071, Block 1072, Block 1073, Block 1074, Block 1075, Block 1076, Block 1077, Block 1078, Block 1079, Block 1080, Block 1081, Block 1082, Block 1083, Block 1084, Block 1085, Block 1086, Block 1087, Block 1088, Block 1089, Block 1090, Block 1091, Block 1092, Block 1093, Block 1997, Block 1998; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2999; Block Group 3: Block 3000, Block 3001, Block 3002; Tract 9802: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025; Block Group 2: Block 2000, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2036, Block 2037, Block 2038, Block 2039, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2054; Precinct TRENTON, Precinct WHITE OAK; Lenoir County: Precinct CONTENTNEA, Precinct VANCE, Precinct KINSTON 1, Precinct KINSTON 2, Precinct KINSTON 3, Precinct KINSTON 5, Precinct KINSTON 6, Precinct KINSTON 7, Precinct KINSTON 8, Precinct MOSELEY HALL, Precinct SAND HILL; Nash County: Precinct ROCKY MOUNT 1, Precinct ROCKY MOUNT 2, Precinct ROCKY MOUNT 3, Precinct ROCKY MOUNT 4; Pitt County: Precinct 3.01, Precinct 4.01, Precinct 5.01, Precinct 9.01: Tract 19: Block Group 1: Block 1002, Block 1003, Block 1010, Block 1011, Block 1012, Block 1018; Block Group 2:

Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2029, Block 2030, Block 2031, Block 2032, Block 2048; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023,

Block 3024, Block 3025, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033; Precinct 10.01, Precinct 11. 01, Precinct 12.01, Precinct 15.01, Precinct 15.03, Precinct 15.04, Precinct 15.06, Precinct 2.00B, Precinct 8.00B, Precinct 15.05A, Precinct 15.05B; Vance County: Precinct EAST HENDERSON 1, Precinct NORTH HENDERSON 1, Precinct NORTH HENDERSON 2, Precinct SOUTH HENDERSON 1, Precinct WEST HENDERSON 1, Precinct WEST HENDERSON 2, Precinct DABNEY, Precinct MIDDLEBURG, Precinct TOWNSVILLE, Precinct WATKINS, Precinct WILLIAMSBORO; Wayne County: Precinct Precinct 7, Precinct Precinct 10, Precinct Precinct 11, Precinct Precinct 12, Precinct Precinct 13, Precinct Precinct 17, Precinct Precinct 18, Precinct Precinct 19, Precinct Precinct 20, Precinct Precinct 21, Precinct Precinct 22, Precinct Precinct 23, Precinct Precinct 26, Precinct Precinct 27, Precinct Precinct 29; Wilson County: Precinct GARDNERS, Precinct SARATOGA, Precinct TOISNOT, Precinct WILSON A, Precinct WILSON B, Precinct WILSON C, Precinct WILSON E, Precinct WILSON F, Precinct WILSON G, Precinct WILSON H, Precinct WILSON I, Precinct WILSON N, Precinct WILSON Q.

District 2: Franklin County, Harnett County, Johnston County, Lee County, Chatham County: Precinct ALBRIGHT, Precinct BENNETT, Precinct BONLEE, Precinct GOLDSTON, Precinct THREE RIVERS, Precinct HADLEY: Tract 202: Block Group 3: Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047, Block 3048, Block 3049, Block 3053, Block 3054; Precinct HARPER'S CROSSROADS, Precinct HICKORY MOUNTAIN, Precinct OAKLAND, Precinct WEST PITTSBORO: Tract 202: Block Group 3: Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3052, Block 3061, Block 3062, Block 3998; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4006, Block 4007, Block 4008, Block 4028, Block 4029, Block 4030, Block 4039, Block 4040, Block 4082, Block 4083; Tract 208: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1999; Block Group 3: Block 3028, Block 3029, Block 3030, Block 3031; Block Group 4: Block 4000,

Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4027, Block 4028, Block 4029, Block 4030, Block 4031, Block 4032, Block 4033, Block 4034, Block 4035, Block 4036, Block 4037, Block 4038, Block 4039, Block 4040, Block 4041, Block 4042, Block 4043, Block 4044, Block 4045, Block 4046, Block 4047, Block 4048, Block 4049, Block 4050, Block 4051, Block 4052, Block 4053, Block 4054, Block 4055, Block 4056, Block 4057, Block 4058, Block 4059, Block 4060, Block 4061, Block 4062, Block 4063, Block 4064, Block 4065, Block 4066, Block 4067, Block 4068, Block 4998, Block 4999; Precinct EAST PITTSBORO, Precinct EAST SILER CITY, Precinct CENTRAL SILER CITY, Precinct WEST SILER CITY; Cumberland County: Precinct CROSS CREEK 3, Precinct CROSS CREEK 5, Precinct CROSS CREEK 9, Precinct CROSS CREEK 13, Precinct CROSS CREEK 16, Precinct CROSS CREEK 17, Precinct CROSS CREEK 19, Precinct CROSS CREEK 21, Precinct CROSS CREEK 22, Precinct CROSS CREEK 26, Precinct CROSS CREEK 32, Precinct CROSS CREEK 33, Precinct CLIFFDALE WEST, Precinct MANCHESTER:

Tract 34: Block Group 1: Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011; Block Group 2: Block 2009, Block 2011, Block 2012, Block 2017, Block 2018, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050, Block 2051, Block 2052, Block 2053, Block 2054, Block 2055, Block 2056, Block 2057, Block 2058, Block 2059, Block 2060, Block 2061, Block 2062, Block 2063, Block 2064, Block 2065, Block 2066, Block 2067, Block 2068, Block 2069, Block 2070, Block 2071, Block 2072, Block 2073, Block 2074, Block 2075, Block 2076, Block 2077, Block 2078, Block 2079, Block 2080, Block 2081, Block 2082, Block 2083, Block 2084, Block 2085, Block 2086, Block 2087, Block 2088, Block 2089, Block 2090, Block 2091, Block 2092, Block 2093, Block 2094, Block 2095, Block 2096, Block 2097, Block 2098, Block 2099, Block 2100, Block 2997, Block 2998; Tract 35: Block Group 2: Block 2000, Block 2007, Block 2008, Block 2009; Tract 36: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1030,

Block 1993, Block 1994, Block 1995, Block 1997, Block 1998; Block Group 2: Block 2003, Block 2004, Block 2012, Block 2013, Block 2017, Block 2031, Block 2995, Block 2996, Block 2998; Block Group 4: Block 4000, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4028, Block 4029, Block 4030, Block 4031, Block 4032, Block 4033, Block 4034, Block 4037, Block 4039, Block 4043, Block 4044, Block 4045, Block 4046, Block 4998; Precinct SPRING LAKE, Precinct WEST AREA; Nash County: Precinct STONY CREEK: Tract 105.03: Block Group 1: Block 1020, Block 1021, Block 1022; Tract 106: Block Group 2: Block 2000, Block 2001, Block 2006; Block Group 3: Block 3033; Tract 107: Block Group 3: Block 3036, Block 3037, Block 3038, Block 3040, Block 3042, Block 3043, Block 3044, Block 3045, Block 3047, Block 3055; Tract 108: Block Group 4: Block 4035, Block 4036, Block 4037, Block 4059, Block 4060; Precinct ROCKY MOUNT 8, Precinct NASHVILLE, Precinct ROCKY MOUNT 10, Precinct GRIFFINS, Precinct JACKSONS, Precinct MANNINGS 1, Precinct MANNINGS 2, Precinct SOUTH WHITAKERS, Precinct BAILEY, Precinct CASTALIA, Precinct DRYWELLS, Precinct FERRELLS, Precinct NORTH WHITAKERS 1, Precinct NORTH WHITAKERS 2; Sampson County: Precinct CENTRAL CLINTON, Precinct EAST CLINTON, Precinct NORTHEAST CLINTON: Tract 9706: Block Group 1: Block 1012, Block 1013, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037; Tract 9707: Block Group 1: Block 1009, Block 1010, Block 1012, Block 1013, Block 1014, Block 1015, Block 1025, Block 1026; Block Group 4: Block 4003, Block 4004, Block 4014; Precinct SOUTHWEST CLINTON, Precinct GARLAND, Precinct GIDDENSVILLE, Precinct HARRELLS, Precinct INGOLD, Precinct KEENER, Precinct LAKEWOOD, Precinct NEWTON GROVE, Precinct ROWAN, Precinct TURKEY; Vance County: Precinct EAST HENDERSON 2, Precinct SOUTH HENDERSON 2, Precinct HILLTOP, Precinct KITTRELL, Precinct SANDY SCREEK; Wake County: Precinct 01–19, Precinct 01–20, Precinct 01–21, Precinct 01–22, Precinct 01–23, Precinct 01–26, Precinct 01–27: Tract 501: Block Group 1: Block 1070; Precinct 01–35, Precinct 16–01, Precinct 16–02, Precinct 16–03, Precinct 16–04, Precinct 16–05, Precinct 16–06, Precinct 16–07, Precinct 18–01, Precinct 18–06.

District 3: Camden County, Carteret County, Currituck County, Dare County, Hyde County, Onslow County, Pamlico County, Tyrrell County, Beaufort County: Precinct HUNTERS BRIDGE, Precinct BELHAVEN, Precinct NORTH CREEK, Precinct OLD FORD, Precinct RIVER ROAD, Precinct TRANTERS CREEK, Pre-

cinct WOODARDS POND, Precinct BEAVER DAM, Precinct PANTEGO, Precinct PINETOWN, Precinct SURRY BATH, Precinct WASHINGTON WARD 4, Precinct WASHINGTON PARK, Precinct GILEAD; Craven County: Precinct TRENT WOODS, Precinct RIVER BEND, Precinct BRIDGETON, Precinct TRUITT, Precinct ERNUL, Precinct VANCEBORO, Precinct EPWORTH, Precinct GRANTHAM, Precinct CROATAN, Precinct WEST HAVELOCK: Tract 9611: Block Group 2: Block 2056, Block 2057, Block 2058, Block 2059, Block 2060, Block 2061; Tract 9612: Block Group 1: Block 1012, Block 1013; Tract 9613: Block Group 4: Block 4001, Block 4023, Block 4024; Block Group 5: Block 5015, Block 5016, Block 5017; Block Group 6: Block 6050; Precinct HARLOWE, Precinct FAIRFIELD HARBOUR, Precinct BRICES CREEK, Precinct EAST HAVELOCK, Precinct GROVER C FIELDS, Precinct WEST NEW BERN; Duplin County: Precinct ALBERTSON, Precinct BEULAVILLE: Tract 9905: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050, Block 2051, Block 2052, Block 2053; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047, Block 3048, Block 3049, Block 3050, Block 3051, Block 3052, Block 3053, Block 3054, Block 3055, Block 3056, Block 3057, Block 3058, Block 3059, Block 3060, Block 3061, Block 3062, Block 3063, Block 3064, Block 3065, Block 3066, Block 3067, Block 3068, Block 3069, Block 3070, Block 3071, Block 3072, Block 3073, Block 3074, Block 3075, Block 3076; Block Group 4:

Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4027, Block 4028, Block 4029, Block 4030, Block 4031, Block 4032, Block 4033, Block 4034, Block 4035, Block 4036, Block 4037, Block 4038, Block 4039, Block 4040, Block 4041, Block 4042, Block 4043, Block 4044,

Block 4045, Block 4046, Block 4047, Block 4048, Block 4049, Block 4050, Block 4051, Block 4052, Block 4053, Block 4054, Block 4055, Block 4056, Block 4057, Block 4058, Block 4059, Block 4060; Block Group 5: Block 5000, Block 5023, Block 5024; Precinct CALYPSO, Precinct CEDAR FORK, Precinct CHINQUAPIN, Precinct GLISSON, Precinct WOLFSCRAPE; Jones County: Precinct BEAVER CREEK, Precinct CYPRESS CREEK, Precinct CHINQUAPIN, Precinct POLLOCKSVILLE: Tract 9801: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1008, Block 1009, Block 1010, Block 1011, Block 1015, Block 1999; Precinct TUCKAHOE; Lenoir County: Precinct INSTITUTE, Precinct NEUSE, Precinct WOODINGTON, Precinct FALLING CREEK, Precinct KINSTON 4, Precinct KINSTON 9, Precinct SOUTHWEST, Precinct TRENT 1, Precinct TRENT 2, Precinct PINK HILL 1, Precinct PINK HILL 2; Nash County: Precinct STONY CREEK: Tract 105.02: Block Group 1: Block 1003, Block 1004; Tract 105.03: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1011; Tract 107: Block Group 3: Block 3039, Block 3046, Block 3048, Block 3049, Block 3050, Block 3051, Block 3052, Block 3053, Block 3054, Block 3056, Block 3057, Block 3058; Tract 108: Block Group 4: Block 4038, Block 4040, Block 4045, Block 4046, Block 4048, Block 4049, Block 4052, Block 4053, Block 4054, Block 4055, Block 4056, Block 4057, Block 4058, Block 4061, Block 4062, Block 4063, Block 4064, Block 4065, Block 4067, Block 4068, Block 4088, Block 4089, Block 4090, Block 4091, Block 4092, Block 4102, Block 4103; Precinct ROCKY MOUNT 5, Precinct ROCKY MOUNT 6, Precinct ROCKY MOUNT 7, Precinct ROCKY MOUNT 9, Precinct COOPERS, Precinct OAK LEVEL, Precinct RED OAK; Pitt County: Precinct 1.01, Precinct 6.01, Precinct 7.01, Precinct 9.01: Tract 18: Block Group 3: Block 3001; Tract 19: Block Group 1: Block 1044; Block Group 2: Block 2001, Block 2027, Block 2028, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2047; Precinct 13.01, Precinct 14.02, Precinct 15.09, Precinct 2.00A, Precinct 8.00A, Precinct 11.02A, Precinct 11.02B, Precinct 14.03A, Precinct 14.03B, Precinct 15.07A, Precinct 15.07B, Precinct 15.07C, Precinct 15.08A, Precinct 15.08B, Precinct 15.10A, Precinct 15.10B, Precinct 15.11A, Precinct 15.11B, Precinct 15.12A, Precinct 15.12B; Wayne County: Precinct Precinct 1, Precinct Precinct 2, Precinct Precinct 3, Precinct Precinct 4, Precinct Precinct 5, Precinct Precinct 6, Precinct Precinct 8, Precinct Precinct 9, Precinct Precinct 14, Precinct Precinct 15, Precinct Precinct 16, Precinct Precinct 24, Precinct Precinct 25, Precinct Precinct 28, Precinct Precinct 30; Wilson County: Precinct BLACK CREEK, Precinct CROSSROADS, Precinct OLD FIELDS, Precinct SPRINGHILL, Precinct STANTONSBURG, Precinct TAY-

LORS, Precinct WILSON D, Precinct WILSON J, Precinct WILSON K, Precinct WILSON L, Precinct WILSON M, Precinct WILSON P.

District 4: Durham County, Orange County, Chatham County: Precinct BYNUM, Precinct HADLEY: Tract 202: Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3007, Block 3008, Block 3009, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3036, Block 3037, Block 3038, Block 3039, Block 3040, Block 3041, Block 3050, Block 3051, Block 3055, Block 3056, Block 3057, Block 3058, Block 3059, Block 3060, Block 3996, Block 3999; Precinct EAST MANNS CHAPEL, Precinct WEST MANNS CHAPEL, Precinct NEW HOPE, Precinct WEST PITTSBORO: Tract 202: Block Group 3: Block 3025, Block 3026, Block 3027, Block 3034, Block 3035; Precinct EAST WILLIAMS, Precinct NORTH WILLIAMS, Precinct WEST WILLIAMS, Precinct NORTH WILLIAMS 2, Precinct EAST WILLIAMS 2; Wake County: Precinct 01–47, Precinct 02–01, Precinct 02–02, Precinct 02–03, Precinct 02–04, Precinct 02–05, Precinct 02–06, Precinct 03–00, Precinct 04–01, Precinct 04–03, Precinct 04–05, Precinct 04–06, Precinct 04–07, Precinct 04–08, Precinct 04–09, Precinct 04–10, Precinct 04–11, Precinct 04–12, Precinct 04–13, Precinct 04–14, Precinct 04–15, Precinct 04–17, Precinct 04–18, Precinct 04–19, Precinct 05–00, Precinct 06–01, Precinct 06–02, Precinct 06–03, Precinct 07–03, Precinct 07–06, Precinct 07–07, Precinct 08–01, Precinct 08–02, Precinct 08–03, Precinct 08–04, Precinct 08–05, Precinct 08–06, Precinct 08–08, Precinct 11–01, Precinct 11–02: Tract 515.01: Block Group 1: Block 1004, Block 1005; Tract 525.03: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024; Tract 525.04: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2022, Block 2023, Block 2026, Block 2028, Block 2029, Block 2038, Block 2039, Block 2040, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2993, Block 2994, Block 2995, Block 2996, Block 2997, Block 2998, Block 2999; Precinct 12–01, Precinct 12–02, Precinct 12–03, Precinct 12–04, Precinct 12–06, Precinct 15–01, Precinct 15–02, Precinct 18–02, Precinct 18–03, Precinct 18–04, Precinct 18–05, Precinct 18–08, Precinct 20–01, Precinct 20–02, Precinct 20–03, Precinct 20–04, Precinct 20–05, Precinct 20–06, Precinct 20–10.

District 5: Alexander County, Alleghany County, Ashe County, Davie County, Stokes County, Surry County, Watauga County, Wilkes County, Yadkin County, Forsyth County: Precinct 011, Precinct 012, Precinct 013, Precinct 014, Precinct 015, Precinct 021, Precinct 031, Precinct 032, Precinct 034, Precinct 051, Precinct 052, Precinct 053, Precinct 054, Precinct 055, Precinct 061, Precinct 062, Precinct 063, Precinct 064, Precinct 065, Precinct 066, Precinct 067, Precinct 068, Precinct 071, Precinct 072, Precinct 073, Precinct 074, Precinct 075, Precinct 091, Precinct 092, Precinct 111, Precinct 112, Precinct 122, Precinct 123, Precinct 131, Precinct 132, Precinct 133, Precinct 602, Precinct 607, Precinct 701, Precinct 702, Precinct 703, Precinct 704, Precinct 705, Precinct 706, Precinct 707, Precinct 708, Precinct 709, Precinct 801, Precinct 802, Precinct 803, Precinct 804, Precinct 805, Precinct 806, Precinct 807, Precinct 808, Precinct 809, Precinct 901, Precinct 906, Precinct 907, Precinct 908, Precinct 909; Iredell County: Precinct Barringer, Precinct Bethany, Precinct Concord, Precinct Chambersburg, Precinct Cool Springs, Precinct Eagle Mills, Precinct New Hope, Precinct Olin, Precinct Sharpesburg, Precinct Statesville 1, Precinct Statesville 2, Precinct Statesville 3, Precinct Statesville 4, Precinct Statesville 5, Precinct Statesville 6, Precinct Turnersburg, Precinct Union Grove; Rockingham County: Precinct HOGANS: Tract 410.01: Block Group 3: Block 3011; Tract 410.02: Block Group 1: Block 1012, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1022, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1998; Block Group 2: Block 2011, Block 2012, Block 2013, Block 2014, Block 2043, Block 2044, Block 2045, Block 2046; Precinct HUNTSVILLE, Precinct NEW BETHEL.

District 6: Moore County, Randolph County, Alamance County: Precinct PATTERSON, Precinct COBLE, Precinct MORTON, Precinct FAUCETTE, Precinct ALBRIGHT, Precinct BOONE 5, Precinct CENTRAL BOONE, Precinct NORTH BOONE, Precinct SOUTH BOONE, Precinct WEST BOONE, Precinct GRAHAM 4, Precinct EAST GRAHAM, Precinct SOUTH GRAHAM, Precinct WEST GRAHAM, Precinct NORTH NEWLIN, Precinct SOUTH NEWLIN, Precinct NORTH THOMPSON, Precinct SOUTH THOMPSON, Precinct MELVILLE 3, Precinct NORTH MELVILLE, Precinct SOUTH MELVILLE, Precinct BURLINGTON 4, Precinct BURLINGTON 5, Precinct BURLINGTON 6, Precinct BURLINGTON 9, Precinct WEST BURLINGTON, Precinct BURLINGTON 10; Davidson County: Precinct COTTON GROVE, Precinct DENTON, Precinct EMMONS, Precinct HEALING SPRINGS, Precinct HOLLY GROVE, Precinct LEXINGTON 1, Precinct LEXINGTON 2, Precinct LEXINGTON 3, Precinct LIBERTY, Precinct MIDWAY, Precinct NORTH DAVIDSON, Precinct SILVER HILL, Precinct SILVER VALLEY, Precinct SOUTH DAVIDSON, Precinct SOUTHMONT, Precinct THOMASVILLE 1,

Precinct THOMASVILLE 4, Precinct THOMASVILLE 5, Precinct THOMASVILLE 7, Precinct THOMASVILLE 9, Precinct THOMASVILLE 10, Precinct WELCOME; Guilford County: Precinct Greene, Precinct Center Grove 1, Precinct Center Grove 2, Precinct Friendship 1, Precinct Friendship 2, Precinct Friendship 3, Precinct Friendship 4, Precinct Friendship 5, Precinct Greensboro 16, Precinct Greensboro 18, Precinct Greensboro 19, Precinct Greensboro 20, Precinct Greensboro 21, Precinct Greensboro 22, Precinct Greensboro 27, Precinct Greensboro 30, Precinct Greensboro 31, Precinct Greensboro 32, Precinct Greensboro 33, Precinct Greensboro 34, Precinct Greensboro 35, Precinct Greensboro 41, Precinct Greensboro 42, Precinct Greensboro 43, Precinct Greensboro 63, Precinct Greensboro 64: Tract 160.04: Block Group 4: Block 4048, Block 4049, Block 4050, Block 4051, Block 4052; Block Group 5: Block 5000, Block 5001, Block 5002, Block 5003, Block 5004, Block 5005, Block 5006, Block 5007, Block 5012, Block 5013, Block 5014, Block 5015, Block 5016; Tract 164.03: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1006; Tract 165.03: Block Group 1: Block 1000, Block 1001, Block 1010; Precinct Gibsonville, Precinct High Point 4, Precinct High Point 14, Precinct High Point 15, Precinct High Point 16, Precinct High Point 20, Precinct High Point 21, Precinct High Point 22, Precinct High Point 23, Precinct High Point 24, Precinct High Point 25, Precinct High Point 26, Precinct High Point 27, Precinct Oak Ridge 1, Precinct Oak Ridge 2, Precinct Pleasant Garden 1, Precinct Pleasant Garden 2, Precinct Rock Creek 1, Precinct Rock Creek 2, Precinct Summerfield 1, Precinct Summerfield 2, Precinct Summerfield 3, Precinct Summerfield 4, Precinct Fentress 2, Precinct Greensboro 40A, Precinct Greensboro 40B, Precinct Jamestown 4, Precinct Jamestown 5, Precinct Jefferson 1, Precinct Jefferson 2: Tract 153: Block Group 3: Block 3006, Block 3007, Block 3008, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3019, Block 3020, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026; Precinct Jefferson 4, Precinct Monroe 1, Precinct Monroe 3, Precinct North Center Grove, Precinct North Deep River, Precinct South Deep River, Precinct South Madison, Precinct Stokesdale, Precinct Sumner 3, Precinct Sumner 4, Precinct North Clay, Precinct North Washington, Precinct South Clay, Precinct South Washington; Rowan County: Precinct Barnhardt Mill, Precinct Blackwelder Park, Precinct Bostian Crossroads, Precinct North China Grove, Precinct South China Grove, Precinct South Locke, Precinct Faith, Precinct Rock Grove, Precinct Granite Quarry, Precinct Hatters Shop, Precinct West Kannapolis, Precinct East Kannapolis, Precinct West Landis, Precinct East Landis, Precinct North Locke, Precinct Morgan I, Precinct Morgan II, Precinct Rockwell, Precinct Gold Knob, Precinct Steele, Precinct Sumner, Precinct Trading Ford, Precinct Bostian School.

District 7: Bladen County, Brunswick County, Columbus County, New Hanover County, Pender County, Robeson County, Cumberland County: Precinct CROSS CREEK 1, Precinct CROSS CREEK 2, Precinct HOPE MILLS 2, Precinct PEARCES MILL 3, Precinct ALDERMAN, Precinct BEAVER DAM, Precinct BLACK RIVER, Precinct CROSS CREEK 11, Precinct CROSS CREEK 15, Precinct CROSS CREEK 23, Precinct CEDAR CREEK, Precinct EASTOVER, Precinct JUDSON/VANDER, Precinct LINDEN, Precinct LONG HILL, Precinct MANCHESTER: Tract 34: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2010, Block 2013, Block 2999; Tract 35: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1009, Block 1013; Tract 36: Block Group 1: Block 1000, Block 1001, Block 1008, Block 1009, Block 1031, Block 1032, Block 1999; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2037, Block 2038, Block 2047, Block 2048, Block 2049, Block 2054, Block 2055, Block 2056, Block 2057, Block 2058, Block 2059, Block 2060, Block 2061, Block 2062, Block 2999; Tract 37: Block Group 2: Block 2021, Block 2022, Block 2023, Block 2025, Block 2026, Block 2043, Block 2995; Precinct SHERWOOD, Precinct STONEY POINT: Tract 16. 01: Block Group 3: Block 3022, Block 3024; Tract 31: Block Group 1: Block 1009, Block 1010, Block 1047, Block 1048, Block 1049, Block 1052, Block 1053, Block 1054, Block 1055, Block 1056, Block 1057, Block 1065, Block 1995, Block 1996, Block 1997; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2018, Block 2019, Block 2021, Block 2999; Block Group 3: Block 3995, Block 3996; Tract 32.01: Block Group 3: Block 3027, Block 3028; Precinct STEDMAN, Precinct WADE; Duplin County: Precinct BEULAVILLE: Tract 9905: Block Group 5: Block 5001, Block 5002, Block 5003, Block 5021, Block 5022; Precinct CYPRESS CREEK, Precinct CHARITY, Precinct FAISON, Precinct HALLSVILLE, Precinct KENANSVILLE, Precinct LOCKLIN, Precinct MAGNOLIA, Precinct ROCKFISH, Precinct ROSE HILL, Precinct SMITH CABIN, Precinct WALLACE, Precinct WARSAW; Sampson County: Precinct AUTRYVILLE, Precinct CLEMENT, Precinct NORTHEAST CLINTON: Tract 9706: Block Group 1: Block 1014, Block 1015, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4026, Block 4027, Block 4028; Tract 9707: Block Group 2: Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block

2027, Block 2028, Block 2029, Block 2030; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022; Block Group 4: Block 4005, Block 4006; Precinct WEST CLINTON, Precinct HERRING, Precinct KITTY FORK, Precinct MINGO, Precinct PLAINVIEW, Precinct ROSEBORO, Precinct SALEMBURG, Precinct WESTBROOK; Scotland County: Precinct 2: Tract 104: Block Group 1: Block 1103, Block 1106, Block 1108, Block 1109, Block 1110, Block 1113; Precinct 6: Tract 104: Block Group 1: Block 1094, Block 1095, Block 1101, Block 1102, Block 1107, Block 1111, Block 1112, Block 1121, Block 1122.

District 8: Anson County, Hoke County, Montgomery County, Richmond County, Stanly County, Cabarrus County: Precinct 0101, Precinct 0102, Precinct 0103, Precinct 0104, Precinct 0201, Precinct 0202, Precinct 0203, Precinct 0205, Precinct 0206, Precinct 0207, Precinct 0401, Precinct 0402, Precinct 0403, Precinct 0404, Precinct 0405, Precinct 0406, Precinct 0407, Precinct 0408, Precinct 0409, Precinct 0410, Precinct 0500, Precinct 0600, Precinct 0700, Precinct 0800, Precinct 0900, Precinct 1000, Precinct 1101, Precinct 1102, Precinct 1201, Precinct 1202, Precinct 1203, Precinct 1204, Precinct 1205, Precinct 1206, Precinct 1207, Precinct 1208, Precinct 1209, Precinct 1210, Precinct 1211, Precinct 1212; Cumberland County: Precinct CROSS CREEK 4, Precinct CROSS CREEK 6, Precinct CROSS CREEK 7, Precinct CROSS CREEK 8, Precinct CUMBERLAND 1, Precinct CUMBERLAND 2, Precinct CUMBERLAND 3, Precinct HOPE MILLS 1, Precinct HOPE MILLS 3, Precinct MORGANTON ROAD, Precinct PEARCES MILL 2, Precinct PEARCES MILL 4, Precinct ARRAN HILLS, Precinct AUMAN, Precinct BRENTWOOD, Precinct CROSS CREEK 10, Precinct CROSS CREEK 12, Precinct CROSS CREEK 14, Precinct CROSS CREEK 18, Precinct CROSS CREEK 20, Precinct CROSS CREEK 24, Precinct CROSS CREEK 25, Precinct CROSS CREEK 27, Precinct CROSS CREEK 28, Precinct CROSS CREEK 29, Precinct CROSS CREEK 30, Precinct CROSS CREEK 31, Precinct CROSS CREEK 34, Precinct LAKE RIM, Precinct MONTIBELLO, Precinct STONEY POINT: Tract 16.01: Block Group 2: Block 2043; Block Group 3: Block 3010, Block 3011, Block 3015, Block 3018; Tract 31: Block Group 1: Block 1005, Block 1031, Block 1032, Block 1998, Block 1999; Block Group 2: Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2020, Block 2022, Block 2023, Block 2998; Tract 32.01: Block Group 1: Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1028, Block 1031, Block 1032,

Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1998, Block 1999; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022; Block Group 3: Block 3003, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3029, Block 3030, Block 3031, Block 3032, Block 3034; Mecklenburg County: Precinct 002, Precinct 004, Precinct 005, Precinct 006, Precinct 007, Precinct 015, Precinct 017, Precinct 029, Precinct 033, Precinct 034, Precinct 045, Precinct 046, Precinct 061, Precinct 062, Precinct 063, Precinct 064, Precinct 084, Precinct 095, Precinct 108, Precinct 109, Precinct 117, Precinct 123, Precinct 124, Precinct 237, Precinct 130, Precinct 141, Precinct 204, Precinct 205; Scotland County: Precinct 1, Precinct 2: Tract 103:

Block Group 1: Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1023, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1075, Block 1076, Block 1077, Block 1078, Block 1079, Block 1080, Block 1081, Block 1082, Block 1083, Block 1084, Block 1085, Block 1086, Block 1087, Block 1088, Block 1089, Block 1090, Block 1100, Block 1999; Block Group 2: Block 2037, Block 2038, Block 2039; Block Group 3: Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4027, Block 4028, Block 4029, Block 4030, Block 4031, Block 4032, Block 4033; Block Group 5: Block 5000, Block 5001, Block 5002, Block 5003, Block 5004, Block 5005, Block 5006, Block 5007, Block 5008, Block 5009, Block 5010, Block 5011, Block 5012, Block 5013, Block 5014, Block 5015, Block 5016, Block 5017,

Block 5018, Block 5019, Block 5020, Block 5021, Block 5022, Block 5023, Block 5024, Block 5025, Block 5026, Block 5027, Block 5028, Block 5029; Tract 104: Block Group 1: Block 1072, Block 1073, Block 1076, Block 1077, Block 1104, Block 1105, Block 1114, Block 1115, Block 1116, Block 1117, Block 1118, Block 1119, Block 1120, Block 1996; Precinct 3, Precinct 4, Precinct 5, Precinct 6: Tract 103: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1020, Block 1021, Block 1022, Block 1024, Block 1025, Block 1026, Block 1027; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2040, Block 2041; Tract 104: Block Group 1: Block 1003, Block 1004, Block 1005, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1055, Block 1056, Block 1057, Block 1058, Block 1059, Block 1060, Block 1061, Block 1062, Block 1063, Block 1064, Block 1065, Block 1066, Block 1067, Block 1068, Block 1069, Block 1070, Block 1071, Block 1074, Block 1075, Block 1078, Block 1079, Block 1080, Block 1081, Block 1082, Block 1083, Block 1084, Block 1085, Block 1086, Block 1087, Block 1088, Block 1089, Block 1090, Block 1091, Block 1092, Block 1093, Block 1096, Block 1097, Block 1098, Block 1099, Block 1100, Block 1123, Block 1124, Block 1125, Block 1126, Block 1127, Block 1128, Block 1129, Block 1130, Block 1131, Block 1132, Block 1133, Block 1134, Block 1135, Block 1136, Block 1137, Block 1997, Block 1998, Block 1999; Precinct 7, Precinct 8, Precinct 9, Precinct 10; Union County: Precinct 01, Precinct 02, Precinct 03, Precinct 04, Precinct 08, Precinct 09, Precinct 10, Precinct 11, Precinct 25, Precinct 26, Precinct 27, Precinct 36, Precinct 43.

District 9: Gaston County: Precinct York Chester, Precinct Victory, Precinct Pleasant Ridge, Precinct Health Center, Precinct Myrtle, Precinct Highland, Precinct Wood Hill, Precinct Grier, Precinct Sherwood, Precinct Armstrong, Precinct Flint

Grove, Precinct Ranlo, Precinct Gardner Park, Precinct Robinson 1, Precinct Gaston Day, Precinct Robinson 2, Precinct Ashbrook, Precinct South Gastonia, Precinct Bessemer City 1, Precinct Bessemer City 2, Precinct Belmont 1, Precinct Belmont 2, Precinct Belmont 3, Precinct Catawba Heights, Precinct Southpoint, Precinct Cramerton, Precinct New Hope, Precinct McAdenville, Precinct Union, Precinct Lowell, Precinct Landers Chapel: Tract 303: Block Group 1: Block 1011, Block 1012, Block 1013, Block 1014, Block 1995; Tract 304: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011; Block Group 2: Block 2005, Block 2015, Block 2016, Block 2048, Block 2050, Block 2995, Block 2996; Tract 305: Block Group 1: Block 1000, Block 1001, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1034, Block 1036, Block 1037, Block 1038, Block 1999; Precinct High Shoals, Precinct Alexis, Precinct Dallas 1, Precinct Dallas 2, Precinct Lucia, Precinct Stanley 1, Precinct Stanley 2, Precinct Mt Holly 1, Precinct Mt Holly 2; Mecklenburg County: Precinct 001, Precinct 008, Precinct 009, Precinct 010, Precinct 018, Precinct 019, Precinct 020, Precinct 021, Precinct 032, Precinct 035, Precinct 036, Precinct 037, Precinct 038, Precinct 047, Precinct 048, Precinct 049, Precinct 050, Precinct 051, Precinct 057, Precinct 058, Precinct 059, Precinct 065, Precinct 066, Precinct 067, Precinct 068, Precinct 069, Precinct 070, Precinct 071, Precinct 072, Precinct 073, Precinct 074, Precinct 075, Precinct 076, Precinct 077: Tract 59.05: Block Group 2: Block 2008, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050; Precinct 083, Precinct 085, Precinct 086, Precinct 087, Precinct 088, Precinct 089, Precinct 090, Precinct 091, Precinct 092, Precinct 093, Precinct 094, Precinct 096, Precinct 097, Precinct 099, Precinct 100, Precinct 101, Precinct 102, Precinct 103, Precinct 106, Precinct 110, Precinct 111, Precinct 112, Precinct 113, Precinct 114, Precinct 115, Precinct 116, Precinct 118, Precinct 119, Precinct 120, Precinct 121, Precinct 122, Precinct 125, Precinct 128, Precinct 225, Precinct 226, Precinct 227, Precinct 229, Precinct 230, Precinct 231, Precinct 232, Precinct 233, Precinct 234, Precinct 235, Precinct 236, Precinct 238, Precinct 240, Precinct 241, Precinct 242, Precinct 243, Precinct 129, Precinct 131, Precinct 133, Precinct 134, Precinct 136, Precinct 137, Precinct 139, Precinct 140, Precinct 142, Precinct 143, Precinct 144, Precinct 200: Tract 59.01: Block Group 3: Block 3013, Block 3023, Block 3030, Block 3031, Block 3032, Block 3033, Block 3993, Block 3996, Block 3997; Block Group 4: Block 4005, Block 4006, Block 4007, Block 4010, Block 4011, Block 4999; Precinct 201, Precinct 202, Pre-

cinct 203, Precinct 207, Precinct 208, Precinct 209, Precinct 214, Precinct 215, Precinct 216, Precinct 217, Precinct 218, Precinct 219, Precinct 220, Precinct 221, Precinct 222, Precinct 223, Precinct 224; Union County: Precinct 05, Precinct 06, Precinct 07, Precinct 12, Precinct 13, Precinct 14, Precinct 15, Precinct 16, Precinct 17, Precinct 18, Precinct 19, Precinct 20, Precinct 21, Precinct 22, Precinct 23, Precinct 24, Precinct 28, Precinct 29, Precinct 30, Precinct 31, Precinct 32, Precinct 33, Precinct 34, Precinct 35, Precinct 37, Precinct 38, Precinct 39, Precinct 40, Precinct 41, Precinct 42.

District 10: Avery County, Burke County, Caldwell County, Catawba County, Cleveland County, Lincoln County, Mitchell County, Gaston County: Precinct Forest Heights, Precinct Crowders Mountain, Precinct Tryon, Precinct Landers Chapel: Tract 305: Block Group 1: Block 1002, Block 1011, Block 1015, Block 1016, Block 1022, Block 1023, Block 1024, Block 1033, Block 1035; Precinct Cherryville 1, Precinct Cherryville 2, Precinct Cherryville 3; Iredell County: Precinct Coddle Creek 1, Precinct Coddle Creek 2, Precinct Coddle Creek 3, Precinct Coddle Creek 4, Precinct Davidson 1, Precinct Davidson 2, Precinct Fallstown, Precinct Shiloh; Rutherford County: Precinct Bostic, Precinct Camp Creek, Precinct Caroleen, Precinct Chimney Rock 1, Precinct Chimney Rock 2, Precinct Cliffside, Precinct Duncans Creek, Precinct Ellenboro, Precinct Forest City 2, Precinct Gilkey, Precinct Golden Valley, Precinct Green Hill: Tract 9602: Block Group 1: Block 1084, Block 1085; Block Group 2: Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2024, Block 2025, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043; Block Group 3: Block 3046, Block 3048, Block 3052, Block 3053, Block 3054, Block 3055; Block Group 4: Block 4001, Block 4002, Block 4003, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4025, Block 4030, Block 4999; Precinct Haynes, Precinct Morgan, Precinct Mount Vernon, Precinct Sandy Mush, Precinct Sunshine.

District 11: Buncombe County, Cherokee County, Clay County, Graham County, Haywood County, Henderson County, Jackson County, McDowell County, Macon County, Madison County, Polk County, Swain County, Transylvania County, Yancey County, Rutherford County: Precinct Danieltown, Precinct Forest City 1, Precinct Green Hill: Tract 9602: Block Group 3: Block 3044, Block 3045, Block 3051; Block Group 4: Block 4017, Block 4024, Block 4026, Block 4027, Block 4028, Block 4029, Block 4031,

Block 4032, Block 4033, Block 4035, Block 4036, Block 4037, Block 4038, Block 4039, Block 4040, Block 4041, Block 4042, Block 4043, Block 4044, Block 4045, Block 4046; Tract 9603: Block Group 2: Block 2162; Tract 9604: Block Group 1: Block 1049; Block Group 2: Block 2006, Block 2007; Tract 9605: Block Group 1: Block 1006, Block 1007, Block 1008, Block 1009, Block 1012, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1048, Block 1052, Block 1053, Block 1055, Block 1056, Block 1057, Block 1999; Precinct Rutherfordton 1, Precinct Rutherfordton 2, Precinct Spindale, Precinct Sulpher Springs, Precinct Union.

District 12: Cabarrus County: Precinct 0204, Precinct 0300; Davidson County: Precinct ABBOTTS CREEK, Precinct ARCADIA, Precinct BOONE, Precinct CENTRAL, Precinct GUMTREE, Precinct LEXINGTON 4, Precinct WARD 1, Precinct WARD 2, Precinct WARD 3, Precinct WARD 4, Precinct WARD 5, Precinct WARD 6, Precinct REEDS YADKIN COLLEGE, Precinct REEDY CREEK, Precinct THOMASVILLE 2, Precinct THOMASVILLE 3, Precinct THOMASVILLE 8, Precinct TYRO, Precinct WALLBURG, Precinct WEST ARCADIA; Forsyth County: Precinct 033, Precinct 042, Precinct 043, Precinct 081, Precinct 082, Precinct 083, Precinct 101, Precinct 201, Precinct 203, Precinct 204, Precinct 205, Precinct 206, Precinct 207, Precinct 301, Precinct 302, Precinct 303, Precinct 304, Precinct 305, Precinct 306, Precinct 401, Precinct 402, Precinct 403, Precinct 404, Precinct 405, Precinct 501, Precinct 502, Precinct 503, Precinct 504, Precinct 505, Precinct 506, Precinct 507, Precinct 601, Precinct 603, Precinct 604, Precinct 605, Precinct 606, Precinct 902, Precinct 903, Precinct 904, Precinct 905; Guilford County: Precinct HP, Precinct Greensboro 4, Precinct Greensboro 46, Precinct Greensboro 52, Precinct Greensboro 53, Precinct Greensboro 54, Precinct Greensboro 55, Precinct Greensboro 57, Precinct Greensboro 59: Tract 126.09: Block Group 1: Block 1030, Block 1031, Block 1035, Block 1036, Block 1037; Block Group 2: Block 2053, Block 2054, Block 2055; Tract 165.02: Block Group 2: Block 2000, Block 2001, Block 2004, Block 2005, Block 2006; Precinct Greensboro 61, Precinct Greensboro 62, Precinct Greensboro 64: Tract 160.04: Block Group 4: Block 4038, Block 4044, Block 4045, Block 4046, Block 4047, Block 4053, Block 4054, Block 4055, Block 4056, Block 4057, Block 4058, Block 4059, Block 4060, Block 4061, Block 4062, Block 4063, Block 4064, Block 4065, Block 4066, Block 4067, Block 4068, Block 4069, Block 4071; Tract 162.01: Block Group 2: Block 2043, Block 2058, Block 2059, Block 2060, Block 2062, Block 2063, Block 2064, Block 2065, Block 2066, Block 2067, Block 2068, Block 2069, Block 2070, Block 2077, Block 2078; Tract 162.02: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1133, Block 1147, Block 1148;

Tract 164.03: Block Group 1: Block 1003, Block 1004, Block 1005, Block 1010, Block 1011, Block 1012, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1029;

Precinct Greensboro 65, Precinct Greensboro 66, Precinct Greensboro 67, Precinct Greensboro 68, Precinct Greensboro 69, Precinct Greensboro 70, Precinct Greensboro 71, Precinct Greensboro 73, Precinct Greensboro 74, Precinct Greensboro 75, Precinct High Point 1, Precinct High Point 2, Precinct High Point 3, Precinct High Point 5, Precinct High Point 6, Precinct High Point 7, Precinct High Point 8, Precinct High Point 9, Precinct High Point 10, Precinct High Point 11, Precinct High Point 12, Precinct High Point 13, Precinct High Point 17, Precinct High Point 18, Precinct High Point 19, Precinct Fentress 1, Precinct Jamestown 1, Precinct Jamestown 2, Precinct Jamestown 3, Precinct Jefferson 3, Precinct Sumner 1, Precinct Sumner 2; Mecklenburg County: Precinct 003, Precinct 011, Precinct 012, Precinct 013, Precinct 014, Precinct 016, Precinct 022, Precinct 023, Precinct 024, Precinct 025, Precinct 026, Precinct 027, Precinct 028, Precinct 030, Precinct 031, Precinct 039, Precinct 040, Precinct 041, Precinct 042, Precinct 043, Precinct 044, Precinct 052, Precinct 053, Precinct 054, Precinct 055, Precinct 056, Precinct 060, Precinct 077: Tract 38.04: Block Group 1: Block 1022; Block Group 2: Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2012; Tract 58.06: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1068, Block 1069, Block 1071, Block 1072, Block 1073, Block 1074, Block 1077, Block 1079, Block 1999; Tract 59.05: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007; Precinct 078, Precinct 079, Precinct 080, Precinct 081, Precinct 082, Precinct 098, Precinct 104, Precinct 105, Precinct 107, Precinct 126, Precinct 127, Precinct 228, Precinct 239, Precinct 132, Precinct 135, Precinct 138, Precinct 200: Tract 59.01: Block Group 2: Block 2012, Block 2013, Block 2030, Block 2031, Block 2035, Block 2036; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3036, Block 3037, Block 3038, Block 3994, Block 3995, Block 3998, Block 3999; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4008, Block 4009; Precinct 206, Precinct

210, Precinct 211, Precinct 212, Precinct 213; Rowan County: Precinct Bradshaw, Precinct Cleveland, Precinct East Enochville, Precinct Franklin, Precinct Milford Hills County, Precinct East Spencer, Precinct Mount Ulla, Precinct Scotch Irish, Precinct Spencer, Precinct Unity, Precinct West Ward II, Precinct West Ward I, Precinct South Ward, Precinct North Ward I, Precinct East Ward I, Precinct West Innes, Precinct North Ward II, Precinct Milford Hills City, Precinct West Ward III, Precinct East Ward II, Precinct West Enochville.

District 13: Caswell County, Person County, Alamance County: Precinct PLEASANT GROVE, Precinct HAW RIVER, Precinct GRAHAM 3, Precinct NORTH GRAHAM, Precinct BURLINGTON 7, Precinct BURLINGTON 8, Precinct EAST BURLINGTON, Precinct NORTH BURLINGTON, Precinct SOUTH BURLINGTON; Granville County: Precinct ANTIOCH, Precinct BEREA, Precinct BRASSFIELD, Precinct BUTNER, Precinct CORINTH, Precinct CREEDMOOR, Precinct OAK HILL, Precinct SASSAFRAS FORK, Precinct TALLY HO; Guilford County: Precinct Center Grove 3, Precinct Greensboro 1, Precinct Greensboro 2, Precinct Greensboro 3, Precinct Greensboro 5, Precinct Greensboro 6, Precinct Greensboro 7, Precinct Greensboro 9, Precinct Greensboro 10, Precinct Greensboro 11, Precinct Greensboro 12, Precinct Greensboro 13, Precinct Greensboro 14, Precinct Greensboro 15, Precinct Greensboro 17, Precinct Greensboro 23, Precinct Greensboro 24, Precinct Greensboro 25, Precinct Greensboro 26, Precinct Greensboro 28, Precinct Greensboro 29, Precinct Greensboro 36, Precinct Greensboro 37, Precinct Greensboro 38, Precinct Greensboro 39, Precinct Greensboro 44, Precinct Greensboro 45, Precinct Greensboro 47, Precinct Greensboro 48, Precinct Greensboro 49, Precinct Greensboro 50, Precinct Greensboro 51, Precinct Greensboro 56, Precinct Greensboro 58, Precinct Greensboro 59: Tract 126.09: Block Group 1: Block 1024, Block 1025, Block 1027, Block 1028, Block 1029, Block 1032, Block 1033, Block 1034, Block 1038, Block 1039; Block Group 2: Block 2048, Block 2049, Block 2050, Block 2051, Block 2052; Precinct Greensboro 60, Precinct Greensboro 72, Precinct Greensboro 8, Precinct Jefferson 2: Tract 111.02: Block Group 2: Block 2000; Tract 127.07: Block Group 1: Block 1000, Block 1001; Tract 128.03: Block Group 1: Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1028, Block 1029, Block 1030, Block 1032, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1042, Block 1049, Block 1051, Block 1055, Block 1066, Block 1067, Block 1069, Block 1070, Block 1074, Block 1075, Block 1076, Block 1077; Block Group 2: Block 2000, Block 2001, Block 2007, Block 2012, Block 2013, Block 2038; Tract 153: Block Group 3: Block 3018, Block 3021, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block

3034, Block 3035, Block 3036; Precinct Monroe 2, Precinct North Madison; Rockingham County: Precinct BETHLEHEM, Precinct CENTRAL AREA, Precinct DRAPER, Precinct DAN VALLEY, Precinct HOGANS: Tract 410.02: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1010, Block 1011, Block 1013, Block 1019, Block 1020, Block 1021, Block 1023, Block 1999; Block Group 2: Block 2001, Block 2008; Tract 411:

Block Group 4: Block 4026, Block 4027; Precinct IRONWORKS, Precinct MAYFIELD, Precinct MAYODAN, Precinct MARTINS, Precinct OREGON HILL, Precinct PRICE, Precinct RUFFIN, Precinct SHILOH, Precinct SIMPSONVILLE, Precinct STONEVILLE, Precinct WENTWORTH, Precinct WILLIAMSBURG, Precinct LEAKSVILLE 1, Precinct LEAKSVILLE 2, Precinct LEAKSVILLE 3, Precinct MADISON 1, Precinct MADISON 2, Precinct REIDSVILLE 1, Precinct REIDSVILLE 2, Precinct REIDSVILLE 3, Precinct REIDSVILLE 4, Precinct REIDSVILLE 5, Precinct REIDSVILLE 6, Precinct SPRAY 1; Wake County: Precinct 01–01, Precinct 01–02, Precinct 01–03, Precinct 01–04, Precinct 01–05, Precinct 01–06, Precinct 01–07, Precinct 01–09, Precinct 01–10, Precinct 01–11, Precinct 01–12, Precinct 01–13, Precinct 01–14, Precinct 01–15, Precinct 01–16, Precinct 01–17, Precinct 01–18, Precinct 01–25, Precinct 01–27: Tract 501: Block Group 1: Block 1067, Block 1068, Block 1069, Block 1071, Block 1072, Block 1073, Block 1074, Block 1075, Block 1076, Block 1077, Block 1078, Block 1103, Block 1104, Block 1105, Block 1106, Block 1107, Block 1108, Block 1109, Block 1110, Block 1111, Block 1118, Block 1119, Block 1120; Tract 510: Block Group 1: Block 1000, Block 1001; Block Group 2: Block 2000, Block 2001, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042; Tract 522.01: Block Group 1: Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1022; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014; Tract 522.02: Block Group 1: Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010; Tract 523.02: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block

1027, Block 1028, Block 1029; Precinct 01–28, Precinct 01–29, Precinct 01–30, Precinct 01–31, Precinct 01–32, Precinct 01–33, Precinct 01–34, Precinct 01–36, Precinct 01–37, Precinct 01–38, Precinct 01–39, Precinct 01–40, Precinct 01–41, Precinct 01–42, Precinct 01–43, Precinct 01–44, Precinct 01–45, Precinct 01–46, Precinct 01–48, Precinct 01–49, Precinct 01–51, Precinct 04–02, Precinct 04–04, Precinct 04–16, Precinct 07–01, Precinct 07–02, Precinct 07–04, Precinct 07–05, Precinct 07–09, Precinct 07–10, Precinct 07–11, Precinct 07–12, Precinct 09–01, Precinct 09–02, Precinct 10–01, Precinct 10–02, Precinct 10–03, Precinct 10–04, Precinct 11–02: Tract 525.04: Block Group 2: Block 2021, Block 2027, Block 2030, Block 2041; Precinct 13–01, Precinct 13–02, Precinct 13–03, Precinct 14–01, Precinct 14–02, Precinct 17–01, Precinct 17–02, Precinct 17–03, Precinct 17–04, Precinct 17–05, Precinct 17–06, Precinct 17–07, Precinct 19–01, Precinct 19–02, Precinct 19–03, Precinct 19–04, Precinct 19–05, Precinct 19–06, Precinct 19–07, Precinct 19–08.

(b) The names and boundaries of precincts (voting tabulation districts), tracts, block groups, and blocks specified in this section are as they were legally defined and recognized in the 2000 United States Census. Boundaries are as shown on the Redistricting Census 2000 TIGER Files, with modifications made by the Legislative Services Office on its computer database as of May 1, 2001, to reflect precincts divided or renamed as outlined in subsection (c) of this section. However, in Robeson County PHILADEPLUS is, in fact, PHILADELPHUS, and in Vance County SANDY SCREEK is, in fact, SANDY CREEK. If the boundary line between Iredell and Mecklenburg Counties in the Redistricting Census 2000 TIGER Files conflicts with that provided by Section 1 of Session Law 1998–15 as rewritten by Session Law 2001–429, Section 1 of Session Law 1998–15 as rewritten by Session Law 2001–429 prevails to the extent of the conflict.

(c) The Legislative Services Office modified on its computer database some of the precincts shown on the Redistricting Census 2000 TIGER Files to reflect precincts divided or renamed by county boards of elections after the TIGER Files were completed. As a result, precincts are shown differently on the Legislative Services Office computer database from the TIGER Files in the following counties:

(1) Buncombe County:

a. Precinct Asheville 4 in TIGER is shown as Precincts Asheville 4 and Asheville 28.

b. Precinct Asheville 22 in TIGER is shown as Precincts Asheville 22 and Asheville 27.

c. Precinct Asheville 19 in TIGER is shown as Precincts Asheville 19 and Asheville 29.

d. Precinct Riceville Swannanoa 2 CRU in TIGER is shown as Precincts Riceville Swannanoa 2 CRU and Riceville Swannanoa CRU 2.

e. Precinct Black Mountain 3 in TIGER is shown as Precincts Black Mountain 3 and Black Mountain 4.

(2) Cabarrus County:

a. Precinct 0202 in TIGER is shown as Precincts 0202 and 0207.

b. Precinct 1209 in TIGER is shown as Precincts 1209 and 1212.

(3) Caldwell County: Precinct Lovelady in TIGER is shown as Precincts Lovelady 1 and Lovelady 2.

(4) Chatham County:

a. Precinct North Williams in TIGER is shown as Precincts North Williams and North Williams 2.

b. Precinct East Williams in TIGER is shown as Precincts East Williams and East Williams 2.

(5) Craven County: Precinct Havelock in TIGER is shown as Precincts Havelock East and Havelock West.

(6) Franklin County: Precinct Harris in TIGER is shown as Precincts East Harris and West Harris.

(7) Guilford County: Precinct Greensboro 40 in TIGER is shown as Precincts Greensboro 40A and Greensboro 40B.

(8) Johnston County: Precinct East Clayton in TIGER is shown as Precincts East Clayton and South Clayton.

(9) Orange County:

a. Precinct Frank Porter Graham in TIGER is renamed Precinct Damascus 1.

b. Precinct Dogwood Acres in TIGER is shown as Precincts Dogwood Acres and Damascus 2.

(10) Rowan County:

a. Precinct Bostian Crossroads in TIGER is shown as Precincts Bostian Crossroads and Rock Grove.

b. Precinct Enochville in TIGER is shown as Precincts Enochville and West Enochville.

(11) Wake County:

a. Precinct 01–32 in TIGER is shown as Precincts 01–32 and 01–49.

b. Precinct 07–06 in TIGER is shown as Precincts 07–06 and 07–11.

c. Precinct 10–01 in TIGER is shown as Precincts 10–01 and 10–04.

d. Precinct 10–02 in TIGER is shown as Precincts 10–02 and 10–03.

e. Precinct 01–43 in TIGER is shown as Precincts 01–43 and 01–51.

f. Precinct 07–02 in TIGER is shown as Precincts 07–02 and 07–12.

g. Precinct 08–04 in TIGER is shown as Precincts 08–04 and 08–08.

h. Precinct 12–02 in TIGER is shown as Precincts 12–02 and 12–06.

i. Precinct 18–03 in TIGER is shown as Precincts 18–03 and 18–08.

j. Precinct 19–02 in TIGER is shown as Precincts 19–02 and 19–06.

k. Precinct 19–03 in TIGER is shown as Precincts 19–03 and 19–07.

l. Precinct 19–04 in TIGER is shown as Precincts 19–04 and 19–08.

m. Precinct 20–04 in TIGER is shown as Precincts 20–04 and 20–10.

n. Precinct 01–32 in TIGER is shown as Precincts 01–32 and 01–49.

(d) If any precinct boundary is changed, that change shall not change the boundary of a congressional district, which shall remain the same.

(e) If this section does not specifically assign any area within North Carolina to a district, and the area is:

(1) Entirely surrounded by a single district, the area shall be deemed to have been assigned to that district.

(2) Contiguous to two or more districts, the area shall be deemed to have been assigned to that district which contains the least population according to the 2000 United States Census.

(3) Contiguous to only one district and to another state or the Atlantic Ocean, the area shall be deemed to have been assigned to that district.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1967, c. 1109; Laws 1971, c. 257; Laws 1981, c. 894; Laws 1982 (1st Ex. Sess.), c. 7; Laws 1991, c. 601, § 1; Laws 1991, c. 761, § 33(a), (b); Laws 1993, c. 553, § 66, eff. July 24, 1993; S.L. 1997–11, §§ 1, 2, eff. March 31, 1997; S.L. 1997–456, § 52, eff. Aug. 29, 1997; S.L. 1998–2, § 1, eff. May 21, 1998; S.L. 2001–471, § 1, eff. Nov. 28, 2001; S.L. 2001–479, § 2, eff. Dec. 5, 2001.

Historical and Statutory Notes

The amendment to subsec. (a) by Laws 1991, c. 601, was submitted to the Attorney General of the United States for preclearance pursuant to provisions of the Voting Rights Act, 42 U.S.C.A. § 5. The Attorney General made objections to this amendment. In response,

subsec. (a) was amended by Laws 1991, Ex. Sess. c. 7. This latter amendment, which received preclearance under the Voting Rights Act, was subsequently held unconstitutional in Shaw v. Hunt, 1996, 116 S. Ct. 1894, 517 U.S. 899, 135 L.Ed. 2d 207.

S.L. 1997–11, § 2 amended subsec. (a). S.L. 1997–11, § 1, as amended by S.L. 1997–456, § 52, provides:

''That part of Section 1 of Chapter 7 of the Session Laws of the 1991 Extra Session which rewrote G.S. 163–201(a) is repealed.''

Cromartie v. Hunt, E.D.N.C. 1998, 34 F. Supp. 1029, granting a summary judgment motion, held that the amendment to subsec. (a) made by S.L. 1997–11, § 2 was unconstitutional. In response to this holding, S.L. 1998–2, § 1 adopted another redistricting plan; however, § 1.1 of that act provided that the adopted plan of § 1 was effective for elections in 1998 and 2000 unless the United States Supreme Court reversed the decision of the District Court holding § 163–201(a) unconstitutional. The 1999 United States Supreme Court in Hunt v. Cromartie, 119 S. Ct. 1545, 526 U.S. 541, 143 L.Ed. 2d 731, reversed the decision of the District Court that had granted summary judgment. Due to this Supreme Court Decision, the text of subsec. (a) incorporates the amendment made by S.L. 1997–11, § 2.

S.L. 1997–11, § 3, provided in part that in the event that a court of competent jurisdiction held that the plan enacted by Section 2 of that act is invalid because the total population range violates the one-person one-vote doctrine, and that decision is not reversed, then the plan enacted by Section 2 of that act in § 63–201 is repealed, and further provided the text of a plan to replace the plan of § 2 of that act.

As amended by S.L. 1998–2, § 1, subsec. (a) of this section reads:

''(a) For the purpose of nominating and electing members of the House of Representatives of the Congress of the United States in 1998 and every two years thereafter, the State of North Carolina shall be divided into 12 districts as follows:

''District 1: Beaufort County: Chocowinity township, Richland township, Washington township: the remainder not in District 3; Bertie County, Craven County: Epworth *, Cove City *, Dover *, Fort Barnwell *, First Ward *, Second Ward *, Third Ward *, Fourth Ward *, Fifth Ward *, Clarks *, Country Club *, Rhems *: the remainder not in District 3; Jasper *; Edgecombe County, Gates County, Granville County: Antioch *, Corinth *, Oak Hill *, Credle *, East Oxford *, South Oxford *, West Oxford Elementary *, Salem *, Sassafras Fork *, Walnut Grove *; Greene County, Halifax County, Hertford County, Jones County: Beaver Creek *, Chinquapin *, Cypress Creek *, Pollocksville *, Trenton *, White Oak *; Lenoir County: Contentnea *, Institute *, Kinston #1 *, Kinston #2 *, Kinston #6 *, Kinston #7 *, Kinston #8 *, Kinston #9 *, Moseley Hall *, Sandhill *, Vance *; Martin County, Northampton County, Person County: Allensville, Cunningham–Chub Lake, Holloway, Roxboro City # 4, Woodsdale, Roxboro City # 1, Roxboro City # 1A, Roxboro City # 2, Roxboro City # 3; Pitt County: Ayden East *, Belvoir *, Bethel *, Carolina *, Falkland *, Fountain *, Grifton *, Grimesland *, Pactolus *, Greenville #1 *, Greenville #2, Greenville #3 *, Greenville #4 *, Greenville #5 *, Greenville #6 *, Greenville #13 *, Greenville #2 Noncontiguous; Vance County, Warren County, Washington County: Lees Mill *, Plymouth #1 *, Plymouth #2 *, Plymouth #3 *; Wayne County: Goldsboro #1 *, Goldsboro #2 *, Goldsboro #3 *, Goldsboro #5 *, Eureka *, Fremont *, Saulston *, Pinewood *; Wilson County: Black Creek *, Gardners *, Saratoga *, Stantonsburg *, Toisnot *, Wilson A *, Wilson B *, Wilson C *, Wilson E *, Wilson F *, Wilson G *, Wilson H *, Wilson I *, Wilson M *, Wilson N *, Wilson Q *.

''District 2: Franklin County, Granville County: Brassfield *, Butner *, Creedmoor *, Tally Ho *; Harnett County, Johnston County, Lee County, Nash County, Sampson County: Kitty Fork *, Keener *, Herring *, Newton Grove *, Northeast Clinton *, Central Clinton *, East Clinton *, West Clinton *, Giddensville *, Turkey *, Westbrook *; Wake County: Raleigh 01–01 *, Raleigh 01–02 *, Raleigh 01–03 *, Raleigh 01–05 *, Raleigh 01–06 *, Raleigh 01–07 *, Raleigh 01–09 *, Raleigh 01–10 *, Raleigh 01–12 *, Raleigh 01–13 *, Raleigh 01–14 *, Raleigh 01–18 *, Raleigh 01–19 *, Raleigh 01–20 *, Raleigh 01–21 *, Raleigh 01–22 *, Raleigh 01–23 *, Raleigh 01–26 *, Raleigh 01–27 *, Raleigh 01–28 *, Raleigh 01–31 *, Raleigh 01–34 *, Raleigh 01–35 *, Raleigh 01–38 *, Raleigh 01–40 *, Raleigh 01–46 *, Bartons Creek #2 *, Little River #1 *, Little River #2 *, Marks Creek

#1 *, Marks Creek #2 *, Raleigh 01–27 Part, Neuse #1 *, Neuse #2 *, New Light #1 *, New Light #2 *, St. Marys #1 *, St. Marys #2 *, St. Matthews #1 *, St. Matthews #2 *, St. Matthews #3 *, St. Matthews #4 *, Wake Forest #1 *, Wake Forest #2 *; Wilson County: Cross Roads *, Old Fields *, Spring Hill *, Taylors *, Wilson D *, Wilson J *, Wilson K *, Wilson L *, Wilson P *.

''District 3: Beaufort County: Bath township, Long Acre township, Pantego township, Washington township: Tract 9905: Block Group 5: Block 522A, Block 528A; Camden County, Carteret County: Carteret County; Chowan County, Craven County: Ernul *, Vanceboro *, Bridgeton *, Truitt *, Harlowe *, Croatan *, Havelock *, Grantham *, Sixth Ward *, Rhems *: Tract 9604: Block Group 7: Block 701, Block 702, Block 704; River Bend *, Trent Woods *, Woodrow *; Currituck County; Dare County; Hyde County; Jones County: Tuckahoe *; Lenoir County: Falling Creek *, Kinston #3 *, Kinston #4 *, Kinston #5 *, Neuse *, Pink Hill #1 *, Pink Hill #2 *, Southwest *, Trent #1 *, Trent #2 *, Woodlington *; Onslow County, Pamlico County; Pasquotank County, Perquimans County, Pitt County: Arthur *, Ayden West *, Chicod *, Farmville West *, Farmville East *, Simpson *, Swift Creek *, Winterville West *, Winterville East *, Greenville #7 *, Greenville #8 *, Greenville #9 *, Greenville #10 *, Greenville #11 *, Greenville #12 *; Tyrrell County, Washington County: Scuppernong *, Skinnersville *; Wayne County: Brogden *, Mt. Olive *, Buck Swamp *, Fork *, Grantham *, Great Swamp *, Goldsboro #4 *, Indian Springs *, White Hall *, New Hope *, Pikeville *, Stoney Creek *.

''District 4: Chatham County: Albright *, Bynum *, East Mann's Chapel *, West Mann's Chapel *, Bennett *, Bonlee *, Harpers Crossroads *, Cape Fear *, East Pittsboro *, West Pittsboro *, Goldston *, Hadley *, Haw River *, Hickory Mountain *, New Hope *, Oakland *, East Williams *, West Williams *; Durham County, Orange County, Person County: Bushy Fork, Flat River, Mt. Tirzah, Olive Hill, Hurdle Mills; Wake County: Raleigh 01–04 *, Raleigh 01–11 *, Raleigh 01–15 *, Raleigh 01–16 *, Raleigh 01–17 *, Raleigh 01–29 *, Raleigh 01–30 *, Raleigh 01–32 *, Raleigh 01–33 *, Raleigh 01–36 *, Raleigh 01–37 *, Raleigh 01–39 *, Raleigh 01–41 *, Raleigh 01–42 *, Raleigh 01–43 *, Raleigh 01–44 *, Raleigh 01–45 *, Bartons Creek #1 *, Buckhorn *, Cary #1 *, Cary #2 *, Cary #3 *, Cary #4 *, Cary #5 *, Cary #6 *, Cary #7 *, Cary #8 *, Cary #9 *, Cary #10 *, Cedar Fork *, Holly Springs *, House Creek #1 *, House Creek #2 *, House Creek #3 *, House Creek #4 *, House Creek #5 *, House Creek #6 *, Leesville #1 *, Leesville #2 *, Leesville #3 *, Meredith *, Middle Creek #1 *, Middle Creek #2 *, Panther Branch *, St. Marys #3 *, St. Marys #4 *, St. Marys #5 *, St. Marys #6 *, St. Marys # 7, Swift Creek #1 *, Swift Creek #2 *, Swift Creek #3 *, Swift Creek #4 *, White Oak #1 *, White Oak #2 *.

''District 5: Alamance County, Caswell County, Davie County: Davie County; Forsyth County: Abbotts Creek #1 *, Abbotts Creek #2 *, Abbotts Creek #3 *, Belews Creek *, Bethania #1 *, Bethania #2 *, Bethania #3 *, Clemmonsville #1 *, Clemmonsville #2 *, Clemmonsville #3 *, Kernersville #1 *, Kernersville #2 *, Kernersville #3 *, Kernersville #4 *, Lewisville #1 *, Lewisville #2 *, Lewisville #3 *, Old Richmond *, Old Town #2 *, Old Town #3 *, Salem Chapel #1 *, Salem Chapel #2 *, South Fork #2 *, South Fork #3 *, Vienna #1 *, Vienna #2 *, Vienna #3 *, Ardmore Baptist Church *, Bethabara Moravian Church *, Bible Wesleyan Church *, Bishop McGuinness *, Bolton Swimming Center *, Brown/Douglas Recreation *, Brunson Elementary School *, Calvary Baptist Church *, Christ Moravian Church *, Country Club Fire St. *, First Christian Church *, Forsyth Tech W. Camp. *, Greek Orthodox Church *, Hanes Community Center *, Jefferson Elementary School *, Latham Elementary School *, Messiah Moravian Church *, Miller Park Recreation Center *, Mt. Tabor High School *, New Hope United Methodist Church *, Old Town Presbyterian Church *, Parkland High School *, Parkway United Church *, Polo Park Recreation Center *, Reynolds High School Gym *, Sherwood Forest Elementary School *, South Fork Elem School *, St. Anne's Episcopal Church *, Summit School *, Trinity United Methodist Church *, Whitaker Elementary School *; Guilford County: Bruce *, North Center Grove *, South Center Grove *, North Madison *, South Madison *, North Monroe *, South Monroe *, Oak Ridge *, Stokesdale *, North Washington *, South Washington *; Rockingham County, Stokes County: Stokes County; Surry County: Dobson

1 *, Dobson 2 *, Dobson 3 *, Eldora *, Franklin *, Long Hill *, Mount Airy 1 *, Mount Airy 2 *, Mount Airy 4 *, Mount Airy 5 *, Mount Airy 6 *, Mount Airy 7 *, Mount Airy 8 *, Mount Airy 9 *, Pilot 1 *, Pilot 2 *, Rockford *, Shoals *, Siloam *, Stewarts Creek 1 *, Stewarts Creek 2 *, North Westfield *, South Westfield *.

''District 6: Chatham County: North Siler City *, South Siler City *; Davidson County: Abbotts Creek *, Alleghany *, Central *, Holly Grove *, Liberty *, Denton *, Emmons *, Silver Valley *, Healing Springs *, Jackson Hill *, Silver Hill *, Thomasville No. 1 *, Thomasville No. 2 *, Thomasville No. 3 *, Thomasville No. 4 *, Thomasville No. 5 *, Thomasville No. 7 *, Thomasville No. 8 *, Thomasville No. 9 *, Thomasville No. 10 *; Guilford County: GB–01 *, GB–02 *, GB–03 *, GB–04 *, GB–05 *, GB–06 *, GB–07 *, GB–08 *, GB–09 *, GB–10 *, GB–11 *, GB–12 *, GB–13 *, GB–14 *, GB–15 *, GB–16 *, GB–17 *, GB–18 *, GB–19 *, GB–20 *, GB–21 *, GB–22 *, GB–23 *, GB–24A *, GB–25 *, GB–26A *, GB–27A *, GB–28 *, GB–29 *, GB–30 *, GB–31 *, GB–32 *, GB–33 *, GB–34A *, GB–35A *, GB–36 *, GB–37A *, GB–38 *, GB–39 *, GB–40A *, GB–41A *, GB–42 *, GB–43 *, GB–44 *, GB–45 *, HP–01 *, HP–02 *, HP–03 *, HP–04 *, HP–05 *, HP–06 *, HP–07 *, HP–08 *, HP–09 *, HP–10 *, HP–11 *, HP–12 *, HP–13 *, HP–14 *, HP–15 *, HP–16 *, HP–17 *, HP–18 *, HP–19 *, HP–20 *, HP–21 *, HP–22 *, HP–23 *, HP–24 *, Clay *, Deep River *, Fentress–1 *, Fentress–2 *, Friendship–1 *, Friendship–2 *, Gibsonville *, Whitsett *, Greene *, Jamestown–1 *, Jamestown–2 *, Jamestown–3 *, North Jefferson *, South Jefferson *, North Sumner *, South Sumner *, GB–24B *, GB–26B *, GB–27B *, GB–34B *, GB–35B *, GB–37B *, GB–40B *, GB–41B *, GIB–G *, GB–24C *, GB–27C *, GB–35C *; Moore County; Randolph County.

''District 7: Bladen County; Brunswick County; Columbus County; Cumberland County: Beaver Dam *, Black River *, Linden *, Long Hill *, Cedar Creek *, Judson *, Stedman *, Cross Creek #1 *, Cross Creek #3 *, Cross Creek #4 *, Cross Creek #7 *, Cross Creek #8 *, Cross Creek #10 *, Cross Creek #11 *, Cross Creek #12 *, Cross Creek #14 *, Cross Creek #15 *, Cross Creek #18 *, Cross Creek #20 *, Cross Creek #22 *, Cross Creek #23 *, Cross Creek #24 *, Cross Creek #2 *, Eastover *, Vander *, Wade *, Alderman *, Sherwood *, Pearces Mill #2 *, Pearces Mill #3 *, Pearces Mill #4 *, Cumberland #1 *, Cumberland #2 *, Hope Mills #1 *, Hope Mills #2 *, Montclair *, Seventy First #2 *, Seventy First #3 *; Duplin County, New Hanover County, Pender County, Robeson County: Alfordsville *, Back Swamp *, Britts *, Burnt Swamp *, Fairmont #1 *, Fairmont #2 *, Gaddys *, East Howellsville *, West Howellsville *, Lumberton #1 *, Lumberton #2 *, Lumberton #3 *, Lumberton #4 *, Lumberton #5 *, Lumberton #6 *, Lumberton #7 *, Lumberton #8 *, Orrum *, North Pembroke *, South Pembroke *, Philadelphus *, Raft Swamp *, Rowland *, Saddletree *, Smiths *, Smyrna *, Sterlings *, Thompson *, Union *, Whitehouse *, Wishart *; Sampson County: Clement *, Harrells *, Salemburg *, Ingold *, Autryville *, Roseboro *, Mingo *, Plainview *, Southwest Clinton *, Rowan *, Garland *, Lakewood *.

''District 8: Anson County, Cabarrus County, Cumberland County: Westarea *, Cross Creek #5 *, Cross Creek #6 *, Cross Creek #9 *, Cross Creek #13 *, Cross Creek #16 *, Cross Creek #17 *, Cross Creek #19 *, Cross Creek #21, Manchester *, Spring Lake *, Beaver Lake *, Brentwood *, Cottonade *, Morganton Road #1 *, Morganton Road #2 *, Seventy First #1 *; Hoke County, Montgomery County; Richmond County, Robeson County: Lumber Bridge *, Maxton *, Parkton *, Red Springs #1 *, Red Springs #2 *, Rennert *, Shannon *, North St. Pauls *, South St. Pauls *; Scotland County, Stanly County; Union County.

''District 9: Cleveland County, Gaston County, Lincoln County, Mecklenburg County: Charlotte Pct. 1 *, Charlotte Pct. 4, Charlotte Pct. 8 *, Charlotte Pct. 18 *, Charlotte Pct. 19 *, Charlotte Pct. 20 *, Charlotte Pct. 32 *, Charlotte Pct. 36 *, Charlotte Pct. 47 *, Charlotte Pct. 48 *, Charlotte Pct. 49 *, Charlotte Pct. 50 *, Charlotte Pct. 57 *, Charlotte Pct. 58 *, Charlotte Pct. 59 *, Charlotte Pct. 62 *, Charlotte Pct. 64 *, Charlotte Pct. 65 *, Charlotte Pct. 66 *, Charlotte Pct. 67 *, Charlotte Pct. 68 *, Charlotte Pct. 69 *, Charlotte Pct. 70 *, Charlotte Pct. 71 *, Charlotte Pct. 72 *, Charlotte Pct. 73 *, Charlotte Pct. 74 *, Charlotte Pct. 75 *, Charlotte Pct. 76 *, Charlotte Pct. 77 *: Tract 0058.06: Block Group 1: Block 113; Tract 0059.03: Block Group 3: Block 340A, Block 340B, Block 341A, Block 341B, Block 342, Block 344A, Block 344B, Block 345, Block 346, Block 347, Block 348, Block 349, Block 350, Block 351, Block 352,

Block 353, Block 354, Block 355, Block 356, Block 357, Block 361; Charlotte Pct. 79 *, Charlotte Pct. 80 *, Charlotte Pct. 83 *, Charlotte Pct. 85 *, Charlotte Pct. 86 *, Charlotte Pct. 87 *, Charlotte Pct. 88 *, Charlotte Pct. 89 *, Charlotte Pct. 90 *, Charlotte Pct. 91, Charlotte Pct. 92 *, Charlotte Pct. 93 *, Charlotte Pct. 94 *, Charlotte Pct. 95 *, Charlotte Pct. 96 *, BER *, CCK *, CO1 *, LEM *, LC1 — North, MA1 *, MA2 *, MA3 *, MA4 *, Charlotte Pct. 102, MH1 *, MH2 *, MH3 *, OAK, PC1 *, PC2 *, PVL *, PR1, PR2, PR3, Charlotte Pct. 93 Part, SC1, SC2, Charlotte Pct. 100 *.

''District 10: Alexander County; Alleghany County; Ashe County; Avery County; Burke County, Caldwell County, Catawba County, Iredell County: Bethany *, Concord *, Davidson *, Eagle Mills *, Fallstown *, New Hope *, Olin *, Sharpesburg *, Shiloh *, Statesville #1 *, Statesville #2 *, Statesville #3 *, Statesville #4 *, Statesville #5 *, Statesville #6 *, Turnersburg *, Union Grove *; Mitchell County, Surry County: Bryan *, Elkin 1 *, Elkin 2 *, Elkin 3 *, Marsh *; Watauga County; Wilkes County, Yadkin County.

''District 11: Buncombe County, Cherokee County; Clay County; Graham County; Haywood County; Henderson County, Jackson County; McDowell County; Macon County; Madison County; Polk County; Rutherford County; Swain County; Transylvania County; Yancey County.

''District 12: Davidson County: Arcadia *, Boone *, Cotton *, Southmont *, Hampton *, Lexington No. 1 *, Lexington No. 2 *, Lexington No. 3 *, Lexington No. 4 *, Ward No. 1 *, Ward No. 2 *, Ward No. 3 *, Ward No. 4 *, Ward No. 5 *, Ward No. 6 *, Welcome *, Midway *, Reeds *, Tyro *, Reedy Creek *, Yadkin College *; Forsyth County: Broadbay #1 *, Broadbay #2 *, Middlefork #2 *, Middlefork #3 *, Ashley Middle School *, Carver High School *, Covenant Presbyterian Church *, East Winston Library *, Easton Elementary School *, Forest Hill Fire Station *, Forest Pk. Elementary School *, 14th Street Recreation Center *, Happy Hill Recreation Center *, Hill Middle School *, Kennedy Middle School *, Lowrance Middle School *, M. L. King Recreation Center *, Memorial Coliseum *, Mineral Springs F. St *, Mt. Sinai Church *, Philo Middle School *, St. Andrews United Methodist *, Trinity Moravian Church *, Winston Lake Family YMCA *; Iredell County: Barringer *, Chambersburg *, Coddle Creek #1 *, Coddle Creek #2 *, Coddle Creek #3 *, Coddle Creek #4 *, Cool Springs *; Mecklenburg County: Charlotte Pct. 2 *, Charlotte Pct. 3, Charlotte Pct. 5 *, Charlotte Pct. 6 *, Charlotte Pct. 7 *, Charlotte Pct. 9 *, Charlotte Pct. 10 *, Charlotte Pct. 11 *, Charlotte Pct. 12 *, Charlotte Pct. 13 *, Charlotte Pct. 14 *, Charlotte Pct. 15 *, Charlotte Pct. 16 *, Charlotte Pct. 17 *, Charlotte Pct. 21 *, Charlotte Pct. 22 *, Charlotte Pct. 23 *, Charlotte Pct. 24 *, Charlotte Pct. 25 *, Charlotte Pct. 26 *, Charlotte Pct. 27 *, Charlotte Pct. 28 *, Charlotte Pct. 29 *, Charlotte Pct. 30 *, Charlotte Pct. 31 *, Charlotte Pct. 33 *, Charlotte Pct. 34 *, Charlotte Pct. 35 *, Charlotte Pct. 37 *, Charlotte Pct. 38 *, Charlotte Pct. 39 *, Charlotte Pct. 40 *, Charlotte Pct. 41 *, Charlotte Pct. 42 *, Charlotte Pct. 43 *, Charlotte Pct. 44 *, Charlotte Pct. 45 *, Charlotte Pct. 46 *, Charlotte Pct. 51 *, Charlotte Pct. 52 *, Charlotte Pct. 53 *, Charlotte Pct. 54 *, Charlotte Pct. 55 *, Charlotte Pct. 56 *, Charlotte Pct. 60, Charlotte Pct. 61 *, Charlotte Pct. 63 *, Charlotte Pct. 77 *: Tract 0038.04: Block Group 2; Tract 0058.06: Block Group 1: Block 101, Block 102, Block 103, Block 104, Block 105, Block 106A, Block 107, Block 108A, Block 109, Block 110, Block 111A, Block 124A, Block 125, Block 126, Block 127, Block 128A, Block 128B, Block 129, Block 130; Tract 0059.03: Block Group 3: Block 301, Block 302, Block 303, Block 304, Block 343, Block 386, Block 387; Charlotte Pct. 78 *, Charlotte Pct. 81 *, Charlotte Pct. 82 *, Charlotte Pct. 84 *, Charlotte Pct. 97 *, Charlotte Pct. 98 *, COR *, CO2 *, DAV *, HUN *, LC2, LC1 –South, MC1, MC2, Charlotte Pct. 16 Part, MC1 part, XMC2 Noncontiguous, Charlotte Pct. 104, Charlotte Pct. 105; Rowan County.''

2001 Legislation

S.L. 2001–466, §§ 1(a) to 1(g), provide:

''Section 1.(a) The filing of notices of candidacy for 2002 only shall be postponed for primary elections for all offices and for elections for all other offices conducted on the day of the primary. The filing period for those offices shall begin at noon on February 18, 2002, and end at noon March 1, 2002.

''Section 1.(b) If by 10:00 A.M. on February 18, 2002, an act to redistrict the State House of Representatives, the State Senate, or North Carolina's districts for electing members of the Unit-

ed States House of Representatives has not been approved under section 5 of the Voting Rights Act of 1965, the State Board of Elections shall postpone the primary election for all offices until a date the State Board determines to be fair to all parties, potential candidates, and voters. The State Board shall make its decision as soon as practical, taking into account the likelihood of receiving a final approval of any pending redistricting plan.

''Section 1.(c) If the filing period or primary election or both are postponed under this section, the State Board of Elections shall adopt rules for the implementation of the primary election schedule. Adoption of those rules is not subject to Chapter 150B of the General Statutes. Those rules shall include a postponed filing period and other necessary parts of the election schedule. The rules shall include reset dates for absentee balloting that shall as nearly as practical provide the same amount of time for voters and election officials set forth in Article 20 of Chapter 163 of the General Statutes. The State Board shall, as soon as practical, distribute its rules, including a Revised Primary Timetable, to county boards of elections.

''Section 1.(d) The State Board of Elections shall be governed by the following limitations:

''(1) Any postponement of the candidate filing period or the primary shall apply to all offices whose primary elections are regularly scheduled on primary day, so that there is one candidate filing period for all those offices and one primary election for all those offices. The State Board shall not set a separate filing period or election date for any election that regularly set on the date of the primary. The postponement shall also apply to any elections to office held on that date (such as elections for boards of education under G.S. 115C–37) and the filing period for those offices.

''(2) The State Board of Elections does not have the authority to dispense with a second primary. The State Board shall provide for a second primary in its schedule to any candidate entitled to call for a second primary under the provisions of G.S. 163–111.

''(3) The State Board shall set a filing period no shorter than 10 business days.

''(4) Before making its decision to postpone a filing period or primary election under this section, the State Board of Elections shall consult with the President Pro Tem of the Senate, the Speaker of the House, and the Majority and Minority Leaders of the House and Senate.

''Section 1.(e) If the primary election is postponed under subsection (b) of this section, any local act for election of a board of education elected at the primary which provides that persons elected shall take office in July of the year of the election is modified for the 2002 election only to provide that the persons elected shall take office in September of the year of the election.

''Section 1.(f) For the 2002 primary election only, G.S. 163–112 shall be applied by substituting '10 days' for '30 days' wherever it appears.

''Section 1.(g) The provisions of this section apply during the 2002 election year only.''

S.L. 2001–471, § 1, eff. Nov. 28, 2001, repealed by S.L. 2001–479, § 1, amended this section to read:

''(a) For purposes of nominating and electing members of the House of Representatives of the Congress of the United States in 2002 and every two years thereafter; the State of North Carolina shall be divided into 13 districts as follows:

''District 1: Bertie County, Chowan County, Edgecombe County, Gates County, Greene County, Halifax County, Hertford County, Martin County, Northampton County, Pasquotank County, Perquimans County, Warren County, Washington County, Beaufort County: Precinct BLOUNTS CREEK, Precinct AURORA, Precinct CHOCOWINITY, Precinct EDWARD, Precinct PS JONES WARD 3, Precinct WASHINGTON WARD 1, Precinct WASHINGTON WARD 2; Craven County: Precinct RHEMS, Precinct CLARKS, Precinct JASPER, Precinct COVE CITY, Precinct DOVER, Precinct FORT BARNWELL, Precinct WEST HAVELOCK: Tract 9611: Block Group 1: Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1996; Block Group 2: Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block

2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050, Block 2051, Block 2052, Block 2053, Block 2054, Block 2055, Block 2062, Block 2063, Block 2064, Block 2065, Block 2066, Block 2067, Block 2068, Block 2069, Block 2070, Block 2071, Block 2072, Block 2073, Block 2074, Block 2075, Block 2076, Block 2077, Block 2078, Block 2079, Block 2080, Block 2081, Block 2082, Block 2083, Block 2084, Block 2085, Block 2086, Block 2087, Block 2088, Block 2997, Block 2998, Block 2999; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3998, Block 3999; Tract 9612:

Block Group 1: Block 1000, Block 1001, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1992, Block 1993, Block 1995, Block 1996, Block 1997, Block 1998, Block 1999; Tract 9613: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1999; Block Group 6: Block 6047, Block 6048, Block 6049; Precinct GEORGE STREET, Precinct FORT TOTTEN, Precinct H J McDONALD, Precinct GLENBURNIE PARK; Granville County: Precinct CREDLE, Precinct EAST OXFORD, Precinct SALEM, Precinct SOUTH OXFORD, Precinct WEST OXFORD ELEMENTARY; Jones County: Precinct POLLOCKSVILLE:

Tract 9801: Block Group 1: Block 1005, Block 1006, Block 1007, Block 1012, Block 1013, Block 1014, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1055, Block 1056, Block 1057, Block 1058, Block 1059, Block 1060, Block 1061, Block 1062, Block 1063, Block 1064, Block 1065, Block 1066, Block 1067, Block 1068, Block 1069, Block 1070, Block 1071, Block 1072, Block 1073, Block 1074, Block 1075, Block 1076, Block 1077, Block 1078, Block 1079, Block 1080, Block 1081, Block 1082, Block 1083, Block 1084, Block 1085, Block 1086, Block 1087, Block 1088, Block 1089, Block 1090, Block 1091, Block 1092, Block 1093, Block 1997, Block 1998; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2999; Block Group 3: Block 3000, Block 3001, Block 3002; Tract 9802: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025; Block Group 2: Block 2000, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2036, Block 2037, Block 2038, Block 2039, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2054; Precinct TRENTON, Precinct WHITE OAK; Lenoir County: Precinct CONTENTNEA, Precinct VANCE, Precinct KINSTON 1, Precinct KINSTON 2, Precinct KINSTON 3, Precinct KINSTON 5, Precinct KINSTON 6, Precinct KINSTON 7, Precinct KINSTON 8, Precinct MOSELEY HALL, Precinct SAND HILL; Nash County: Precinct ROCKY MOUNT 1, Precinct ROCKY MOUNT 2, Precinct ROCKY MOUNT 3, Precinct ROCKY MOUNT 4; Pitt County: Precinct 3.01, Precinct 4.01, Precinct 5.01, Precinct 10.01, Precinct 12.01, Precinct 15.01, Precinct 15.03, Precinct 15.04, Precinct 15.06, Precinct 2.00B, Precinct 8.00A, Precinct 8.00B, Precinct 15.05A, Pre-

cinct 15.05B; Vance County: Precinct EAST HENDERSON 1, Precinct NORTH HENDERSON 1, Precinct NORTH HENDERSON 2, Precinct SOUTH HENDERSON 1, Precinct WEST HENDERSON 1, Precinct WEST HENDERSON 2, Precinct DABNEY, Precinct MIDDLEBURG, Precinct TOWNSVILLE, Precinct WATKINS, Precinct WILLIAMSBORO; Wayne County: Precinct Precinct 7, Precinct Precinct 10, Precinct Precinct 11, Precinct Precinct 12, Precinct Precinct 13, Precinct Precinct 17, Precinct Precinct 18, Precinct Precinct 19, Precinct Precinct 20, Precinct Precinct 21, Precinct Precinct 22, Precinct Precinct 23, Precinct Precinct 26, Precinct Precinct 27, Precinct Precinct 29; Wilson County: Precinct GARDNERS, Precinct SARATOGA, Precinct TOISNOT, Precinct WILSON A, Precinct WILSON B, Precinct WILSON C, Precinct WILSON E, Precinct WILSON F, Precinct WILSON G, Precinct WILSON H, Precinct WILSON I, Precinct WILSON N, Precinct WILSON Q.

''District 2: Franklin County, Harnett County, Johnston County, Lee County, Chatham County: Precinct ALBRIGHT, Precinct BENNETT, Precinct BONLEE, Precinct GOLDSTON, Precinct THREE RIVERS, Precinct HADLEY, Precinct HARPER'S CROSSROADS, Precinct HICKORY MOUNTAIN, Precinct OAKLAND, Precinct WEST PITTSBORO, Precinct EAST PITTSBORO, Precinct EAST SILER CITY, Precinct CENTRAL SILER CITY, Precinct WEST SILER CITY; Cumberland County: Precinct CROSS CREEK 3, Precinct CROSS CREEK 5, Precinct CROSS CREEK 9, Precinct CROSS CREEK 13, Precinct CROSS CREEK 16, Precinct CROSS CREEK 17, Precinct CROSS CREEK 19, Precinct CROSS CREEK 21, Precinct CROSS CREEK 22, Precinct CROSS CREEK 26, Precinct CROSS CREEK 32, Precinct CROSS CREEK 33, Precinct CLIFFDALE WEST, Precinct MANCHESTER:

Tract 34: Block Group 1: Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011; Block Group 2: Block 2009, Block 2011, Block 2012, Block 2017, Block 2018, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050, Block 2051, Block 2052, Block 2053, Block 2054, Block 2055, Block 2056, Block 2057, Block 2058, Block 2059, Block 2060, Block 2061, Block 2062, Block 2063, Block 2064, Block 2065, Block 2066, Block 2067, Block 2068, Block 2069, Block 2070, Block 2071, Block 2072, Block 2073, Block 2074, Block 2075, Block 2076, Block 2077, Block 2078, Block 2079, Block 2080, Block 2081, Block 2082, Block 2083, Block 2084, Block 2085, Block 2086, Block 2087, Block 2088, Block 2089, Block 2090, Block 2091, Block 2092, Block 2093, Block 2094, Block 2095, Block 2096, Block 2097, Block 2098, Block 2099, Block 2100, Block 2997, Block 2998; Tract 35: Block Group 2: Block 2000, Block 2007, Block 2008, Block 2009; Tract 36: Block Group 1: Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1030, Block 1993, Block 1994, Block 1995, Block 1997, Block 1998; Block Group 2: Block 2003, Block 2004, Block 2012, Block 2013, Block 2017, Block 2031, Block 2995, Block 2996, Block 2998; Block Group 4: Block 4000, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4028, Block 4029, Block 4030, Block 4031, Block 4032, Block 4033, Block 4034, Block 4037, Block 4039, Block 4043, Block 4044, Block 4045, Block 4046, Block 4998; Precinct SPRING LAKE, Precinct WEST AREA; Nash County: Precinct ROCKY MOUNT 8, Precinct NASHVILLE, Precinct ROCKY MOUNT 10, Precinct GRIFFINS, Precinct JACKSONS, Precinct MANNINGS 1, Precinct MANNINGS 2, Precinct SOUTH WHITAKERS, Precinct BAILEY, Precinct CASTALIA, Precinct DRYWELLS, Precinct FERRELLS, Precinct NORTH WHITAKERS 1, Precinct NORTH WHITAKERS 2; Sampson County: Precinct CENTRAL CLINTON, Precinct EAST CLINTON, Precinct SOUTHWEST CLINTON, Precinct GARLAND,

Precinct GIDDENSVILLE, Precinct HARRELLS, Precinct INGOLD, Precinct KEENER, Precinct LAKEWOOD, Precinct NEWTON GROVE, Precinct ROWAN, Precinct TURKEY; Vance County: Precinct EAST HENDERSON 2, Precinct SOUTH HENDERSON 2, Precinct HILLTOP, Precinct KITTRELL, Precinct SANDY SCREEK; Wake County: Precinct 01–19, Precinct 01–20, Precinct 01–21, Precinct 01–22, Precinct 01–23, Precinct 01–26, Precinct 01–27: Tract 501: Block Group 1: Block 1070; Precinct 01–35, Precinct 16–01, Precinct 16–02, Precinct 16–03, Precinct 16–04, Precinct 16–05, Precinct 16–06, Precinct 16–07, Precinct 18–01, Precinct 18–06.

''District 3: Camden County, Carteret County, Currituck County, Dare County, Hyde County, Onslow County, Pamlico County, Tyrrell County, Beaufort County: Precinct HUNTERS BRIDGE, Precinct BELHAVEN, Precinct NORTH CREEK, Precinct OLD FORD, Precinct RIVER ROAD, Precinct TRANTERS CREEK, Precinct WOODARDS POND, Precinct BEAVER DAM, Precinct PANTEGO, Precinct PINETOWN, Precinct SURRY BATH, Precinct WASHINGTON WARD 4, Precinct WASHINGTON PARK, Precinct GILEAD; Craven County: Precinct TRENT WOODS, Precinct RIVER BEND, Precinct BRIDGETON, Precinct TRUITT, Precinct ERNUL, Precinct VANCEBORO, Precinct EPWORTH, Precinct GRANTHAM, Precinct CROATAN, Precinct WEST HAVELOCK: Tract 9611: Block Group 2: Block 2056, Block 2057, Block 2058, Block 2059, Block 2060, Block 2061; Tract 9612: Block Group 1: Block 1012, Block 1013; Tract 9613: Block Group 4: Block 4001, Block 4023, Block 4024; Block Group 5: Block 5015, Block 5016, Block 5017; Block Group 6: Block 6050; Precinct HARLOWE, Precinct FAIRFIELD HARBOUR, Precinct BRICES CREEK, Precinct EAST HAVELOCK, Precinct GROVER C FIELDS, Precinct WEST NEW BERN; Duplin County: Precinct ALBERTSON, Precinct BEULAVILLE: Tract 9905: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050, Block 2051, Block 2052, Block 2053; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3008, Block 3009, Block 3010, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047, Block 3048, Block 3049, Block 3050, Block 3051, Block 3052, Block 3053, Block 3054, Block 3055, Block 3056, Block 3057, Block 3058, Block 3059, Block 3060, Block 3061, Block 3062, Block 3063, Block 3064, Block 3065, Block 3066, Block 3067, Block 3068, Block 3069, Block 3070, Block 3071, Block 3072, Block 3073, Block 3074, Block 3075, Block 3076; Block Group 4:

Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005,Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025, Block 4026, Block 4027, Block 4028, Block 4029, Block 4030, Block 4031, Block 4032, Block 4033, Block 4034, Block 4035, Block 4036, Block 4037, Block 4038, Block 4039, Block 4040, Block 4041, Block 4042, Block 4043, Block 4044, Block 4045, Block 4046, Block 4047, Block 4048, Block 4049, Block 4050, Block 4051, Block 4052, Block 4053, Block 4054, Block 4055, Block 4056, Block 4057, Block 4058, Block 4059, Block 4060; Block Group 5: Block 5000, Block 5023, Block 5024; Precinct CALYPSO, Precinct CEDAR FORK, Precinct CHINQUAPIN, Precinct GLISSON, Precinct WOLFSCRAPE; Jones County: Precinct BEAVER CREEK, Precinct CYPRESS CREEK, Precinct CHINQUAPIN, Precinct POLLOCKSVILLE: Tract 9801: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1008, Block 1009, Block 1010, Block 1011, Block 1015, Block 1999; Precinct TUCKAHOE; Lenoir County: Precinct INSTITUTE, Precinct NEUSE, Precinct WOODINGTON, Pre-

cinct FALLING CREEK, Precinct KINSTON 4, Precinct KINSTON 9, Precinct SOUTHWEST, Precinct TRENT 1, Precinct TRENT 2, Precinct PINK HILL 1, Precinct PINK HILL 2; Nash County: Precinct STONY CREEK, Precinct ROCKY MOUNT 5, Precinct ROCKY MOUNT 6, Precinct ROCKY MOUNT 7, Precinct ROCKY MOUNT 9, Precinct COOPERS, Precinct OAK LEVEL, Precinct RED OAK; Pitt County: Precinct 1.01, Precinct 6.01, Precinct 7.01, Precinct 9.01, Precinct 11.01, Precinct 13.01, Precinct 14.02, Precinct 15.09, Precinct 2.00A, Precinct 11.02A, Precinct 11.02B, Precinct 14.03A, Precinct 14.03B, Precinct 15.07A, Precinct 15.07B, Precinct 15.07C, Precinct 15.08A, Precinct 15.08B, Precinct 15.10A, Precinct 15.10B, Precinct 15.11A, Precinct 15.11B, Precinct 15.12A, Precinct 15.12B; Wayne County: Precinct Precinct 1, Precinct Precinct 2, Precinct Precinct 3, Precinct Precinct 4, Precinct Precinct 5, Precinct Precinct 6, Precinct Precinct 8, Precinct Precinct 9, Precinct Precinct 14, Precinct Precinct 15, Precinct Precinct 16, Precinct Precinct 24, Precinct Precinct 25, Precinct Precinct 28, Precinct Precinct 30; Wilson County: Precinct BLACK CREEK, Precinct CROSSROADS, Precinct OLD FIELDS, Precinct SPRINGHILL, Precinct STANTONSBURG, Precinct TAYLORS, Precinct WILSON D, Precinct WILSON J, Precinct WILSON K, Precinct WILSON L, Precinct WILSON M, Precinct WILSON P.

''District 4: Durham County, Orange County, Chatham County: Precinct BYNUM, Precinct EAST MANNS CHAPEL, Precinct WEST MANNS CHAPEL, Precinct NEW HOPE, Precinct EAST WILLIAMS, Precinct NORTH WILLIAMS, Precinct WEST WILLIAMS, Precinct NORTH WILLIAMS 2, Precinct EAST WILLIAMS 2; Wake County: Precinct 01–47, Precinct 02–01, Precinct 02–02, Precinct 02–03, Precinct 02–04, Precinct 02–05, Precinct 02–06, Precinct 03–00, Precinct 04–01, Precinct 04–03, Precinct 04–05, Precinct 04–06, Precinct 04–07, Precinct 04–08, Precinct 04–09, Precinct 04–10, Precinct 04–11, Precinct 04–12, Precinct 04–13, Precinct 04–14, Precinct 04–15, Precinct 04–17, Precinct 04–18, Precinct 04–19, Precinct 05–00, Precinct 06–01, Precinct 06–02, Precinct 06–03, Precinct 07–03, Precinct 07–06, Precinct 07–07, Precinct 07–11, Precinct 08–01, Precinct 08–02, Precinct 08–03, Precinct 08–04, Precinct 08–05, Precinct 08–06, Precinct 08–08, Precinct 11–01, Precinct 11–02, Precinct 12–01, Precinct 12–02, Precinct 12–03, Precinct 12–04, Precinct 12–06, Precinct 15–01, Precinct 15–02, Precinct 18–02, Precinct 18–03, Precinct 18–04, Precinct 18–05, Precinct 18–08, Precinct 20–01, Precinct 20–02, Precinct 20–03, Precinct 20–04, Precinct 20–05, Precinct 20–06, Precinct 20–10.

''District 5: Alexander County, Alleghany County, Ashe County, Davie County, Stokes County, Surry County, Watauga County, Wilkes County, Yadkin County, Forsyth County: Precinct 011, Precinct 012, Precinct 013, Precinct 014, Precinct 015, Precinct 021, Precinct 031, Precinct 032, Precinct 034, Precinct 051, Precinct 052, Precinct 053, Precinct 054, Precinct 055, Precinct 061, Precinct 062, Precinct 063, Precinct 064, Precinct 065, Precinct 066, Precinct 067, Precinct 068, Precinct 071, Precinct 072, Precinct 073, Precinct 074, Precinct 075, Precinct 091, Precinct 092, Precinct 111, Precinct 112, Precinct 122, Precinct 123, Precinct 131, Precinct 132, Precinct 133, Precinct 602, Precinct 607, Precinct 701, Precinct 702, Precinct 703, Precinct 704, Precinct 705, Precinct 706, Precinct 707, Precinct 708, Precinct 709, Precinct 801, Precinct 802, Precinct 803, Precinct 804, Precinct 805, Precinct 806, Precinct 807, Precinct 808, Precinct 809, Precinct 901, Precinct 906, Precinct 907, Precinct 908, Precinct 909; Iredell County: Precinct Barringer, Precinct Bethany, Precinct Concord, Precinct Chambersburg, Precinct Cool Springs, Precinct Eagle Mills, Precinct New Hope, Precinct Olin, Precinct Sharpesburg, Precinct Statesville 1, Precinct Statesville 2, Precinct Statesville 3, Precinct Statesville 4, Precinct Statesville 5, Precinct Statesville 6, Precinct Turnersburg, Precinct Union Grove; Rockingham County: Precinct HOGANS, Precinct HUNTSVILLE, Precinct NEW BETHEL.

''District 6: Moore County, Randolph County, Alamance County: Precinct PATTERSON, Precinct COBLE, Precinct MORTON, Precinct FAUCETTE, Precinct ALBRIGHT, Precinct BOONE 5, Precinct CENTRAL BOONE, Precinct NORTH BOONE, Precinct SOUTH BOONE, Precinct WEST BOONE, Precinct GRAHAM 4, Precinct EAST GRAHAM, Precinct SOUTH GRAHAM, Precinct WEST GRAHAM, Precinct NORTH NEWLIN,

Precinct SOUTH NEWLIN, Precinct NORTH THOMPSON, Precinct SOUTH THOMPSON, Precinct MELVILLE 3, Precinct NORTH MELVILLE, Precinct SOUTH MELVILLE, Precinct BURLINGTON 4, Precinct BURLINGTON 5, Precinct BURLINGTON 6, Precinct BURLINGTON 9, Precinct WEST BURLINGTON, Precinct BURLINGTON 10; Davidson County: Precinct COTTON GROVE, Precinct DENTON, Precinct EMMONS, Precinct HEALING SPRINGS, Precinct HOLLY GROVE, Precinct LEXINGTON 1, Precinct LEXINGTON 2, Precinct LEXINGTON 3, Precinct LIBERTY, Precinct MIDWAY, Precinct NORTH DAVIDSON, Precinct SILVER HILL, Precinct SILVER VALLEY, Precinct SOUTH DAVIDSON, Precinct SOUTHMONT, Precinct THOMASVILLE 1, Precinct THOMASVILLE 4, Precinct THOMASVILLE 5, Precinct THOMASVILLE 7, Precinct THOMASVILLE 9, Precinct THOMASVILLE 10, Precinct WELCOME; Guilford County: Precinct Greene, Precinct Center Grove 1, Precinct Center Grove 2, Precinct Friendship 1, Precinct Friendship 2, Precinct Friendship 3, Precinct Friendship 4, Precinct Friendship 5, Precinct Greensboro 16, Precinct Greensboro 18, Precinct Greensboro 19, Precinct Greensboro 20, Precinct Greensboro 21, Precinct Greensboro 22, Precinct Greensboro 27, Precinct Greensboro 30, Precinct Greensboro 31, Precinct Greensboro 32, Precinct Greensboro 33, Precinct Greensboro 34, Precinct Greensboro 35, Precinct Greensboro 41, Precinct Greensboro 42, Precinct Greensboro 43, Precinct Greensboro 63, Precinct Greensboro 64: Tract 160.04: Block Group 4: Block 4048, Block 4049, Block 4050, Block 4051, Block 4052; Block Group 5: Block 5000, Block 5001, Block 5002, Block 5003, Block 5004, Block 5005, Block 5006, Block 5007, Block 5012, Block 5013, Block 5014, Block 5015, Block 5016; Tract 164.03: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1006; Tract 165.03: Block Group 1: Block 1000, Block 1001, Block 1010; Precinct Gibsonville, Precinct High Point 4, Precinct High Point 14, Precinct High Point 15, Precinct High Point 16, Precinct High Point 20, Precinct High Point 21, Precinct High Point 22, Precinct High Point 23, Precinct High Point 24, Precinct High Point 25, Precinct High Point 26, Precinct High Point 27, Precinct Oak Ridge 1, Precinct Oak Ridge 2, Precinct Pleasant Garden 1, Precinct Pleasant Garden 2, Precinct Rock Creek 1, Precinct Rock Creek 2, Precinct Summerfield 1, Precinct Summerfield 2, Precinct Summerfield 3, Precinct Summerfield 4, Precinct Fentress 2, Precinct Greensboro 40A, Precinct Greensboro 40B, Precinct Jamestown 4, Precinct Jamestown 5, Precinct Jefferson 1, Precinct Jefferson 4, Precinct Monroe 1, Precinct Monroe 3, Precinct North Center Grove, Precinct North Deep River, Precinct South Deep River, Precinct South Madison, Precinct Stokesdale, Precinct Sumner 3, Precinct Sumner 4, Precinct North Clay, Precinct North Washington, Precinct South Clay, Precinct South Washington; Rowan County: Precinct Barnhardt Mill, Precinct Blackwelder Park, Precinct Bostian Crossroads, Precinct North China Grove, Precinct South China Grove, Precinct South Locke, Precinct Faith, Precinct Rock Grove, Precinct Granite Quarry, Precinct Hatters Shop, Precinct West Kannapolis, Precinct East Kannapolis, Precinct West Landis, Precinct East Landis, Precinct North Locke, Precinct Morgan I, Precinct Morgan II, Precinct Rockwell, Precinct Gold Knob, Precinct Steele, Precinct Sumner, Precinct Trading Ford, Precinct Bostian School.

''District 7: Bladen County, Brunswick County, Columbus County, New Hanover County, Pender County, Robeson County, Cumberland County: Precinct CROSS CREEK 1, Precinct CROSS CREEK 2, Precinct HOPE MILLS 2, Precinct PEARCES MILL 3, Precinct ALDERMAN, Precinct BEAVER DAM, Precinct BLACK RIVER, Precinct CROSS CREEK 11, Precinct CROSS CREEK 15, Precinct CROSS CREEK 23, Precinct CEDAR CREEK, Precinct EASTOVER, Precinct JUDSON/VANDER, Precinct LINDEN, Precinct LONG HILL, Precinct MANCHESTER: Tract 34: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2010, Block 2013, Block 2999; Tract 35: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1009, Block 1013; Tract 36: Block Group 1: Block 1000, Block 1001, Block 1008, Block 1009, Block 1031, Block 1032, Block 1999; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2037, Block 2038, Block 2047, Block 2048, Block 2049, Block 2054, Block 2055, Block 2056, Block 2057, Block 2058, Block 2059, Block 2060,

Block 2061, Block 2062, Block 2999; Tract 37: Block Group 2: Block 2021, Block 2022, Block 2023, Block 2025, Block 2026, Block 2043, Block 2995; Precinct SHERWOOD, Precinct STEDMAN, Precinct WADE; Duplin County: Precinct BEULAVILLE: Tract 9905: Block Group 5: Block 5001, Block 5002, Block 5003, Block 5021, Block 5022; Precinct CYPRESS CREEK, Precinct CHARITY, Precinct FAISON, Precinct HALLSVILLE, Precinct KENANSVILLE, Precinct LOCKLIN, Precinct MAGNOLIA, Precinct ROCKFISH, Precinct ROSE HILL, Precinct SMITH CABIN, Precinct WALLACE, Precinct WARSAW; Sampson County: Precinct AUTRYVILLE, Precinct CLEMENT, Precinct NORTHEAST CLINTON, Precinct WEST CLINTON, Precinct HERRING, Precinct KITTY FORK, Precinct MINGO, Precinct PLAINVIEW, Precinct ROSEBORO, Precinct SALEMBURG, Precinct WESTBROOK; Scotland County: Precinct 2: Tract 104: Block Group 1: Block 1103, Block 1106, Block 1108, Block 1109, Block 1110, Block 1113; Precinct 6: Tract 104: Block Group 1: Block 1094, Block 1095, Block 1101, Block 1102, Block 1107, Block 1111, Block 1112, Block 1121, Block 1122.

''District 8: Anson County, Hoke County, Montgomery County, Richmond County, Stanly County, Cabarrus County: Precinct 0101, Precinct 0102, Precinct 0103, Precinct 0104, Precinct 0201, Precinct 0202, Precinct 0203, Precinct 0205, Precinct 0206, Precinct 0207, Precinct 0401, Precinct 0402, Precinct 0403, Precinct 0404, Precinct 0405, Precinct 0406, Precinct 0407, Precinct 0408, Precinct 0409, Precinct 0410, Precinct 0500, Precinct 0600, Precinct 0700, Precinct 0800, Precinct 0900, Precinct 1000, Precinct 1101, Precinct 1102, Precinct 1201, Precinct 1202, Precinct 1203, Precinct 1204, Precinct 1205, Precinct 1206, Precinct 1207, Precinct 1208, Precinct 1209, Precinct 1210, Precinct 1211, Precinct 1212; Cumberland County: Precinct CROSS CREEK 4, Precinct CROSS CREEK 6, Precinct CROSS CREEK 7, Precinct CROSS CREEK 8, Precinct CUMBERLAND 1, Precinct CUMBERLAND 2, Precinct CUMBERLAND 3, Precinct HOPE MILLS 1, Precinct HOPE MILLS 3, Precinct MORGANTON ROAD, Precinct PEARCES MILL 2, Precinct PEARCES MILL 4, Precinct ARRAN HILLS, Precinct AUMAN, Precinct BRENTWOOD, Precinct CROSS CREEK 10, Precinct CROSS CREEK 12, Precinct CROSS CREEK 14, Precinct CROSS CREEK 18, Precinct CROSS CREEK 20, Precinct CROSS CREEK 24, Precinct CROSS CREEK 25, Precinct CROSS CREEK 27, Precinct CROSS CREEK 28, Precinct CROSS CREEK 29, Precinct CROSS CREEK 30, Precinct CROSS CREEK 31, Precinct CROSS CREEK 34, Precinct LAKE RIM, Precinct MONTIBELLO, Precinct STONEY POINT; Mecklenburg County: Precinct 002, Precinct 004, Precinct 005, Precinct 006, Precinct 007, Precinct 015, Precinct 017, Precinct 029, Precinct 033, Precinct 034, Precinct 045, Precinct 046, Precinct 061, Precinct 062, Precinct 063, Precinct 064, Precinct 084, Precinct 095, Precinct 108, Precinct 109, Precinct 117, Precinct 123, Precinct 124, Precinct 237, Precinct 130, Precinct 141, Precinct 204, Precinct 205; Scotland County: Precinct 1, Precinct 2: Tract 103:

Block Group 1: Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1023, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1075, Block 1076, Block 1077, Block 1078, Block 1079, Block 1080, Block 1081, Block 1082, Block 1083, Block 1084, Block 1085, Block 1086, Block 1087, Block 1088, Block 1089, Block 1090, Block 1100, Block 1999; Block Group 2: Block 2037, Block 2038, Block 2039; Block Group 3: Block 3007, Block 3008, Block 3009, Block 3010, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036; Block Group 4: Block 4000, Block 4001, Block 4002, Block 4003, Block 4004, Block 4005, Block 4006, Block 4007, Block 4008, Block 4009, Block 4010, Block 4011, Block 4012, Block 4013, Block 4014, Block 4015, Block 4016, Block 4017, Block 4018, Block 4019, Block 4020, Block 4021, Block 4022, Block 4023, Block 4024, Block 4025,

Block 4026, Block 4027, Block 4028, Block 4029, Block 4030, Block 4031, Block 4032, Block 4033; Block Group 5: Block 5000, Block 5001, Block 5002, Block 5003, Block 5004, Block 5005, Block 5006, Block 5007, Block 5008, Block 5009, Block 5010, Block 5011, Block 5012, Block 5013, Block 5014, Block 5015, Block 5016, Block 5017, Block 5018, Block 5019, Block 5020, Block 5021, Block 5022, Block 5023, Block 5024, Block 5025, Block 5026, Block 5027, Block 5028, Block 5029; Tract 104: Block Group 1: Block 1072, Block 1073, Block 1076, Block 1077, Block 1104, Block 1105, Block 1114, Block 1115, Block 1116, Block 1117, Block 1118, Block 1119, Block 1120, Block 1996; Precinct 3, Precinct 4, Precinct 5, Precinct 6: Tract 103: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1020, Block 1021, Block 1022, Block 1024, Block 1025, Block 1026, Block 1027; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2040, Block 2041; Tract 104:

Block Group 1: Block 1003, Block 1004, Block 1005, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052, Block 1053, Block 1054, Block 1055, Block 1056, Block 1057, Block 1058, Block 1059, Block 1060, Block 1061, Block 1062, Block 1063, Block 1064, Block 1065, Block 1066, Block 1067, Block 1068, Block 1069, Block 1070, Block 1071, Block 1074, Block 1075, Block 1078, Block 1079, Block 1080, Block 1081, Block 1082, Block 1083, Block 1084, Block 1085, Block 1086, Block 1087, Block 1088, Block 1089, Block 1090, Block 1091, Block 1092, Block 1093, Block 1096, Block 1097, Block 1098, Block 1099, Block 1100, Block 1123, Block 1124, Block 1125, Block 1126, Block 1127, Block 1128, Block 1129, Block 1130, Block 1131, Block 1132, Block 1133, Block 1134, Block 1135, Block 1136, Block 1137, Block 1997, Block 1998, Block 1999; Precinct 7, Precinct 8, Precinct 9, Precinct 10; Union County: Precinct 01, Precinct 02, Precinct 03, Precinct 04, Precinct 08, Precinct 09, Precinct 10, Precinct 11, Precinct 25, Precinct 26, Precinct 27, Precinct 36, Precinct 43.

''District 9: Gaston County: Precinct York Chester, Precinct Victory, Precinct Pleasant Ridge, Precinct Health Center, Precinct Myrtle, Precinct Highland, Precinct Wood Hill, Precinct Grier, Precinct Sherwood, Precinct Armstrong, Precinct Flint Grove, Precinct Ranlo, Precinct Gardner Park, Precinct Robinson 1, Precinct Gaston Day, Precinct Robinson 2, Precinct Ashbrook, Precinct South Gastonia, Precinct Bessemer City 1, Precinct Bessemer City 2, Precinct Belmont 1, Precinct Belmont 2, Precinct Belmont 3, Precinct Catawba Heights, Precinct Southpoint, Precinct Cramerton, Precinct New Hope, Precinct McAdenville, Precinct Union, Precinct Lowell, Precinct Landers Chapel, Precinct High Shoals, Precinct Alexis, Precinct Dallas 1, Precinct Dallas 2, Precinct Lucia, Precinct Stanley 1, Precinct Stanley 2, Precinct Mt Holly 1, Precinct Mt Holly 2; Mecklenburg County: Precinct 001, Precinct 008, Precinct 009, Precinct 010, Precinct 018, Precinct 019, Precinct 020, Precinct 021, Precinct 032, Precinct 035, Precinct 036, Precinct 037, Precinct 038, Precinct 047, Precinct 048, Precinct 049, Precinct 050, Precinct 051, Precinct 057, Precinct 058, Precinct 059, Precinct 065, Precinct 066, Precinct 067, Precinct 068, Precinct 069, Precinct 070, Precinct 071, Precinct 072, Precinct 073, Precinct 074, Precinct 075, Precinct 076, Precinct 077: Tract 59.05: Block Group 2: Block 2008, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050; Precinct 083, Precinct 085, Precinct 086, Precinct 087, Precinct 088, Precinct 089, Precinct 090, Precinct 091, Precinct 092, Precinct 093, Precinct 094, Pre-

cinct 096, Precinct 097, Precinct 099, Precinct 100, Precinct 101, Precinct 102, Precinct 103, Precinct 106, Precinct 110, Precinct 111, Precinct 112, Precinct 113, Precinct 114, Precinct 115, Precinct 116, Precinct 118, Precinct 119, Precinct 120, Precinct 121, Precinct 122, Precinct 125, Precinct 128, Precinct 225, Precinct 226, Precinct 227, Precinct 229, Precinct 230, Precinct 231, Precinct 232, Precinct 233, Precinct 234, Precinct 235, Precinct 236, Precinct 238, Precinct 240, Precinct 241, Precinct 242, Precinct 243, Precinct 129, Precinct 131, Precinct 133, Precinct 134, Precinct 136, Precinct 137, Precinct 139, Precinct 140, Precinct 142, Precinct 143, Precinct 144, Precinct 201, Precinct 202, Precinct 203, Precinct 207, Precinct 208, Precinct 209, Precinct 214, Precinct 215, Precinct 216, Precinct 217, Precinct 218, Precinct 219, Precinct 220, Precinct 221, Precinct 222, Precinct 223, Precinct 224; Union County: Precinct 05, Precinct 06, Precinct 07, Precinct 12, Precinct 13, Precinct 14, Precinct 15, Precinct 16, Precinct 17, Precinct 18, Precinct 19, Precinct 20, Precinct 21, Precinct 22, Precinct 23, Precinct 24, Precinct 28, Precinct 29, Precinct 30, Precinct 31, Precinct 32, Precinct 33, Precinct 34, Precinct 35, Precinct 37, Precinct 38, Precinct 39, Precinct 40, Precinct 41, Precinct 42.

''District 10: Avery County, Burke County, Caldwell County, Catawba County, Cleveland County, Lincoln County, Mitchell County, Gaston County: Precinct Forest Heights, Precinct Crowders Mountain, Precinct Tryon, Precinct Cherryville 1, Precinct Cherryville 2, Precinct Cherryville 3; Iredell County: Precinct Coddle Creek 1, Precinct Coddle Creek 2, Precinct Coddle Creek 3, Precinct Coddle Creek 4, Precinct Davidson 1, Precinct Davidson 2, Precinct Fallstown, Precinct Shiloh; Rutherford County: Precinct Bostic, Precinct Camp Creek, Precinct Caroleen, Precinct Chimney Rock 1, Precinct Chimney Rock 2, Precinct Cliffside, Precinct Duncans Creek, Precinct Ellenboro, Precinct Forest City 2, Precinct Gilkey, Precinct Golden Valley, Precinct Green Hill, Precinct Haynes, Precinct Morgan, Precinct Mount Vernon, Precinct Sandy Mush, Precinct Sunshine.

''District 11: Buncombe County, Cherokee County, Clay County, Graham County, Haywood County, Henderson County, Jackson County, McDowell County, Macon County, Madison County, Polk County, Swain County, Transylvania County, Yancey County, Rutherford County: Precinct Danieltown, Precinct Forest City 1, Precinct Rutherfordton 1, Precinct Rutherfordton 2, Precinct Spindale, Precinct Sulpher Springs, Precinct Union.

''District 12: Cabarrus County: Precinct 0204, Precinct 0300; Davidson County: Precinct ABBOTTS CREEK, Precinct ARCADIA, Precinct BOONE, Precinct CENTRAL, Precinct GUMTREE, Precinct LEXINGTON 4, Precinct WARD 1, Precinct WARD 2, Precinct WARD 3, Precinct WARD 4, Precinct WARD 5, Precinct WARD 6, Precinct REEDS YADKIN COLLEGE, Precinct REEDY CREEK, Precinct THOMASVILLE 2, Precinct THOMASVILLE 3, Precinct THOMASVILLE 8, Precinct TYRO, Precinct WALLBURG, Precinct WEST ARCADIA; Forsyth County: Precinct 033, Precinct 042, Precinct 043, Precinct 081, Precinct 082, Precinct 083, Precinct 101, Precinct 201, Precinct 203, Precinct 204, Precinct 205, Precinct 206, Precinct 207, Precinct 301, Precinct 302, Precinct 303, Precinct 304, Precinct 305, Precinct 306, Precinct 401, Precinct 402, Precinct 403, Precinct 404, Precinct 405, Precinct 501, Precinct 502, Precinct 503, Precinct 504, Precinct 505, Precinct 506, Precinct 507, Precinct 601, Precinct 603, Precinct 604, Precinct 605, Precinct 606, Precinct 902, Precinct 903, Precinct 904, Precinct 905; Guilford County: Precinct HP, Precinct Greensboro 4, Precinct Greensboro 46, Precinct Greensboro 52, Precinct Greensboro 53, Precinct Greensboro 54, Precinct Greensboro 55, Precinct Greensboro 57, Precinct Greensboro 61, Precinct Greensboro 62, Precinct Greensboro 64: Tract 160.04: Block Group 4: Block 4038, Block 4044, Block 4045, Block 4046, Block 4047, Block 4053, Block 4054, Block 4055, Block 4056, Block 4057, Block 4058, Block 4059, Block 4060, Block 4061, Block 4062, Block 4063, Block 4064, Block 4065, Block 4066, Block 4067, Block 4068, Block 4069, Block 4071; Tract 162.01: Block Group 2: Block 2043, Block 2058, Block 2059, Block 2060, Block 2062, Block 2063, Block 2064, Block 2065, Block 2066, Block 2067, Block 2068, Block 2069, Block 2070, Block 2077, Block 2078; Tract 162.02: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1133, Block 1147, Block 1148; Tract 164. 03: Block

Group 1: Block 1003, Block 1004, Block 1005, Block 1010, Block 1011, Block 1012, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1029;

Precinct Greensboro 65, Precinct Greensboro 66, Precinct Greensboro 67, Precinct Greensboro 68, Precinct Greensboro 69, Precinct Greensboro 70, Precinct Greensboro 71, Precinct Greensboro 73, Precinct Greensboro 74, Precinct Greensboro 75, Precinct High Point 1, Precinct High Point 2, Precinct High Point 3, Precinct High Point 5, Precinct High Point 6, Precinct High Point 7, Precinct High Point 8, Precinct High Point 9, Precinct High Point 10, Precinct High Point 11, Precinct High Point 12, Precinct High Point 13, Precinct High Point 17, Precinct High Point 18, Precinct High Point 19, Precinct Fentress 1, Precinct Jamestown 1, Precinct Jamestown 2, Precinct Jamestown 3, Precinct Jefferson 3, Precinct Sumner 1, Precinct Sumner 2; Mecklenburg County: Precinct 003, Precinct 011, Precinct 012, Precinct 013, Precinct 014, Precinct 016, Precinct 022, Precinct 023, Precinct 024, Precinct 025, Precinct 026, Precinct 027, Precinct 028, Precinct 030, Precinct 031, Precinct 039, Precinct 040, Precinct 041, Precinct 042, Precinct 043, Precinct 044, Precinct 052, Precinct 053, Precinct 054, Precinct 055, Precinct 056, Precinct 060, Precinct 077: Tract 38.04: Block Group 1: Block 1022; Block Group 2: Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2012; Tract 58.06: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1068, Block 1069, Block 1071, Block 1072, Block 1073, Block 1074, Block 1077, Block 1079, Block 1999; Tract 59.05: Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007; Precinct 078, Precinct 079, Precinct 080, Precinct 081, Precinct 082, Precinct 098, Precinct 104, Precinct 105, Precinct 107, Precinct 126, Precinct 127, Precinct 228, Precinct 239, Precinct 132, Precinct 135, Precinct 138, Precinct 200, Precinct 206, Precinct 210, Precinct 211, Precinct 212, Precinct 213; Rowan County: Precinct Bradshaw, Precinct Cleveland, Precinct East Enochville, Precinct Franklin, Precinct Milford Hills County, Precinct East Spencer, Precinct Mount Ulla, Precinct Scotch Irish, Precinct Spencer, Precinct Unity, Precinct West Ward II, Precinct West Ward I, Precinct South Ward, Precinct North Ward I, Precinct East Ward I, Precinct West Innes, Precinct North Ward II, Precinct Milford Hills City, Precinct West Ward III, Precinct East Ward II, Precinct West Enochville.

''District 13: Caswell County, Person County, Alamance County: Precinct PLEASANT GROVE, Precinct HAW RIVER, Precinct GRAHAM 3, Precinct NORTH GRAHAM, Precinct BURLINGTON 7, Precinct BURLINGTON 8, Precinct EAST BURLINGTON, Precinct NORTH BURLINGTON, Precinct SOUTH BURLINGTON; Granville County: Precinct ANTIOCH, Precinct BEREA, Precinct BRASSFIELD, Precinct BUTNER, Precinct CORINTH, Precinct CREEDMOOR, Precinct OAK HILL, Precinct SASSAFRAS FORK, Precinct TALLY HO; Guilford County: Precinct Center Grove 3, Precinct Greensboro 1, Precinct Greensboro 2, Precinct Greensboro 3, Precinct Greensboro 5, Precinct Greensboro 6, Precinct Greensboro 7, Precinct Greensboro 9, Precinct Greensboro 10, Precinct Greensboro 11, Precinct Greensboro 12, Precinct Greensboro 13, Precinct Greensboro 14, Precinct Greensboro 15, Precinct Greensboro 17, Precinct Greensboro 23, Precinct Greensboro 24, Precinct Greensboro 25, Precinct Greensboro 26, Precinct Greensboro 28, Precinct Greensboro 29, Precinct Greensboro 36, Precinct Greensboro 37, Precinct Greensboro 38, Precinct Greensboro 39, Precinct Greensboro 44, Precinct Greensboro 45, Precinct Greensboro 47, Precinct Greensboro 48, Precinct Greensboro 49, Precinct Greensboro 50, Precinct Greensboro 51, Precinct Greensboro 56, Precinct Greensboro 58, Precinct Greensboro 59, Precinct Greensboro 60, Precinct Greensboro 72, Precinct Greensboro 8, Precinct Jefferson 2, Precinct Monroe 2, Precinct North Madison; Rockingham County: Precinct BETHLEHEM, Precinct CENTRAL AREA, Precinct DRAPER, Precinct DAN VALLEY, Precinct IRONWORKS, Precinct MAYFIELD, Precinct MAYODAN, Precinct MARTINS, Precinct OREGON HILL, Precinct PRICE, Precinct RUFFIN, Precinct SHILOH, Precinct

SIMPSONVILLE, Precinct STONEVILLE, Precinct WENTWORTH, Precinct WILLIAMSBURG, Precinct LEAKSVILLE 1, Precinct LEAKSVILLE 2, Precinct LEAKSVILLE 3, Precinct MADISON 1, Precinct MADISON 2, Precinct REIDSVILLE 1, Precinct REIDSVILLE 2, Precinct REIDSVILLE 3, Precinct REIDSVILLE 4, Precinct REIDSVILLE 5, Precinct REIDSVILLE 6, Precinct SPRAY 1; Wake County: Precinct 01–01, Precinct 01–02, Precinct 01–03, Precinct 01–04, Precinct 01–05, Precinct 01–06, Precinct 01–07, Precinct 01–09, Precinct 01–10, Precinct 01–11, Precinct 01–12, Precinct 01–13, Precinct 01–14, Precinct 01–15, Precinct 01–16, Precinct 01–17, Precinct 01–18, Precinct 01–25, Precinct 01–27: Tract 501: Block Group 1: Block 1067, Block 1068, Block 1069, Block 1071, Block 1072, Block 1073, Block 1074, Block 1075, Block 1076, Block 1077, Block 1078, Block 1103, Block 1104, Block 1105, Block 1106, Block 1107, Block 1108, Block 1109, Block 1110, Block 1111, Block 1118, Block 1119, Block 1120; Tract 510:

Block Group 1: Block 1000, Block 1001; Block Group 2: Block 2000, Block 2001, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042; Tract 522.01: Block Group 1: Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1022; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014; Tract 522.02: Block Group 1: Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010; Tract 523.02: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1027, Block 1028, Block 1029; Precinct 01–28, Precinct 01–29, Precinct 01–30, Precinct 01–31, Precinct 01–32, Precinct 01–33, Precinct 01–34, Precinct 01–36, Precinct 01–37, Precinct 01–38, Precinct 01–39, Precinct 01–40, Precinct 01–41, Precinct 01–42, Precinct 01–43, Precinct 01–44, Precinct 01–45, Precinct 01–46, Precinct 01–48, Precinct 01–49, Precinct 01–51, Precinct 04–02, Precinct 04–04, Precinct 04–16, Precinct 07–01, Precinct 07–02, Precinct 07–04, Precinct 07–05, Precinct 07–09, Precinct 07–10, Precinct 07–12, Precinct 09–01, Precinct 09–02, Precinct 10–01, Precinct 10–02, Precinct 10–03, Precinct 10–04, Precinct 13–01, Precinct 13–02, Precinct 13–03, Precinct 14–01, Precinct 14–02, Precinct 17–01, Precinct 17–02, Precinct 17–03, Precinct 17–04, Precinct 17–05, Precinct 17–06, Precinct 17–07, Precinct 19–01, Precinct 19–02, Precinct 19–03, Precinct 19–04, Precinct 19–05, Precinct 19–06, Precinct 19–07, Precinct 19–08.

''(b) The names and boundaries of precincts (voting tabulation districts), tracts, block groups, and blocks specified in this section are as they were legally defined and recognized in the 2000 United States Census. Boundaries are as shown on the Redistricting Census 2000 TIGER Files, with modifications made by the Legislative Services Office on its computer database as of May 1, 2001, to reflect precincts divided or renamed as outlined in subsection (c) of this section. However, in Robeson County PHILADEPLUS is, in fact, PHILADELPHUS, and in Vance County SANDY SCREEK is, in fact, SANDY CREEK. If the boundary line between Iredell and Mecklenburg Counties in the Redistricting Census 2000 TIGER Files conflicts with that provided by Section 1 of Session Law 1998–15 as rewritten by Session Law 2001–429, Section 1 of Session Law 1998–15 as rewritten by Session Law 2001–429 prevails to the extent of the conflict.

''(c) The Legislative Services Office modified on its computer database some of the precincts shown on the Redistricting Census 2000 TIGER Files to reflect precincts divided or renamed by county boards of elections after the TIGER Files were completed. As a result, precincts are shown differently on the Legislative Services Office computer database from the TIGER Files in the following counties:

''(1) Buncombe County:

''a. Precinct Asheville 4 in TIGER is shown as Precincts Asheville 4 and Asheville 28.

''b. Precinct Asheville 22 in TIGER is shown as Precincts Asheville 22 and Asheville 27.

''c. Precinct Asheville 19 in TIGER is shown as Precincts Asheville 19 and Asheville 29.

''d. Precinct Riceville Swannanoa 2 CRU in TIGER is shown as Precincts Riceville Swannanoa 2 CRU and Riceville Swannanoa CRU 2.

''e. Precinct Black Mountain 3 in TIGER is shown as Precincts Black Mountain 3 and Black Mountain 4.

''(2) Cabarrus County:

''a. Precinct 0202 in TIGER is shown as Precincts 0202 and 0207.

''b. Precinct 1209 in TIGER is shown as Precincts 1209 and 1212.

''(3) Caldwell County: Precinct Lovelady in TIGER is shown as Precincts Lovelady 1 and Lovelady 2.

''(4) Chatham County:

''a. Precinct North Williams in TIGER is shown as Precincts North Williams and North Williams 2.

''b. Precinct East Williams in TIGER is shown as Precincts East Williams and East Williams 2.

''(5) Craven County: Precinct Havelock in TIGER is shown as Precincts Havelock East and Havelock West.

''(6) Franklin County: Precinct Harris in TIGER is shown as Precincts East Harris and West Harris.

''(7) Guilford County: Precinct Greensboro 40 in TIGER is shown as Precincts Greensboro 40A and Greensboro 40B.

''(8) Johnston County: Precinct East Clayton in TIGER is shown as Precincts East Clayton and South Clayton.

''(9) Orange County:

''a. Precinct Frank Porter Graham in TIGER is renamed Precinct Damascus 1.

''b. Precinct Dogwood Acres in TIGER is shown as Precincts Dogwood Acres and Damascus 2.

''(10) Rowan County:

''a. Precinct Bostian Crossroads in TIGER is shown as Precincts Bostian Crossroads and Rock Grove.

''b. Precinct Enochville in TIGER is shown as Precincts Enochville and West Enochville.

''(11) Wake County:

''a. Precinct 01–32 in TIGER is shown as Precincts 01–32 and 01–49.

''b. Precinct 07–06 in TIGER is shown as Precincts 07–06 and 07–11.

''c. Precinct 10–01 in TIGER is shown as Precincts 10–01 and 10–04.

''d. Precinct 10–02 in TIGER is shown as Precincts 10–02 and 10–03.

''e. Precinct 01–43 in TIGER is shown as Precincts 01–43 and 01–51.

''f. Precinct 07–02 in TIGER is shown as Precincts 07–02 and 07–12.

''g. Precinct 08–04 in TIGER is shown as Precincts 08–04 and 08–08.

''h. Precinct 12–02 in TIGER is shown as Precincts 12–02 and 12–06.

''i. Precinct 18–03 in TIGER is shown as Precincts 18–03 and 18–08.

''j. Precinct 19–02 in TIGER is shown as Precincts 19–02 and 19–06.

''k. Precinct 19–03 in TIGER is shown as Precincts 19–03 and 19–07.

''l. Precinct 19–04 in TIGER is shown as Precincts 19–04 and 19–08.

''m. Precinct 20–04 in TIGER is shown as Precincts 20–04 and 20–10.

''n. Precinct 01–32 in TIGER is shown as Precincts 01–32 and 01–49.

''(d) If any precinct boundary is changed, that change shall not change the boundary of a congressional district, which shall remain the same.

''(e) If this section does not specifically assign any area within North Carolina to a district, and the area is:

''(1) Entirely surrounded by a single district, the area shall be deemed to have been assigned to that district.

''(2) Contiguous to two or more districts, the area shall be deemed to have been assigned to that district which contains the least population according to the 2000 United States Census.

''(3) Contiguous to only one district and to another state or the Atlantic Ocean, the area shall be deemed to have been assigned to that district.''

The U.S. Department of Justice precleared the amendments by S.L. 2001–479 in a letter dated Feb. 15, 2002, but noted in the preclearance letter ''...that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of changes''.

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1. Validity

Race was dominant reason for state legislature's creation of congressional district, requiring that strict scrutiny test be applied in determining whether district violated due process rights of voters; there was evidence that borders were adjusted until black voters numbered slightly over 50% of total. Cromartie v. Hunt, 2000, 133 F.Supp.2d 407, probable jurisdiction noted 120 S.Ct. 2715, 530 U.S. 1260, 147 L.Ed.2d 980, reversed 121 S.Ct. 1452, 532 U.S. 234, 149 L.Ed.2d 430, rehearing denied 121 S.Ct. 2239, 532 U.S. 1076, 150 L.Ed.2d 228. Constitutional Law ⚷ 4233; United States ⚷ 10

Legislative reapportionment of congressional districts met minimum federal constitutional standards. Drum v. Seawell, 1967, 271 F.Supp. 193. United States ⚷ 10

While regional variations in state legislative redistricting scheme rendered apportionment plan considered as a whole constitutionally suspect, they did not constitute invidious discrimination. Drum v. Seawell, 1966, 250 F.Supp. 922. Constitutional Law ⚷ 3658(4)

While rigid mathematical standards are not sine qua non of constitutional validity of congressional apportionment scheme, practical and rational equality is required and such equality recognizes only minor deviations which may occur in recognition of rational and legitimate factors, free from taint of arbitrariness, irrationality and discrimination. Drum v. Seawell, 1966, 250 F.Supp. 922. Constitutional Law ⚷ 3658(4)

Motive to retain incumbent congressmen may not predominate over requirements of practicable equality in congressional redistricting plan. Drum v. Seawell, 1966, 250 F.Supp. 922. Constitutional Law ⚷ 3658(3)

2. Equal Protection

Congressional district proposed by state legislature was racially gerrymandered, in violation of equal protection rights of district residents; district was irregularly shaped, to incorporate areas of high percentage of black residents, it had lowest compactness rating of any district, as measured by mathematical formulas, and legitimate objective of creating equal number of democratic and republican districts could have been furthered while creating much more geographically compact district. Cromartie v. Hunt, 2000, 133 F.Supp.2d 407, probable jurisdiction noted 120 S.Ct. 2715, 530 U.S. 1260, 147 L.Ed.2d 980, reversed 121 S.Ct. 1452, 532 U.S. 234, 149 L.Ed.2d 430, rehearing denied 121 S.Ct. 2239, 532 U.S. 1076, 150 L.Ed.2d 228. Constitutional Law ⚷ 3285; United States ⚷ 10

Reasonably compact congressional district was narrowly tailored to further objective of Voting Rights Act, to assure equality of voting opportunities for black citizens, as required in order for district found to have been created for racial reasons to be constitutional under equal protection clause. Cromartie v. Hunt, 2000, 133 F.Supp.2d 407, probable jurisdiction noted 120 S.Ct. 2715, 530 U.S. 1260, 147 L.Ed.2d 980, reversed 121 S.Ct. 1452, 532 U.S. 234, 149 L.Ed.2d 430, rehearing denied 121 S.Ct. 2239, 532 U.S. 1076, 150 L.Ed.2d 228. Constitutional Law ⚷ 3285; United States ⚷ 10

North Carolina made a "good faith effort" to equitably reapportion its congressional districts, so that redistricting statute did not violate the equal protection clause, even though another plan that was considered would have resulted in an average deviation from ideal equality of .4954%, whereas the plan adopted contained an average deviation from perfection of 1.01%, where the difference between the biggest and smallest district under the enacted plan was only 17,502 persons, while the difference between the biggest and smallest districts under the plan that was not enacted was 13,301 persons, which net disparity of persons was insubstantial and de minimis. Drum v. Scott, 1972, 337 F.Supp. 588. Constitutional Law ⚷ 3658(5); United States ⚷ 10

Tortuous lines which delineated boundaries of congressional districts under proposed North Carolina congressional redistricting plan, resulting lack of compactness and contiguity, and failure to achieve equal representation for equal number of people as nearly as practicable rendered plan constitutionally invalid. Drum v. Seawell, 1966,

250 F.Supp. 922. Constitutional Law ⚷ 3658(5); United States ⚷ 10

Where population variance ratio between most and least populous district of state was 18.2 to 1 and minimum controlling percentage of state's population residing in least populous districts capable of electing majority of the state House of Representatives was 27.1%, constitutional provisions requiring that each county be afforded at least one representative regardless of its population and implementing statute were null and void as violative of equal protection provisions. Drum v. Seawell, 1965, 249 F.Supp. 877, affirmed 86 S.Ct. 1237, 383 U.S. 831, 16 L.Ed.2d 298. Constitutional Law ⚷ 3658(5)

Equal protection clause requires substantially equal representation for all citizens in a state in each of two Houses of state bicameral Legislature; representation in state legislative bodies must be, to extent practicable, apportioned on districts of equal population even though mechanical exactness is not necessary. Drum v. Seawell, 1965, 249 F.Supp. 877, affirmed 86 S.Ct. 1237, 383 U.S. 831, 16 L.Ed.2d 298. Constitutional Law ⚷ 3658(8)

3. Construction and application

Where court order intended to stay its mandate and retain jurisdiction for purpose of giving 1967 General Assembly opportunity to reconsider matter of congressional redistricting and, since it was anticipated that regular session would adjourn before July 1, 1967, such date was inserted, fact that General Assembly remained in session for longer period than anticipated and did not reach final agreement on congressional redistricting before July 4, 1967, was of no consequence, and its final enactment was given same effect and weight as if final action had been taken before July 1, 1967. Drum v. Seawell, 1967, 271 F.Supp. 193. United States ⚷ 10

Whether state legislative reapportionment plan violates state constitution is matter primarily for state courts. Drum v. Seawell, 1966, 250 F.Supp. 922. Courts ⚷ 489(2)

4. Population

Within limitations imposed by county lines, court could not say that disparities in population constituted invidious discrimination concerning reapportionment of congressional districts, where population variance ratio was 1.04 to 1, average deviation for all districts was 1.06%, deviation of persons per congressman ranged from minus 1.86% to plus 2.31% and population difference between largest and smallest district was 17,276. Drum v. Seawell, 1967, 271 F.Supp. 193. United States ⚷ 10

Any deviation from population standard in congressional redistricting plan must be rationally justified, and the greater the disparity the greater the burden. Drum v. Seawell, 1966, 250 F.Supp. 922. Constitutional Law ⚷ 3658(5)

Where minimum controlling percentage of state's population residing in least populous districts capable of electing majority of state Senate was 47.1% and population variance ratio between most and least populous district was 2.3 to 1, apportionment of Senate in view of malapportionment of House of Representatives was not sufficiently grounded on population to be constitutionally sustainable and accordingly statute apportioning Senators among districts of state was null and void. Drum v. Seawell, 1965, 249 F.Supp. 877, affirmed 86 S.Ct. 1237, 383 U.S. 831, 16 L.Ed.2d 298. States ⚷ 27(6)

Where voter proved charge of discrimination on basis of population by stipulated evidence, burden was placed upon defendant State Board of Elections to justify variation from standard which was shown to exist in legislative reapportionment case. Drum v. Seawell, 1965, 249 F.Supp. 877, affirmed 86 S.Ct. 1237, 383 U.S. 831, 16 L.Ed.2d 298. States ⚷ 27(10)

Where population variance ratio between most and least populous district of state was 1.8 to 1, statute creating several districts for purpose of selecting congressional representatives was null and void. Drum v. Seawell, 1965, 249 F.Supp. 877, affirmed 86 S.Ct. 1237, 383 U.S. 831, 16 L.Ed.2d 298. United States ⚷ 10

5. Districts, generally

Congressional districts should be so drawn not only to achieve equal representation for equal numbers of people as nearly as practicable but also they should be reasonably compact. Drum v. Seawell, 1967, 271 F.Supp. 193. United States ⚷ 10

Compactness and contiguity are aspects of practicable equality in congressional redistricting plan. Drum v. Seawell, 1966, 250 F.Supp. 922. Constitutional Law ⚷ 3658(3)

Stricter adherence to equality of population between districts may logically be required in congressional than in state legislative representation. Drum v. Seawell, 1966, 250 F.Supp. 922. Constitutional Law ⚷ 3658(5)

Any deviation from strict population basis in one house of legislature should be compensated for in other house to end that, as nearly as practicable, one man's vote will be worth as much as another's. Drum v. Seawell, 1966, 250 F.Supp. 922. Constitutional Law ⚷ 3658(5)

North Carolina legislative redistricting act, under which minimum controlling percentage of 48.8 per cent and population variance ratio of 1.32 to 1 obtained in Senate and controlling percentage of 47.54 and ratio of 1.33 to 1 obtained in House, met minimum federal constitutional standards, taking into consideration peculiar interests of state and its geographic composition. Drum v. Seawell, 1966, 250 F.Supp. 922. Constitutional Law ⚷ 3658(5); States ⚷ 27(6)

Obligation of state is to apportion the two legislative bodies as nearly equal as possible on a population based representation, and even minor deviations must be free from any taint of arbitrariness or discrimination. Drum v. Seawell, 1965, 249 F.Supp. 877, affirmed 86 S.Ct. 1237, 383 U.S. 831, 16 L.Ed.2d 298. States ⚷ 27(5)

Even though apportionment of Senate was far more nearly equitable than that of the House, court would not validate either body in the abstract but would consider it in relation to other branch of legislative body as it was finally apportioned. Drum v. Seawell, 1965, 249 F.Supp. 877, affirmed 86 S.Ct. 1237, 383 U.S. 831, 16 L.Ed.2d 298. States ⚷ 27(10)

6. Injunction

In view of North Carolina legislature's good faith effort and the imminence of the 1965 primaries 1966 congressional elections would be permitted under unconstitutional redistricting plan. Drum v. Seawell, 1966, 250 F.Supp. 922. Injunction ⚷ 189

In view of right of people to be represented in Congress during interval in which statewide reapportionment scheme of congressional representation was considered, court enjoining elections under invalid laws would not enjoin special election which was called to fill vacancy in district and which would be held under invalid apportionment. Drum v. Seawell, 1965, 249 F.Supp. 877, affirmed 86 S.Ct. 1237, 383 U.S. 831, 16 L.Ed.2d 298. Injunction ⚷ 189

Legislature should be given opportunity to rectify malapportionment before court undertakes to do so, and accordingly court would stay mandate enjoining elections under invalid laws in order that special legislative session could be called but retain jurisdiction allowing court to fashion apportionment scheme in case of Legislature's failure. Drum v. Seawell, 1965, 249 F.Supp. 877, affirmed 86 S.Ct. 1237, 383 U.S. 831, 16 L.Ed.2d 298. Injunction ⚷ 193

§ 163–201.1. Severability of congressional apportionment acts

If any provision of any act of the General Assembly that apportions congressional districts is held invalid by any court of competent jurisdiction, the invalidity shall not affect other provisions that can be given effect without the invalid provision; and to this end the provisions of any said act are severable.

Added by Laws 1981, c. 771, § 2.

§ 163–201.2. Dividing precincts in congressional apportionment acts restricted

(a) An act of the General Assembly that apportions congressional districts after the return of a census may not divide precincts unless an act that apportioned congressional districts after the return of that same census has been rejected by the United States

Department of Justice or the District Court for the District of Columbia under section 5 of the Voting Rights Act of 1965.

(b) If an act that apportioned congressional districts has been rejected by the United States Department of Justice or the District Court for the District of Columbia under section 5 of the Voting Rights Act of 1965, then a subsequent act may only divide the minimum number of precincts necessary to obtain approval of the act under section 5 of the Voting Rights Act of 1965.

(c) This section does not prevent the General Assembly from taking any action to comply with federal law or the Constitution of the United States.

Added by Laws 1995, c. 355, § 2, eff. June 29, 1995.

Historical and Statutory Notes

The addition of this section by Laws 1995, c. 355, was submitted to the Attorney General of the United States for preclearance pursuant to the provisions of the Voting Rights Act. In a letter dated Feb. 16, 1996, the Attorney General interposed objection to Laws 1995, c. 355.

§ 163–202. Election after reapportionment of members of House of Representatives

Whenever, by a new apportionment of members of the United States House of Representatives, the number of Representatives from North Carolina shall be changed, and neither the Congress nor the General Assembly shall provide for electing them, the following procedures shall apply:

(1) If the number of Representatives is increased, the Representative from each of the existing congressional districts shall be elected by the qualified voters of his district, and the additional Representatives apportioned to North Carolina shall be elected on a single ballot by the qualified voters of the whole State.

(2) If the number of Representatives is decreased, existing congressional district lines shall be ignored, and all Representatives apportioned to North Carolina shall be elected on a single ballot by the qualified voters of the whole State.

Added by Laws 1967, c. 775, § 1.

§§ 163–203 to 163–207. Reserved

Article 18

Presidential Electors

Section

163–208. Conduct of presidential election.
163–209. Names of presidential electors not printed on ballots; notification.

Section
163–209.1. Notification of political parties of dual-office holding rules.
163–209.2. Elector may be held in addition to other appointive offices.
163–210. Governor to proclaim results; casting State's vote for President and Vice–President.
163–211. Compensation of presidential electors.
163–212. Penalty for failure of presidential elector to attend and vote.
163–213. Appointment of Presidential Electors by General Assembly in certain circumstances, by the Governor in certain other circumstances.

§ 163–208. Conduct of presidential election

Unless otherwise provided, the election of presidential electors shall be conducted and the returns made in the manner prescribed by this Chapter for the election of State officers.

Added by Laws 1967, c. 775, § 1.

§ 163–209. Names of presidential electors not printed on ballots; notification

(a) The names of candidates for electors of President and Vice–President nominated by any political party recognized in this State under G.S. 163–96, or nominated under G.S. 163–1(c) by a candidate for President of the United States who has qualified to have his or her name printed on the general election ballot as an unaffiliated candidate under G.S. 163–122, shall be filed with the Secretary of State but shall not be printed on the ballot. In the case of the unaffiliated candidate, the names of candidates for electors must be filed with the Secretary of State no later than 12:00 noon on the first Friday in August. In place of their names, there shall be printed on the ballot the names of the candidates for President and Vice–President of each political party recognized in this State, and the name of any candidate for President who has qualified to have his or her name printed on the general election ballot under G.S. 163–122. A candidate for President who has qualified for the general election ballot as an unaffiliated candidate under G.S. 163–122 shall, no later than 12:00 noon on the first Friday in August, file with the State Board of Elections the name of a candidate for Vice–President, whose name shall also be printed on the ballot. A vote for the candidates named on the ballot shall be a vote for the electors of the party or unaffiliated candidate by which those candidates were nominated and whose names have been filed with the Secretary of State.

(b) Upon receiving the filing of a name as a candidate for elector under this section, the Secretary of State shall notify that candidate of the dual-office holding requirements of the North Carolina Constitution and the General Statutes, including specifically that if a person elected as elector holds another elective office

at the time of taking the oath of office as elector, that other office is vacated upon taking the oath of office.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1991 (Reg. Sess., 1992), c. 782, § 2; S.L. 2001–460, § 5, eff. Jan. 1, 2002; S.L. 2009–96, § 2, eff. June 11, 2009.

Historical and Statutory Notes

2001 Legislation

S.L. 2001–460, § 5, eff. Jan. 1, 2002, in the third sentence, deleted ''in accordance with the provisions of G.S. 163–140'' following ''of their names,''.

2009 Legislation

S.L. 2009–96, § 2, in the section name line added ''; notification''; designated existing text as subsec. (a) and, as so designated, made text gender neutral; added subsec. (b).

Cross References

Time of regular elections and primaries, § 163–1.

§ 163–209.1. Notification of political parties of dual-office holding rules

During January of each year in which electors are elected, the Secretary of State shall notify each political party authorized to nominate electors of (i) the requirement under G.S. 163–1(c) to nominate first and second alternate electors, and (ii) the dual-office holding requirements of the North Carolina Constitution and the General Statutes, including specifically that if a person elected as elector holds another elective office at the time of taking the oath of office as elector, that other office is vacated upon taking the oath of office.

Added by S.L. 2009–96, § 3, eff. June 11, 2009.

§ 163–209.2. Elector may be held in addition to other appointive offices

The office of elector may be held in addition to the maximum number of appointive offices allowed by G.S. 128–1.1.

Added by S.L. 2009–96, § 1, eff. June 11, 2009.

§ 163–210. Governor to proclaim results; casting State's vote for President and Vice–President

Upon receipt of the certifications prepared by the State Board of Elections and delivered in accordance with G.S. 163–182.15, the Secretary of State, under seal of the office, shall notify the Governor of the names of the persons elected to the office of elector for President and Vice–President of the United States as stated in the abstracts of the State Board of Elections. Thereupon, the Governor shall immediately issue a proclamation setting forth the names of the electors and instructing them to be present in the old Hall of the House of Representatives in the State Capitol in the City of

Raleigh at noon on the first Monday after the second Wednesday in December next after their election, at which time the electors shall meet and vote on behalf of the State for President and Vice–President of the United States. The Governor shall cause this proclamation to be published in the daily newspapers published in the City of Raleigh. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice. The Secretary of State is responsible for making the actual arrangements for the meeting, preparing the agenda, and inviting guests.

Before the date fixed for the meeting of the electors, the Governor shall send by registered mail to the Archivist of the United States, either three duplicate original certificates, or one original certificate and two authenticated copies of the Certificates of Ascertainment, under the great seal of the State setting forth the names of the persons chosen as presidential electors for this State and the number of votes cast for each. These Certificates of Ascertainment should be sent as soon as possible after the election, but must be received before the Electoral College meeting. At the same time the Governor shall deliver to the electors six duplicate originals of the same certificate, each bearing the great seal of the State. At any time prior to receipt of the certificate of the Governor or within 48 hours thereafter, any person elected to the office of elector may resign by submitting his resignation, written and duly verified, to the Governor. Failure to so resign shall signify consent to serve and to cast his vote for the candidate of the political party which nominated such elector.

In case of the absence, ineligibility or resignation of any elector chosen, or if the proper number of electors shall for any cause be deficient, the first and second alternates, respectively, who were nominated under G.S. 163–1(c), shall fill the first two vacancies. If the alternates are absent, ineligible, resign, or were not chosen, or if there are more than two vacancies, then the electors present at the required meeting shall forthwith elect from the citizens of the State a sufficient number of persons to fill the deficiency, and the persons chosen shall be deemed qualified electors to vote for President and Vice–President of the United States.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1969, c. 949, §§ 1, 2; Laws 1981, c. 35, § 1; Laws 1989, c. 93, § 5; Laws 1993 (Reg. Sess., 1994), c. 738, § 1, eff. July 13, 1994; S.L. 2001–398, § 8, eff. Jan. 1, 2002.

Historical and Statutory Notes

2001 Legislation

S.L. 2001–398, § 8, eff. Jan. 1, 2002, rewrote the section, which prior thereto read:

"Upon receipt of the abstracts prepared by the State Board of Elections and delivered to him in accordance with G.S. 163–192, the Secretary of State, under his hand and the seal of his office, shall certify to the Governor the names of the persons elected to the office of elector for President and Vice-President of the United States as stated in the abstracts of the State Board of

Elections. Thereupon, the Governor shall immediately issue a proclamation setting forth the names of the electors and instructing them to be present in the old Hall of the House of Representatives in the State Capitol in the City of Raleigh at noon on the first Monday after the second Wednesday in December next after their election, at which time the electors shall meet and vote on behalf of the State for President and Vice-President of the United States. The Governor shall cause this proclamation to be published in the daily newspapers published in the City of Raleigh. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice. The Secretary of State is responsible for making the actual arrangements for the meeting, preparing the agenda, and inviting guests.

''Before the date fixed for the meeting of the electors, the Governor shall send by registered mail to the Archivist of the United States, either three duplicate original certificates, or one original certificate and two authenticated copies of the Certificates of Ascertainment, under the great seal of the State setting forth the names of the persons chosen as presidential electors for this State and the number of votes cast for each. These Certificates of Ascertainment should be sent as soon as possible after the election, but must be received before the Electoral College meeting. At the same time he shall deliver to the electors six duplicate originals of the same certificate, each bearing the great seal of the State. At any time prior to receipt of the certificate of the Governor or within 48 hours thereafter, any person elected to the office of elector may resign by submitting his resignation, written and duly verified, to the Governor. Failure to so resign shall signify consent to serve and to cast his vote for the candidate of the political party which nominated such elector.

''In case of the absence, ineligibility or resignation of any elector chosen, or if the proper number of electors shall for any cause be deficient, the first and second alternates, respectively, who were nominated under G.S. 163-1(c), shall fill the first two vacancies. If the alternates are absent, ineligible, resign, or were not chosen, or if there are more than two vacancies, then the electors present at the required meeting shall forthwith elect from the citizens of the State a sufficient number of persons to fill the deficiency, and the persons chosen shall be deemed qualified electors to vote for President and Vice-President of the United States.''

§ 163–211. Compensation of presidential electors

Presidential electors shall be paid, for attending the meeting held in the City of Raleigh on the first Monday after the second Wednesday in December next after their election, the sum of forty-four dollars ($44.00) per day and traveling expenses at the rate of seventeen cents (17¢) per mile in going to and returning home from the required meeting.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1979, c. 1008.

§ 163–212. Penalty for failure of presidential elector to attend and vote

Any presidential elector having previously signified his consent to serve as such, who fails to attend and vote for the candidate of the political party which nominated such elector, for President and Vice–President of the United States at the time and place directed in G.S. 163–210 (except in case of sickness or other unavoidable accident) shall forfeit and pay to the State five hundred dollars ($500.00), to be recovered by the Attorney General in the Superior Court of Wake County. In addition to such forfeiture, refusal or failure to vote for the candidates of the political party which

nominated such elector shall constitute a resignation from the office of elector, his vote shall not be recorded, and the remaining electors shall forthwith fill such vacancy as hereinbefore provided.

The clear proceeds of forfeitures provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C–457.2.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1969, c. 949, § 3; S.L. 1998–215, § 131, eff. Oct. 31, 1998.

§ 163–213. Appointment of Presidential Electors by General Assembly in certain circumstances, by the Governor in certain other circumstances

(a) Appointment by General Assembly if No Proclamation by Six Days Before Electors' Meeting Day. – As permitted by 3 U.S.C. § 2, whenever the appointment of any Presidential Elector has not been proclaimed under G.S. 163–210 before noon on the date for settling controversies specified by 3 U.S.C. § 5, and upon the call of an extra session pursuant to the North Carolina Constitution for the purposes of this section, the General Assembly may fill the position of any Presidential Electors whose election is not yet proclaimed.

(b) Appointment by Governor if No Appointment by the Day Before Electors' Meeting Day. – If the appointment of any Presidential Elector has not been proclaimed under G.S. 163–210 before noon on the date for settling controversies specified by 3 U.S.C. § 5, nor appointed by the General Assembly by noon on the day before the day set for the meeting of Presidential Electors by 3 U.S.C. § 7, then the Governor shall appoint that Elector.

(c) Standard for Decision by General Assembly and Governor. – In exercising their authority under subsections (a) and (b) of this section, the General Assembly and the Governor shall designate Electors in accord with their best judgment of the will of the electorate. The decisions of the General Assembly or Governor under subsections (a) and (b) of this section are not subject to judicial review, except to ensure that applicable statutory and constitutional procedures were followed. The judgment itself of what was the will of the electorate is not subject to judicial review.

(d) Proclamation Before Electors' Meeting Day Controls. – If the proclamation of any Presidential Elector under G.S. 163–210 is made any time before noon on the day set for the meeting of Presidential Electors by 3 U.S.C. § 7, then that proclamation shall control over an appointment made by the General Assembly or the Governor. This section does not preclude litigation otherwise provided by law to challenge the validity of the proclamation or the procedures that resulted in that proclamation.

Added by S.L. 2001–289, § 1, eff. July 19, 2001.

Article 18A

Presidential Preference Primary Act

Section

163–213.1. Short title.
163–213.2. Primary to be held; date; qualifications and registration of voters.
163–213.3. Conduct of election.
163–213.4. Nomination by State Board of Elections.
163–213.5. Nomination by petition.
163–213.6. Notification to candidates.
163–213.7. Voting in presidential preference primary; ballots.
163–213.8. Allocation of delegate positions to reflect division of votes in the primary.
163–213.9. National committee to be notified of provisions under this Article.
163–213.10. Transferred.
163–213.11. Repealed.
163–214 to 163–217. Reserved.

§ 163–213.1. Short title

This Article may be cited as the ''Presidential Preference Primary Act.''

Added by Laws 1971, c. 225. Amended by Laws 1975, c. 744.

§ 163–213.2. Primary to be held; date; qualifications and registration of voters

On the Tuesday after the first Monday in May, 1992, and every four years thereafter, the voters of this State shall be given an opportunity to express their preference for the person to be the presidential candidate of their political party.

Any person otherwise qualified who will become qualified by age to vote in the general election held in the same year of the presidential preference primary shall be entitled to register and vote in the presidential preference primary. Such persons may register not earlier than 60 days nor later than the last day for making application to register under G.S. 163–82.6 prior to the said primary. In addition, persons who will become qualified by age to register and vote in the general election for which the primary is held, who do not register during the special period may register to vote after such period as if they were qualified on the basis of age, but until they are qualified by age to vote, they may vote only in primary elections.

Added by Laws 1971, c. 225. Amended by Laws 1975, c. 744; Laws 1977, c. 19; Laws 1977, c. 661, § 7; Laws 1983, c. 331, § 5; Laws 1985 (Reg. Sess., 1986), c. 927, § 1; Laws 1987, c. 457, § 3; Laws 1991, c. 689, § 15(a); Laws 1991 (Reg. Sess., 1992), c. 1032, § 6; S.L. 1999–424, § 7(j), eff. Aug. 5, 1999.

§ 163–213.3. Conduct of election

The presidential preference primary election shall be conducted and canvassed by the same authority and in the manner provided by law for the conduct and canvassing of the primary election for the office of Governor and all other offices enumerated in G.S. 163–182.4(b) and under the same provisions stipulated in G.S. 163–182.5(c). The State Board of Elections shall have authority to promulgate reasonable rules and regulations, not inconsistent with provisions contained herein, pursuant to the administration of this Article.

Added by Laws 1971, c. 225. Amended by Laws 1975, c. 744; Laws 1987, c. 81, § 2; Laws 1991, c. 689, § 15(b); S.L. 2001–398, § 9, eff. Jan. 1, 2002.

Historical and Statutory Notes

2001 Legislation

S.L. 2001–398, § 9, eff. Jan. 1, 2002, in the first sentence, substituted ''163–182.4(b)'' for ''163–187'' and ''163–182.5(c)'' for ''163–188''.

§ 163–213.4. Nomination by State Board of Elections

By the first Tuesday in February of the year preceding the North Carolina presidential preference primary, the chair of each political party shall submit to the State Board of Elections a list of its presidential candidates to be placed on the presidential preference primary ballot. The list must be comprised of candidates whose candidacy is generally advocated and recognized in the news media throughout the United States or in North Carolina, unless any such candidate executes and files with the chair of the political party an affidavit stating without qualification that the candidate is not and does not intend to become a candidate for nomination in the North Carolina Presidential Preference Primary Election. The State Board of Elections shall prepare and publish a list of the names of the presidential candidates submitted. The State Board of Elections shall convene in Raleigh on the first Tuesday in March preceding the presidential preference primary election. At the meeting required by this section, the State Board of Elections shall nominate as presidential primary candidates all candidates affiliated with a political party, recognized pursuant to the provisions of Article 9 of Chapter 163 of the General Statutes, who have been submitted to the State Board of Elections. Immediately upon completion of these requirements, the Board shall release to the news media all such nominees selected. Provided, however, nothing shall prohibit the partial selection of nominees prior to the meeting required by this section, if all provisions herein have been complied with.

Added by Laws 1971, c. 225. Amended by Laws 1975, c. 744; Laws 1983, c. 729; Laws 1987, c. 81, § 1; Laws 1987, c. 549, § 6.1; Laws 1991, c. 689, § 15(c); S.L. 2003–278, § 9(a), eff. June 27, 2003; S.L. 2007–391, § 33, eff. Aug. 19, 2007.

Historical and Statutory Notes

2003 Legislation

S.L. 2003–278, § 9(a), eff. June 27, 2003, in the first sentence, substituted ''March'' for ''February''.

2007 Legislation

S.L. 2007–391, § 33, rewrote the section, which prior thereto read:

''The State Board of Elections shall convene in Raleigh on the first Tuesday in March preceding the presidential preference primary election. At the meeting required by this section, the State Board of Elections shall nominate as presidential primary candidates all candidates affiliated with a political party, recognized pursuant to the provisions of Article 9 of Chapter 163 of the General Statutes, who have become eligible to receive payments from the Presidential Primary Matching Payment Account, as provided in section 9033 of the U.S. Internal Revenue Code of 1954, as amended. Immediately upon completion of these requirements, the Board shall release to the news media all such nominees selected. Provided, however, nothing shall prohibit the partial selection of nominees prior to the meeting required by this section, if all provisions herein have been complied with.''

Notes of Decisions

Construction and application 1

1. Construction and application

State's adoption of federal matching funds criteria as part of its standard for placement of candidate on presidential primary ballot did not violate due process, but was permissible means for furthering valid state interest of insuring that only viable candidates competed in state's presidential primary elections. LaRouche v. State Bd. of Elections, 1985, 758 F.2d 998. Constitutional Law ⚷ 4232; Elections ⚷ 22

Candidate, who failed to honor agreement to pay amounts owed from prior election based on Federal Election Committee audit, was ineligible to receive matching fund payments, and thus, candidate was properly denied placement of name on ballot. LaRouche v. State Bd. of Elections, 1985, 758 F.2d 998. Elections ⚷ 126(5); United States ⚷ 82(6.5)

§ 163–213.5. Nomination by petition

Any person seeking the endorsement by the national political party for the office of President of the United States, or any group organized in this State on behalf of, and with the consent of, such person, may file with the State Board of Elections petitions signed by 10,000 persons who, at the time they signed are registered and qualified voters in this State and are affiliated, by such registration, with the same political party as the candidate for whom the petitions are filed. Such petitions shall be presented to the county board of elections 10 days before the filing deadline and shall be certified promptly by the chairman of the board of elections of the county in which the signatures were obtained and shall be filed by the petitioners with the State Board of Elections no later than 5:00 P.M. on the Monday prior to the date the State Board of Elections is required to meet as directed by G.S. 163–213.4.

The petitions must state the name of the candidate for nomination, along with a letter of approval signed by such candidate. Said petitions must also state the name and address of the chairman of any such group organized to circulate petitions authorized under this section. The requirement for signers of such petitions shall be the same as now required under provisions of G.S.

163–96(b)(1) and (2). The requirement of the respective chairmen of county boards of elections shall be the same as now required under the provisions of G.S. 163–96 as they relate to the chairman of the county board of elections.

The State Board of Elections shall forthwith determine the sufficiency of petitions filed with it and shall immediately communicate its determination to the chairman of such group organized to circulate petitions. The form and style of petition shall be as prescribed by the State Board of Elections.

Added by Laws 1971, c. 225. Amended by Laws 1975, c. 744; S.L. 2002–159, § 55(e), eff. Jan. 1, 2003; S.L. 2003–278, § 9(b), eff. June 27, 2003; S.L. 2004–127, § 6, eff. July 26, 2004.

Historical and Statutory Notes

2002 Legislation

S.L. 2002–159, § 55(e), eff. Jan. 1, 2003, deleted the third paragraph, which prior thereto had read:

''The group of petitioners shall pay to the chairman of the county board of elections a fee of ten cents (10¢) for each signature he is required to examine under the provisions of this section.''

S.L. 2002–159, § 55(p), provides:

''Subsections 55(a) through 55(n) of this section become effective January 1, 2003, and apply to all primaries and elections held on and after that date. Subsection 55(*o*) is effective when this act becomes law.''

2003 Legislation

S.L. 2003–278, § 9(b), eff. June 27, 2003, in the second sentence of the first paragraph, inserted ''Monday prior to the'' after ''5:00 p.m. on the''.

2004 Legislation

S.L. 2004–127, § 6, eff. July 26, 2004, in the fourth sentence of the second paragraph, substituted ''163–96'' for ''163–96(b)(1) and (2)''.

Notes of Decisions

Validity 1

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1. Validity

That portion of state election statute which required an independent candidate for President to file written petition signed by qualified voters equal in number of ten percent of those who voted for Governor in the last gubernatorial election was an unconstitutional infringement upon plaintiffs' rights to associate for the advancement of political beliefs, to cast their votes effectively, and to enjoy equal protection under law, in that in 1980 statute required independent candidates to produce over 166,000 signatures, while group of voters seeking a place on the ballot as a new party and candidate desiring to run in Presidential primary had to submit petitions signed by only 10,000 voters, and state asserted no rational basis, much less any compelling interest, for such disparate treatment. Greaves v. State Bd. of Elections of North Carolina, 1980, 508 F.Supp. 78. Constitutional Law ⚷ 1464; Constitutional Law ⚷ 3644; Elections ⚷ 21

§ 163–213.6. Notification to candidates

The State Board of Elections shall forthwith contact each person who has been nominated by the Board or by petition and notify him in writing that his name will be printed as a candidate of a specified political party on the North Carolina presidential preference primary ballot. A candidate who participates in the North Carolina presidential preference primary of a particular party shall have his name placed on the general election ballot only as a

nominee of that political party. The board shall send a copy of the ''Presidential Preference Primary Act'' to each candidate with the notice specified above.

Added by Laws 1971, c. 225. Amended by Laws 1975, c. 744; Laws 1987, c. 549, § 6.2.

Notes of Decisions

Construction and application 1
Injunction 2
Review 3

1. Construction and application

District court's construction of ''sore loser'' provision of North Carolina Presidential Preference Primary Act to effect that independent candidate for President of the United States had not participated in presidential preference primary because candidate had ''revoked'' his nomination as Republican presidential candidate prior to date of North Carolina primary election was manifestly without error. Anderson v. Babb, 1980, 632 F.2d 300. Elections ⚷ 21

2. Injunction

Independent candidate for President of the United States was entitled to injunctive decree directing that his name be placed on general election ballot, upon finding that ''sore loser'' provision of North Carolina Presidential Preference Primary Act did not require omission of his name. Anderson v. Babb, 1980, 632 F.2d 300. Injunction ⚷ 80

3. Review

Faced with cryptic wording of ''sore loser'' provision of North Carolina Presidential Preference Primary Act, conflicting opinions of North Carolina State Board of Elections and its own executive secretary–director, and time constraints imposed by imminent election, it was proper for district court, exercising its pendent jurisdiction, to make its own interpretation of that statute. Anderson v. Babb, 1980, 632 F.2d 300. Federal Courts ⚷ 391

Unappealed determination by North Carolina State Board of Elections under ''sore loser'' provision of North Carolina Presidential Preference Primary Act refusing to place name of independent candidate for President of the United States on general election ballot was not entitled to collateral estoppel effect in federal district court suit challenging such action, wherein substantial federal constitutional questions could turn upon its resolution. Anderson v. Babb, 1980, 632 F.2d 300. Judgment ⚷ 828.7

§ 163–213.7. Voting in presidential preference primary; ballots

The names of all candidates in the presidential preference primary shall appear at an appropriate place on the ballot or voting machine. In addition the State Board of Elections shall provide a category on the ballot or voting machine allowing voters in each political party to vote an ''uncommitted'' or ''no preference'' status. The voter shall be able to cast his ballot for one of the presidential candidates of a political party or for an ''uncommitted'' or ''no preference'' status, but shall not be permitted to vote for candidates or ''uncommitted'' status of a political party different from his registration. Persons registered as ''Unaffiliated'' shall not participate in the presidential primary except as provided in G.S. 163–119.

Added by Laws 1971, c. 225. Amended by Laws 1975, c. 744; Laws 1993 (Reg. Sess., 1994), c. 762, § 52, eff. Jan. 1, 1995; S.L. 2004–127, § 11, eff. July 26, 2004.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

''Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.'' [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

2004 Legislation

S.L. 2004–127, § 11, eff. July 26, 2004, in the fourth sentence, substituted ''163–119'' for ''163–116''.

§ 163–213.8. Allocation of delegate positions to reflect division of votes in the primary

(a) Upon completion and certification of the primary results by the State Board of Elections, the Secretary of State shall certify the results to the State chairman of each political party.

Each political party shall allocate delegate positions in a manner which reflects the division of votes of the party primary consistent with the national party rules of that political party.

(b) In case of conflict between subsection (a) of this section and the national rules of a political party, the State executive committee of that party has the authority to resolve the conflict by adopting for that party the national rules, which shall then supercede any provision in subsection (a) of this section with which it conflicts, provided that the executive committee shall take only such action under this subsection necessary to resolve the conflict.

Added by Laws 1971, c. 225. Amended by Laws 1975, c. 744; Laws 1979, c. 800; Laws 1983, c. 216, § 1, 2.

§ 163–213.9. National committee to be notified of provisions under this Article

It shall be the responsibility of the State chairman of each political party, qualified under the laws of this State, to notify his party's national committee no later than January 30 of each year in which such presidential preference primary shall be conducted of the provisions contained under this Article.

Added by Laws 1971, c. 225. Amended by Laws 1975, c. 744.

Historical and Statutory Notes

A former section 163–213.9, pertaining to number of votes to be cast for candidates participating in the primary was also added by Laws 1971, c. 225. Laws 1975, c. 744 repealed the former section and renumbered § 163–210 as this section.

§ 163–213.10. Transferred to § 163–213.9

Historical and Statutory Notes

Laws 1975, c. 744 repealed the former section 163–213.9 and renumbered § 163–213.10 as that section.

§ 163–213.11. Repealed by Laws 1991, c. 689, § 15

§§ 163–214 to 163–217. Reserved

Article 19

Petitions for Elections and Referenda

Section

163–218. Registration of notice of circulation of petition.
163–219. Petition void after one year from registration.
163–220. Limitation on petitions circulated prior to July 1, 1957.
163–221. Persons may not sign name of another to petition.
163–222 to 163–225. Reserved.

§ 163–218. Registration of notice of circulation of petition

From and after July 1, 1957, notice of circulation of a petition calling for any election or referendum shall be registered with the county board of elections with which the petition is to be filed, and the date of registration of the notice shall be the date of issuance and commencement of circulation of the petition.

Added by Laws 1967, c. 775, § 1.

§ 163–219. Petition void after one year from registration

Petitions calling for elections and referenda shall be and become void and of no further effect one year after the date the notice of circulation is registered with the county board of elections with which it is required to be filed; and notwithstanding any public, special, local, or private act to the contrary, no election or referendum shall thereafter be called or held pursuant to or based upon any such void petition.

Added by Laws 1967, c. 775, § 1.

§ 163–220. Limitation on petitions circulated prior to July 1, 1957

Petitions calling for elections or referenda which were circulated prior to July 1, 1957, shall be and become void and of no further force and effect one year after the date of issuance of such petitions for circulation; and notwithstanding any public, special, local, or private act to the contrary, no election or referendum shall be called or held pursuant to or based upon any such void petition from and after July 1, 1957.

Added by Laws 1967, c. 775, § 1.

§ 163–221. Persons may not sign name of another to petition

(a) No person may sign the name of another person to any of the following:

(1) Any petition calling for an election or referendum.

(2) Any petition under G.S. 163–96 for the formulation of a new political party.

(3) Any petition under G.S. 163–107.1 requesting a person to be a candidate.

(4) Any petition under G.S. 163–122 to have the name of an unaffiliated candidate placed on the general election ballot, or under G.S. 163–296 to have the name of an unaffiliated or nonpartisan candidate placed on the regular municipal election ballot.

(5) Any petition under G.S. 163–213.5 to place a name on the ballot under the Presidential Preference Primary Act.

(6) Any petition under G.S. 163–123 to qualify as a write-in candidate.

(b) Any name signed on a petition, in violation of this section, shall be void.

(c) Any person who willfully violates this section is guilty of a Class 2 misdemeanor.

Added by Laws 1977, c. 218, § 1. Amended by Laws 1979, c. 534, § 1; Laws 1987, c. 565, § 6; Laws 1993, c. 539, § 1104, eff. Oct. 1, 1994; Laws 1994 (1st Ex. Sess.), c. 24, § 14(c), eff. March 26, 1994; S.L. 2003–278, § 7, eff. June 27, 2003.

Historical and Statutory Notes

Laws 1993, c. 539, § 1359, provides:

''This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.'' [Amended by Laws 1994, Ex. Sess., c. 24, § 14(c), eff. March 26, 1994.]

Laws 1993, c. 539, was ratified July 24, 1993.

2003 Legislation

S.L. 2003–278, § 7, eff. June 27, 2003, rewrote subsec. (a), which prior thereto read:

''(a) No person may sign the name of another person to:

''(1) Any petition calling for an election or referendum;

''(2) Any petition under G.S. 163-96 for the formulation of a new political party;

''(3) Any petition under G.S. 163-107.1 requesting a person to be a candidate;

''(4) Any petition under G.S. 163-122 to have the name of an unaffiliated candidate placed on the general election ballot, or under G.S. 163-296 to have the name of an unaffiliated or nonpartisan candidate placed on the regular municipal election ballot; or

''(5) Any petition under G.S. 163-213.5 to place a name on the ballot under the Presidential Preference Primary Act.''

Cross References

Misdemeanor sentencing and punishment, see § 15A–1340.13 et seq.

§§ 163–222 to 163–225. Reserved

SUBCHAPTER VII. ABSENTEE VOTING

Article 20

Absentee Ballot

Section
163–226. Who may vote an absentee ballot.
163–226.1. Absentee voting in primary.
163–226.2. Absentee voting in municipal elections.
163–226.3. Certain acts declared felonies.
163–227. Repealed.
163–227.1. Second primary; applications for absentee ballots for voting in second primary.
163–227.2. Alternate procedures for requesting application for absentee ballot; ''one-stop'' voting procedure in board office.
163–227.3. Date by which absentee ballots must be available for voting.
163–228. Register of absentee requests, applications, and ballots issued; a public record.
163–229. Absentee ballots, applications on container-return envelopes, and instruction sheets.
163–230. Repealed.
163–230.1. Simultaneous issuance of absentee ballots with application.
163–230.2. Method of requesting absentee ballots.
163–231. Voting absentee ballots and transmitting them to the county board of elections.
163–232. Certified list of executed absentee ballots; distribution of list.
163–232.1. Certified list of executed absentee ballots received on or after election day; publication of list.
163–233. Applications for absentee ballots; how retained.
163–233.1. Withdrawal of absentee ballots not allowed.
163–234. Counting absentee ballots by county board of elections.
163–235. Repealed.
163–236. Violations by county board of elections.
163–237. Certain violations of absentee ballot law made criminal offenses.
163–238. Reports of violations to district attorneys.
163–239. Article 21 relating to absentee voting by servicemen and certain civilians not applicable.
163–240 to 163–240.5. Expired.
163–241 to 163–244. Reserved.

§ 163–226. Who may vote an absentee ballot

(a) Who May Vote Absentee Ballot; Generally. – Any qualified voter of the State may vote by absentee ballot in a statewide primary, general, or special election on constitutional amendments, referenda or bond proposals, and any qualified voter of a county is authorized to vote by absentee ballot in any primary or election conducted by the county board of elections, in the manner provided in this Article.

(a1) Deleted by S.L. 2001–337, § 1, eff. Jan. 1, 2002.

(a2) Annual Request by Person With Sickness or Physical Disability. – If the applicant so requests and reports in the application

that the voter has a sickness or physical disability that is expected to last the remainder of the calendar year, the application shall constitute a request for an absentee ballot for all of the primaries and elections held during the calendar year when the application is received.

(b) Absentee Ballots; Exceptions. – Notwithstanding the authority contained in G.S. 163–226(a), absentee ballots shall not be permitted in fire district elections.

(c) The Term ''Election''. – As used in this Subchapter, unless the context clearly requires otherwise, the term ''election'' includes a general, primary, second primary, runoff election, bond election, referendum, or special election.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1967, c. 952, § 1; Laws 1973, c. 536, § 1; Laws 1973, c. 1018; Laws 1977, c. 469, § 1; Laws 1979, c. 140, § 1; Laws 1995 (Reg. Sess., 1996), c. 561, § 1; Laws 1995 (Reg. Sess., 1996), c. 734, § 5, eff. June 21, 1996; S.L. 1999–455, § 1; S.L. 2001–337, § 1, eff. Jan. 1, 2002; S.L. 2001–507, § 1.

Historical and Statutory Notes

Laws 1995, c. 561, § 5, provides:

''This act becomes effective with respect to elections conducted on or after January 1, 1997.''

Laws 1995, c. 561, was ratified June 17, 1996.

S.L. 1999–455, § 24 provides:

''This act applies to elections held on or after January 1, 2000, except that the State Board of Elections may issue rules required or permitted by this act prior to that date.''

2001 Legislation

S.L. 2001–337, § 1, eff. Jan. 1, 2002, rewrote the section, which prior thereto read:

''(a) Who May Vote Absentee Ballot; Generally.—Any qualified voter of the State may vote by absentee ballot in a statewide primary, general, or special election on constitutional amendments, referenda or bond proposals, and any qualified voter of a county is authorized to vote by absentee ballot in any primary or election conducted by the county board of elections, in the manner provided in this Article if:

''(1) The voter expects to be absent from the county in which he is registered during the entire period that the polls are open on the day of the specified election in which the voter desires to vote;

''(2) The voter is unable to be present at the voting place to vote in person on the day of the specified election in which the voter desires to vote because of the voter's sickness or other physical disability;

''(3) The voter is incarcerated, whether in the voter's county of residence or elsewhere, shall be entitled to vote by absentee ballot in the county of the voter's residence in any election, specified herein, in which the voter otherwise would be entitled to vote. Absentee voting shall be in the same manner as provided in this Article. The chief custodian or superintendent of the institution or other place of confinement shall certify that the applicant is not a felon, and the certification shall be as prescribed by the State Board of Elections. The State Board of Elections is authorized to prescribe procedures to carry out the intent and purpose of this subsection;

''(3a) The voter because of the observance of a religious holiday pursuant to the tenets of the voter's religion will be unable to cast a ballot at the polling place on the day of the election; or

''(4) The voter is an employee of the county board of elections or a precinct official, observer, or ballot counter, in another precinct and the voter's assigned duties on the day of the election will cause the voter to be unable to be present at the voting place to vote in person and provided such employee has the application witnessed by the chairman of the county board of elections.

''(a1) No-Excuse Absentee Voting for One-Stop in General Elections Only.--The only type of absentee voting that is not subject to the excuse requirements of subsection (a) of this section is one-stop voting as provided in G.S. 163–227.2 for elections held on the day of the general elections in November of even-numbered years.

''(b) Absentee Ballots; Exceptions.--Notwithstanding the authority contained in G.S. 163–226(a), absentee ballots shall not be permitted in fire district elections.

''(c) The Term 'Election'.--As used in this Subchapter, unless the context clearly requires otherwise, the term 'election' includes a general, primary, second primary, runoff election, bond election, referendum, or special election.''

S.L. 2001–507, § 1, inserted subsec. (a2).

S.L. 2001–507, § 5, provides:

''This act is effective when it becomes law. Sections 3 and 4 of this act apply to appointments made on or after January 1, 2002, and primaries and elections held on or after January 1, 2002. The remainder of this act applies to primaries and elections held on or after January 1, 2002. ''

Notes of Decisions

Absentee voters, generally 4
Conduct of election officials 6
Construction and application 2
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Testimony 3
Validity 1

1. Validity

Const. Art. 6, § 2, providing that a person must reside in state, county, and precinct ''in which he offers to vote'' a certain length of time, does not require the personal presence of the voter in order to cast his ballot, and hence Absentee Voters Law (Pub.Laws 1917, c. 23, as amended by Pub.Laws 1919, c. 322), permitting one absent from the state to vote, does not violate such section of the Constitution. Jenkins v. State Board of Elections of North Carolina, 1920, 104 S.E. 346, 180 N.C. 169, 14 A.L.R. 1247. Elections ⚷ 25

Absentee Voters Law (Pub.Laws 1917, c. 23, as amended by Pub.Laws 1919, c. 322) does not conflict with Const. Art. 6, § 6, declaring that all elections by the people shall be by ballot. Jenkins v. State Board of Elections of North Carolina, 1920, 104 S.E. 346, 180 N.C. 169, 14 A.L.R. 1247. Elections ⚷ 27

The fact that Absentee Voters Law (Pub.Laws 1917, c. 23, as amended by Pub.Laws 1919, c. 322) originated from extraordinary emergency, and was not contemplated by the framers of the Constitution, can make no difference as to its validity, since, if the power resides in the Legislature, it may exercise it and apply it to all voters, whether soldiers or not. Jenkins v. State Board of Elections of North Carolina, 1920, 104 S.E. 346, 180 N.C. 169, 14 A.L.R. 1247. Elections ⚷ 27

2. Construction and application

The absentee voting law contemplates that the acts required by absent voting procedure may be done in the other state or county in which absent voter is sojourning. Owens v. Chaplin, 1948, 47 S.E.2d 12, 228 N.C. 705, rehearing denied 48 S.E.2d 37, 229 N.C. 797. Elections ⚷ 216.1

The purpose of absentee voting law is to enable qualified voter to vote at a general election in the precinct of his domicile when he is temporarily absent in another state or county. Owens v. Chaplin, 1948, 47 S.E.2d 12, 228 N.C. 705, rehearing denied 48 S.E.2d 37, 229 N.C. 797. Elections ⚷ 216.1

Absentee ballot law and Australian ballot law, being in pari materia, were required to be construed together, and, when so construed, authorized absentee voting in municipal elections (Code 1935, §§ 5960 et seq., 6055(a1), 6055(a2) 6055(a3), 6055(a39), 6055(a42). Phillips v. Slaughter, 1936, 183 S.E. 897, 209 N.C. 543. Elections ⚷ 213

Absentee ballot law and Australian ballot law, being in pari materia, were required to be construed together (Code 1935, §§ 5960 et seq., 6055(a1), 6055(a2), 6055(a3), 6055(a39), 6055a(42). Phillips v. Slaughter, 1936, 183 S.E. 897, 209 N.C. 543. Statutes ⚷ 223.2(11)

3. Testimony

Testimony of challenged elector, called as a witness by unsuccessful candidate for office of clerk of superior court, that at time he voted by absentee ballot he intended to return to county which he had always considered his home and that he returned to home of father and mother in that county upon being discharged from Armed Forces, established his right to vote in that county, notwithstanding his testimony that he had considered going elsewhere upon being discharged, depending upon where he could find work. Owens v. Chaplin, 1948, 48 S.E.2d 37, 229 N.C. 797. Elections ⚷ 72

Testimony of challenged elector called as a witness by unsuccessful candidate for office of clerk of superior court that, if he was laid off, he would return to county in which challenged absentee ballot was cast, did not show loss of voting residence in that county in view of other testimony. Owens v. Chaplin, 1948, 48 S.E.2d 37, 229 N.C. 797. Elections ⚷ 72

4. Absentee voters, generally

C.S. § 5960, requiring that physical inability to vote in person appear by affidavit or physician's certificate is mandatory, and, without substantial compliance therewith, a voter in the county cannot vote, especially in view of Pub.Laws 1923, c. 111, § 5, though C.S. § 5968, requires that the election laws be liberally construed in favor of the elector's right to vote. Davis v. Board of Education of Beaufort County, 1923, 119 S.E. 372, 186 N.C. 227. Elections ⚷ 213

That the judges of election acted on personal knowledge of the illness of seven absent voters, in permitting them to vote by mail without physicians' certificates or affidavits as to their physical inability to appear in person, as required by C.S. § 5960, did not abrogate such requirement; the registrar and election judges being authorized to determine whether a voter has complied with the law, but not to nullify its plain mandate. Davis v. Board of Education of Beaufort County, 1923, 119 S.E. 372, 186 N.C. 227. Elections ⚷ 213

Under the Absentee Voter Act, permitting, before its amendment by Pub.L. 1919, c. 322, only electors absent from the county to vote under that act, electors who were within the county, but were prevented by work or sickness from voting in person, could not vote as absentees. Robertson v. Jackson, 1922, 110 S.E. 593, 183 N.C. 695. Elections ⚷ 203

5. Oaths of absentee voters

Doubtful statements of challenged electors as to whether they were sworn by attesting officer when they signed statutory affidavit accompanying absentee ballot were insufficient to overcome certificate of notary, which imported prima facie truth of pertinent recitals, stipulation of the parties, and evidence of attesting officer called as a witness by unsuccessful candidates. Owens v. Chaplin, 1948, 48 S.E.2d 37, 229 N.C. 797. Elections ⚷ 216.1

Absentee ballots cast by absentee voters who were not sworn were defective and could not be counted. Owens v. Chaplin, 1948, 47 S.E.2d 12, 228 N.C. 705, rehearing denied 48 S.E.2d 37, 229 N.C. 797. Elections ⚷ 216.1; Elections ⚷ 227(8)

Absentee ballots cast by absentee voters taking oath with uplifted hands instead of upon the Bible were valid. Owens v. Chaplin, 1948, 47 S.E.2d 12, 228 N.C. 705, rehearing denied 48 S.E.2d 37, 229 N.C. 797. Oath ⚷ 3

Jurat of officer authorized to administer oaths is prima facie evidence of all matters properly stated therein. Bouldin v. Davis, 1930, 156 S.E. 103, 200 N.C. 24. Affidavits ⚷ 12

Jurat of officer authorized to administer oaths is not conclusive, and extrinsic evidence is admissible to prove that statements are false. Bouldin v. Davis, 1930, 156 S.E. 103, 200 N.C. 24. Affidavits ⚷ 12

Absentee voter, signing alleged statutory affidavit, is competent to testify, in contradiction of jurat that he was not sworn. Bouldin v. Davis, 1930, 156 S.E. 103, 200 N.C. 24. Affidavits ⚷ 12

Ballots of absentee voters who, contrary to statute, did not swear to alleged affidavits signed by them, were properly excluded (C.S. § 5960 et seq.) Bouldin v. Davis, 1930, 156 S.E. 103, 200 N.C. 24. Elections ⚷ 239

6. Conduct of election officials

Misconduct of election officials did not disfranchise otherwise qualified electors who cast absentee ballots. Per STACY, C. J., and SEAWELL, J. Owens v. Chaplin, 1948, 48 S.E.2d 37, 229 N.C. 797. Elections ⚷ 227(8)

The object of elections is to ascertain and not to thwart the popular will, and

to secure and not to defeat rights of duly qualified electors, and hence innocent voters should not be disfranchised for mistake or wilful misconduct of election officials in performing their duties. Owens v. Chaplin, 1948, 47 S.E.2d 12, 228 N.C. 705, rehearing denied 48 S.E.2d 37, 229 N.C. 797. Elections ⚷ 227(1)

That chairman of county board of elections delivered absentee ballots to absentee voters outside county, and that chairman was accompanied by certain candidates, and that absentee voters returned ballots in person to chairman instead of by mail as prescribed by statute, did not invalidate ballots, in absence of coercion, fraud or imposition practiced on absentee voters, notwithstanding that chairman may have violated a due sense of propriety in delivering ballots outside county. Owens v. Chaplin, 1948, 47 S.E.2d 12, 228 N.C. 705, rehearing denied 48 S.E.2d 37, 229 N.C. 797. Elections ⚷ 227(8)

Superior court clerk's interest in reelection did not invalidate absentee ballots cast by absentee voters to whom clerk administered the oaths, since clerk was merely performing duty imposed by law regarding which nothing was left to his discretion and his act in administering oaths was ministerial and not judicial. Owens v. Chaplin, 1948, 47 S.E.2d 12, 228 N.C. 705, rehearing denied 48 S.E.2d 37, 229 N.C. 797. Elections ⚷ 216.1

7. Pleadings

Complaint in election contest alleging that absentee ballots and votes of nonresidents were illegally cast for defendant in municipal election held not to state cause of action, where absentee ballots were legal and defendant had majority of votes legally cast (Code 1935, §§ 5960 et seq., 6055(a1), 6055(a2), 6055(a3), 6055(a39), 6055(a42). Phillips v. Slaughter, 1936, 183 S.E. 897, 209 N.C. 543. Elections ⚷ 285(3)

Demurrer to complaint in election contest which admitted alleged fact that absentee ballots were cast for defendant held not to admit conclusion of law set forth therein that such ballots were illegal. Phillips v. Slaughter, 1936, 183 S.E. 897, 209 N.C. 543. Pleading ⚷ 214(5)

8. Presumptions and burden of proof

Admission by unsuccessful candidate for office of clerk of superior court that each challenged elector was duly registered in county, and that his absentee ballot was in proper form gave rise to a presumption of validity of ballot and imposed on unsuccessful candidate the burden of showing the contrary. Per STACY, C. J., and SEAWELL, J. Owens v. Chaplin, 1948, 48 S.E.2d 37, 229 N.C. 797. Elections ⚷ 216.1

Absentee ballots cast for successful candidate were improperly rejected in quo warranto proceeding to try title to office of clerk of superior court, where relator failed to carry burden of proving disqualification of challenged electors, in view of presumption arising from official certificate declaring defendant elected to office and relator's concession that challenged electors were registered in county and that absentee ballots were in proper form. Owens v. Chaplin, 1948, 48 S.E.2d 37, 229 N.C. 797. Quo Warranto ⚷ 57

§ 163–226.1. Absentee voting in primary

A qualified voter may vote by absentee ballot in a partisan primary provided the qualified voter is affiliated, at the time the qualified voter makes application for absentee ballots, with the political party in whose primary the qualified voter wishes to vote, except that an unaffiliated voter may vote in a party primary if permitted under G.S. 163–119. The official registration records of the county in which the voter is registered shall be proof of whether the qualified voter is affiliated with a political party and of the party, if any, with which the qualified voter is affiliated.

Added by Laws 1977, c. 469, § 1. Amended by S.L. 1999–455, § 2.

Historical and Statutory Notes

S.L. 1999–455, § 24 provides:

''This act applies to elections held on or after January 1, 2000, except that the State Board of Elections may issue rules required or permitted by this act prior to that date.''

§ 163–226.2. Absentee voting in municipal elections

Absentee voting by qualified voters residing in a municipality shall be in accordance with the authorization specified in G.S. 163-302.

Added by Laws 1977, c. 469, § 1.

§ 163–226.3. Certain acts declared felonies

(a) Any person who shall, in connection with absentee voting in any election held in this State, do any of the acts or things declared in this section to be unlawful, shall be guilty of a Class I felony. It shall be unlawful:

(1) For any person except the voter's near relative or the voter's verifiable legal guardian to assist the voter to vote an absentee ballot when the voter is voting an absentee ballot other than under the procedure described in G.S. 163–227.2; provided that if there is not a near relative or legal guardian available to assist the voter, the voter may request some other person to give assistance;

(2) For any person to assist a voter to vote an absentee ballot under the absentee voting procedure authorized by G.S. 163–227.2 except as provided in that section;

(3) For a voter who votes an absentee ballot under the procedures authorized by G.S. 163–227.2 to vote that voter's absentee ballot outside of the voting booth or private room provided to the voter for that purpose in or adjacent to the office of the county board of elections or at the additional site provided by G.S. 163–227.2(f1), or to receive assistance except as provided in G.S. 163–227. 2;

(4) For any owner, manager, director, employee, or other person, other than the voter's near relative or verifiable legal guardian, to make a written request pursuant to G.S. 163–230.1 or an application on behalf of a registered voter who is a patient in any hospital, clinic, nursing home or rest home in this State or for any owner, manager, director, employee, or other person other than the voter's near relative or verifiable legal guardian, to mark the voter's absentee ballot or assist such a voter in marking an absentee ballot. This subdivision does not apply to members, employees, or volunteers of the county board of elections, if those members, employees, or volunteers are working as part of a multipartisan team trained and authorized by the county board of elections to assist voters

with absentee ballots. Each county board of elections shall train and authorize such teams, pursuant to procedures which shall be adopted by the State Board of Elections.

(5) Repealed by Session Laws 1987, c. 583, s. 8.

(6) For any person to take into that person's possession for delivery to a voter or for return to a county board of elections the absentee ballot of any voter, provided, however, that this prohibition shall not apply to a voter's near relative or the voter's verifiable legal guardian;

(7) Except as provided in subsections (1), (2), (3) and (4) of this section, G.S. 163–231(a), G.S. 163–250(a), and G.S. 163–227.2(e), for any voter to permit another person to assist the voter in marking that voter's absentee ballot, to be in the voter's presence when a voter votes an absentee ballot, or to observe the voter mark that voter's absentee ballot.

(b) The State Board of Elections or a county board of elections, upon receipt of a sworn affidavit from any qualified voter of the State or the county, as the case may be, attesting to first-person knowledge of any violation of subsection (a) of this section, shall transmit that affidavit to the appropriate district attorney, who shall investigate and prosecute any person violating subsection (a).

Added by Laws 1979, c. 799, § 4. Amended by Laws 1983, c. 331, § 2; Laws 1985, c. 563, § 4; Laws 1987, c. 565, § 7; Laws 1987, c. 583, § 8; Laws 1987, c. 583, § 10; Laws 1995, c. 243, § 1, eff. Jan. 1, 1996; S.L. 1999–455, § 3; S.L. 2005–428, § 5(b), eff. Jan. 1, 2006; S.L. 2007–391, § 29(a), eff. Jan. 1, 2008.

Historical and Statutory Notes

Laws 1995, c. 243, § 1, provides:

''Wherever the term 'supervisor' appears in the General Statutes of North Carolina or in any local act in reference to the county supervisor of elections as provided in G.S. 163–35, the term is changed to read 'director.' ''

S.L. 1999–455, § 24 provides:

''This act applies to elections held on or after January 1, 2000, except that the State Board of Elections may issue rules required or permitted by this act prior to that date.''

2005 Legislation

S.L. 2005–428, § 5(b), eff. Jan. 1, 2006, amended subsec. (a) by substituting ''as provided in that section'' for ''a member of the county board of elections, the director of elections, an employee of the board authorized by the board, the voter's near relative or the voter's verifiable legal guardians'' in subd. (a)(2) and substituted ''except as provided in G.S. 163–227.2'' for ''in getting to and from the voting booth or private room and in preparing and marking that voter's ballots from any person other than a member of the county board of elections, the director of elections, an employee of the board of elections authorized by the board, a near relative of the voter or the voter's verifiable legal guardian'' in subd. (a)(3).

S.L. 2005–428, § 18, provides:

''Sections 2, 6, 7, 8, 10, 12, 13, 14, 15, and 16 of this act are effective when this act becomes law and apply to all primaries and elections held on or after that date. The remainder of this act becomes effective January 1, 2006, and applies to all primaries and elections held on or after that date.''

2007 Legislation

S.L. 2007–391, § 29(a), changed the semicolon following ''marking an ab-

sentee ballot'' to a period, and added the second and third sentences.

Cross References

Felony sentencing and punishment, see § 15A–1340.10 et seq.
Forfeiture of gain acquired through commission of felony, see § 14–2.3.
Forfeiture of licensing privileges after felony conviction, see § 15A–1331A.

§ 163–227. Repealed by S.L. 1999–455, § 4

Historical and Statutory Notes

The repealed section provided that the state board prescribe and the county secure the form of application for absentee ballots.

S.L. 1999–455, § 24 provides:

''This act applies to elections held on or after January 1, 2000, except that the State Board of Elections may issue rules required or permitted by this act prior to that date.''

§ 163–227.1. Second primary; applications for absentee ballots for voting in second primary

A voter applying for an absentee ballot for a primary election who will be eligible to vote under this Article on the day of the primary and second primary shall be permitted by the county board of elections to indicate that fact on that voter's application and that voter shall automatically be issued an application and absentee ballot for the second primary if one is called. The county board of elections shall consider that indication a separate request for application for the second primary and, at the proper time, shall enter that voter's name in the absentee register along with the listing of other applicants for absentee ballots for the second primary.

In addition, a voter entitled to absentee ballots under the provisions of this Article who did not make application for the primary or who failed to apply for a second primary ballot at the time of application for a first primary ballot may make a written request for absentee ballots for a second primary not earlier than the day a second primary is called and not later than the date and time provided by G.S. 163–230.1.

All procedures with respect to absentee ballots in a second primary shall be the same as with respect to absentee ballots in a first primary except as otherwise provided by this section.

Added by Laws 1973, c. 536, § 1. Amended by Laws 1981, c. 560, § 1; Laws 1985, c. 600, § 3; S.L. 1999–455, § 5.

Historical and Statutory Notes

S.L. 1999–455, § 24 provides:

''This act applies to elections held on or after January 1, 2000, except that the State Board of Elections may issue rules required or permitted by this act prior to that date.''

§ 163–227.2. Alternate procedures for requesting application for absentee ballot; ''one-stop'' voting procedure in board office

(a) Any voter eligible to vote by absentee ballot under G.S. 163–226 may request an application for absentee ballots, complete the application, and vote under the provisions of this section and of G.S. 163–82.6A, as applicable.

(a1) Deleted by S.L. 2001–337, § 2, eff. Jan. 1, 2002.

(b) Not earlier than the third Thursday before an election, in which absentee ballots are authorized, in which a voter seeks to vote and not later than 1:00 P.M. on the last Saturday before that election, the voter shall appear in person only at the office of the county board of elections, except as provided in subsection(g) of this section. A county board of elections shall conduct one-stop voting on the last Saturday before the election until 1:00 P.M. and may conduct it until 5:00 P.M. on that Saturday. That voter shall enter the voting enclosure at the board office through the appropriate entrance and shall at once state his or her name and place of residence to an authorized member or employee of the board.

In a primary election, the voter shall also state the political party with which the voter affiliates and in whose primary the voter desires to vote, or if the voter is an unaffiliated voter permitted to vote in the primary of a particular party under G.S. 163–119, the voter shall state the name of the authorizing political party in whose primary he wishes to vote. The board member or employee to whom the voter gives this information shall announce the name and residence of the voter in a distinct tone of voice. After examining the registration records, an employee of the board shall state whether the person seeking to vote is duly registered. If the voter is found to be registered that voter may request that the authorized member or employee of the board furnish the voter with an application form as specified in G.S. 163–227. The voter shall complete the application in the presence of the authorized member or employee of the board, and shall deliver the application to that person.

(c) If the application is properly filled out, the authorized member or employee shall enter the voter's name in the register of absentee requests, applications, and ballots issued and shall furnish the voter with the ballots to which the application for absentee ballots applies. The voter thereupon shall vote in accordance with subsection (e) of this section.

All actions required by this subsection shall be performed in the office of the board of elections, except that the voting may take place in an adjacent room as provided by subsection (e) of this section. The application under this subsection shall be signed in

the presence of the chair, member, director of elections of the board, or full-time employee, authorized by the board who shall sign the application and certificate as the witness and indicate the official title held by him or her. Notwithstanding G.S. 163–231(a), in the case of this subsection, only one witness shall be required on the certificate.

(d) Only the chairman, member, employee, or director of elections of the board shall keep the voter's application for absentee ballots in a safe place, separate and apart from other applications and container-return envelopes. If the voter's application for absentee ballots is disapproved by the board, the board shall so notify the voter stating the reason for disapproval by first-class mail addressed to the voter at that voter's residence address and at the address shown in the application for absentee ballots; and the board shall enter a challenge under G.S. 163–89.

(e) The voter shall vote that voter's absentee ballot in a voting booth in the office of the county board of elections, and the county board of elections shall provide a voting booth for that purpose, provided however, that the county board of elections may in the alternative provide a private room for the voter adjacent to the office of the board, in which case the voter shall vote that voter's absentee ballot in that room. A voter at a one-stop site shall be entitled to the same assistance as a voter at a voting place on election day under G.S. 163–166.8. The State Board of Elections shall, where appropriate, adapt the rules it adopts under G.S. 163–166.8 to one-stop voting.

(e1) If a county uses a voting system with retrievable ballots, that county's board of elections may by resolution elect to conduct one-stop absentee voting according to the provisions of this subsection. In a county in which the board has opted to do so, a one-stop voter shall cast the ballot and then shall deposit the ballot in the ballot box or voting system in the same manner as if such box or system was in use in a precinct on election day. At the end of each business day, or at any time when there will be no employee or officer of the board of elections on the premises, the ballot box or system shall be secured in accordance with a plan approved by the State Board of Elections, which shall include that no additional ballots have been placed in the box or system. Any county board desiring to conduct one-stop voting according to this subsection shall submit a plan for doing so to the State Board of Elections. The State Board shall adopt standards for conducting one-stop voting under this subsection and shall approve any county plan that adheres to its standards. The county board shall adhere to its State Board-approved plan. The plan shall provide that each one-stop ballot shall have a ballot number on it in accordance with G.S. 163–230.1(a2), or shall have an equivalent identifier to allow for retrievability. The standards shall address

retrievability in one-stop voting on direct record electronic equipment where no paper ballot is used.

(e2) A voter who has moved within the county more than 30 days before election day but has not reported the move to the board of elections shall not be required on that account to vote a provisional ballot at the one-stop site, as long as the one-stop site has available all the information necessary to determine whether a voter is registered to vote in the county and which ballot the voter is eligible to vote based on the voter's proper residence address. The voter with that kind of unreported move shall be allowed to vote the same kind of absentee ballot as other one-stop voters.

(f) Notwithstanding the exception specified in G.S. 163–36, counties which operate a modified full-time office shall remain open five days each week during regular business hours consistent with daily hours presently observed by the county board of elections, commencing with the date prescribed in G.S. 163–227.2(b) and continuing until 5:00 P.M. on the Friday prior to that election and shall also be open on the last Saturday before the election. A county board may conduct one-stop absentee voting during evenings or on weekends, as long as the hours are part of a plan submitted and approved according to subsection (g) of this section. The boards of county commissioners shall provide necessary funds for the additional operation of the office during that time.

(g) Notwithstanding any other provision of this section, a county board of elections by unanimous vote of all its members may provide for one or more sites in that county for absentee ballots to be applied for and cast under this section. Every individual staffing any of those sites shall be a member or full-time employee of the county board of elections or an employee of the county board of elections whom the board has given training equivalent to that given a full-time employee. Those sites must be approved by the State Board of Elections as part of a Plan for Implementation approved by both the county board of elections and by the State Board of Elections which shall also provide adequate security of the ballots and provisions to avoid allowing persons to vote who have already voted. The Plan for Implementation shall include a provision for the presence of political party observers at each one-stop site equivalent to the provisions in G.S. 163–45 for party observers at voting places on election day. A county board of elections may propose in its Plan not to offer one-stop voting at the county board of elections office; the State Board may approve that proposal in a Plan only if the Plan includes at least one site reasonably proximate to the county board of elections office and the State Board finds that the sites in the Plan as a whole provide adequate coverage of the county's electorate. If a county board of elections has considered a proposed Plan or Plans for Implementation and has been unable to reach unanimity in favor of a Plan, a

member or members of that county board of elections may petition the State Board of Elections to adopt a plan for it. If petitioned, the State Board may also receive and consider alternative petitions from another member or members of that county board. The State Board of Elections may adopt a Plan for that county. The State Board, in that plan, shall take into consideration factors including geographic, demographic, and partisan interests of that county.

(g1) The State Board of Elections shall not approve, either in a Plan approved unanimously by a county board of elections or in an alternative Plan proposed by a member or members of that board, a one-stop site in a building that the county board of elections is not entitled under G.S. 163–129 to demand and use as an election-day voting place, unless the State Board of Elections finds that other equally suitable sites were not available and that the use of the sites chosen will not unfairly advantage or disadvantage geographic, demographic, or partisan interests of that county. In providing the site or sites for one-stop absentee voting under this section, the county board of elections shall make a request to the State, county, city, local school board, or other entity in control of the building that is supported or maintained, in whole or in part, by or through tax revenues at least 90 days prior to the start of one-stop absentee voting under this section. The request shall clearly identify the building, or any specific portion thereof, requested the dates and times for which that building or specific portion thereof is requested and the requirement of an area for election related activity. If the State, local governing board, or other entity in control of the building does not respond to the request within 20 days, the building or specific portion thereof may be used for one-stop absentee voting as stated in the request. If the State, local governing board, or other entity in control of the building or specific portion thereof responds negatively to the request within 20 days, that entity and the county board of elections shall, in good faith, work to identify a building or specific portion thereof in which to conduct one-stop absentee voting under this section. If no building or specific portion thereof has been agreed upon within 45 days from the date the county board of elections received a response to the request, the matter shall be resolved by the State Board of Elections.

(h) Notwithstanding the provisions of G.S. 163–89(a) and (b), a challenge may be entered against a voter at a one-stop site under subsection (g) of this section or during one-stop voting at the county board office. The challenge may be entered by a person conducting one-stop voting under this section or by another registered voter who resides in the same precinct as the voter being challenged. If challenged at the place where one-stop voting occurs, the voter shall be allowed to cast a ballot in the same way as other voters. The challenge shall be made on forms prescribed

by the State Board of Elections. The challenge shall be heard by the county board of elections in accordance with the procedures set forth in G.S. 163–89(e).

(i) At any site where one-stop absentee voting is conducted, there shall be a curtained or otherwise private area where the voter may mark the ballot unobserved.

Added by Laws 1973, c. 536, § 1. Amended by Laws 1975, c. 844, § 12; Laws 1977, c. 469, § 1; Laws 1977, c. 626, § 1; Laws 1979, c. 107, § 14; Laws 1979, c. 799, §§ 1 to 3; Laws 1981, c. 305, § 2; Laws 1985, c. 600, § 4; Laws 1987, c. 583, § 4; Laws 1989, c. 520, § 1; Laws 1989 (Reg. Sess., 1990), c. 991, § 2; Laws 1993 (Reg. Sess., 1994), c. 762, § 53, eff. Jan. 1, 1995; Laws 1995, c. 243, § 1, eff. Jan. 1, 1996; Laws 1995, c. 509, §§ 117, 118, eff. July 29, 1995; Laws 1995 (Reg. Sess., 1996), c. 561, § 4; S.L. 1997–510, § 2, eff. Sept. 17, 1997; S.L. 1999–455, § 6; S.L. 2000–136, § 2, eff. July 17, 2000; S.L. 2001–319, §§ 5(a) to 5(c); S.L. 2001–337, § 2, eff. Jan. 1, 2002; S.L. 2001–353, § 9, eff. Aug. 10, 2001; S.L. 2003–278, § 11, eff. June 27, 2003; S.L. 2005–428, § 5(a), eff. Jan. 1, 2006; S.L. 2005–428, §§ 6(a), 7, eff. Sept. 22, 2005; S.L. 2007–253, § 3, eff. Oct. 9, 2007; S.L. 2007–391, § 34(a), eff. Jan. 1, 2008; S.L. 2009–541, § 23, eff. Aug. 28, 2009.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

''Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.'' [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

Laws 1995, c. 243, § 1, provides:

''Wherever the term 'supervisor' appears in the General Statutes of North Carolina or in any local act in reference to the county supervisor of elections as provided in G.S. 163–35, the term is changed to read 'director.' ''

Laws 1995, c. 561, § 5, provides:

''This act becomes effective with respect to elections conducted on or after January 1, 1997.''

Laws 1995, c. 717, §§ 1 to 3, provide:

''Section 1. (a) Notwithstanding the provisions of G.S. 163–227.2, if the county uses a system with retrievable ballots, after the voter casts the ballot under G.S. 163–227.2, the voter shall deposit the ballot in the ballot box or voting system in the same manner as if such box or system was in use in a precinct on election day. At the end of each business day, or at any time when there will be no employee or officer of the board of elections on the premises, the ballot box or system shall be secured in accordance with rules adopted by the State Board of Elections, which shall include verifying that no additional ballots have been placed in the box or system.

''(b) Voting under this section shall be under rules approved by the State Board of Elections. The ballot shall have the ballot number on it in accordance with G.S. 163–230(3)a. so that it is retrievable.

''Section 2. This act applies only to Wake, Durham, Watauga, and Randolph counties.

''Section 3. This act is effective upon ratification.''

S.L. 1999–455, § 24 provides:

''This act applies to elections held on or after January 1, 2000, except that the State Board of Elections may issue rules required or permitted by this act prior to that date.''

Subsecs. (f1) and (f2) were redesignated as (g) and (h) by the Revisor of Statutes.

2000 Legislation

S.L. 2000–136, § 2, eff. July 17, 2000, in subsec. (g), added the sixth to ninth sentences.

By letter dated Aug. 1, 2000, the U.S. Department of Justice Civil Rights Division and Voting Section had no objection to the proposal by Senate Bill 767 that the State Board of Elections may adopt a plan for one-stop voting for counties. Senate Bill 767 was adopted as S.L. 2000–136.

2001 Legislation

S.L. 2001–319, § 5(a), in subsec. (b), rewrote the first paragraph, which prior thereto read:

''(b) Not earlier than the first business day after the twenty-fifth day before an election, in which absentee ballots are authorized, in which a voter seeks to vote and not later than 5:00 p.m. on the Friday prior to that election, the voter shall appear in person only at the office of the county board of elections, except as provided in subsection (f1) of this section. That voter shall enter the voting enclosure at the board office through the appropriate entrance and shall at once state his or her name and place of residence to an authorized member or employee of the board.''

S.L. 2001–319, § 5(b), rewrote subsec. (f), which prior thereto read:

''(f) Notwithstanding the exception specified in G.S. 163–36, counties which operate a modified full-time office shall remain open five days each week during regular business hours consistent with daily hours presently observed by the county board of elections, commencing with the date prescribed in G.S. 163–227.2(b) and continuing until 5:00 p.m. on the Friday prior to that election or primary. The boards of county commissioners shall provide necessary funds for the additional operation of the office during that time.''

S.L. 2001–319, § 5(c), eff. July 28, 2001, in subsec. (g), inserted the sixth sentence.

S.L. 2001–319, § 5(d), provides:

''This section becomes effective with respect to primaries and elections held on or after January 1, 2002.''

S.L. 2001–353, § 9, eff. Aug. 10, 2001, added subsec. (i).

2003 Legislation

S.L. 2003–278, § 11, eff. June 27, 2003, rewrote subsec. (a), which prior thereto read:

''(a) Except as provided in subsection (a1) of this section, a person expecting to be absent from the county in which that person is registered during the entire period that the polls are open on the day of an election in which absentee ballots are authorized or is eligible under G.S. 163-226(a)(2), 163-226(a)(3a), or 163-226(a)(4) may request an application for absentee ballots, complete the application, and vote under the provisions of this section.''

2005 Legislation

S.L. 2005–256, § 1, eff. Aug. 11, 2005, as amended by S.L. 2005–305, § 4.1, eff. Aug. 23, 2005, provides:

''With the approval of the State Board of Elections, the Orange County Board of Elections may conduct a pilot program in Chapel Hill Township for any or all primaries or elections occurring prior to January 1, 2007, where the requirements of this section prevail over any other requirement concerning voting at one-stop sites or on election day. The pilot program shall consist of continuing one-stop voting as provided in G.S. 163–227.2 on election day as the method of voting. Voting places, whether during the one-stop period or on election day, shall be known as voting centers. The pilot program consists of the following elements:

''(1) Any voter properly registered in Chapel Hill Township may vote at any voting center during the one-stop period established in G.S. 163–227.2 or on election day.

''(2) On election day, the only places open to vote in Chapel Hill Township are those designated as voting centers.

''(3) All voting centers shall have a Web-based or online connection to the voter registration system so that voter registration information and voting history can be checked in a timely manner to ensure against any voter voting more than once.

''(4) Notwithstanding G.S. 163–227.2(e1), the State Board of Elections shall determine which ballots must be made retrievable and identifiable to the county board of elections in order to ensure that the vote count by eligible voters is accurate. If any vote need not be identifiable, it shall not be made so, notwithstanding G.S. 163–227.2(e1).

''(5) The Plan of Implementation may provide a different system for voter sign-in than the regular one-stop process which requires completion of an

absentee ballot application, but the process must be auditable. As required by G.S. 163–166.7, the voter, before voting, shall sign that voter's name on the pollbook, other voting record, or voter authorization document. As provided by G.S. 163–166.7, if the voter is unable to sign, a voting center official shall enter the person's name on the same document before the voter votes. A voter at a voting center shall be entitled to the same assistance as a voter at a voting place on election day under G.S. 163–166.8.

''(6) A larger number of voting centers may be open on election day than during the earlier part of the one-stop period.

''(7) Election returns shall be reported by regular precinct as well as by voting center. Notwithstanding G.S. 163–132.5G, for primary elections in 2006, those returns by regular precinct shall be reported by May 1, 2007, and for the 2006 general election those returns by regular precinct shall be reported by March 1, 2007. G.S. 163–132.5G shall not apply to elections held in 2005 under this act.

''(8) Notwithstanding G.S. 163–227.2(g), the State Board of Elections may allow the county board of elections during the regular one-stop voting period to designate voting centers in commercial buildings that are not public buildings.

''(9) Notwithstanding G.S. 163–227.2(g), on election day any building may be designated as a voting center, but the office of the county board of elections does not have to be designated as a voting center.

''(10) Notwithstanding G.S. 163–227.2(g), officials appointed pursuant to G. S. 163–41, 163–42, and 163–42.1 may be assigned to staff the voting centers. The Plan of Implementation shall provide for appointment of election officials at voting centers so that political parties have a similar opportunity to recommend officials as if there were precinct polling places.

''(11) The Plan of Implementation may for administrative purposes treat the entire township as one precinct with multiple voting places on election day, but a voter must, when appearing to vote, report any change of address.

''(12) Before voting centers may be used under this section, a Plan of Implementation must be approved unanimously by the county board of elections and then approved by the Executive Director of the State Board of Elections. Prior to adoption, the county board of elections shall conduct a public hearing and notify the county chair of each political party under Article 9 of Chapter 163 of the General Statutes. The county board of elections shall develop an outreach and education campaign to inform voters about the changes in voting locations.

''(13) If any polling place that had been a satellite voting place in 2004 under G.S. 163–130 is designated as a voting center, the county board of elections may provide in its Plan of Implementation that only voters assigned to the satellite voting place may vote at the voting center there, and that such voters may not vote at any other voting center on election day.''

S.L. 2005–256, § 1.1, provides:

''If no elections are conducted under this act in 2005, then any or all elections occurring in 2007 may also be held under this act in addition to those in 2006.''

S.L. 2005–428, § 5(a), eff. Jan. 1, 2006, rewrote subsec. (e), which prior thereto read:

''(e) The voter shall vote that voter's absentee ballot in a voting booth in the office of the county board of elections, and the county board of elections shall provide a voting booth for that purpose, provided however, that the county board of elections may in the alternative provide a private room for the voter adjacent to the office of the board, in which case the voter shall vote that voter's absentee ballot in that room. If the voter needs assistance in getting to and from the voting booth and in preparing and marking that voter's ballots or if the voter is a blind voter, only a member of the county board of elections, the director of elections, an employee of the board of elections authorized by the board, a near relative of the voter or the voter's verifiable legal guardian shall be entitled to assist the voter.''

S.L. 2005–428, § 6(a), eff. Sept. 22, 2005, added subsec. (e2).

S.L. 2005–428, § 7, eff. Sept. 22, 2005, amended subsec. (c) by substituting ''issued and'' for ''issued; shall furnish the voter with the instruction sheets called for by G.S. 163–229(c); and'' and substituted ''chair'' for ''chairman''.

S.L. 2005–428, § 18, provides:

''Sections 2, 6, 7, 8, 10, 12, 13, 14, 15, and 16 of this act are effective when

this act becomes law and apply to all primaries and elections held on or after that date. The remainder of this act becomes effective January 1, 2006, and applies to all primaries and elections held on or after that date.''

2007 Legislation

S.L. 2007–253, § 3, in subsec. (a) inserted ''and of G.S. 163–82.6A, as applicable''.

S.L. 2007–253, § 5, provides:

''Sections 1, 2, and 3 of this act become effective as follows:

''(1) If preclearance under Section 5 of the Voting Rights Act of 1965 is obtained before September 1, 2007, those sections are effective with regard to registration and voting for any primary or election held on or after October 9, 2007.

''(2) If preclearance is obtained during September 2007, those sections are effective with regard to registration and voting for any primary or election held on or after November 6, 2007.

''(3) If preclearance is obtained on or after October 1, 2007, those sections are effective with regard to registration and voting for any primary or election held on or after the 60th day after preclearance is obtained.

''The remainder of this act is effective when it becomes law. The State Board of Elections may adopt any necessary procedures to implement this act at any time after this act becomes law.''

On Aug. 16, 2007, the United States Attorney General interposed no objection to the amendment of this section by S.L. 2007–253, § 3.

S.L. 2007–391, § 34(a), in subsec. (g), deleted the second sentence, which prior thereto read: ''Any site other than the county board of elections office shall be in any building or part of a building that the county board of elections is entitled under G.S. 163–129 to demand and use as a voting place.'' and added the tenth sentence relating to approval of one-stop sites.

S.L. 2007–391, § 34(b), provides:

''This section becomes effective January 1, 2008.''

2009 Legislation

S.L. 2009–541, § 23, designated the tenth sentence of subsec. (g) as subsec. (g1); and, in subsec. (g1), added the second through sixth sentences.

Cross References

Verification of voter qualifications, see § 163–82.7.
Voter education, see § 163–278.99E.

§ 163–227.3. Date by which absentee ballots must be available for voting

Text of subsec. (a) eff. until Jan. 1, 2010.

(a) A board of elections shall provide absentee ballots of the kinds needed 50 days prior to the date on which the election shall be conducted unless 45 days is authorized by the State Board of Elections under G.S. 163–22(k) or there shall exist an appeal before the State Board or the courts not concluded, in which case the board shall provide the ballots as quickly as possible upon the conclusion of such an appeal. However, in the case of municipal elections, absentee ballots shall be made available no later than 30 days before an election. In every instance the board of elections shall exert every effort to provide absentee ballots, of the kinds needed by the date on which absentee voting is authorized to commence.

Text of subsec. (a) eff. Jan. 1, 2010.

(a) A board of elections shall provide absentee ballots of the kinds needed 60 days prior to the statewide general election in even-numbered years and 50 days prior to the date on which any

other election shall be conducted, unless 45 days is authorized by the State Board of Elections under G.S. 163–22(k) or there shall exist an appeal before the State Board or the courts not concluded, in which case the board shall provide the ballots as quickly as possible upon the conclusion of such an appeal. However, in the case of municipal elections, absentee ballots shall be made available no later than 30 days before an election. In every instance the board of elections shall exert every effort to provide absentee ballots, of the kinds needed by the date on which absentee voting is authorized to commence.

(b) Second Primary. – The board of elections shall provide absentee ballots, of the kinds needed, as quickly as possible after the ballot information for a second primary has been determined.

Added by Laws 1973, c. 1275. Amended by Laws 1985 (Reg. Sess., 1986), c. 986, § 2; Laws 1987, c. 485, § 2; Laws 1987, c. 509, § 9; S.L. 2001–353, § 4, eff. Aug. 10, 2001; S.L. 2002–159, § 55(i), eff. Jan. 1, 2003; S.L. 2009–537, § 2, eff. Jan. 1, 2010.

Historical and Statutory Notes

2001 Legislation

S.L. 2001–353, § 4, eff. Aug. 10, 2001, in subsec. (a), inserted the third sentence.

2002 Legislation

S.L. 2002–159, § 55(i), eff. Jan. 1, 2003, rewrote the section, which prior thereto read:

''(a) The State Board of Elections shall provide absentee ballots of the kinds to be furnished by the State Board, to the county boards of elections 50 days prior to the date on which the election shall be conducted unless there shall exist an appeal before the State Board or the courts not concluded, in which case the State Board shall provide the ballots as quickly as possible upon the conclusion of such an appeal. In every instance the State Board shall exert every effort to provide absentee ballots, of the kinds to be furnished by the State Board, to each county by the date on which absentee voting is authorized to commence. In any case where absentee ballots are printed by the county board of elections, that county board shall follow the direction of the State Board in delaying absentee ballots while an appeal is pending and in providing them as soon as possible thereafter.

''(b) Second Primary. – The State Board of Elections shall provide absentee ballots, of the kinds to be furnished by the State Board, as quickly as possible after the ballot information has been determined.''

S.L. 2002–159, § 55(p), provides:

''Subsections 55(a) through 55(n) of this section become effective January 1, 2003, and apply to all primaries and elections held on and after that date. Subsection 55(*o*) is effective when this act becomes law.''

2009 Legislation

S.L. 2009–537, § 2, in subsection (a), in the first sentence, inserted ''60 days prior to the statewide general election in even-numbered years and'' and substituted ''any other election shall be conducted,'' for ''the election shall be conducted''.

S.L. 2009–537, § 11, provides:

"This act becomes effective January 1, 2010, and applies with respect to elections held on or after that date."

§ 163–228. Register of absentee requests, applications, and ballots issued; a public record

Text of section eff. until Jan. 1, 2010. See, also, section eff. Jan. 1, 2010.

The State Board of Elections shall approve an official register in which the county board of elections in each county of the State shall record the following information:

(1) Name of voter for whom application and ballots are being requested, and, if applicable, the name and address of the voter's near relative or verifiable legal guardian who requested the application and ballots for the voter.
(2) Number of assigned voter's application when issued.
(3) Precinct in which applicant is registered.
(4) Address to which ballots are to be mailed, or, if the voter voted pursuant to G.S. 163–227.2, a notation of that fact.
(5) Reason assigned for requesting absentee ballots.
(6) Date request for application for ballots is received by the county board of elections.
(7) The voter's party affiliation.
(8) The date the ballots were mailed or delivered to the voter.
(9) Whatever additional information and official action may be required by this Article.

The State Board of Elections may provide for the register to be kept by electronic data processing equipment, and a copy shall be printed out each business day or a supplement printed out each business day of new information.

The register of absentee requests, applications and ballots issued shall constitute a public record and shall be opened to the inspection of any registered voter of the county at any time within 50 days before and 30 days after an election in which absentee ballots were authorized, or at any other time when good and sufficient reason may be assigned for its inspection.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1967, c. 952, § 4; Laws 1973, c. 536, § 1; Laws 1977, c. 469, § 1; Laws 1991, c. 636, § 21; S.L. 1999–455, § 7.

§ 163–228. Register of absentee requests, applications, and ballots issued; a public record

Text of section eff. Jan. 1, 2010. See, also, section eff. until Jan. 1, 2010.

The State Board of Elections shall approve an official register in which the county board of elections in each county of the State shall record the following information:

(1) Name of voter for whom application and ballots are being requested, and, if applicable, the name and address of the voter's near relative or verifiable legal guardian who requested the application and ballots for the voter.
(2) Number of assigned voter's application when issued.
(3) Precinct in which applicant is registered.
(4) Address to which ballots are to be mailed, or, if the voter voted pursuant to G.S. 163–227.2, a notation of that fact.
(5) Deleted by S.L. 2009–537, § 3, eff. Jan. 1, 2010.

(6) Date request for application for ballots is received by the county board of elections.

(7) The voter's party affiliation.

(8) The date the ballots were mailed or delivered to the voter.

(9) Whatever additional information and official action may be required by this Article.

The State Board of Elections may provide for the register to be kept by electronic data processing equipment, and a copy shall be printed out each business day or a supplement printed out each business day of new information.

The register of absentee requests, applications and ballots issued shall constitute a public record and shall be opened to the inspection of any registered voter of the county within 60 days before and 30 days after an election in which absentee ballots were authorized, or at any other time when good and sufficient reason may be assigned for its inspection.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1967, c. 952, § 4; Laws 1973, c. 536, § 1; Laws 1977, c. 469, § 1; Laws 1991, c. 636, § 21; S.L. 1999–455, § 7; S.L. 2009–537, § 3, eff. Jan. 1, 2010.

Historical and Statutory Notes

S.L. 1999–455, § 24 provides:

''This act applies to elections held on or after January 1, 2000, except that the State Board of Elections may issue rules required or permitted by this act prior to that date.''

2009 Legislation

S.L. 2009–537, § 3, deleted subd. (5) and, in the third undesignated paragraph, deleted ''at any time'' after ''registered voter of the county'' and substituted ''60 days'' for ''50 days''. Prior to the amendment, subd. (5) read as follows:

"(5) Reason assigned for requesting absentee ballots."

S.L. 2009–537, § 11, provides:

"This act becomes effective January 1, 2010, and applies with respect to elections held on or after that date."

§ 163–229. Absentee ballots, applications on container-return envelopes, and instruction sheets

Text of section eff. until Jan. 1, 2010. See, also, section eff. Jan. 1, 2010.

(a) Absentee Ballot Form. —In accordance with the provisions of G.S. 163–230.1, persons entitled to vote by absentee ballot shall be furnished with official ballots.

(b) Application on Container–Return Envelope. —In time for use not later than 50 days before a statewide primary, general election or county bond election, the county board of elections shall print a sufficient number of envelopes in which persons casting absentee ballots may transmit their marked ballots to the county board of elections. Each container-return envelope shall have printed on it an application which shall be designed and prescribed by the State Board of Elections, the voter's certification of eligibility to vote the enclosed ballot and of having voted the

enclosed ballot in accordance with this Article, a space for identification of the envelope with the voter, and a space for approval by the county board of elections. The envelope shall allow reporting of a change of name as provided by G.S. 163–82.16. The container-return envelope shall be printed in accordance with the instructions of the State Board of Elections.

(c) Instruction Sheets. —In time for use not later than 50 days before a statewide primary, general or county bond election, the county board of elections shall prepare and print a sufficient number of sheets of instructions on how voters are to prepare absentee ballots and return them to the county board of elections.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1967, c. 851, § 1; Laws 1967, c. 952, § 5; Laws 1973, c. 536, § 1; Laws 1975, c. 844, § 13; Laws 1977, c. 469, § 1; Laws 1985, c. 562, §§ 3, 4; Laws 1985 (Reg. Sess., 1986), c. 986, § 2; Laws 1987, c. 485, § 2; Laws 1987, c. 509, § 9; Laws 1987, c. 583, § 3; Laws 1995 (Reg. Sess., 1996), c. 561, § 5; S.L. 1999–455, § 8.

§ 163–229. Absentee ballots, applications on container-return envelopes, and instruction sheets

Text of section eff. Jan. 1, 2010. See, also, section eff. until Jan. 1, 2010.

(a) Absentee Ballot Form.—In accordance with the provisions of G.S. 163–230.1, persons entitled to vote by absentee ballot shall be furnished with official ballots.

(b) Application on Container–Return Envelope.—In time for use not later than 60 days before a statewide general election in an even-numbered year, and not later than 50 days before a statewide primary, other general election or county bond election, the county board of elections shall print a sufficient number of envelopes in which persons casting absentee ballots may transmit their marked ballots to the county board of elections. However, in the case of municipal elections, sufficient container-return envelopes shall be made available no later than 30 days before an election. Each container-return envelope shall have printed on it an application which shall be designed and prescribed by the State Board of Elections, the voter's certification of eligibility to vote the enclosed ballot and of having voted the enclosed ballot in accordance with this Article, a space for identification of the envelope with the voter, and a space for approval by the county board of elections. The envelope shall allow reporting of a change of name as provided by G.S. 163–82.16. The container-return envelope shall be printed in accordance with the instructions of the State Board of Elections.

(c) Instruction Sheets.—In time for use not later than 60 days before a statewide general election in an even-numbered year, and not later than 50 days before a statewide primary, other general or

county bond election, the county board of elections shall prepare and print a sufficient number of sheets of instructions on how voters are to prepare absentee ballots and return them to the county board of elections. However, in the case of municipal elections, instruction sheets shall be made available no later than 30 days before an election.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1967, c. 851, § 1; Laws 1967, c. 952, § 5; Laws 1973, c. 536, § 1; Laws 1975, c. 844, § 13; Laws 1977, c. 469, § 1; Laws 1985, c. 562, §§ 3, 4; Laws 1985 (Reg. Sess., 1986), c. 986, § 2; Laws 1987, c. 485, § 2; Laws 1987, c. 509, § 9; Laws 1987, c. 583, § 3; Laws 1995 (Reg. Sess., 1996), c. 561, § 5; S.L. 1999–455, § 8; S.L. 2009–537, § 4, eff. Jan. 1, 2010.

Historical and Statutory Notes

Laws 1995, c. 561, § 5, provides:

''This act becomes effective with respect to elections conducted on or after January 1, 1997.''

S.L. 1999–455, § 24 provides:

''This act applies to elections held on or after January 1, 2000, except that the State Board of Elections may issue rules required or permitted by this act prior to that date.''

2009 Legislation

S.L. 2009–537, § 4, in subsec. (b), in the first sentence, inserted ''60 days before a statewide general election in an even-numbered year, and not later than'' and substituted ''other general election'' for ''general election''; in subsec. (b), inserted the second sentence; in subsec. (c), in the first sentence, inserted ''60 days before a statewide general election in an even-numbered year, and not later than'' and substituted ''other general or county bond election'' for ''general or county bond election''; and in subsec. (c), added the second sentence.

S.L. 2009–537, § 11, provides:

"This act becomes effective January 1, 2010, and applies with respect to elections held on or after that date."

§ 163–230. Repealed by S.L. 1999–455, § 9

Historical and Statutory Notes

The repealed section related to procedures to follow in receiving and issuing applications for absentee ballots and determining their validity.

S.L. 1999–455, § 24 provides:

''This act applies to elections held on or after January 1, 2000, except that the State Board of Elections may issue rules required or permitted by this act prior to that date.''

§ 163–230.1. Simultaneous issuance of absentee ballots with application

Text of section eff. until Jan. 1, 2010. See, also, section eff. Jan. 1, 2010.

(a) A qualified voter who is eligible to vote by absentee ballot under G.S. 163–226(a) or that voter's near relative or verifiable legal guardian, shall request in writing an application for absentee ballots, so that the county board of elections receives the request not later than 5:00 P.M. on the Tuesday before the election. That written request shall be signed by the voter, the voter's near relative, or the voter's verifiable legal guardian. The county board of elections shall enter in the register of absentee requests, applications, and ballots issued the information required in G.S. 163–228

as soon as each item of that information becomes available. Upon receiving the application, the county board of elections shall cause to be mailed to that voter in a single package:

(1) The official ballots the voter is entitled to vote;

(2) A container-return envelope for the ballots, printed in accordance with G.S. 163–229; and

(3) Repealed by Session Laws 1999–455, § 10.

(4) An instruction sheet.

The ballots, envelope, and instructions shall be mailed to the voter by the county board's chairman, member, officer, or employee as determined by the board and entered in the register as provided by this Article.

(a1) Absence for Sickness or Physical Disability. —Notwithstanding the provisions of subsection (a) of this section, if a voter expects to be unable to go to the voting place to vote in person on election day because of that voter's sickness or other physical disability, that voter or that voter's near relative or verifiable legal guardian may make written request in person for absentee ballots to the board of elections of the county in which the voter is registered after 5:00 p.m. on the Tuesday before the election but not later than 5:00 p.m. on the day before the election. The county board of elections shall enter in the register of absentee requests, applications, and ballots issued the information required in G.S. 163–228 as soon as each item of that information becomes available. The county board of elections shall personally deliver to the requester in a single package:

(1) The official ballots the voter is entitled to vote;

(2) A container-return envelope for the ballots, printed in accordance with G.S. 163–229; and

(3) An instruction sheet.

(a2) Delivery of Absentee Ballots and Container–Return Envelope to Applicant. —When the county board of elections receives a request for applications and absentee ballots, the board shall promptly issue and transmit them to the voter in accordance with the following instructions:

(1) On the top margin of each ballot the applicant is entitled to vote, the chair, a member, officer, or employee of the board of elections shall write or type the words ''Absentee Ballot No. ___'' or an abbreviation approved by the State Board of Elections and insert in the blank space the number assigned the applicant's application in the register of absentee requests, applications, and ballots issued. That person shall not write, type, or print any other matter upon the ballots transmitted to the absentee voter. Alternatively, the board of elections may cause to be barcoded

on the ballot the voter's application number, if that barcoding system is approved by the State Board of Elections.

(2) The chair, member, officer, or employee of the board of elections shall fold and place the ballots (identified in accordance with the preceding instruction) in a container-return envelope and write or type in the appropriate blanks thereon, in accordance with the terms of G.S. 163–229(b), the absentee voter's name, the absentee voter's application number, and the designation of the precinct in which the voter is registered. If the ballot is barcoded under this section, the envelope may be barcoded rather than having the actual number appear. The person placing the ballots in the envelopes shall leave the container-return envelope holding the ballots unsealed.

(3) The chair, member, officer, or employee of the board of elections shall then place the unsealed container-return envelope holding the ballots together with printed instructions for voting and returning the ballots, in an envelope addressed to the voter at the post office address stated in the request, seal the envelope, and mail it at the expense of the county board of elections: Provided, that in case of a request received after 5:00 p.m. on the Tuesday before the election under the provisions of subsection (a1) of this section, in lieu of transmitting the ballots to the voter in person or by mail, the chair, member, officer, or employee of the board of elections may deliver the sealed envelope containing the instruction sheet and the container-return envelope holding the ballots to a near relative or verifiable legal guardian of the voter.

The county board of elections may receive written requests for applications earlier than 50 days prior to the election but shall not mail applications and ballots to the voter or issue applications and ballots in person earlier than 50 days prior to the election, except as provided in G.S. 163–227.2. No election official shall issue applications for absentee ballots except in compliance with this Article.

(b) The application shall be completed and signed by the voter personally, the ballots marked, the ballots sealed in the container-return envelope, and the certificate completed as provided in G.S. 163–231.

(c) At its next official meeting after return of the completed container-return envelope with the voter's ballots, the county board of elections shall determine whether the container-return envelope has been properly executed. If the board determines that the container-return envelope has been properly executed, it shall approve the application and deposit the container-return envelope with other container-return envelopes for the envelope to

be opened and the ballots counted at the same time as all other container-return envelopes and absentee ballots.

(c1) Required Meeting of County Board of Elections. —During the period commencing on the third Tuesday before an election, in which absentee ballots are authorized, the county board of elections shall hold one or more public meetings each Tuesday at 5:00 p.m. for the purpose of action on applications for absentee ballots. At these meetings, the county board of elections shall pass upon applications for absentee ballots.

If the county board of elections changes the time of holding its meetings or provides for additional meetings in accordance with the terms of this subsection, notice of the change in hour and notice of the schedule of additional meetings, if any, shall be published in a newspaper circulated in the county at least 30 days prior to the election.

At the time the county board of elections makes its decision on an application for absentee ballots, the board shall enter in the appropriate column in the register of absentee requests, applications, and ballots issued opposite the name of the applicant a notation of whether the applicant's application was ''Approved'' or ''Disapproved''.

The decision of the board on the validity of an application for absentee ballots shall be final subject only to such review as may be necessary in the event of an election contest. The county board of elections shall constitute the proper official body to pass upon the validity of all applications for absentee ballots received in the county; this function shall not be performed by the chairman or any other member of the board individually.

(d) Deleted by S.L. 1999–455, § 10.

(e) The State Board of Elections, by rule or by instruction to the county board of elections, shall establish procedures to provide appropriate safeguards in the implementation of this section.

(f) For the purpose of this Article, ''near relative'' means spouse, brother, sister, parent, grandparent, child, grandchild, mother-in-law, father-in-law, daughter-in-law, son-in-law, stepparent, or stepchild.

Added by Laws 1983, c. 304, § 1. Amended by Laws 1985, c. 759, §§ 5.1 to 5.5; Laws 1991, c. 727, § 6.3; Laws 1993, c. 553, § 67, eff. July 24, 1993; Laws 1995, c. 243, § 1, eff. Jan. 1, 1996; S.L. 1999–455, § 10; S.L. 2001–337, § 3, eff. Jan. 1, 2002; S.L. 2002–159, § 55(m), eff. Jan. 1, 2003.

§ 163–230.1. Simultaneous issuance of absentee ballots with application

Text of section eff. Jan. 1, 2010. See, also, section eff. until Jan. 1, 2010.

(a) A qualified voter who is eligible to vote by absentee ballot under G.S. 163–226(a) or that voter's near relative or verifiable legal guardian, shall request in writing an application for absentee ballots, so that the county board of elections receives the request not later than 5:00 P.M. on the Tuesday before the election. That written request shall be signed by the voter, the voter's near relative, or the voter's verifiable legal guardian. The county board of elections shall enter in the register of absentee requests, applications, and ballots issued the information required in G.S. 163–228 as soon as each item of that information becomes available. Upon receiving the application, the county board of elections shall cause to be mailed to that voter in a single package:

(1) The official ballots the voter is entitled to vote;
(2) A container-return envelope for the ballots, printed in accordance with G.S. 163–229; and
(3) Repealed by Session Laws 1999–455, § 10.
(4) An instruction sheet.

The ballots, envelope, and instructions shall be mailed to the voter by the county board's chairman, member, officer, or employee as determined by the board and entered in the register as provided by this Article.

(a1) Absence for Sickness or Physical Disability. —Notwithstanding the provisions of subsection (a) of this section, if a voter expects to be unable to go to the voting place to vote in person on election day because of that voter's sickness or other physical disability, that voter or that voter's near relative or verifiable legal guardian may make written request in person for absentee ballots to the board of elections of the county in which the voter is registered after 5:00 p.m. on the Tuesday before the election but not later than 5:00 p.m. on the day before the election. The county board of elections shall enter in the register of absentee requests, applications, and ballots issued the information required in G.S. 163–228 as soon as each item of that information becomes available. The county board of elections shall personally deliver to the requester in a single package:

(1) The official ballots the voter is entitled to vote;
(2) A container-return envelope for the ballots, printed in accordance with G.S. 163–229; and
(3) An instruction sheet.

(a2) Delivery of Absentee Ballots and Container–Return Envelope to Applicant.—When the county board of elections receives a request for applications and absentee ballots, the board shall promptly issue and transmit them to the voter in accordance with the following instructions:

(1) On the top margin of each ballot the applicant is entitled to vote, the chair, a member, officer, or employee of the

board of elections shall write or type the words ''Absentee Ballot No. . . . .'' or an abbreviation approved by the State Board of Elections and insert in the blank space the number assigned the applicant's application in the register of absentee requests, applications, and ballots issued. That person shall not write, type, or print any other matter upon the ballots transmitted to the absentee voter. Alternatively, the board of elections may cause to be barcoded on the ballot the voter's application number, if that barcoding system is approved by the State Board of Elections.

(2) The chair, member, officer, or employee of the board of elections shall fold and place the ballots (identified in accordance with the preceding instruction) in a container-return envelope and write or type in the appropriate blanks thereon, in accordance with the terms of G.S. 163–229(b), the absentee voter's name, the absentee voter's application number, and the designation of the precinct in which the voter is registered. If the ballot is barcoded under this section, the envelope may be barcoded rather than having the actual number appear. The person placing the ballots in the envelopes shall leave the container-return envelope holding the ballots unsealed.

(3) The chair, member, officer, or employee of the board of elections shall then place the unsealed container-return envelope holding the ballots together with printed instructions for voting and returning the ballots, in an envelope addressed to the voter at the post office address stated in the request, seal the envelope, and mail it at the expense of the county board of elections: Provided, that in case of a request received after 5:00 p.m. on the Tuesday before the election under the provisions of subsection (a1) of this section, in lieu of transmitting the ballots to the voter in person or by mail, the chair, member, officer, or employee of the board of elections may deliver the sealed envelope containing the instruction sheet and the container-return envelope holding the ballots to a near relative or verifiable legal guardian of the voter.

The county board of elections may receive written requests for applications at any time prior to the election but shall not mail applications and ballots to the voter or issue applications and ballots in person earlier than 60 days prior to the statewide general election in an even-numbered year, or earlier than 50 days prior to any other election, except as provided in G.S. 163–227.2. No election official shall issue applications for absentee ballots except in compliance with this Article.

(b) The application shall be completed and signed by the voter personally, the ballots marked, the ballots sealed in the container-

return envelope, and the certificate completed as provided in G.S. 163–231.

(c) At its next official meeting after return of the completed container-return envelope with the voter's ballots, the county board of elections shall determine whether the container-return envelope has been properly executed. If the board determines that the container-return envelope has been properly executed, it shall approve the application and deposit the container-return envelope with other container-return envelopes for the envelope to be opened and the ballots counted at the same time as all other container-return envelopes and absentee ballots.

(c1) Required Meeting of County Board of Elections. —During the period commencing on the third Tuesday before an election, in which absentee ballots are authorized, the county board of elections shall hold one or more public meetings each Tuesday at 5:00 p.m. for the purpose of action on applications for absentee ballots. At these meetings, the county board of elections shall pass upon applications for absentee ballots.

If the county board of elections changes the time of holding its meetings or provides for additional meetings in accordance with the terms of this subsection, notice of the change in hour and notice of the schedule of additional meetings, if any, shall be published in a newspaper circulated in the county at least 30 days prior to the election.

At the time the county board of elections makes its decision on an application for absentee ballots, the board shall enter in the appropriate column in the register of absentee requests, applications, and ballots issued opposite the name of the applicant a notation of whether the applicant's application was ''Approved'' or ''Disapproved''.

The decision of the board on the validity of an application for absentee ballots shall be final subject only to such review as may be necessary in the event of an election contest. The county board of elections shall constitute the proper official body to pass upon the validity of all applications for absentee ballots received in the county; this function shall not be performed by the chairman or any other member of the board individually.

(d) Deleted by S.L. 1999–455, § 10.

(e) The State Board of Elections, by rule or by instruction to the county board of elections, shall establish procedures to provide appropriate safeguards in the implementation of this section.

(f) For the purpose of this Article, ''near relative'' means spouse, brother, sister, parent, grandparent, child, grandchild, mother-in-

law, father-in-law, daughter-in-law, son-in-law, stepparent, or stepchild.

Added by Laws 1983, c. 304, § 1. Amended by Laws 1985, c. 759, §§ 5.1 to 5.5; Laws 1991, c. 727, § 6.3; Laws 1993, c. 553, § 67, eff. July 24, 1993; Laws 1995, c. 243, § 1, eff. Jan. 1, 1996; S.L. 1999–455, § 10; S.L. 2001–337, § 3, eff. Jan. 1, 2002; S.L. 2002–159, § 55(m), eff. Jan. 1, 2003; S.L. 2009–537, § 5, eff. Jan. 1, 2010.

Historical and Statutory Notes

Laws 1995, c. 243, § 1, provides:

''Wherever the term 'supervisor' appears in the General Statutes of North Carolina or in any local act in reference to the county supervisor of elections as provided in G.S. 163–35, the term is changed to read 'director.' ''

S.L. 1999–455, § 24 provides:

''This act applies to elections held on or after January 1, 2000, except that the State Board of Elections may issue rules required or permitted by this act prior to that date.''

2001 Legislation

S.L. 2001–337, § 3, eff. Jan. 1, 2002, in the first sentence of subsec. (a), substituted ''163–226(a)'' for ''163–226(a)(1),''.

2002 Legislation

S.L. 2002–159, § 55(m), eff. Jan. 1, 2003, in the introductory paragraph of subsec. (a), added the second sentence.

S.L. 2002–159, § 55(p), provides:

''Subsections 55(a) through 55(n) of this section become effective January 1, 2003, and apply to all primaries and elections held on and after that date. Subsection 55(*o*) is effective when this act becomes law.''

2009 Legislation

S.L. 2009–537, § 5, in subsec. (a2), in the first sentence of the final undesignated paragraph, substituted ''at any time'' for ''earlier than 50 days'', inserted ''60 days prior to the statewide general election in an even-numbered year, or earlier than'', and substituted ''prior to any other election'' for ''prior to the election''.

S.L. 2009–537, § 11, provides:

"This act becomes effective January 1, 2010, and applies with respect to elections held on or after that date."

§ 163–230.2. Method of requesting absentee ballots

(a) Valid Types of Written Requests. – A written request for an absentee ballot as required by G.S. 163–230.1 is valid only if it is written entirely by the requester personally, or is on a form generated by the county board of elections and signed by the requester. The county board of elections shall issue a request form only to the voter seeking to vote by absentee ballot or to a person authorized by G.S. 163–230.1 to make a request for the voter. If a requester, due to disability or illiteracy, is unable to complete a written request, that requester may receive assistance in writing that request from an individual of that requester's choice.

(b) Invalid Types of Written Requests. – A request is not valid if it does not comply with subsection (a) of this section. If a county board of elections receives a request for an absentee ballot that does not comply with subsection (a) of this section, the board shall not issue an application and ballot under G.S. 163–230.1.

(c) Rules by State Board. – The State Board of Elections shall adopt rules for the enforcement of this section.

Added by S.L. 2002–159, § 57(a), eff. Jan. 1, 2003.

Historical and Statutory Notes

2002 Legislation
S.L. 2002–159, § 57(b), provides:
"This section becomes effective January 1, 2003, and applies to all primaries and elections held on or after that date."

§ 163–231. Voting absentee ballots and transmitting them to the county board of elections

Text of subsec. (a) eff. until Jan. 1, 2010.

(a) Procedure for Voting Absentee Ballots. —In the presence of two other persons who are at least 18 years of age, and who are not disqualified by G.S. 163–226.3(a)(4) or G.S. 163–237(b1), the voter shall:

(1) Mark the voter's ballots, or cause them to be marked by one of such persons in the voter's presence according to the voter's instruction;

(2) Fold each ballot separately, or cause each of them to be folded in the voter's presence;

(3) Place the folded ballots in the container-return envelope and securely seal it, or have this done in the voter's presence;

(4) Make the application printed on the container-return envelope according to the provisions of G.S. 163–229(b) and make the certificate printed on the container-return envelope according to the provisions of G.S. 163–229(b).

The persons in whose presence the ballot is marked shall at all times respect the secrecy of the ballot and the privacy of the absentee voter, unless the voter requests their assistance and they are otherwise authorized by law to give assistance. The persons in whose presence the ballot was marked shall sign the application and certificate as witnesses, and shall indicate their address. When thus executed, the sealed container-return envelope, with the ballots enclosed, shall be transmitted in accordance with the provisions of subsection (b) of this section to the county board of elections which issued the ballots.

Text of subsec. (a) eff. Jan. 1, 2010.

(a) Procedure for Voting Absentee Ballots.—In the presence of a person who is at least 18 years of age, and who is not disqualified by G.S. 163–226.3(a)(4) or G.S. 163–237(b1), the voter shall:

(1) Mark the voter's ballots, or cause them to be marked by that person in the voter's presence according to the voter's instruction;

(2) Fold each ballot separately, or cause each of them to be folded in the voter's presence;

(3) Place the folded ballots in the container-return envelope and securely seal it, or have this done in the voter's presence;

(4) Make the application printed on the container-return envelope according to the provisions of G.S. 163–229(b) and make the certificate printed on the container-return envelope according to the provisions of G.S. 163–229(b).

The person in whose presence the ballot is marked shall at all times respect the secrecy of the ballot and the privacy of the absentee voter, unless the voter requests the person's assistance and the person is otherwise authorized by law to give assistance. The person in whose presence the ballot was marked shall sign the application and certificate as a witness and shall indicate that person's address. When thus executed, the sealed container-return envelope, with the ballots enclosed, shall be transmitted in accordance with the provisions of subsection (b) of this section to the county board of elections which issued the ballots.

(a1) Repealed by Law 1987, c. 583, § 1.

Text of subsec. (b) eff. until Jan. 1, 2010.

(b) Transmitting Executed Absentee Ballots to County Board of Elections. —The sealed container-return envelope in which executed absentee ballots have been placed shall be transmitted to the county board of elections who issued them as follows: All ballots issued under the provisions of Articles 20 and 21 of this Chapter shall be transmitted by mail or by commercial courier service, at the voter's expense, or delivered in person, or by the voter's near relative or verifiable legal guardian not later than 5:00 p.m. on the day before the statewide primary or general election or county bond election. If such ballots are received later than that hour, they shall not be accepted for unless federal law so requires.

Text of subsec. (b) eff. Jan. 1, 2010.

(b) Transmitting Executed Absentee Ballots to County Board of Elections.—The sealed container-return envelope in which executed absentee ballots have been placed shall be transmitted to the county board of elections who issued them as follows: All ballots issued under the provisions of Articles 20 and 21 of this Chapter shall be transmitted by mail or by commercial courier service, at the voter's expense, or delivered in person, or by the voter's near relative or verifiable legal guardian not later than 5:00 p.m. on the day before the statewide primary or general election or county bond election. If ballots are received later than that hour, they shall not be accepted unless (i) federal law so requires, (ii) if ballots issued under Article 20 of this Chapter are postmarked by the day of the statewide primary or general election or county bond election and are received by the county board of elections not later than three days after the election by 5:00 p.m., or (iii) if

ballots issued under Article 21 of this Chapter are received by the county board of elections not later than three days after the election by 5:00 p.m. Ballots issued under Article 20 of this Chapter not postmarked by the day of the election shall not be accepted by the county board of elections.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1973, c. 536, § 1; Laws 1977, c. 469, § 1; Laws 1979, c. 799, § 5; Laws 1985, c. 562, §§ 1, 2; Laws 1987, c. 583, §§ 1, 2; Laws 1989 (Reg. Sess., 1990), c. 991, § 4; S.L. 1999–455, § 11; S.L. 2009–537, §§ 6, 8(a), eff. Jan. 1, 2010.

Historical and Statutory Notes

S.L. 1999–455, § 24 provides:

''This act applies to elections held on or after January 1, 2000, except that the State Board of Elections may issue rules required or permitted by this act prior to that date.''

2009 Legislation

S.L. 2009–537, § 6, in subsec. (a), in the first sentence, substituted ''a person who is'' for ''two other persons who are'' and ''who is not'' for ''who are not'', and made nonsubstantive changes.

S.L. 2009–537, § 8(a), in subsec. (b), in the second sentence, substituted ''If ballots are received later than that hour, they shall not be accepted unless (i) federal law so requires; (ii) if ballots issued under Article 20 of this Chapter are postmarked by the day of the statewide primary or general election or county bond election and are received by the county board of elections not later than three days after the election by 5:00 p.m., or (iii) if ballots issued under Article 21 of this Chapter are received by the county board of elections not later than three days after the election by 5:00 p.m.'' for ''If such ballots are received later than that hour, they shall not be accepted for unless federal law so requires.'', and added the third sentence.

S.L. 2009–537, § 11, provides:

"This act becomes effective January 1, 2010, and applies with respect to elections held on or after that date."

Cross References

Procedures for challenging absentee ballots, see § 163–89.

Notes of Decisions

Conduct of election officials 3
Oath 2
Purpose 1

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1. Purpose

The purpose of absentee voting law is to enable qualified voter to vote at a general election in the precinct of his domicile when he is temporarily absent in another state or county. Owens v. Chaplin, 1948, 47 S.E.2d 12, 228 N.C. 705, rehearing denied 48 S.E.2d 37, 229 N.C. 797. Elections ⚷ 216.1

The object of elections is to ascertain and not to thwart the popular will, and to secure and not to defeat rights of duly qualified electors, and hence innocent voters should not be disfranchised for mistake or wilful misconduct of election officials in performing their duties. Owens v. Chaplin, 1948, 47 S.E.2d 12, 228 N.C. 705, rehearing denied 48 S.E.2d 37, 229 N.C. 797. Elections ⚷ 227(1)

2. Oath

Doubtful statements of challenged electors as to whether they were sworn by attesting officer when they signed statutory affidavit accompanying absentee ballot were insufficient to overcome certificate of notary, which imported prima facie truth of pertinent recitals, stipulation of the parties, and evidence of attesting officer called as a witness by unsuccessful candidates. Owens v. Chaplin, 1948, 48 S.E.2d 37, 229 N.C. 797. Elections ⚷ 216.1

Absentee ballots cast by absentee voters who were not sworn were defective and could not be counted. Owens v. Chaplin, 1948, 47 S.E.2d 12, 228 N.C. 705, rehearing denied 48 S.E.2d 37, 229 N.C. 797. Elections ⚷ 216.1; Elections ⚷ 227(8)

Absentee ballots cast by absentee voters taking oath with uplifted hands instead of upon the Bible were valid. Owens v. Chaplin, 1948, 47 S.E.2d 12, 228 N.C. 705, rehearing denied 48 S.E.2d 37, 229 N.C. 797. Oath ⚷ 3

3. Conduct of election officials

Misconduct of election officials did not disfranchise otherwise qualified electors who cast absentee ballots. Per STACY, C. J., and SEAWELL, J. Owens v. Chaplin, 1948, 48 S.E.2d 37, 229 N.C. 797. Elections ⚷ 227(8)

That chairman of county board of elections delivered absentee ballots to absentee voters outside county, and that chairman was accompanied by certain candidates, and that absentee voters returned ballots in person to chairman instead of by mail as prescribed by statute, did not invalidate ballots, in absence of coercion, fraud or imposition practiced on absentee voters, notwithstanding that chairman may have violated a due sense of propriety in delivering ballots outside county. Owens v. Chaplin, 1948, 47 S.E.2d 12, 228 N.C. 705, rehearing denied 48 S.E.2d 37, 229 N.C. 797. Elections ⚷ 227(8)

Superior court clerk's interest in reelection did not invalidate absentee ballots cast by absentee voters to whom clerk administered the oaths, since clerk was merely performing duty imposed by law regarding which nothing was left to his discretion and his act in administering oaths was ministerial and not judicial. Owens v. Chaplin, 1948, 47 S.E.2d 12, 228 N.C. 705, rehearing denied 48 S.E.2d 37, 229 N.C. 797. Elections ⚷ 216.1

§ 163–232. Certified list of executed absentee ballots; distribution of list

The county board of elections shall prepare, or cause to be prepared, a list in at least quadruplicate, of all absentee ballots returned to the county board of elections to be counted, which have been approved by the county board of elections, and which have been received as of 5:00 p.m. on the day before the election. At the end of the list, the chairman shall execute the following certificate under oath:

''State of North Carolina

County of _____

I, _____, chairman of the _____ County board of elections, do hereby certify that the foregoing is a list of all executed absentee ballots to be voted in the election to be conducted on the _____ day of _____, _____, which have been approved by the county board of elections and which have been returned no later than 5:00 p.m. on the day before the election. I certify that the chairman, member, officer, or employee of the board of elections has not delivered ballots for absentee voting to any person other than the voter, by mail or by commercial courier service or in person, except as provided by law, and have not mailed or delivered ballots when the request for the ballot was received after the deadline provided by law.

This the _____ day of _____, _____

_____

(Signature of chairman of county board of elections)

Sworn to and subscribed before me this _____ day of _____, _____. Witness my hand and official seal.

_____

(Signature of officer administering oath)

_____

(Title of officer)''

No later than 10:00 a.m. on election day, the county board of elections shall cause one copy of the list of executed absentee ballots, which may be a continuing countywide list or a separate list for each precinct, to be immediately deposited as ''first-class'' mail to the State Board of Elections. The board shall retain one copy in the board office for public inspection and the board shall cause two copies of the appropriate precinct list to be delivered to the chief judge of each precinct in the county. The county board of elections shall be authorized to call upon the sheriff of the county to distribute the list to the precincts. In addition the county board of elections shall, upon request, provide a copy of the complete list to the chairman of each political party, recognized under the provisions of G.S. 163–96, represented in the county.

The chief judge shall post one copy of the list immediately in a conspicuous location in the voting place and retain one copy until all challenges of absentee ballots have been heard by the county board of elections. Challenges shall be made to absentee ballots as provided in G.S. 163–89.

After receipt of the list of absentee voters required by this section the chief judge shall call the name of each person recorded on the list and enter an ''A'' in the appropriate voting square on the voter's permanent registration record, or a similar entry on the computer list used at the polls. If such person is already recorded as having voted in that election, the chief judge shall enter a challenge which shall be presented to the county board of elections for resolution by the board of elections prior to certification of results by the board.

All lists required by this section shall be retained by the county board of elections for a period of 22 months after which they may then be destroyed.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1973, c. 536, § 1; Laws 1977, c. 469, § 1; Laws 1981, c. 155, § 1; Laws 1981, c. 305, § 4; Laws 1985, c. 600, § 7; Laws 1993 (Reg. Sess., 1994), c. 762, §§ 5, 54, eff. Jan. 1, 1995; S.L. 1999–455, § 12; S.L. 1999–456, § 59, eff. Jan. 1, 2000.

Historical and Statutory Notes

S.L.1999–456, § 59, provides for deletion of year prefix ''19'' in the date segment of the form.

Laws 1993, c. 762, § 73, provides:

''Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.'' [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

S.L. 1999–455, § 24 provides:

''This act applies to elections held on or after January 1, 2000, except that the State Board of Elections may issue rules required or permitted by this act prior to that date.''

Cross References

Procedures for challenging absentee ballots, see § 163–89.

§ 163–232.1. Certified list of executed absentee ballots received on or after election day; publication of list

Text of section eff. Jan. 1, 2010.

(a) The county board of elections shall prepare, or cause to be prepared, a list in at least triplicate, of all absentee ballots issued under Article 20 of this Chapter returned to the county board of elections to be counted, which have been approved by the county board of elections, have not been included on the certified list prepared pursuant to G.S. 163–232, and which have been postmarked by the day of the statewide primary or general election or county bond election and received by the county board of elections not later than three days after the election by 5:00 p.m. The list shall be supplemented with new information each business day following the day of the election until the deadline for receipt of such absentee ballots. At the end of the list, the chairman shall execute the following certificate under oath:

''State of North Carolina

County of . . . . . .

I, ..., chairman of the . . . . . County Board of Elections, do hereby certify that the foregoing is a list of all executed absentee ballots to be voted in the election to be conducted on the . . . . . day of . . . . . ., ..., which have been approved by the county board of elections and which have been postmarked by the day of the statewide primary or general election or county bond election and received by the county board of elections not later than three days after the election by 5:00 p.m. I certify that the chairman, member, officer, or employee of the board of elections has not delivered ballots for absentee voting to any person other than the voter, by mail or by commercial courier service or in person, except as provided by

law, and have not mailed or delivered ballots when the request for the ballot was received after the deadline provided by law.

This the ..... day of ....., ...

.....
(Signature of chairman of
county board of elections)

Sworn to and subscribed before me this ..... day of ....., ...

Witness my hand and official seal.

.....
(Signature of officer administering oath)
.....

(Title of officer)''

(b) The county board of elections shall prepare, or cause to be prepared, a list in at least triplicate, of all military absentee ballots issued under Article 21 of this Chapter and returned to the county board of elections to be counted, which have been approved by the county board of elections, have not been included on the certified list prepared pursuant to G.S. 163–232, and which have been received by the county board of elections not later than three days after the election by 5:00 p.m. The list shall be supplemented with new information each business day following the day of the election until the deadline for receipt of such absentee ballots. At the end of the list, the chairman shall execute the following certificate under oath:

''State of North Carolina

County of .....

I, ..., chairman of the ..... County Board of Elections, do hereby certify that the foregoing is a list of all executed military absentee ballots to be voted in the election to be conducted on the ..... day of ....., ..., which have been approved by the county board of elections, and which have been postmarked by the day of the statewide primary or general election or county bond election and received by the county board of elections not later than three days after the election by 5:00 p.m. I further certify that I have issued ballots to no other persons than those listed herein and further that I have not delivered military absentee ballots to persons other than those listed herein; that this list constitutes the only precinct registration of military absentee voters whose names have not heretofore been entered on the regular registration of the appropriate precinct.

This the ..... day of ....., ...

.....
(Signature of chairman of
county board of elections)

Sworn to and subscribed before me this ..... day of ....., ...

Witness my hand and official seal.

.....
(Signature of officer administering oath)

.....
(Title of officer)''

(c) The board shall post one copy of the most current version of each list in the board office in a conspicuous location for public inspection and shall retain one copy until all challenges of absentee ballots have been heard by the county board of elections. The county board of elections shall cause one copy of each of the final lists of executed absentee ballots required under subsection (a) and subsection (b) of this section to be deposited as ''first-class'' mail to the State Board of Elections no later than 10:00 a.m. of the next business day following the deadline for receipt of such absentee ballots. Challenges shall be made to absentee ballots as provided in G.S. 163–89. In addition the county board of elections shall, upon request, provide a copy of each of the lists to the chairman of each political party, recognized under the provisions of G.S. 163–96, represented in the county.

(d) All lists required by this section shall be retained by the county board of elections for a period of 22 months after which they may then be destroyed.

Added by S.L. 2009–537, § 8(b), eff. Jan. 1, 2010.

Historical and Statutory Notes

2009 Legislation

S.L. 2009–537, § 11, provides: "This act becomes effective January 1, 2010, and applies with respect to elections held on or after that date."

§ 163–233. Applications for absentee ballots; how retained

The county board of elections shall retain, in a safe place, the original of all applications made for absentee ballots and shall make them available to inspection by the State Board of Elections or to any person upon the directive of the State Board of Elections.

All applications for absentee ballots shall be retained by the county board of elections for a period of one year after which they may be destroyed.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1973, c. 536, § 1; Laws 1973, c. 1075, § 5; Laws 1977, c. 469, § 1; S.L. 1999–455, § 13.

Historical and Statutory Notes

S.L. 1999–455, § 24 provides:

"This act applies to elections held on or after January 1, 2000, except that the State Board of Elections may issue rules required or permitted by this act prior to that date."

§ 163–233.1. Withdrawal of absentee ballots not allowed

No person shall be permitted to withdraw an absentee ballot after such ballot has been mailed to or returned to the county board of elections.

Added by Laws 1973, c. 536, § 1. Amended by Laws 1977, c. 469, § 1.

§ 163–234. Counting absentee ballots by county board of elections

Text of section eff. until Jan. 1, 2010. See, also, section eff. Jan. 1, 2010.

All absentee ballots returned to the county board of elections in the container-return envelopes shall be retained by the board to be counted by the county board of elections as herein provided.

(1) Only those absentee ballots returned to the county board of elections no later than 5:00 p.m. on the day before election day in a properly executed container-return envelope shall be counted, except to the extent federal law requires otherwise.

(2) The county board of elections shall meet at 5:00 p.m. on election day in the board office or other public location in the county courthouse for the purpose of counting all absentee ballots except those which have been challenged before 5:00 p.m. on election day. Any elector of the county shall be permitted to attend the meeting and allowed to observe the counting process, provided the elector shall not in any manner interfere with the election officials in the discharge of their duties.

Provided, that the county board of elections is authorized to begin counting absentee ballots between the hours of 2:00 p.m. and 5:00 p.m. upon the adoption of a resolution at least two weeks prior to the election wherein the hour and place of counting absentee ballots shall be stated. A copy of the resolutions shall be published once a week for two weeks prior to the election, in a newspaper having general circulation in the county. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition

to the newspaper and other required notice. The count shall be continuous until completed and the members shall not separate or leave the counting place except for unavoidable necessity, except that if the count has been completed prior to the time the polls close, it shall be suspended until that time pending receipt of any additional ballots. Nothing in this section shall prohibit a county board of elections from taking preparatory steps for the count earlier than the times specified in this section, as long as the preparatory steps do not reveal to any individual not engaged in the actual count election results before the times specified in this subdivision for the count to begin. By way of illustration and not limitation, a preparatory step for the count would be the entry of tally cards from direct record electronic voting units into a computer for processing. The board shall not announce the result of the count before 7:30 p.m.

(2a) Notwithstanding the provisions of subdivision (2) of this section, a county board of elections may, at each meeting at which it approves absentee ballot applications pursuant to G.S. 163–230.1(c) and (c1), remove those ballots from their envelopes and have them read by an optical scanning machine, without printing the totals on the scanner. The board shall complete the counting of these ballots at the times provided in subdivision (2) of this section. The State Board of Elections shall provide instructions to county boards of elections for executing this procedure, and the instructions shall be designed to ensure the accuracy of the count, the participation of board members of both parties, and the secrecy of the results before election day. This subdivision applies only in counties that use optical scan devices to count absentee ballots.

(3) The counting of absentee ballots shall not commence until a majority and at least one board member of each political party represented on the board is present and that fact is publicly declared and entered in the official minutes of the county board.

(4) The county board of elections may employ such assistants as deemed necessary to count the absentee ballots, but each board member present shall be responsible for and observe and supervise the opening and tallying of the ballots.

(5) As each ballot envelope is opened, the board shall cause to be entered into a pollbook designated ''Pollbook of Absentee Voters'' the name of the absentee voter, or if the pollbook is computer-generated, the board shall check off the name. Preserving secrecy, the ballots shall be placed in the appropriate ballot boxes, at least one of which shall

be provided for each type of ballot. The ''Pollbook of Absentee Voters'' shall also contain the names of all persons who voted under G.S. 163–227.2, but those names may be printed by computer for inclusion in the pollbook.

After all ballots have been placed in the boxes, the counting process shall begin.

If one-stop ballots under G.S. 163–227.2 are counted electronically, that count shall commence at the time the polls close. If one-stop ballots are paper ballots counted manually, that count shall commence at the same time as other absentee ballots are counted.

If a challenge transmitted to the board on canvass day by a chief judge is sustained, the ballots challenged and sustained shall be withdrawn from the appropriate boxes, as provided in G.S. 163–89(e).

As soon as the absentee ballots have been counted and the names of the absentee voters entered in the pollbook as required herein, the board members and assistants employed to count the absentee ballots shall each sign the pollbook immediately beneath the last absentee voter's name entered therein. The county board of elections shall be responsible for the safekeeping of the pollbook of absentee voters.

(6) Upon completion of the counting process the board members shall cause the results of the tally to be entered on the absentee abstract prescribed by the State Board of Elections. The abstract shall be signed by the members of the board in attendance and the original mailed immediately to the State Board of Elections. The county board of elections may have a separate count on the abstract for one-stop absentee ballots under G.S. 163–227.2.

(7) One copy of the absentee abstract shall be retained by the county board of elections and the totals appearing thereon shall be added to the final totals of all votes cast in the county for each office as determined on the official canvass.

(8) In the event a political party does not have a member of the county board of elections present at the meeting to count absentee ballots due to illness or other cause of the member, the counting shall not commence until the county party chairman of said absent member, or a member of the party's county executive committee, is in attendance. Such person shall act as an official witness to the counting and shall sign the absentee ballot abstract as an ''observer.''

(9) The county board of elections shall retain all container-return envelopes and absentee ballots, in a safe place, for

at least four months, and longer if any contest is pending concerning the validity of any ballot.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1967, c. 851, § 2; Laws 1973, c. 536, § 1; Laws 1975, c. 798, § 3; Laws 1977, c. 469, § 1; Laws 1977, c. 626, § 1; Laws 1989, c. 93, § 7; Laws 1993 (Reg. Sess., 1994), c. 762, §§ 5, 55, eff. Jan. 1, 1995; Laws 1995, c. 243, § 1, eff. Jan. 1, 1996; S.L. 1999–455, § 14; S.L. 2005–159, § 1, eff. July 7, 2005; S.L. 2006–262, § 1, eff. Aug. 27, 2006.

§ 163–234. Counting absentee ballots by county board of elections

Text of section eff. Jan. 1, 2010. See, also, section eff. until Jan. 1, 2010.

All absentee ballots returned to the county board of elections in the container-return envelopes shall be retained by the board to be counted by the county board of elections as herein provided.

(1) Only those absentee ballots returned to the county board of elections no later than 5:00 p.m. on the day before election day in a properly executed container-return envelope or absentee ballots received pursuant to G.S. 163–231(b)(ii) or (iii) shall be counted, except to the extent federal law requires otherwise.

(2) The county board of elections shall meet at 5:00 p.m. on election day in the board office or other public location in the county courthouse for the purpose of counting all absentee ballots except those which have been challenged before 5:00 p.m. on election day and those received pursuant to G.S. 163–231(b)(ii) or (iii). Any elector of the county shall be permitted to attend the meeting and allowed to observe the counting process, provided the elector shall not in any manner interfere with the election officials in the discharge of their duties.

Provided, that the county board of elections is authorized to begin counting absentee ballots between the hours of 2:00 p.m. and 5:00 p.m. upon the adoption of a resolution at least two weeks prior to the election wherein the hour and place of counting absentee ballots shall be stated. Such resolution also may provide for an additional meeting following the day of the election and prior to the day of canvass to count absentee ballots received pursuant to G.S. 163–231(b)(ii) or (iii) as provided in subdivision (10) of this section. A copy of the resolutions shall be published once a week for two weeks prior to the election, in a newspaper having general circulation in the county. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice. The count shall be continuous until completed and the members shall not separate or leave the counting place except for

unavoidable necessity, except that if the count has been completed prior to the time the polls close, it shall be suspended until that time pending receipt of any additional ballots. Nothing in this section shall prohibit a county board of elections from taking preparatory steps for the count earlier than the times specified in this section, as long as the preparatory steps do not reveal to any individual not engaged in the actual count election results before the times specified in this subdivision for the count to begin. By way of illustration and not limitation, a preparatory step for the count would be the entry of tally cards from direct record electronic voting units into a computer for processing. The board shall not announce the result of the count before 7:30 p.m.

(2a) Notwithstanding the provisions of subdivision (2) of this section, a county board of elections may, at each meeting at which it approves absentee ballot applications pursuant to G.S. 163–230.1(c) and (c1), remove those ballots from their envelopes and have them read by an optical scanning machine, without printing the totals on the scanner. The board shall complete the counting of these ballots at the times provided in subdivision (2) of this section. The State Board of Elections shall provide instructions to county boards of elections for executing this procedure, and the instructions shall be designed to ensure the accuracy of the count, the participation of board members of both parties, and the secrecy of the results before election day. This subdivision applies only in counties that use optical scan devices to count absentee ballots.

(3) The counting of absentee ballots shall not commence until a majority and at least one board member of each political party represented on the board is present and that fact is publicly declared and entered in the official minutes of the county board.

(4) The county board of elections may employ such assistants as deemed necessary to count the absentee ballots, but each board member present shall be responsible for and observe and supervise the opening and tallying of the ballots.

(5) As each ballot envelope is opened, the board shall cause to be entered into a pollbook designated ''Pollbook of Absentee Voters'' the name of the absentee voter, or if the pollbook is computer-generated, the board shall check off the name. Preserving secrecy, the ballots shall be placed in the appropriate ballot boxes, at least one of which shall be provided for each type of ballot. The ''Pollbook of Absentee Voters'' shall also contain the names of all per-

sons who voted under G.S. 163–227.2, but those names may be printed by computer for inclusion in the pollbook.

After all ballots have been placed in the boxes, the counting process shall begin.

If one-stop ballots under G.S. 163–227.2 are counted electronically, that count shall commence at the time the polls close. If one-stop ballots are paper ballots counted manually, that count shall commence at the same time as other absentee ballots are counted.

If a challenge transmitted to the board on canvass day by a chief judge is sustained, the ballots challenged and sustained shall be withdrawn from the appropriate boxes, as provided in G.S. 163–89(e).

As soon as the absentee ballots have been counted and the names of the absentee voters entered in the pollbook as required herein, the board members and assistants employed to count the absentee ballots shall each sign the pollbook immediately beneath the last absentee voter's name entered therein. The county board of elections shall be responsible for the safekeeping of the pollbook of absentee voters.

(6) Upon completion of the counting process the board members shall cause the results of the tally to be entered on the absentee abstract prescribed by the State Board of Elections. The abstract shall be signed by the members of the board in attendance and the original mailed immediately to the State Board of Elections. The county board of elections may have a separate count on the abstract for one-stop absentee ballots under G.S. 163–227.2.

(7) One copy of the absentee abstract shall be retained by the county board of elections and the totals appearing thereon shall be added to the final totals of all votes cast in the county for each office as determined on the official canvass.

(8) In the event a political party does not have a member of the county board of elections present at the meeting to count absentee ballots due to illness or other cause of the member, the counting shall not commence until the county party chairman of said absent member, or a member of the party's county executive committee, is in attendance. Such person shall act as an official witness to the counting and shall sign the absentee ballot abstract as an ''observer.''

(9) The county board of elections shall retain all container-return envelopes and absentee ballots, in a safe place, for at least four months, and longer if any contest is pending concerning the validity of any ballot.

(10) The county board of elections shall meet after election day and prior to the date of canvass to determine where the container-return envelopes for absentee ballots received pursuant to G.S. 163–231(b)(ii) or (iii) has been properly executed. The county board of elections shall comply with the requirements of G.S. 163–230.1 for approval of applications. Any absentee ballots received pursuant to G.S. 163–231(b)(ii) or (iii) shall be counted by the county board of elections on the day of canvass. The county board of elections is also authorized to meet following the day of the election and prior to the day of canvass to count absentee ballots received pursuant to G.S. 163–231(b)(ii) or (iii) upon the adoption of a resolution pursuant to subdivision (2) of this section. The county board of elections shall comply with all other requirements of this section for the counting of such absentee ballots.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1967, c. 851, § 2; Laws 1973, c. 536, § 1; Laws 1975, c. 798, § 3; Laws 1977, c. 469, § 1; Laws 1977, c. 626, § 1; Laws 1989, c. 93, § 7; Laws 1993 (Reg. Sess., 1994), c. 762, §§ 5, 55, eff. Jan. 1, 1995; Laws 1995, c. 243, § 1, eff. Jan. 1, 1996; S.L. 1999–455, § 14; S.L. 2005–159, § 1, eff. July 7, 2005; S.L. 2006–262, § 1, eff. Aug. 27, 2006; S.L. 2009–537, § 8(d), eff. Jan. 1, 2010.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

''Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.'' [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

Laws 1995, c. 243, § 1, provides:

''Wherever the term 'supervisor' appears in the General Statutes of North Carolina or in any local act in reference to the county supervisor of elections as provided in G.S. 163–35, the term is changed to read 'director.' ''

S.L. 1999–455, § 24 provides:

''This act applies to elections held on or after January 1, 2000, except that the State Board of Elections may issue rules required or permitted by this act prior to that date.''

2005 Legislation

S.L. 2005–159, § 1, eff. July 7, 2005, rewrote subd. (2) which prior thereto had read:

''(2) The county board of elections shall meet at 5:00 p.m. on election day in the board office or other public location in the county courthouse for the purpose of counting all absentee ballots except those which have been challenged before 5:00 p.m. on election day. Any elector of the county shall be permitted to attend the meeting and allowed to observe the counting process, provided the elector shall not in any manner interfere with the election officials in the discharge of their duties.

''Provided, that the county board of elections is authorized to begin counting absentee ballots between the hours of 2:00 p.m. and 5:00 p.m. upon the adoption of a resolution at least two weeks prior to the election wherein the hour and place of counting absentee ballots shall be stated. A copy of the resolutions shall be published once a week for two weeks prior to the elec-

tion, in a newspaper having general circulation in the county. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice. The count shall be continuous until completed and the members shall not separate or leave the counting place except for unavoidable necessity, except that if the count has been completed prior to the time the polls close, it shall be suspended until that time pending receipt of any additional ballots, and except that one-stop ballots under G.S. 163–227.2 counted electronically shall not be counted until the polls close; provided, however, that if there are outstack ballots in the counting device, they may be counted at the same time as other ballots are counted under this subdivision. The county board of elections may begin putting them in the tabulator at the same time as other ballots are counted under this subdivision if the system for counting one-stop ballots requires them to be put in a tabulator but the process has the voter place them in a ballot box. The board shall not announce the result of the count before 7:30 p.m.''

2006 Legislation

S.L. 2006–262, § 1, eff. Aug. 27, 2006, added subd. (2a).

S.L. 2006–262, § 5, provides:

''Section 4 of this act becomes effective January 1, 2007. The remainder of this act is effective when it becomes law, except that any criminal penalty resulting from this act becomes effective October 1, 2006. Prosecutions for offenses committed before October 1, 2006, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.''

2009 Legislation

S.L. 2009–537, § 8(d), in subd. (1), inserted ''or absentee ballots received pursuant to G.S. 163–231(b)(ii) or (iii)''; in subd. (2), in the first sentence of the first paragraph, added ''and those received pursuant to G.S. 163–231(b)(ii) or (iii)''; in subd. (2), in the second paragraph, inserted the second sentence; and added subd. (10).

S.L. 2009–537, § 11, provides:

"This act becomes effective January 1, 2010, and applies with respect to elections held on or after that date."

§ 163–235. Repealed by Laws 1973, c. 536, § 5

Historical and Statutory Notes

The repealed section pertained to absentee voting where voting machines are used.

§ 163–236. Violations by county board of elections

The county board of elections shall be sole custodian of blank applications for absentee ballots, official ballots, and container-return envelopes for absentee ballots. The board shall issue and deliver blank applications for absentee ballots in strict accordance with the provisions of G.S. 163–230.1. The issuance of ballots to persons whose requests for absentee ballots have been received by the county board of elections under the provisions of G.S. 163–230.1 is the responsibility and duty of the county board of elections.

It shall be the duty of the county board of elections to keep current all records required by this Article and to make promptly all reports required by this Article. If that duty has been assigned to the chair, member, officer, or employee of the board of elections, that person shall carry out the duty.

The willful violation of this section shall constitute a Class 2 misdemeanor.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1977, c. 469, § 1; Laws 1987, c. 565, § 9; Laws 1993, c. 539, § 1105, eff. Oct. 1, 1994; Laws 1993, c. 539, § 1359; Laws 1994 (1st Ex. Sess.), c. 24, § 14(c), eff. March 26, 1994; S.L. 1999–455, § 15.

Historical and Statutory Notes

Laws 1993, c. 539, § 1359, provides:

''This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.'' [Amended by Laws 1994, Ex. Sess., c. 24, § 14(c), eff. March 26, 1994.]

S.L. 1999–455, § 24 provides:

''This act applies to elections held on or after January 1, 2000, except that the State Board of Elections may issue rules required or permitted by this act prior to that date.''

Cross References

Misdemeanor sentencing and punishment, see § 15A–1340.13 et seq.

§ 163–237. Certain violations of absentee ballot law made criminal offenses

(a) False Statements under Oath Made Class 2 Misdemeanor.—If any person shall willfully and falsely make any affidavit or statement, under oath, which affidavit or statement under oath, is required to be made by the provisions of this Article, he shall be guilty of a Class 2 misdemeanor.

(b) False Statements Not under Oath Made Class 2 Misdemeanor.—Except as provided by G.S. 163–275(16), if any person, for the purpose of obtaining or voting any official ballot under the provisions of this Article, shall willfully sign any printed or written false statement which does not purport to be under oath, or which, if it purports to be under oath, was not duly sworn to, he shall be guilty of a Class 2 misdemeanor.

(b1) Candidate Witnessing Absentee Ballots of Nonrelative Made Class 2 Misdemeanor. —A person is guilty of a Class 2 misdemeanor if that person acts as a witness under G.S. 163–231(a) or G.S. 163–250(a) in any primary or election in which the person is a candidate for nomination or election, unless the voter is the candidate's near relative as defined in G.S. 163–230.1(f).

(c) Fraud in Connection with Absentee Vote; Forgery.—Any person attempting to aid and abet fraud in connection with any absentee vote cast or to be cast, under the provisions of this Article, shall be guilty of a misdemeanor. Attempting to vote by fraudulently signing the name of a regularly qualified voter is a Class I felony.

(d) Violations Not Otherwise Provided for Made Class 2 Misdemeanors.—If any person shall willfully violate any of the provi-

sions of this Article, or willfully fail to comply with any of the provisions thereof, for which no other punishment is herein provided, he shall be guilty of a Class 2 misdemeanor.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1977, c. 469, § 1; Laws 1985, c. 562, § 6; Laws 1987, c. 565, § 8; Laws 1993, c. 539, § 1106; Laws 1993, c. 539, § 1324, eff. Oct. 1, 1994; Laws 1994 (1st Ex. Sess.), c. 24, § 14(c), eff. March 26, 1994; S.L. 1999–455, § 22.

Historical and Statutory Notes

Laws 1993, c. 539, § 1359, provides:

''This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.'' [Amended by Laws 1994, Ex. Sess., c. 24, § 14(c), eff. March 26, 1994.]

S.L. 1999–455, § 24 provides:

''This act applies to elections held on or after January 1, 2000, except that the State Board of Elections may issue rules required or permitted by this act prior to that date.''

Cross References

Felony sentencing and punishment, see § 15A–1340.10 et seq.
Forfeiture of gain acquired through commission of felony, see § 14–2.3.
Forfeiture of licensing privileges after felony conviction, see § 15A–1331A.
Misdemeanor sentencing and punishment, see § 15A–1340.13 et seq.

§ 163–238. Reports of violations to district attorneys

It shall be the duty of the State Board of Elections to report to the district attorney of the appropriate prosecutorial district, any violation of this Article, or the failure of any person charged with a duty under its provisions to comply with and perform that duty, and it shall be the duty of the district attorney to cause such a person to be prosecuted therefor.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1977, c. 469, § 1.

§ 163–239. Article 21 relating to absentee voting by servicemen and certain civilians not applicable

Except as otherwise provided therein, Article 21 of this Chapter, relating to absentee registration and voting by servicemen and certain civilians, shall not apply to or modify the provisions of this Article.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1977, c. 469, § 1.

§§ 163–240 to 163–240.5. Expired

Historical and Statutory Notes

The repealed provisions pertained to absentee voting for the statewide primary election to be conducted in 1972. Laws 1971, c. 1247, enacting these sections, provides for expiration thereof July 1, 1972.

§§ 163–241 to 163–244. Reserved

Article 21

Military Absentee Registration and Voting in Primary and General Elections

Section

163–245. Persons in Armed Forces, their spouses, certain veterans, civilians working with Armed Forces, and members of Peace Corps may register and vote by mail.
163–246. Provisions of Article 20 applicable except as otherwise provided; State Board of Elections to adopt regulations.
163–247. Methods of applying for absentee ballots.
163–248. Register, ballots, container-return envelopes, and instruction sheets.
163–249. Consideration and approval of applications and issuance of absentee ballots.
163–250. Voting absentee ballots and transmitting them to chairman of county board of elections.
163–251. Certified list of approved military absentee ballot applications; record of ballots received; disposition of list; list constitutes registration.
163–252. Repealed.
163–253. Article inapplicable to persons after change of status; reregistration not required.
163–254. Registration and voting on primary or election day.
163–255. Absentee voting at office of board of elections.
163–256. Regulations of State Board of Elections.
163–257. Facsimile, electronic mail, or scanned transmission of election materials.
163–258. Emergency powers.

§ 163–245. Persons in Armed Forces, their spouses, certain veterans, civilians working with Armed Forces, and members of Peace Corps may register and vote by mail

(a) Any individual who is eligible to register and who is qualified to vote in any statewide primary or election held under the laws of this State, and who is absent from the county of his residence in any of the capacities specified in subsection (b) of this section, shall be entitled to register by mail or to vote by absentee ballot or both in the manner provided in this Article.

(b) The provisions of this Article shall apply to the following persons:

(1) Individuals serving in the Armed Forces of the United States, including, but not limited to, the army, the navy, the air force, the marine corps, the coast guard, the Merchant Marine, the National Oceanic and Atmospheric Administration, the commissioned corps of the Public Health Service, and members of the National Guard and military reserve.

(2) Spouses of persons serving in the Armed Forces of the United States residing outside the counties of their spouses' voting residence.

(3) Disabled war veterans in United States government hospitals.

(4) Civilians attached to and serving outside the United States with the Armed Forces of the United States.

(5) Members of the Peace Corps.

(6) Other individuals meeting the definitions of ''absent uniformed services voter'' and ''overseas voter'' in the federal Uniformed and Overseas Citizens Absentee Voting Act.

(c) An otherwise valid voter registration or absentee ballot application submitted by an absent uniformed services voter during a year shall not be refused or prohibited on the grounds that the voter submitted the application before the first date on which the county board of elections otherwise accepts those applications submitted by absentee voters who are not members of the uniformed services for that year.

(d) If any absent uniformed services or overseas voter submits a voter registration application or absentee ballot request, and the request is rejected, the board of elections that makes the rejection shall notify the voter of the reasons for the rejection.

(e) The requirement for any oath or affirmation to accompany any document as to voter registration or absentee ballots under this Article may be met by use of the standard oath prescribed by the Presidential designee under section 101(b)(7) of the Uniformed and Overseas Citizens Absentee Voting Act.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1973, c. 793, § 71; S.L. 2001–466, § 4(a), eff. Nov. 16, 2001; S.L. 2003–226, § 19, eff. Jan. 1, 2004; S.L. 2006–192, § 6, eff. Aug. 3, 2006.

Historical and Statutory Notes

2001 Legislation

S.L. 2001–466, § 4(a), eff. Nov. 16, 2001, rewrote subd. (b)(1) which prior thereto read:

''(1) Persons serving in the Armed Forces of the United States, including (but not limited to) the army, the navy, the air force, the marine corps, the coast guard, the Army Nurse Corps, the Navy Nurse Corps, the Women's Navy Reserve, the Marine Corps Women's Reserve, the Women's Army Corps, the Merchant Marine, and members of the National Guard and military reserve who on the day of a primary or general election are absent on active duty.''

2003 Legislation

S.L. 2003–226, § 19, eff. Jan. 1, 2004, added subsecs. (c), (d), and (e).

S.L. 2003–226, §§ 1, 22, eff. June 19, 2003, provide:

''Section 1. The purpose of this act is to ensure that the State of North Carolina has a system for all North Carolina elections that complies with the requirements for federal elections set forth in the federal Help America Vote Act of 2002, Public Law 107–252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481–15485.

''The General Assembly finds that the education and training of election officials as required by G.S. 163–82.34 has met and continues to meet the mandate for the education and training of precinct officials and other election officials in section 254(a)(3) of the Help America Vote Act of 2002. The General Assembly further finds that the establishment, development, and continued operation of the statewide list maintenance program for voter registration set forth in G.S. 163–82.14 has met and continues to meet the mandates of sec-

tion 303(a)(2) of the Help America Vote Act of 2002.

''In certain other areas of the election statutes and other laws, the General Assembly finds that the statutes must be amended to comply with the Help America Vote Act.''

''Section 22. Sections 1, 3, 4, 5, 12, 18, 21, and 22 of this act are effective when this act becomes law. Sections 11 and 13 of this act become effective January 1, 2006. The remainder of this act becomes effective January 1, 2004. All sections of this act apply with respect to all primaries and elections held on or after the date they become effective.''

2006 Legislation

S.L. 2006–192, § 6, eff. Aug. 3, 2006, amended subsec. (a) by substituting ''or'' for ''and'', deleting ''military'' before ''absentee ballot'', inserting ''or both'' and adding subd. (6).

S.L. 2006–192, § 19, provides:

''Sections 2 through 5 of this act are effective January 1, 2007, and apply to all primaries and elections conducted on or after that date. Sections 8 and 9 of this act are effective when this act becomes law and apply to vacancies occurring on or after that date. Section 17 of this act and the portion of Section 15 of this act that affects G.S. 163–278.13(e3) become effective January 1, 2007, and apply to contributions made or accepted on or after that date. Section 18 of this act becomes effective for taxable years beginning on or after January 1, 2006. The remainder of this act is effective when it becomes law.''

§ 163–246. Provisions of Article 20 applicable except as otherwise provided; State Board of Elections to adopt regulations

Except as otherwise provided in this Article, registration by mail and absentee voting by individuals to whom this Article is applicable shall be governed by the provisions of Article 20 of this Chapter. By way of illustration rather than limitation, the provisions of this paragraph shall apply to the form of absentee ballots, certificates and container-return envelopes; the manner of depositing and voting military absentee ballots; the counting and certifying of results; the hearing of challenges; and the preservation of container-return envelopes in which executed military absentee ballots are transmitted. The intent of this Article is that each uniformed services voter receives the utmost consideration and cooperation when voting, that each valid ballot cast by that voter is duly counted, and that all qualified uniformed and overseas voters have equal opportunity to cast a vote and have it counted if it conforms with the law. For purposes of this Article, ''uniformed services voter'' means those individuals set forth as such in The Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA).

The State Board of Elections is authorized to adopt and promulgate whatever rules and regulations (not in conflict with other provisions of this Chapter) it may deem necessary to carry out the true intent and purpose of this Article.

Added by Laws 1967, c. 775, § 1. Amended by S.L. 2001–466, § 4(b), eff. Nov. 16, 2001.

Historical and Statutory Notes

2001 Legislation

S.L. 2001–466, § 4(b), eff. Nov. 16, 2001, in the first paragraph, inserted the third and fourth sentences.

§ 163–247. Methods of applying for absentee ballots

An individual entitled to exercise the rights conferred by this Article and who is absent from the county of his residence may apply for absentee ballots in either of the ways provided in this section.

(1) Federal Postcard Application Form. – At any time prior to the statewide primary or general election in which he seeks to vote, the applicant may make and sign a written application to the County Board of Election[s] in County of Voter's Residence for absentee ballots on the postcard form specified in or promulgated by regulation under The Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA), 42 U.S.C. § 1973ff(b) and § 1973ff–3.

(2) Application to Chairman of County Board of Elections.— In lieu of applying on the federal postcard as provided in the preceding subdivision, at any time prior to the statewide primary or general election in which he seeks to vote the applicant may make and sign a written application to the chairman of the board of elections of the county of his residence upon a form prepared and furnished him upon request by the county board of elections. This form shall require the applicant's signature and shall elicit from him:

a. A request for absentee ballots to be voted in a specified statewide primary or general election.

b. A statement of his political party affiliation if he seeks to vote by absentee ballot in a primary election.

c. A statement of his membership in the Armed Forces of the United States, or his membership in one of the other categories to which this Article is made applicable in G.S. 163-245.

d. A statement of the precinct in which he is registered to vote, or, if the applicant is not registered, a statement of his address before entering military or other qualifying service and the period of time he resided at that address.

e. A statement of the address to which the absentee ballots should be mailed. In lieu of using a form prepared and furnished by the county board of elections, the voter may apply in an informal writing. If the written application is signed by the voter and if it contains all the information required by this subdivision, it shall be

regarded as sufficient to permit the chairman of the county board of elections to act upon it.

(3) If a single application from an absentee uniformed voter is received by an election official, it shall be considered a valid absentee ballot request with respect to all general, primary, and runoff elections for federal, State, county, or those municipal offices in which absentee ballots are allowed under the provisions of G.S. 163–302, held through the next two regularly scheduled general elections for federal office. This subdivision does not apply to a special election not involving the election of candidates, unless that special election is being held on the same day as a general or primary election.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1977, c. 265, § 16; Laws 1987, c. 415; S.L. 2001–466, §§ 4(c), 4(d), eff. Nov. 16, 2001; S.L. 2003–226, § 20, eff. Jan. 1, 2004.

Historical and Statutory Notes

2001 Legislation

S.L. 2001–466, § 4(c), eff. Nov. 16, 2001, in subd. (1), substituted ''The Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA), 42 U.S.C. § 1973ff(b) and § 1973ff(3)'' for ''42 U.S.C. 1973cc–14''.

S.L. 2001–466, § 4(d), eff. Nov. 16, 2001, rewrote subd. (3), which prior thereto read:

''(3) Notwithstanding subdivisions (1) and (2) of this section, if the application under either of those subdivisions so requests, it shall constitute an application for more than one or for all of the primaries and elections held during the calendar year when the application is received.''

2003 Legislation

S.L. 2003–226, § 20, eff. Jan. 1, 2004, in the first sentence of subd. (3), substituted ''held through the next two regularly scheduled general elections for federal office'' for ''held during the calendar year the application was received''.

S.L. 2003–226, §§ 1 and 22, eff. June 19, 2003, provide:

''Section 1. The purpose of this act is to ensure that the State of North Carolina has a system for all North Carolina elections that complies with the requirements for federal elections set forth in the federal Help America Vote Act of 2002, Public Law 107–252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481–15485.

''The General Assembly finds that the education and training of election officials as required by G.S. 163–82.34 has met and continues to meet the mandate for the education and training of precinct officials and other election officials in section 254(a)(3) of the Help America Vote Act of 2002. The General Assembly further finds that the establishment, development, and continued operation of the statewide list maintenance program for voter registration set forth in G.S. 163–82.14 has met and continues to meet the mandates of section 303(a)(2) of the Help America Vote Act of 2002.

''In certain other areas of the election statutes and other laws, the General Assembly finds that the statutes must be amended to comply with the Help America Vote Act.''

''Section 22. Sections 1, 3, 4, 5, 12, 18, 21, and 22 of this act are effective when this act becomes law. Sections 11 and 13 of this act become effective January 1, 2006. The remainder of this act becomes effective January 1, 2004. All sections of this act apply with respect to all primaries and elections held on or after the date they become effective.''

Administrative Code References

County board of elections, voting procedures and duties, general guidelines, 8 NCAC 12.0105.

§ 163–248. Register, ballots, container-return envelopes, and instruction sheets

Text of section eff. until Jan. 1, 2010. See, also, section eff. Jan. 1, 2010.

(a) Register of Military Absentee Ballot Applications and Ballots Issued.—The State Board of Elections shall furnish the chairman of the board of elections in each county of the State with a book to be called the register of military absentee ballot applications and ballots issued in which shall be recorded whatever information and official action may be required by this Article. In lieu of furnishing this register, the State Board of Elections may provide for a separate military section in the register furnished under the provisions of G.S. 163–228 which shall be used for the same purpose.

The register of military absentee ballot applications and ballots issued, whether contained in a separate book or maintained as a separate part of the register furnished under the provisions of G.S. 163–228, shall constitute a public record and shall be opened to the inspection of any registered voter of the county at any time.

(b) Absentee Ballot Form.—Persons entitled to vote by absentee ballot under the terms of this Article shall be furnished with regular official ballots; separate or distinctly marked absentee ballots shall not be used. The State Board of Elections and the county boards of elections shall have all necessary absentee ballots printed and in the hands of the proper election officials not later than 50 days before the primary or election.

(c) Container-Return Envelope.—The county board of elections shall print a sufficient number of envelopes in which persons casting military absentee ballots may transmit their marked ballots to the chairman of the county board of elections. The container-return envelopes shall be printed and available for use not later than 50 days before the primary or election. Each container-return envelope shall be printed in accordance with the following instructions:

(1) On one side shall be arranged identified spaces in which the chairman of the county board of elections may insert the name of the applicant, the number assigned his application, and the designation of the precinct in which his ballots are to be voted.

(2) On the other side shall be printed the return address of the chairman of the county board of elections and the following certificate:

''Certificate of Absentee Voter

I, _____, do hereby certify that I am a resident and qualified voter in _____ precinct, _____ County, North Car-

olina, and that I am [check whichever of the following statements is correct]

[ ] Serving in the Armed Forces of the United States

[ ] The spouse of a member of the Armed Forces of the United States residing outside the county of my spouse's residence

[ ] A disabled war veteran in a United States government hospital

[ ] A civilian attached to and serving outside the United States with the Armed Forces of the United States

[ ] A member of the Peace Corps

I further certify that I am affiliated with the _____ Party. [To be completed only if applicant seeks to vote in the primary of the political party to which he belongs.]

I further certify that the following is my official address:

_____

[Unit (Co., Sq., Trp., Bn., etc.), Governmental Agency, or Office]

_____

[Military Base, Station, Camp, Fort, Ship, Airfield, etc.]

_____

[Street number, APO, or FPO number]

_____

[City, postal zone, State, and zip code]

I further certify that I made application for absentee ballots and that I marked the ballots enclosed herein, or that they were marked for me in my presence and according to my instruction. I understand it is a felony to falsely sign this certificate.

Witness my hand in the presence of ___ [Insert names and addresses of witnesses] this ___ day of _____, _____.

_____
(Signature of voter)

Signature of witness #1 _____
Address of witness #1 _____
Signature of witness #2 _____
Address of witness #2 _____

Note: This certificate must be witnessed by any two persons who are 18 years of age or older, and must contain their signatures and addresses.''

(d) Instruction Sheets.—The county board of elections shall prepare and print a sufficient number of sheets of instructions on how voters covered by the provisions of this Article are to prepare absentee ballots and return them to the chairman of the county board of elections. The instruction sheets shall be printed and

available for use not later than 60 days before the primary or election.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1973, c. 793, § 72; Laws 1975, c. 844, §§ 15 to 17; Laws 1979, c. 411, § 7; Laws 1985 (Reg. Sess., 1986), c. 986, § 2; Laws 1987, c. 485, § 2; Laws 1987, c. 509, § 9; Laws 1987, c. 583, § 5; S.L. 1999–456, § 59, eff. Jan. 1, 2000.

§ 163–248. Register, ballots, container-return envelopes, and instruction sheets

Text of section eff. Jan. 1, 2010. See, also, section eff. until Jan. 1, 2010.

(a) Register of Military Absentee Ballot Applications and Ballots Issued.—The State Board of Elections shall approve an official register of military absentee ballot applications and ballots issued in which shall be recorded whatever information and official action may be required by this Article. The State Board of Elections may provide for the register to be kept by electronic data processing equipment, and a copy or a supplement of new information shall be printed each business day.

The register of military absentee ballot applications and ballots issued shall constitute a public record.

(b) Absentee Ballot Form.—Persons entitled to vote by absentee ballot under the terms of this Article shall be furnished with regular official ballots; separate or distinctly marked absentee ballots shall not be used. The State Board of Elections and the county boards of elections shall have all necessary absentee ballots printed and in the hands of the proper election officials not later than 60 days before the statewide general election in even-numbered years and not later than 50 days before the primary or any other election. However, in the case of municipal elections, absentee ballots shall be made available no later than 30 days before an election.

(c) Container–Return Envelope.—The county board of elections shall print a sufficient number of envelopes in which persons casting military absentee ballots may transmit their marked ballots to the chairman of the county board of elections. The container-return envelopes shall be printed and available for use not later than 60 days before the statewide general election in even-numbered years and not later than 50 days before the primary or any other election. However, in the case of municipal elections, container-return envelopes shall be made available no later than 30 days before an election. Each container-return envelope shall be printed in accordance with the following instructions:

(1) On one side shall be arranged identified spaces in which the chairman of the county board of elections may insert the name of the applicant, the number assigned his appli-

cation, and the designation of the precinct in which the applicant is registered.

(2) On the other side shall be printed the return address of the chairman of the county board of elections and the following certificate:

"**CERTIFICATE OF ABSENTEE VOTER**

I, ..., do hereby certify that I am a resident and qualified voter in ..... precinct, ... County, North Carolina, and that I am [check whichever of the following statements is correct]

[ ] Serving in the armed forces of the United States

[ ] The spouse of a member of the armed forces of the United States residing outside the county of my spouse's residence

[ ] A disabled war veteran in a United States government hospital

[ ] A civilian attached to and serving outside the United States with the armed forces of the United States

[ ] A member of the Peace Corps

[ ] A United States citizen currently outside the United States

I further certify that I am affiliated with the ..... Party. [To be completed only if applicant seeks to vote in the primary of the political party to which he belongs.]

I further certify that the following is my official address:

.....

[Unit (Co., Sq., Trp., Bn., etc.), Governmental Agency, or Office]

.....

[Military Base, Station, Camp, Fort, Ship, Airfield, etc.]

.....

[Street number, APO, or FPO number]

.....

[City, postal zone, State, and zip code]

.....

[E–mail address]

I further certify that I made application for absentee ballots and that I marked the ballots enclosed herein, or that they were marked for me in my presence and according to my instruction. I understand it is a felony to falsely sign this certificate.

Witness my hand in the presence of ..... [Insert name and address of witness] this ..... day of ....., ...

.....

(Signature of voter)

Signature of witness . . . . . .

Address of witness . . . . . .

Note: This certificate must be witnessed by a person who is 18 years of age or older, and must contain the signature and address of the witness.''

(d) Instruction Sheets.—The county board of elections shall prepare and print a sufficient number of sheets of instructions on how voters covered by the provisions of this Article are to prepare absentee ballots and return them to the chairman of the county board of elections. The instruction sheets shall be printed and available for use not later than the date of ballot availability.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1973, c. 793, § 72; Laws 1975, c. 844, §§ 15 to 17; Laws 1979, c. 411, § 7; Laws 1985 (Reg. Sess., 1986), c. 986, § 2; Laws 1987, c. 485, § 2; Laws 1987, c. 509, § 9; Laws 1987, c. 583, § 5; S.L. 1999–456, § 59, eff. Jan. 1, 2000; S.L. 2009–537, § 1, eff. Jan. 1, 2010.

Historical and Statutory Notes

S.L.1999–456, § 59, provides for deletion of year prefix ''19'' in the date segment of the form.

2009 Legislation

S.L. 2009–537, § 1, rewrote the section, which prior thereto read:

''(a) Register of Military Absentee Ballot Applications and Ballots Issued.—The State Board of Elections shall furnish the chairman of the board of elections in each county of the State with a book to be called the register of military absentee ballot applications and ballots issued in which shall be recorded whatever information and official action may be required by this Article. In lieu of furnishing this register, the State Board of Elections may provide for a separate military section in the register furnished under the provisions of G.S. 163–228 which shall be used for the same purpose.

''The register of military absentee ballot applications and ballots issued, whether contained in a separate book or maintained as a separate part of the register furnished under the provisions of G.S. 163–228, shall constitute a public record and shall be opened to the inspection of any registered voter of the county at any time.

''(b) Absentee Ballot Form.—Persons entitled to vote by absentee ballot under the terms of this Article shall be furnished with regular official ballots; separate or distinctly marked absentee ballots shall not be used. The State Board of Elections and the county boards of elections shall have all necessary absentee ballots printed and in the hands of the proper election officials not later than 50 days before the primary or election.

''(c) Container-Return Envelope.—The county board of elections shall print a sufficient number of envelopes in which persons casting military absentee ballots may transmit their marked ballots to the chairman of the county board of elections. The container-return envelopes shall be printed and available for use not later than 50 days before the primary or election. Each container-return envelope shall be printed in accordance with the following instructions:

''(1) On one side shall be arranged identified spaces in which the chairman of the county board of elections may insert the name of the applicant, the number assigned his application, and the designation of the precinct in which his ballots are to be voted.

''(2) On the other side shall be printed the return address of the chairman of the county board of elections and the following certificate:

''Certificate of Absentee Voter

''I, _____, do hereby certify that I am a resident and qualified voter in _____ precinct, _____ County, North Carolina, and that I am [check whichever of the following statements is correct]

''[ ] Serving in the Armed Forces of the United States

''[ ] The spouse of a member of the Armed Forces of the United States residing outside the county of my spouse's residence

''[ ] A disabled war veteran in a United States government hospital

''[ ] A civilian attached to and serving outside the United States with the Armed Forces of the United States

''[ ] A member of the Peace Corps

''I further certify that I am affiliated with the _____ Party. [To be completed only if applicant seeks to vote in the primary of the political party to which he belongs.]

''I further certify that the following is my official address:

_____

''[Unit (Co., Sq., Trp., Bn., etc.), Governmental Agency, or Office]

'' _____

''[Military Base, Station, Camp, Fort, Ship, Airfield, etc.]

'' _____

''[Street number, APO, or FPO number]

'' _____

''[City, postal zone, State, and zip code]

''I further certify that I made application for absentee ballots and that I marked the ballots enclosed herein, or that they were marked for me in my presence and according to my instruction. I understand it is a felony to falsely sign this certificate.

''Witness my hand in the presence of ___ [Insert names and addresses of witnesses] this ___ day of _____, _____.

'' _____

''(Signature of voter)

''Signature of witness #1 _____

''Address of witness #1 _____

''Signature of witness #2 _____

''Address of witness #2 _____

''Note: This certificate must be witnessed by any two persons who are 18 years of age or older, and must contain their signatures and addresses.''

''(d) Instruction Sheets.—The county board of elections shall prepare and print a sufficient number of sheets of instructions on how voters covered by the provisions of this Article are to prepare absentee ballots and return them to the chairman of the county board of elections. The instruction sheets shall be printed and available for use not later than 60 days before the primary or election.''

S.L. 2009–537, § 11, provides:

"This act becomes effective January 1, 2010, and applies with respect to elections held on or after that date."

§ 163–249. Consideration and approval of applications and issuance of absentee ballots

The procedure to be followed in receiving applications for absentee ballots under this Article, passing upon their validity, and issuing absentee ballots shall be governed by the provisions of this section.

(1) Record of Applications Received and Ballots Issued.—Upon receipt of a voter's written application for absentee ballots in either of the forms permitted by G.S. 163-247, the chairman of the county board of elections shall promptly enter in the register of military absentee ballot applications and ballots issued:

a. Name of voter applying for absentee ballots.

b. Applicant's political party affiliation as stated in an application for ballots in a primary.

c. Number assigned voter's application. (Numbers assigned applications received under the provisions of this Article shall be chosen so as not to be identical with

numbers assigned applications received under the provisions of Article 20.)

d. Precinct in which applicant is registered if he is already registered, or precinct in which applicant is registered by the chairman of the county board of elections under the provisions of subdivisions (2) and (3) of this section.

e. Address to which ballots are to be mailed.

f. Statement of basis on which applicant asserts his qualifications for obtaining absentee ballots under the provisions of this Article.

g. Date application for ballots is received by chairman.

(2) Determination of Validity of Applications for Absentee Ballots; Handling Applications for Persons Not Registered.—The chairman of the county board of elections shall pass upon the validity of all applications for absentee ballots received under the provisions of this Article, and he shall not delegate this responsibility.

If the chairman finds that the applicant is a qualified voter of the county, that he is registered in the precinct stated in his application, that the assertions in his application are true, that they demonstrate that he is entitled to vote by absentee ballot under the terms of this Article, and that his application is in proper form, the chairman shall approve the application for absentee ballots.

If the chairman finds that the applicant is not registered to vote in the precinct in which he declares he is a resident, the chairman shall make a reasonable investigation as to the applicant's residence. If the chairman determines that the applicant is a resident of the precinct asserted, that he is eligible to register and vote under the Constitution and statutes of this State, and that his application is otherwise in order, the chairman shall register him according to the procedure specified in subdivision (3) of this section and approve his application for absentee ballots.

(3) Record of Chairman's Decisions; Registration by Chairman.—At the time the chairman of the county board of elections makes his decision on an application for absentee ballots, he shall enter in the appropriate column in the register of military absentee ballot applications and ballots issued opposite the name of the applicant a notation of whether his application was ''Approved'' or ''Disapproved.'' In cases in which the chairman determines that an unregistered applicant is entitled to register, he shall also note in the appropriate column of the register the designation of the precinct in which the applicant is entitled to vote. This entry shall constitute registration and

shall entitle an otherwise qualified applicant to receive absentee ballots.

(4) Delivery of Absentee Ballots and Container-Return Envelope to Applicant.—When the chairman of the county board of elections approves an application for military absentee ballots he shall promptly issue and transmit them in accordance with the following instructions:

a. On the top margin of each ballot the applicant is entitled to vote, the chairman shall write or type the words ''Absentee Ballot No . . .'' and insert in the blank space the number assigned the applicant's application in the register of military absentee ballot applications and ballots issued. He shall not write, type, or print any other matter upon the ballots transmitted to the absentee voter.

b. The chairman shall fold and place the ballots (identified in accordance with the preceding instruction) in a container-return envelope and write or type in the appropriate blanks thereon, the absentee voter's name, his application number, and the designation of the precinct in which his ballots are to be voted. The chairman shall leave the container-return envelope holding the ballots unsealed.

c. The chairman shall then place the unsealed container-return envelope holding the ballots, together with printed instructions for voting and returning the ballots, in an envelope addressed to the applicant at the address stated in his application, seal the envelope, and mail it at the expense of the county board of elections.

Added by Laws 1967, c. 775, § 1.

§ 163–250. Voting absentee ballots and transmitting them to chairman of county board of elections

Text of section eff. until Jan. 1, 2010. See, also, section eff. Jan. 1, 2010.

(a) Procedure for Voting Absentee Ballots.—In the presence of two persons who are at least 18 years of age, the voter shall:

(1) Mark his ballots, or cause them to be marked by one of such persons in his presence according to his instructions.

(2) Fold each ballot separately, or cause each of them to be folded in his presence.

(3) Place the folded ballots in the container-return envelope and securely seal it, or have this done in his presence.

(4) Make and subscribe the certificate printed on the container-return envelope according to the provisions of G.S. 163-248(c).

The persons in whose presence the ballots were marked shall sign the certificate as witnesses, and shall give their addresses.

(b) Transmitting Executed Absentee Ballots to Chairman of County Board of Elections.—When executed and witnessed in accordance with the provisions of subsection (a) of this section, the sealed container-return envelope in which executed absentee ballots have been placed shall be mailed by the voter to the chairman of the county board of elections who issued them.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1987, c. 583, § 6.

§ 163–250. Voting absentee ballots and transmitting them to chairman of county board of elections

Text of section eff. Jan. 1, 2010. See, also, section eff. until Jan. 1, 2010.

(a) Procedure for Voting Absentee Ballots.—In the presence of a person who is at least 18 years of age, the voter shall:

(1) Mark the voter's ballots, or cause them to be marked by that person in the voter's presence according to the voter's instructions.

(2) Fold each ballot separately, or cause each of them to be folded in the voter's presence.

(3) Place the folded ballots in the container-return envelope and securely seal it, or have this done in the voter's presence.

(4) Make and subscribe the certificate printed on the container-return envelope according to the provisions of G.S. 163–248(c).

The person in whose presence the ballots were marked shall sign the certificate as a witness and shall give that person's address.

(b) Transmitting Executed Absentee Ballots to Chairman of County Board of Elections.—When executed and witnessed in accordance with the provisions of subsection (a) of this section, the sealed container-return envelope in which executed absentee ballots have been placed shall be mailed by the voter to the chairman of the county board of elections who issued them.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1987, c. 583, § 6; S.L. 2009–537, § 7, eff. Jan. 1, 2010.

Historical and Statutory Notes

2009 Legislation

S.L. 2009–537, § 7, in subsec. (a), in the first sentence, substituted ''a person who is'' for ''two other persons who are'' and ''who is not'' for ''who are not'', and made other nonsubstantive changes throughout the section.

S.L. 2009–537, § 11, provides:

"This act becomes effective January 1, 2010, and applies with respect to elections held on or after that date."

§ 163–251. Certified list of approved military absentee ballot applications; record of ballots received; disposition of list; list constitutes registration

(a) Preparation of List.—The chairman of the county board of elections shall prepare, or cause to be prepared, a list in quadruplicate of all military absentee ballots returned to the county board of elections to be counted which have been approved by the county board of elections. At the end of the list the chairman shall execute the following certificate under oath:

''State of North Carolina

County of _____

I, _____, Chairman of the _____ County Board of Elections, do hereby certify that the foregoing is a list of all executed military absentee ballots to be voted in the election to be conducted on the _____ day of _____, _____, which have been approved by the County Board of Elections. I further certify that I have issued ballots to no other persons than those listed herein and further that I have not delivered military absentee ballots to persons other than those listed herein; that this list constitutes the only precinct registration of military absentee voters whose names have not heretofore been entered on the regular registration of the appropriate precinct.

This the _____ day of _____, _____.

_____
(Signature of Chairman of County Board of Elections)

Sworn to and subscribed before me this ___ day of ___, _____

_____
(Signature of Officer administering oath)

_____
(Title of officer)''

(b) Distribution of List.—No earlier than 3:00 P.M. on the day before the election and no later than 10:00 A.M. on election day, the chairman shall cause one copy of the list of executed military absentee ballots, which may be a continuing countywide list or a separate list for each precinct, to be immediately deposited as first-class mail to the State Board of Elections. The chairman shall retain one copy in the board office for public inspection and he shall cause two copies of the appropriate precinct list to be delivered to the chief judge of each precinct in the county. The chief judge shall post one copy in the voting place and retain one

copy until all challenges of absentee ballots have been heard by the county board of elections. Challenges shall be made as provided in G.S. 163–89.

After receipt of the list of absentee voters required by this section the chief judge shall call the name of each person recorded on the list and enter an ''A'' in the appropriate voting square on the voter's permanent registration record, if any. If such person is already recorded as having voted in that election, the chief judge shall enter a challenge which shall be presented to the chairman of the county board of elections for resolution by the board of elections prior to certification of results by the board.

(c) List Constitutes Registration.—The ''List of Applicants for Military Absentee Ballots to Whom Ballots Have Been Issued'' prescribed by this section, when delivered to the chief judges of the various precincts, shall constitute the only precinct registration of the military absentee voters listed thereon whose names are not already entered in the registration records of the appropriate precinct. Chief judges shall not add the names of persons listed on the military absentee list to the regular registration books of their precincts.

(d) Counting Ballots, Hearing Challenges.—The county board of elections shall count military ballots as provided for civilian absentee ballots in G.S. 163–234, and shall hear challenges as provided in G.S. 163–89.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1973, c. 536, § 2; Laws 1977, c. 265, § 17; Laws 1979, c. 797, § 3; Laws 1981, c. 155, § 2; Laws 1981, c. 308, § 3; Laws 1983, c. 331, § 4; Laws 1993 (Reg. Sess., 1994), c. 762, §§ 5, 56, 57, eff. Jan. 1, 1995; S.L. 1999–456, § 59, eff. Jan. 1, 2000.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

''Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.'' [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

S.L.1999–456, § 59, provides for deletion of year prefix ''19'' in the date segment of the form.

Cross References

Procedures for challenging absentee ballots, see § 163–89.

§ 163–252. Repealed by Laws 1973, c. 536, § 5

Historical and Statutory Notes

The repealed section declared unlawful absentee voting in primary a misdemeanor.

§ 163–253. Article inapplicable to persons after change of status; reregistration not required

Upon discharge from the Armed Forces of the United States or termination of any other status qualifying the voter to register and vote by absentee ballot under the provisions of this Article, the voter shall not be entitled to vote by military absentee ballot, but if the voter was registered under the provisions of this Article that voter's registration shall remain valid for the remainder of the calendar year that voter registered, and that voter shall be entitled to vote in any primary or election for the remainder of the calendar year without having to reregister. If requested by election officials, the voter shall present proof of military status at the time of registration. This section does not entitle a person to vote in North Carolina if that person has become disqualified because of change of permanent residence to another State or because of conviction of a felony.

Added by Laws 1967, c. 775, § 1. Amended by S.L. 1999–424, § 7(k), eff. Aug. 5, 1999; S.L. 2001–466, § 4(e), eff. Nov. 16, 2001.

Historical and Statutory Notes

2001 Legislation

S.L. 2001–466, § 4(e), eff. Nov. 16, 2001, rewrote the section, which prior thereto read:

''§ 163–253. Article inapplicable to persons after change of status; reregistration required

''Upon discharge from the Armed Forces of the United States or termination of any other status qualifying him to register and vote by absentee ballot under the provisions of this Article, the voter shall not be entitled to vote by military absentee ballot, and if he was registered under the provisions of this Article his registration shall become void and he shall be required to register under the provisions of Article 7A before being entitled to vote in any primary or election.''

§ 163–254. Registration and voting on primary or election day

Notwithstanding any other provisions of Chapter 163 of the General Statutes, an individual shall be permitted to register in person at any time the office of the board of elections or the voting place is open, including the day of a primary or election if that individual was absent on the day the registration records close for an election, but returns to that individual's county of residence in North Carolina thereafter, and if the absence is due to an occupation or status of that individual listed below:

(1) Individuals serving in the Armed Forces of the United States, including (but not limited to) the army, the navy, the air force, the marine corps, the coast guard, the

Merchant Marine, the National Oceanic and Atmospheric Administration, the commissioned corps of the Public Health Service, and members of the National Guard and military reserve.

(2) Spouses of individuals serving in the Armed Forces of the United States residing outside the counties of their spouses' voting residence.

(3) Disabled war veterans in United States government hospitals.

(4) Civilians attached to and serving outside the United States with the Armed Forces of the United States.

(5) Members of the Peace Corps.

If an individual so absent on the day registration closes shall appear in person at the voting place on election day and is otherwise eligible to vote, that individual shall be entitled to register and vote at the voting place that day, regardless of whether the person's occupation or status as outlined in subdivisions (1) through (5) of this section has changed since the close of registration.

Added by Laws 1977, c. 93. Amended by S.L. 1999–424, § 7(*l*), eff. Aug. 5, 1999; S.L. 2001–353, § 3, eff. Aug. 10, 2001.

Historical and Statutory Notes

2001 Legislation

S.L. 2001–353, § 3, eff. Aug. 10, 2001, rewrote the section, which prior thereto read:

"Notwithstanding any other provisions of Chapter 163 of the General Statutes, any person entitled to vote an absentee ballot pursuant to G.S. 163–245 shall be permitted to register in person at any time including the day of a primary or election. Should such person's eligibility to register or vote as provided in G.S. 163–245 terminate after the twenty-fifth day prior to a primary or election, such person, if he appears in person, shall be entitled to register if otherwise qualified after the twenty-fifth day before the primary or election, or on the primary or election day, and shall be permitted to vote if such person is otherwise qualified."

§ 163–255. Absentee voting at office of board of elections

Notwithstanding any other provisions of Chapter 163 of the General Statutes, any person eligible to vote an absentee ballot pursuant to G.S. 163-245 shall be permitted to vote an absentee ballot pursuant to G.S. 163-227.2 if the person has not already voted an absentee ballot which has been returned to the board of elections, and if he will not be in the county on the day of the primary or election.

In the event an absentee application or ballot has already been mailed to such person applying to vote pursuant to G.S. 163-227.2, the board of elections shall void the application and ballot unless the voted absentee ballot has been received by the board of elections. Such person shall be eligible to vote pursuant to G.S. 163-227.2 no later than 5:00 P.M. on the day next preceding the primary, second primary or election.

Added by Laws 1977, c. 93. Amended by Laws 1979, c. 797, § 4.

§ 163–256. Regulations of State Board of Elections

(a) The State Board of Elections shall adopt rules and regulations to carry out the intent and purpose of G.S. 163–254 and 163–255, and to ensure that a proper list of persons voting under said sections shall be maintained by the boards of elections, and to ensure proper registration records, and such rules and regulations shall not be subject to the provisions of Article 2A of Chapter 150B of the General Statutes.

(b) The State Board of Elections shall be the single office responsible for providing information concerning voter registration and absentee voting procedures to be used by absent uniformed services voters and overseas voters as to all elections and procedures relating to the use of federal write-in absentee ballots. Unless otherwise required by law, the State Board of Elections shall be responsible for maintaining contact and cooperation with the Federal Voting Assistance Program, the United States Department of Defense, and other federal entities that deal with military and overseas voting. The State Board of Elections shall, as needed, make recommendations concerning military and overseas citizen voting to the General Assembly, the Governor, and other State officials.

Added by Laws 1977, c. 93. Amended by S.L. 2003–226, § 18, eff. June 19, 2003.

Historical and Statutory Notes

2003 Legislation

S.L. 2003–226, § 18, eff. June 19, 2003, rewrote the section, which prior thereto read:

''The State Board of Elections shall adopt rules and regulations to carry out the intent and purpose of G.S. 163-254 and 163-255, and to ensure that a proper list of persons voting under said sections shall be maintained by the boards of elections, and to ensure proper registration records, and such rules and regulations shall not be subject to the provisions of G.S. 150B-9.''

S.L. 2003–226, §§ 1 and 22, eff. June 19, 2003, provide:

''Section 1. The purpose of this act is to ensure that the State of North Carolina has a system for all North Carolina elections that complies with the requirements for federal elections set forth in the federal Help America Vote Act of 2002, Public Law 107–252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481–15485.

''The General Assembly finds that the education and training of election officials as required by G.S. 163–82.34 has met and continues to meet the mandate for the education and training of precinct officials and other election officials in section 254(a)(3) of the Help America Vote Act of 2002. The General Assembly further finds that the establishment, development, and continued operation of the statewide list maintenance program for voter registration set forth in G.S. 163–82.14 has met and continues to meet the mandates of section 303(a)(2) of the Help America Vote Act of 2002.

''In certain other areas of the election statutes and other laws, the General Assembly finds that the statutes must be amended to comply with the Help America Vote Act.''

''Section 22. Sections 1, 3, 4, 5, 12, 18, 21, and 22 of this act are effective when this act becomes law. Sections 11 and 13 of this act become effective January 1, 2006. The remainder of this act becomes effective January 1, 2004. All sections of this act apply with respect to all primaries and elections held on or after the date they become effective.''

§ 163–257. Facsimile, electronic mail, or scanned transmission of election materials

An applicant entitled to exercise the rights conferred by this Article may apply for registration and an absentee ballot by facsimile, electronic mail, or transmission of a scanned document if otherwise qualified to apply for and vote by absentee ballot. A county board of elections may send and receive absentee ballot applications and accept voted ballots by facsimile, electronic mail, or transmission of a scanned document from eligible electors as defined in G.S. 163–245. The State Board of Elections shall promulgate uniform rules for the use of facsimiles, electronic mail, and transmission of scanned documents in application and voting under this section, and all county boards of elections shall adhere to those rules.

Added by S.L. 1999–455, § 20. Amended by S.L. 2004–127, § 9(b), eff. July 26, 2004.

Historical and Statutory Notes

S.L. 1999–455, § 24 provides:

''This act applies to elections held on or after January 1, 2000, except that the State Board of Elections may issue rules required or permitted by this act prior to that date.''

2004 Legislation

S.L. 2004–127, § 9(b), eff. July 1, 2004, rewrote the section, which prior thereto read:

''§ 163–257. Facsimile and electronic mail transmission of election materials

''An applicant entitled to exercise the rights conferred by this Article may apply for registration and an absentee ballot by facsimile or electronic mail if otherwise qualified to apply for and vote by absentee ballot. A county board of elections may send and receive absentee ballot applications and accept voted ballots by facsimile or electronic mail from eligible electors as defined in G.S. 163–245. The State Board of Elections shall promulgate uniform rules for the use of facsimiles and electronic mail in application and voting under this section, and all county boards of elections shall adhere to those rules.''

Administrative Code References

County board of elections, voting procedures and duties, 8 NCAC 12.0101 et seq.

§ 163–258. Emergency powers

Text of section eff. Jan. 1, 2010.

If an international, national, or local emergency or other situation arises that makes substantial compliance with this Article or the Uniformed and Overseas Citizens Absentee Voting Act[1] impossible or unreasonable, the State Board of Elections may prescribe, by emergency rule, such special procedures or requirements as may be necessary to facilitate absentee voting by those absent uniformed services voters or overseas voters directly affected who are eligible to vote in this State. The rule shall become effective when filed with the Codifier of Rules.

Added by S.L. 2009–537, § 9, eff. Jan. 1, 2010.

[1] See 42 U.S.C.A. § 1973ff et seq.

Historical and Statutory Notes

2009 Legislation

S.L. 2009–537, § 11, provides:

"This act becomes effective January 1, 2010, and applies with respect to elections held on or after that date."

SUBCHAPTER VIII. REGULATION OF ELECTION CAMPAIGNS

Article 22

Corrupt Practices and Other Offenses Against the Elective Franchise

Section

163–259 to 163–268. Repealed.
163–269, 163–270. Repealed.
163–271. Intimidation of voters by officers made misdemeanor.
163–272. Repealed.
163–272.1. Penalties for violation of this Chapter.
163–273. Offenses of voters; interference with voters; penalty.
163–274. Certain acts declared misdemeanors.
163–275. Certain acts declared felonies.
163–276. Convicted officials; removal from office.
163–277. Compelling self-incriminating testimony; person so testifying excused from prosecution.
163–278. Duty of investigating and prosecuting violations of this Article.
163–278.1 to 163–278.4. Reserved.

§§ 163–259 to 163–268. Repealed by Laws 1975, c. 565, § 8

Historical and Statutory Notes

The repealed sections contained definitions and requirements of accounting, recordkeeping, and reporting of expenses, expenditures and contributions.

§§ 163–269, 163–270. Repealed by S.L. 1999–31, § 5(b), eff. May 4, 1999

Historical and Statutory Notes

Repealed § 163–269 pertained to violations by corporations; and, § 163–270 pertained to using funds of insurance companies for political purposes.

§ 163–271. Intimidation of voters by officers made misdemeanor

It shall be unlawful for any person holding any office, position, or employment in the State government, or under and with any department, institution, bureau, board, commission, or other State agency, or under and with any county, city, town, district, or other political subdivision, directly or indirectly, to discharge, threaten to discharge, or cause to be discharged, or otherwise intimidate or oppress any other person in such employment on account of any vote such voter or any member of his family may cast, or consider or intend to cast, or not to cast, or which he may have failed to cast, or to seek or undertake to control any vote which any

subordinate of such person may cast, or consider or intend to cast, or not to cast, by threat, intimidation, or declaration that the position, salary, or any part of the salary of such subordinate depends in any manner whatsoever, directly or indirectly, upon the way in which subordinate or any member of his family casts, or considers or intends to cast, or not to cast his vote, at any primary or election. A violation of this section is a Class 2 misdemeanor.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1987, c. 565, § 11; Laws 1993, c. 539, § 1109, eff. Oct. 1, 1994; Laws 1994 (1st Ex. Sess.), c. 24, § 14(c), eff. March 26, 1994.

Historical and Statutory Notes

Laws 1993, c. 539, § 1359, provides:

''This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.'' [Amended by Laws 1994, Ex. Sess., c. 24, § 14(c), eff. March 26, 1994.]

Cross References

Misdemeanor sentencing and punishment, see § 15A–1340.13 et seq.

§ 163–272. Repealed by Laws 1971, c. 872, § 3

§ 163–272.1. Penalties for violation of this Chapter

Whenever in this Chapter it is provided that a crime is a misdemeanor, the punishment shall be for a Class 2 misdemeanor.

Added by Laws 1987, c. 565, § 1. Amended by Laws 1993, c. 539, § 1110, eff. Oct. 1, 1994; Laws 1994 (1st Ex. Sess.), c. 24, § 14(c), eff. March 26, 1994.

Historical and Statutory Notes

Laws 1993, c. 539, § 1359, provides:

''This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.'' [Amended by Laws 1994, Ex. Sess., c. 24, § 14(c), eff. March 26, 1994.]

Cross References

Misdemeanor sentencing and punishment, see § 15A–1340.13 et seq.

§ 163–273. Offenses of voters; interference with voters; penalty

(a) Any person who shall, in connection with any primary or election in this State, do any of the acts and things declared in this section to be unlawful, shall be guilty of a Class 2 misdemeanor. It shall be unlawful:

(1) For a voter, except as otherwise provided in this Chapter, to allow his ballot to be seen by any person.

(2) For a voter to take or remove, or attempt to take or remove, any ballot from the voting enclosure.

(3) For any person to interfere with, or attempt to interfere with, any voter when inside the voting enclosure.

(4) For any person to interfere with, or attempt to interfere with, any voter when marking his ballots.

(5) For any voter to remain longer than the specified time allowed by this Chapter in a voting booth, after being notified that his time has expired.

(6) For any person to endeavor to induce any voter, while within the voting enclosure, before depositing his ballots, to show how he marks or has marked his ballots.

(7) For any person to aid, or attempt to aid, any voter by means of any mechanical device, or any other means whatever, while within the voting enclosure, in marking his ballots.

(b) Election officers shall cause any person committing any of the offenses set forth in subsection (a) of this section to be arrested and shall cause charges to be preferred against the person so offending in a court of competent jurisdiction.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1987, c. 565, § 12; Laws 1993, c. 539, § 1111, eff. Oct. 1, 1994; Laws 1994 (1st Ex. Sess.,) c. 24, § 14(c), eff. March 26, 1994.

Historical and Statutory Notes

Laws 1993, c. 539, § 1359, provides:

"This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions." [Amended by Laws 1994, Ex. Sess., c. 24, § 14(c), eff. March 26, 1994.]

Cross References

Misdemeanor sentencing and punishment, see § 15A–1340.13 et seq.

§ 163–274. Certain acts declared misdemeanors

(a) Class 2 Misdemeanors.—Any person who shall, in connection with any primary or election in this State, do any of the acts and things declared in this subsection to be unlawful, shall be guilty of a Class 2 misdemeanor. It shall be unlawful:

(1) For any person to fail, as an officer or as a judge or chief judge of a primary or election, or as a member of any board of elections, to prepare the books, ballots, and return blanks which it is his duty under the law to prepare, or to distribute the same as required by law, or to perform any other duty imposed upon him within the time and in the manner required by law;

(1a) For any member, director, or employee of a board of elections to alter a voter registration application or other voter registration record without either the written authorization of the applicant or voter or the written authorization of the State Board of Elections;

(2) For any person to continue or attempt to act as a judge or chief judge of a primary or election, or as a member of any board of elections, after having been legally removed from such position and after having been given notice of such removal;

(3) For any person to break up or by force or violence to stay or interfere with the holding of any primary or election, to interfere with the possession of any ballot box, election book, ballot, or return sheet by those entitled to possession of the same under the law, or to interfere in any manner with the performance of any duty imposed by law upon any election officer or member of any board of elections;

(4) For any person to be guilty of any boisterous conduct so as to disturb any member of any election board or any chief judge or judge of election in the performance of his duties as imposed by law;

(5) For any person to bet or wager any money or other thing of value on any election;

(5a) Repealed by S.L. 1999–455, § 21.

(6) For any person, directly or indirectly, to discharge or threaten to discharge from employment, or otherwise intimidate or oppose any legally qualified voter on account of any vote such voter may cast or consider or intend to cast, or not to cast, or which he may have failed to cast;

(7) For any person to publish in a newspaper or pamphlet or otherwise, any charge derogatory to any candidate or calculated to affect the candidate's chances of nomination or election, unless such publication be signed by the party giving publicity to and being responsible for such charge;

(8) For any person to publish or cause to be circulated derogatory reports with reference to any candidate in any primary or election, knowing such report to be false or in reckless disregard of its truth or falsity, when such report is calculated or intended to affect the chances of such candidate for nomination or election;

(9) For any person to give or promise, in return for political support or influence, any political appointment or support for political office;

(10) For any chairman of a county board of elections or other returning officer to fail or neglect, willfully or of malice, to perform any duty, act, matter or thing required or directed in the time, manner and form in which said

duty, matter or thing is required to be performed in relation to any primary, general or special election and the returns thereof;

(11) For any clerk of the superior court to refuse to make and give to any person applying in writing for the same a duly certified copy of the returns of any primary or election or of a tabulated statement to a primary or election, the returns of which are by law deposited in his office, upon the tender of the fees therefor;

(12) For any person willfully and knowingly to impose upon any blind or illiterate voter a ballot in any primary or election contrary to the wish or desire of such voter, by falsely representing to such voter that the ballot proposed to him is such as he desires; or

(13) Except as authorized by G.S. 163–82.15, for any person to provide false information, or sign the name of any other person, to a written report under G.S. 163–82.15.

(14) For any person to commit any of the voter registration violations set forth in G.S. 163–82.6(a1).

(b) Class 1 Misdemeanor.—Any person who shall, in connection with any primary or election in this State, do any of the acts and things declared in this subsection to be unlawful shall be guilty of a Class 1 misdemeanor. It shall be unlawful for any person who has access to an official voted ballot or record to knowingly disclose in violation of G.S. 163–165.1(e) how an individual has voted that ballot.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1979, c. 135, § 3; Laws 1987, c. 565, § 13; Laws 1987, c. 583, § 9; Laws 1993, c. 539, § 1112; Laws 1993 (Reg. Sess., 1994), c. 762, §§ 5, 58(a) to (c), eff. Jan. 1, 1995; Laws 1994 (1st Ex. Sess.), c. 24, § 14(c), eff. March 26, 1994; S.L. 1999–424, § 7(h), eff. Aug. 5, 1999; S.L. 1999–426, § 2(a), eff. Oct. 1, 1999; S.L. 1999–455, § 21; S.L. 2007–391, §§ 9(b), 16(b), eff. Dec. 1, 2007.

Historical and Statutory Notes

Laws 1993, c. 539, § 1359, provides:

''Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.'' [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

Laws 1993, c. 762, §§ 58(h) and 73, provide:

''Section 58(h). This section applies to offenses committed on or after January 1, 1995.''

''Section 73. Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, of-

fenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences. G.S. 163–82.20(a)(3) and G.S. 163–82.20(b1) as enacted in Section 2 of this act expire January 1, 1996.''

S.L. 1999–426, § 2.(b) provides:

''This section becomes effective October 1, 1999, and applies to all offenses committed on and after that date.''

S.L. 1999–455, § 24 provides:

''This act applies to elections held on or after January 1, 2000, except that the State Board of Elections may issue rules required or permitted by this act prior to that date.''

2007 Legislation

S.L. 2007–391, § 9(b), designated the introductory paragraph as (a), inserted ''Class 2 Misdemeanors.—'', substituted ''subsection'' for ''section''; and added subsec. (b).

S.L. 2007–391, § 9(c), provides:

''This section becomes effective December 1, 2007, and applies to any offense occurring on or after that date.''

S.L. 2007–391, § 16(b), added subd. (14).

S.L. 2007–391, § 16(c), provides:

''This section becomes effective December 1, 2007, and applies to any offense committed on or after that date.''

Cross References

Misdemeanor sentencing and punishment, see § 15A–1340.13 et seq.

Notes of Decisions

Judicial proceedings 2
Validity 1

1. Validity

Statute making it misdemeanor punishable by imprisonment for any person to publish completely truthful charge against any political candidate unless person signs publication was not unconstitutionally vague so as to violate free speech guarantees in Federal and State Constitutions; statute served legitimate compelling interest of state in regulating election campaigns and defined proscribed conduct with sufficient definiteness so as to avoid arbitrary and discriminatory enforcement. State v. Petersilie, 1993, 334 N.C. 169, 432 S.E.2d 832. Constitutional Law ⚷ 1684; Elections ⚷ 311

As used in statute criminalizing publishing charges derogatory to candidates for public office, terms ''publish'' and ''charge'' were not so ambiguous as to render statute unconstitutionally vague; ''publish'' meant simply to declare publicly, and ''charge'' meant an accusation of wrongdoing. State v. Petersilie, 1993, 334 N.C. 169, 432 S.E.2d 832. Constitutional Law ⚷ 1681; Elections ⚷ 311

Statute criminalizing publication of unsigned derogatory accusations against candidates for public office was not unconstitutionally overbroad, but rather, was as narrowly drawn as it could be and still serve state's compelling interest in ensuring fair elections. State v. Petersilie, 1993, 334 N.C. 169, 432 S.E.2d 832. Constitutional Law ⚷ 1681; Elections ⚷ 311

2. Judicial proceedings

Trial court presiding over felony charges that defendant had intimidated election official in conduct of election was not required to instruct jury on allegedly lesser included misdemeanor offense of interfering with duty imposed by law on election official; if defendant was guilty at all, it was only because she intimidated official. State v. Hines, 1996, 122 N.C.App. 545, 471 S.E.2d 109, review allowed 344 N.C. 634, 477 S.E.2d 47, review improvidently allowed 345 N.C. 627, 481 S.E.2d 85. Criminal Law ⚷ 795(2.26)

Instruction requiring jury to convict defendant if it found beyond reasonable doubt that defendant published charge he intended to be derogatory to candidate for public office incorrectly stated law regarding one of two possible theories upon which defendant could have been convicted; accordingly, since it was unclear upon which theory jury relied in reaching its verdict, reviewing court was required to assume that jury based verdict on theory for which it received improper instruction and remand case for new trial. State v. Petersilie, 1993, 334 N.C. 169, 432 S.E.2d 832. Criminal Law ⚷ 1144.15

Superior court had neither exclusive original jurisdiction of prosecution for misdemeanor of publishing unsigned campaign material in connection with election, nor derivative jurisdiction provided by appeal from conviction in district court, where defendant's arrest sprang from indictments issued by grand jury and not from warrants by magistrate or clerk; the misdemeanor indictments were issued by grand jury and thus originated in superior court, prosecution was initiated in superior court upon those indictments, and no presentment preceded the indictments. State v. Petersilie, 1992, 414 S.E.2d 41, 105 N.C.App. 233, temporary stay allowed 413 S.E.2d 556, 330 N.C. 853, review allowed, writ allowed 414 S.E.2d 764, 331 N.C. 120, review allowed 414 S.E.2d 765, 331 N.C. 120, reversed 432 S.E.2d 832, 334 N.C. 169. Criminal Law ⚷ 86

Indictment alleging that accused with force and arms did unlawfully and willfully by his own boisterous conduct disturb duly qualified, appointed and acting registrar for primary election while in performance of her duties as such registrar, failed to particularize crime charged, and was not sufficiently explicit to protect accused against subsequent prosecutions for same offense. State v. Walker, 1958, 105 S.E.2d 101, 249 N.C. 35. Indictment And Information ⚷ 71.4(1)

§ 163–275. Certain acts declared felonies

Any person who shall, in connection with any primary, general or special election held in this State, do any of the acts or things declared in this section to be unlawful, shall be guilty of a Class I felony. It shall be unlawful:

(1) For any person fraudulently to cause his name to be placed upon the registration books of more than one election precinct or fraudulently to cause or procure his name or that of any other person to be placed upon the registration books in any precinct when such registration in that precinct does not qualify such person to vote legally therein, or to impersonate falsely another registered voter for the purpose of voting in the stead of such other voter;

(2) For any person to give or promise or request or accept at any time, before or after any such primary or election, any money, property or other thing of value whatsoever in return for the vote of any elector;

(3) For any person who is an election officer, a member of an election board or other officer charged with any duty with respect to any primary or election, knowingly to make any false or fraudulent entry on any election book or any false or fraudulent returns, or knowingly to make or cause to be made any false statement on any ballot, or to do any fraudulent act or knowingly and fraudulently omit to do any act or make any report legally required of such person;

(4) For any person knowingly to swear falsely with respect to any matter pertaining to any primary or election;

(5) For any person convicted of a crime which excludes him from the right of suffrage, to vote at any primary or election without having been restored to the right of citizenship in due course and by the method provided by law;

(6) For any person to take corruptly the oath prescribed for voters;

(7) For any person with intent to commit a fraud to register or vote at more than one precinct or more than one time, or to induce another to do so, in the same primary or election, or to vote illegally at any primary or election;

(8) For any chief judge or any clerk or copyist to make any entry or copy with intent to commit a fraud;

(9) For any election official or other officer or person to make, certify, deliver or transmit any false returns of any primary or election, or to make any erasure, alteration, or conceal or destroy any election ballot, book, record, return or process with intent to commit a fraud;

(10) For any person to assault any chief judge, judge of election or other election officer while in the discharge of his duty in the registration of voters or in conducting any primary or election;

(11) For any person, by threats, menaces or in any other manner, to intimidate or attempt to intimidate any chief judge, judge of election or other election officer in the discharge of his duties in the registration of voters or in conducting any primary or election;

(12) For any chief judge, judge of election, member of a board of elections, assistant, marker, or other election official, directly or indirectly, to seek, receive or accept money or the promise of money, the promise of office, or other reward or compensation from a candidate in any primary or election or from any source other than such compensation as may be provided by law for his services;

(13) For any person falsely to make or present any certificate or other paper to qualify any person fraudulently as a voter, or to attempt thereby to secure to any person the privilege of voting;

(14) For any officer to register voters and any other individual to knowingly and willfully receive, complete, or sign an application to register from any voter contrary to the provisions of G.S. 163–82.4; or

(15) Reserved.

(16) For any person falsely to make the certificate provided by G.S. 163–229(b)(2) or G.S. 163–250(a).

(17) For any person, directly or indirectly, to misrepresent the law to the public through mass mailing or any other means of communication where the intent and the effect is to intimidate or discourage potential voters from exercising their lawful right to vote.

(18) For any person, knowing that a person is not a citizen of the United States, to instruct or coerce that person to register to vote or to vote.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1979, c. 539, § 4; Laws 1979 (2nd Sess.), c. 1316, § 27; Laws 1985, c. 562, § 5; Laws 1987, c. 565, § 14; Laws 1987, c. 583, § 7; Laws 1989, c. 770, § 38; Laws 1991, c. 727, § 1; Laws 1993, c. 553, § 68; Laws 1993 (Reg. Sess., 1994), c. 762, § 58(d) to (g), eff. Jan. 1, 1995; S.L. 1999–424, § 7(i), eff. Aug. 5, 1999; S.L. 2007–391, § 17(a), eff. Dec. 1, 2007.

Historical and Statutory Notes

Laws 1993, c. 762, §§ 58(h) and 73, provide:

''Section 58(h). This section applies to offenses committed on or after January 1, 1995.''

''Section 73. Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.'' [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

2007 Legislation

S.L. 2007–391, § 17(a), added subd. (18).

S.L. 2007–391, § 17(b), provides:

''This section becomes effective December 1, 2007, and applies to any offense committed on or after that date.''

Cross References

Felony sentencing and punishment, see § 15A–1340.10 et seq.
Forfeiture of gain acquired through commission of felony, see § 14–2.3.
Forfeiture of licensing privileges after felony conviction, see § 15A–1331A.

Notes of Decisions

Instructions 3
Intimidation and violence 2
Libel per se 4
Validity 1

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1. Validity

Statute prohibiting ''intimidation'' of election official discharging his duties in registering voters or conducting election was not unconstitutionally vague; term ''intimidate'' had dictionary meaning of frightening, and statute clearly meant legislature wanted to prevent anyone from frightening election official conducting his duties. State v. Hines, 1996, 122 N.C.App. 545, 471 S.E.2d 109, review allowed 344 N.C. 634, 477 S.E.2d 47, review improvidently allowed 345 N.C. 627, 481 S.E.2d 85. Elections ⚷ 311

Statute prohibiting intimidation of election official registering voters or conducting election was not overbroad, in violation of freedom of speech rights; statute was tailored as narrowly as possible to serve state's compelling interest in ensuring electoral integrity, was generally applicable and its regulations were even-handed. State v. Hines, 1996, 122 N.C.App. 545, 471 S.E.2d 109, review allowed 344 N.C. 634, 477 S.E.2d 47, review improvidently allowed 345 N.C. 627, 481 S.E.2d 85. Constitutional Law ⚷ 1691; Elections ⚷ 311; Constitutional Law ⚷ 1688

2. Intimidation and violence

Members of county boards of elections are ''election officers'' for purpose of applying statute prohibiting intimidation of those officers. State v. Hines, 1996, 122 N.C.App. 545, 471 S.E.2d 109, review allowed 344 N.C. 634, 477 S.E.2d 47, review improvidently allowed 345 N.C. 627, 481 S.E.2d 85. Elections ⚷ 320

Defendant could be convicted of intimidating member of county board of elections in discharge of duties in conducting primary election, even though it was claimed that board conducted elections and not individual members; board could act only through its members. State v. Hines, 1996, 122 N.C.App. 545, 471 S.E.2d 109, review allowed 344 N.C. 634, 477 S.E.2d 47, review improvidently allowed 345 N.C. 627, 481 S.E.2d 85. Elections ⚷ 320

3. Instructions

Trial court presiding over felony charges that defendant had intimidated election official in conduct of election was not required to instruct jury on allegedly lesser included misdemeanor offense of interfering with duty imposed by law on election official; if defendant was guilty at all, it was only because she intimidated official. State v. Hines, 1996, 122 N.C.App. 545, 471 S.E.2d 109, review allowed 344 N.C. 634, 477 S.E.2d 47, review improvidently allowed 345 N.C. 627, 481 S.E.2d 85. Criminal Law ⚷ 795(2.26)

4. Libel per se

Libel per se is a publication which, when considered alone without explanatory circumstances: (1) charges that a person has committed an infamous crime; (2) charges a person with having an infectious disease; (3) tends to impeach a person in that person's trade or profession; or (4) otherwise tends to subject one to ridicule, contempt or disgrace. Aycock v. Padgett, 1999, 134 N.C.App. 164, 516 S.E.2d 907. Libel And Slander ⚷ 33

Public allegation that political candidate was not resident of town in which he was running for office was not ''libelous per se,'' even though such allegation accused candidate of felony; regardless of whether that particular felony rose to level of infamous crime, there was need for explanatory circumstances for listener or reader to know that candidate had committed infamous crime. Aycock v. Padgett, 1999, 134 N.C.App. 164, 516 S.E.2d 907. Libel And Slander ⚷ 7(2)

§ 163–276. Convicted officials; removal from office

Any public official who shall be convicted of violating any provision of Article 14A or 22 of this Chapter, in addition to the punishment provided by law, shall be removed from office by the judge presiding, and, if the conviction is for a felony, shall be disqualified from voting until his citizenship is restored as provided by law.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1985, c. 563, § 11.3; S.L. 2002–159, § 21(c), eff. Oct. 11, 2002.

Historical and Statutory Notes

2002 Legislation

S.L. 2002–159, § 21(c), eff. Oct. 11, 2002, substituted ''14A'' for ''13''.

§ 163–277. Compelling self-incriminating testimony; person so testifying excused from prosecution

No person shall be excused from attending or testifying or producing any books, papers or other documents before any court or magistrate upon any investigation, proceeding or trial for the violation of any of the provisions of this Article, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate or degrade him, but such person may be subpoenaed and required to testify by and for the State relative to any offense arising under the provisions of this Article; but such person shall not be prosecuted or

subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be used against him upon any criminal investigation or proceeding, but such person so compelled to testify with respect to any acts of his own shall be immune from prosecution on account thereof, and shall be pardoned for any violation of law about which such person shall be so required to testify.

Added by Laws 1967, c. 775, § 1.

§ 163–278. Duty of investigating and prosecuting violations of this Article

It shall be the duty of the State Board of Elections and the district attorneys to investigate any violations of this Article, and the Board and district attorneys are authorized and empowered to subpoena and compel the attendance of any person before them for the purpose of making such investigation. The State Board of Elections and the district attorneys are authorized to call upon the Attorney General to furnish assistance by the State Bureau of Investigation in making the investigations of such violations. The State Board of Elections shall furnish the district attorney a copy of its investigation. The district attorney shall initiate prosecution and prosecute any violations of this Article. The provisions of G.S. 163-278.28 shall be applicable to violations of this Article.

Added by Laws 1967, c. 775, § 1. Amended by Laws 1975, c. 565, § 7.

Historical and Statutory Notes

2004 Legislation

S.L. 2004–127, § 15, purported to amend G.S. 163–278(9), but intended to amend G.S. 163–278.6. The amendment was not given effect due to the incorrect section identification. [Corrected by S.L. 2006–264, § 23, eff. Aug. 27, 2006.]

§§ 163–278.1 to 163–278.4. Reserved

Article 22A

Regulating Contributions and Expenditures in Political Campaigns

Part 1. In General

Section

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163–278.13. Limitation on contributions.
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163–278.27. Criminal penalties; duty to report and prosecute.
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163–278.29. Compelling self-incriminating testimony; individual so testifying excused from prosecution.
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Part 1. In General

§ 163–278.5. Scope of Article; severability

The provisions of this Article apply to primaries and elections for North Carolina offices and to North Carolina referenda and do not apply to primaries and elections for federal offices or offices in other States or to non-North Carolina referenda. Any provision in this Article that regulates a non-North Carolina entity does so only to the extent that the entity's actions affect elections for North Carolina offices or North Carolina referenda.

The provisions of this Article are severable. If any provision is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the Article that can be given effect without the invalid provision.

This section applies to Articles 22B, 22D, 22E, 22F, 22G, 22H, 22J, and 22M of the General Statutes to the same extent that it applies to this Article.

Added by S.L. 1999–31, § 6(a), eff. May 4, 1999; S.L. 2000–140, § 82, eff. July 21, 2000. Amended by S.L. 2005–430, § 7, eff. Dec. 1, 2005; S.L. 2007–349, § 5, eff. Jan. 1, 2008; S.L. 2009–534, § 6, eff. Dec. 1, 2009.

Historical and Statutory Notes

2000 Legislation

S.L. 2000–140, § 82, eff. July 21, 2000, in the first paragraph, in the first sentence, inserted ''and to North Carolina referenda'' and ''or to non-North Carolina referenda'' and in the second sentence, inserted ''or North Carolina referenda''.

2005 Legislation

S.L. 2005–430, § 7, eff. Dec. 1, 2005, added the third paragraph.

S.L. 2005–430, § 11, eff. Dec. 1, 2005, provides:

''This act becomes effective December 1, 2005, and applies to all contributions and expenditures made or accepted on or after that date.''

2007 Legislation

S.L. 2007–349, § 5, in the third undesignated paragraph, substituted ''22F, 22G, 22H, and 22M'' for ''and 22F''.

2009 Legislation

S.L. 2009–534, § 6, in the third paragraph, inserted ''22J,''.

§ 163–278.6. Definitions

When used in this Article:

(1) The term ''board'' means the State Board of Elections with respect to all candidates for State, legislative, and judicial offices and the county or municipal board of elections with respect to all candidates for county and municipal offices. The term means the State Board of Elections with respect to all statewide referenda and the county or municipal board of elections conducting all local referenda.

(2) The term ''broadcasting station'' means any commercial radio or television station or community antenna radio or television station. Special definitions of 'radio' and 'television' that apply only in Part 1A of this Article are set forth in G.S. 163–278.38Z.

(3) The term ''business entity'' means any partnership, joint venture, joint-stock company, company, firm, or any commercial or industrial establishment or enterprise.

(4) The term ''candidate'' means any individual who, with respect to a public office listed in G.S. 163–278.6(18), has taken positive action for the purpose of bringing about that individual's nomination or election to public office. Examples of positive action include:

a. Filing a notice of candidacy or a petition requesting to be a candidate,

b. Being certified as a nominee of a political party for a vacancy,

c. Otherwise qualifying as a candidate in a manner authorized by law,

d. Making a public announcement of a definite intent to run for public office in a particular election, or

e. Receiving funds or making payments or giving the consent for anyone else to receive funds or transfer anything of value for the purpose of bringing about that individual's nomination or election to office. Transferring anything of value includes incurring an obligation to transfer anything of value.

Status as a candidate for the purpose of this Article continues if the individual is receiving contributions to repay loans or

cover a deficit or is making expenditures to satisfy obligations from an election already held. Special definitions of ''candidate'' and ''candidate campaign committee'' that apply only in Part 1A of this Article are set forth in G.S. 163–278.38Z.

(5) The term ''communications media'' or ''media'' means broadcasting stations, carrier current stations, newspapers, magazines, periodicals, outdoor advertising facilities, billboards, newspaper inserts, and any person or individual whose business is polling public opinion, analyzing or predicting voter behavior or voter preferences. Special definitions of 'print media,' 'radio,' and 'television' that apply only in Part 1A of this Article are set forth in G.S. 163–278.38Z.

(6) The terms ''contribute'' or ''contribution'' mean any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, to a candidate to support or oppose the nomination or election of one or more clearly identified candidates, to a political committee, to a political party, or to a referendum committee, whether or not made in an election year, and any contract, agreement, or other obligation to make a contribution. An expenditure forgiven by a person or entity to whom it is owed shall be reported as a contribution from that person or entity. These terms include, without limitation, such contributions as labor or personal services, postage, publication of campaign literature or materials, in-kind transfers, loans or use of any supplies, office machinery, vehicles, aircraft, office space, or similar or related services, goods, or personal or real property. These terms also include, without limitation, the proceeds of sale of services, campaign literature and materials, wearing apparel, tickets or admission prices to campaign events such as rallies or dinners, and the proceeds of sale of any campaign-related services or goods. Notwithstanding the foregoing meanings of ''contribution,'' the word shall not be construed to include services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate, political committee, or referendum committee. The term ''contribution'' does not include an ''independent expenditure.'' If:

a. Any individual, person, committee, association, or any other organization or group of individuals, including but not limited to, a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986) makes, or contracts to make, any disbursement for any electioneering communication, as defined in G.S.

163–278.80(2) and (3) and G. S. 163–278.90(2) and (3); and

b. That disbursement is coordinated with a candidate, an authorized political committee of that candidate, a State or local political party or committee of that party, or an agent or official of any such candidate, party, or committee

that disbursement or contracting shall be treated as a contribution to the candidate supported by the electioneering communication or that candidate's party and as an expenditure by that candidate or that candidate's party.

(7) The term ''corporation'' means any corporation established under either domestic or foreign charter, and includes a corporate subsidiary and any business entity in which a corporation participates or is a stockholder, a partner or a joint venturer. The term applies regardless of whether the corporation does business in the State of North Carolina.

(7a) The term ''costs of collection'' means monies spent by the State Board of Elections in the collection of the penalties levied under this Article to the extent the costs do not constitute more than fifty percent (50%) of the civil penalty. The costs are presumed to be ten percent (10%) of the civil penalty unless otherwise determined by the State Board of Elections based on the records of expenses incurred by the State Board of Elections for its collection procedures.

(7b) The term ''day'' means calendar day.

(7c) The term ''election cycle'' means the period of time from January 1 after an election for an office through December 31 after the election for the next term of the same office. Where the term is applied in the context of several offices with different terms, ''election cycle'' means the period from January 1 of an odd-numbered year through December 31 of the next even-numbered year.

(8) The term ''election'' means any general or special election, a first or second primary, a run-off election, or an election to fill a vacancy. The term ''election'' shall not include any local or statewide referendum.

(8a) The term ''enforcement costs'' means salaries, overhead, and other monies spent by the State Board of Elections in the enforcement of the penalties provisions of this Article, including the costs of investigators, attorneys, travel costs for State Board employees and its attorneys, to the extent the costs do not constitute more than fifty percent (50%)

of the sum levied for the enforcement costs and civil late penalty.

(9) The terms ''expend'' or ''expenditure'' mean any purchase, advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, whether or not made in an election year, and any contract, agreement, or other obligation to make an expenditure, to support or oppose the nomination, election, or passage of one or more clearly identified candidates, or ballot measure. An expenditure forgiven by a person or entity to whom it is owed shall be reported as a contribution from that person or entity. Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party. The term ''expenditure'' also includes any payment or other transfer made by a candidate, political committee, or referendum committee.

(9a) The term ''independently expend'' or ''independent expenditure'' means an expenditure to support or oppose the nomination or election of one or more clearly identified candidates that is made without consultation or coordination with a candidate or agent of a candidate whose nomination or election the expenditure supports or whose opponent's nomination or election the expenditure opposes. Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party. A contribution is not an independent expenditure. As applied to referenda, the term ''independent expenditure'' applies if consultation or coordination does not take place with a referendum committee that supports a ballot measure the expenditure supports, or a referendum committee that opposes the ballot measure the expenditure opposes.

(10) The term ''individual'' means a single individual or more than one individual.

(11) The term ''insurance company'' means any person whose business is making or underwriting contracts of insurance, and includes mutual insurance companies, stock insurance companies, and fraternal beneficiary associations.

(12) The term ''labor union'' means any union, organization, combination or association of employees or workmen formed for the purposes of securing by united action favorable wages, improved labor conditions, better hours of labor or work-related benefits, or for handling, pro-

cessing or righting grievances by employees against their employers, or for representing employees collectively or individually in dealings with their employers. The term includes any unions to which Article 10, Chapter 95 applies.

(13) The term ''person'' means any business entity, corporation, insurance company, labor union, or professional association.

(14) The term ''political committee'' means a combination of two or more individuals, such as any person, committee, association, organization, or other entity that makes, or accepts anything of value to make, contributions or expenditures and has one or more of the following characteristics:

a. Is controlled by a candidate;

b. Is a political party or executive committee of a political party or is controlled by a political party or executive committee of a political party;

c. Is created by a corporation, business entity, insurance company, labor union, or professional association pursuant to G.S. 163–278.19(b); or

d. Has the major purpose to support or oppose the nomination or election of one or more clearly identified candidates.

Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party.

If the entity qualifies as a ''political committee'' under sub-subdivision a., b., c., or d. of this subdivision, it continues to be a political committee if it receives contributions or makes expenditures or maintains assets or liabilities. A political committee ceases to exist when it winds up its operations, disposes of its assets, and files its final report.

The term ''political committee'' includes the campaign of a candidate who serves as his or her own treasurer.

Special definitions of ''political action committee'' and ''candidate campaign committee'' that apply only in Part 1A of this Article are set forth in G.S. 163–278.38Z.

(15) The term ''political party'' means any political party organized or operating in this State, whether or not that party is recognized under the provisions of G.S. 163–96. A special definition of 'political party organization' that applies only in Part 1A of this Article is set forth in G.S. 163–278.38Z.

(16) Repealed by S.L. 1999–31, § 4(a), eff. May 4, 1999.

(17) The term ''professional association'' means any trade association, group, organization, association, or collec-

tion of persons or individuals formed for the purposes of advancing, representing, improving, furthering or preserving the interests of persons or individuals having a common vocation, profession, calling, occupation, employment, or training.

(18) The term ''public office'' means any office filled by election by the people on a statewide, county, municipal or district basis, and this Article shall be applicable to such elective offices whether the election therefor is partisan or nonpartisan.

(18a) The term ''referendum'' means any question, issue, or act referred to a vote of the people of the entire State by the General Assembly, a unit of local government, or by the people under any applicable local act and includes constitutional amendments and State bond issues. The term ''referendum'' includes any type of municipal, county, or special district referendum and any initiative or referendum authorized by a municipal charter or local act. A recall election shall not be considered a referendum within the meaning of this Article.

(18b) The term ''referendum committee'' means a combination of two or more individuals such as a committee, association, organization, or other entity or a combination of two or more business entities, corporations, insurance companies, labor unions, or professional associations such as a committee, association, organization, or other entity the primary purpose of which is to support or oppose the passage of any referendum on the ballot. If the entity qualifies as a ''referendum committee'' under this subdivision, it continues to be a referendum committee if it receives contributions or makes expenditures or maintains assets or liabilities. A referendum committee ceases to exist when it winds up its operations, disposes of its assets, and files its final report.

(19) The term ''treasurer'' means an individual appointed by a candidate, political committee, or referendum committee as provided in G.S. 163–278.7 or G.S. 163–278.40A.

Added by Laws 1973, c. 1272, § 1. Amended by Laws 1975, c. 798, § 5, 6; Laws 1979, c. 500, § 1; Laws 1979, c. 1073, §§ 1 to 3; Laws 1979, c. 1073, § 19; Laws 1979, c. 1073, § 20; Laws 1981, c. 837, § 1; Laws 1983, c. 331, § 6; Laws 1985, c. 352, § 1; Laws 1985, c. 352, § 2; Laws 1985, c. 352, § 3; S.L. 1997–515, § 4(a) to (c), eff. Sept. 17, 1997; S.L. 1997–515, § 7(b) to (d), eff. Jan. 1, 1998; S.L. 1999–31, § 1(a), (b), 2(a) to (c), 3, 4(a), eff. May 4, 1999; S.L. 1999–424, § 6(a), (b), eff. Aug. 5, 1999; S.L. 2002–159, § 55(n), eff. Jan. 1, 2003; S.L. 2003–278, § 5, eff. June 27, 2003; S.L. 2004–125, § 3; S.L. 2004–127, § 15, eff. July 26, 2004; S.L. 2004–203, § 12(b), eff. Aug. 17, 2004; S.L. 2004–127, § 15, eff. July 26, 2004; S.L. 2005–430, § 10, eff. Dec. 1, 2005; S.L. 2007–391, § 3, eff. Aug. 19, 2007; S.L. 2008–150, § 6(a), eff. Aug. 2, 2008; S.L. 2009–534, § 1, 3(a), (b), eff. Dec. 1, 2009.

Historical and Statutory Notes

S.L. 1997–515, §§ 4(f), 7(f), and 15, provide:

''Section 4(f). This section applies to primaries, elections, and referenda beginning in 1998.''

''Section 7(f). This section becomes effective January 1, 1998, and applies to all reports due on or after that date.''

''Section 15. Except as otherwise provided herein, this act is effective when it becomes law. Prosecutions for, or sentences based on, offenses occurring before the relevant effective dates in this act are not abated or affected by this act, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.''

2002 Legislation

S.L. 2002–159, § 55(n), eff. Jan. 1, 2003, rewrote subd. (1), which prior thereto read:

''(1) The term 'board' means the State Board of Elections with respect to all candidates for State and multi-county district offices and the county or municipal board of elections with respect to all candidates for single-county district, county and municipal offices. The term means the State Board of Elections with respect to all statewide referenda and the county or municipal board of elections conducting all local referenda.''

S.L. 2002–159, § 55(p), provides:

''Subsections 55(a) through 55(n) of this section become effective January 1, 2003, and apply to all primaries and elections held on and after that date. Subsection 55(*o*) is effective when this act becomes law.''

2003 Legislation

S.L. 2003–278, § 5, eff. June 27, 2003, rewrote subd. (18a), which prior thereto read:

''(18a) The term 'referendum' means any question, issue, or act referred to a vote of the people of the entire State by the General Assembly, a unit of local government, or by the people under any applicable local act and includes constitutional amendments and State bond issues. The term 'referendum' includes any type of municipal, county, or special district referendum.''

2004 Legislation

S.L. 2004–125, § 3, rewrote subd. (6), which prior thereto read:

''(6) The terms 'contribute' or 'contribution' mean any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, to a candidate to support or oppose the nomination or election of one or more clearly identified candidates, to a political committee, to a political party, or to a referendum committee, whether or not made in an election year, and any contract, agreement, promise or other obligation, whether or not legally enforceable, to make a contribution. These terms include, without limitation, such contributions as labor or personal services, postage, publication of campaign literature or materials, in-kind transfers, loans or use of any supplies, office machinery, vehicles, aircraft, office space, or similar or related services, goods, or personal or real property. These terms also include, without limitation, the proceeds of sale of services, campaign literature and materials, wearing apparel, tickets or admission prices to campaign events such as rallies or dinners, and the proceeds of sale of any campaign-related services or goods. Notwithstanding the foregoing meanings of 'contribution,' the word shall not be construed to include services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate, political committee, or referendum committee. The term 'contribution' does not include an 'independent expenditure.'''

S.L. 2004–125, § 7, provides:

''This act is effective when it becomes law [July 20, 2004], except as otherwise provided in this act, and except that any criminal penalty resulting from this act becomes effective October 1, 2004.''

S.L. 2004–127, § 15, purported to amend ''G.S. 163–278(9)'' but apparently intended to amend ''G.S. 163–278.6(9)''. The amendment has not been executed upon this section. S.L. 2004–127, § 15, eff. July 26, 2004, in subd. (9), deleted the fourth sentence, which read, ''The special definition of 'expenditure' in G.S. 163–278.12A applies only in that section.'' [Corrected by S.L. 2006–264, § 23, eff. Aug. 23, 2006.]

S.L. 2004–203, § 12(b), eff. Aug. 17, 2004, in subd. (2), added the second sentence; in subd. (4), added the third sentence; in subd. (5), added the sec-

ond sentence; in subd. (14), added the fifth paragraph; and in subd. (15), added the second sentence.

2005 Legislation

S.L. 2005–430, § 10, eff. Dec. 1, 2005, in subd. (7), in the first sentence substituted ''corporation established'' for ''corporation doing business in this State'' and added the second sentence.

S.L. 2005–430, § 11, eff. Dec. 1, 2005, provides:

''This act becomes effective December 1, 2005, and applies to all contributions and expenditures made or accepted on or after that date.''

2007 Legislation

S.L. 2007–391, § 3, in subd. (14), deleted the second undesignated paragraph relating to the rebuttable presumption of having a major purpose to support or oppose, which prior thereto read:

''An entity is rebuttably presumed to have as a major purpose to support or oppose the nomination or election of one or more clearly identified candidates if it contributes or expends or both contributes and expends during an election cycle more than three thousand dollars ($3,000). The presumption may be rebutted by showing that the contributions and expenditures giving rise to the presumption were not a major part of activities of the organization during the election cycle. Contributions to referendum committees and expenditures to support or oppose ballot issues shall not be facts considered to give rise to the presumption or otherwise be used in determining whether an entity is a political committee.''

2008 Legislation

S.L. 2008–150, § 6(a), in subd. (14)d, preceding ''major purpose'', substituted ''the'' for ''as a''; inserted the third undesignated paragraph under subd. (14)d.

2009 Legislation

S.L. 2009–534, § 1, rewrote subd. (4), which prior thereto read:

''(4) The term 'candidate' means any individual who, with respect to a public office listed in G.S. 163-278.6(18), has filed a notice of candidacy or a petition requesting to be a candidate, or has been certified as a nominee of a political party for a vacancy, has otherwise qualified as a candidate in a manner authorized by law, or has received funds or made payments or has given the consent for anyone else to receive funds or transfer anything of value for the purpose of exploring or bringing about that individual's nomination or election to office. Transferring anything of value includes incurring an obligation to transfer anything of value. Status as a candidate for the purpose of this Article continues if the individual is receiving contributions to repay loans or cover a deficit or is making expenditures to satisfy obligations from an election already held. Special definitions of 'candidate' and 'candidate campaign committee' that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z.''

S.L. 2009–534, § 3(a), in subd. (6), substituted ''or other obligation'' for ''promise or other obligation, whether or not legally enforceable,'' in the first sentence, and inserted the second sentence relating to forgiven expenditures.

S.L. 2009–534, § 3(b), in subd. (9), substituted ''or other obligation'' for ''promise or other obligation, whether or not legally enforceable,'' in the first sentence, and inserted the second sentence relating to forgiven expenditures.

Local Modifications

Town of Chapel Hill: S.L. 2007–222, § 1.

Cross References

Legal expense funds, applicability of limitations on contributions, see § 163–278.316.

Persons exempt from lobbying regulations, see § 120C–700.

Political activity of employees; promise or threat to obtain political contribution or support, see § 126–14.

Political activity of employees; threat to obtain political contribution or support, see § 126–14.1.

Prohibitions on campaign contributions, see § 120C–302.

Restrictions on lobbyists, campaign positions, see § 120C–304.

Notes of Decisions

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1. Validity

State has ''sufficiently important interest,'' for purposes of First Amendment analysis, in regulating campaign contributions in order to prevent quid pro quo corruption of and undue influence upon candidates; State's interest in preventing corruption is not confined to bribery of public officials, but extends to broader threat from politicians too compliant with wishes of large contributors. North Carolina Right To Life, Inc. v. Leake, 2003, 344 F.3d 418, vacated 124 S.Ct. 2065, 541 U.S. 1007, 158 L.Ed.2d 617, on remand 482 F.Supp.2d 686. Elections ⚷ 317.2; Constitutional Law ⚷ 1469

A campaign contribution limit involving significant interference with associational rights can survive constitutional scrutiny if the Government demonstrates that contribution regulation is closely drawn to match a sufficiently important interest. North Carolina Right To Life, Inc. v. Leake, 2003, 344 F.3d 418, vacated 124 S.Ct. 2065, 541 U.S. 1007, 158 L.Ed.2d 617, on remand 482 F.Supp.2d 686. Constitutional Law ⚷ 1469

Major purpose test for defining political committee for purpose of North Carolina election and campaign finance law, which created rebuttable presumption that entity's major purpose was to support or oppose candidate if it contributed more than $3,000 during election cycle, was overbroad in violation of free speech clause; major purpose standard was based on arbitrary level of spending bearing no relation to idiosyncrasies of entity, shifting focus away from entity itself to effect of expenditures on election, and would have chilling effect on speech. North Carolina Right To Life, Inc. v. Leake, 2003, 344 F.3d 418, vacated 124 S.Ct. 2065, 541 U.S. 1007, 158 L.Ed.2d 617, on remand 482 F.Supp.2d 686. Constitutional Law ⚷ 1687; Elections ⚷ 311

North Carolina statute defining ''political committee'' to encompass groups engaging in both express and issue advocacy, and subjecting both to registration and reporting requirements, could not be narrowly construed to exclude groups engaged only in issue advocacy, so as to save it from being void for vagueness, given that such construction would require reading words of out statute. North Carolina Right to Life, Inc. v. Bartlett, 1999, 168 F.3d 705, certiorari denied 120 S.Ct. 1156, 528 U.S. 1153, 145 L.Ed.2d 1069. Constitutional Law ⚷ 1026; Elections ⚷ 311

North Carolina statute that defined ''political committee'' to encompass groups engaging in only issue advocacy, and subjected such groups to intrusive set of reporting requirements, was unconstitutionally vague and overbroad. North Carolina Right to Life, Inc. v. Bartlett, 1999, 168 F.3d 705, certiorari denied 120 S.Ct. 1156, 528 U.S. 1153, 145 L.Ed.2d 1069. Constitutional Law ⚷ 1463; Elections ⚷ 311

North Carolina statutes prohibiting corporate expenditures or contributions for political purposes were substantially overbroad and unconstitutionally vague, given failure to make exception for nonprofit corporations presenting minimal risk of distorting political process. North Carolina Right to Life, Inc. v. Bartlett, 1999, 168 F.3d 705, certiorari denied 120 S.Ct. 1156, 528 U.S. 1153, 145 L.Ed.2d 1069. Constitutional Law ⚷ 1469; Elections ⚷ 311

Unconstitutional provisions of North Carolina campaign finance statute, which regulated issue advocacy by focusing on ''contextual factors'' such as the timing of the communication, the distribution of the communication, the cost of the communication and a reasonable person standard in evaluating the ''essential nature'' of the communication, were severable from remainder of statute. North Carolina Right to Life, Inc. v. Leake, 2007, 482 F.Supp.2d 686, affirmed in part, reversed in part 525 F.3d 274. Statutes ⚷ 64(2)

North Carolina campaign finance statute defining ''political committee,'' which focused on ''contextual factors'' such as the timing of the communication, the distribution of the communication, the cost of the communication and a reasonable person standard, unconstitutionally regulated issue advocacy in violation of First Amendment. North Carolina Right to Life, Inc. v. Leake, 2007, 482 F.Supp.2d 686, affirmed in part, reversed in part 525 F.3d 274. Constitutional Law ⚷ 1695; Elections ⚷ 311

Because of vagueness concerns, *McConnell* exception, permitting regulation of the ''functional equivalent'' of express advocacy under First Amendment, was inapplicable in determining constitutionality of North Carolina campaign finance statute, which focused on ''contextual factors'' such as the timing of the communication, the distribution of the communication, the cost of the communication and a reasonable person standard in evaluating the ''essential nature'' of the communication. North Carolina Right to Life, Inc. v. Leake, 2007, 482 F.Supp.2d 686, affirmed in part, reversed in part 525 F.3d 274. Constitutional Law ⚷ 1695

North Carolina statute which defined ''political committee,'' for purposes of requirement that such committees register with state or face criminal penalties, as any person, committee, association, or organization, with primary or incidental purpose of support or opposing any candidate or political party, or influencing or attempting to influence result of an election, was not limited to regulation of express advocacy, but denied full First Amendment protection of political speech to individuals and groups engaged in issue advocacy, and thus was facially unconstitutional. North Carolina Right to Life, Inc. v. Bartlett, 1998, 3 F.Supp.2d 675, affirmed in part, reversed in part 168 F.3d 705, certiorari denied 120 S.Ct. 1156, 528 U.S. 1153, 145 L.Ed.2d 1069. Constitutional Law ⚷ 1687; Elections ⚷ 311

2. Construction and application

Taxpayer failed to allege actual controversy for purposes of claim for declaratory relief concerning nature of proceeds of attorney general's lawsuits, even though taxpayer claimed that proceeds were disguised campaign contributions, and that proceeds were either state funds or penal funds which should had been remitted to either state treasurer or local school boards, where state funds did not fall within purview of either original or amended version of statute defining ''contributions'' or ''donations'' that had to be reported. Fuller v. Easley, 2001, 145 N.C.App. 391, 553 S.E.2d 43. Declaratory Judgment ⚷ 319

Statute governing prosecution for violations of article within election laws regulating contributions and expenditures in political campaigns is clearly mandatory in its language. State v. Bolt, 1986, 344 S.E.2d 51, 81 N.C.App. 133. Elections ⚷ 309

Where election of public officer had been certified at time contribution was made by insurance company to breakfast held in his honor, he was not ''candidate'' for political office within meaning of statute prohibiting use of funds of insurance companies for political purposes and summons were therefore insufficient to charge criminal offense under such statute. State v. Charlotte Liberty Mut. Ins. Co., 1979, 251 S.E.2d 867, 39 N.C.App. 557, affirmed 258 S.E.2d 343, 298 N.C. 270. Elections ⚷ 317.2

2.5. Political committees

Fact that political committee that made solely independent expenditures shared staff and facilities with sister and parent entities that made expenditures in consultation or coordination with political candidates did not render committee subject to North Carolina statutory limit on campaign contributions; there was no evidence that committee had abused its corporate form, and no showing that any legal authority considered committee as identical to other entities, and thus application of contribution limits to committee violated its free speech rights. North Carolina Right to Life, Inc. v. Leake, 2008, 525 F.3d 274. Elections ⚷ 317.2

North Carolina campaign finance statutes' dollar limit on campaign contributions infringed First Amendment's free speech guarantee when applied to political committee that made solely independent expenditures, i.e. expenditures made without consultation or coordination with a political candidate; committee was far removed from candidates, and state did not proffer systematic and concrete evidence of corruption flowing from independent-expenditure political committees. North Carolina Right to Life, Inc. v. Leake, 2008, 525 F.3d 274. Elections ⚷ 311

North Carolina campaign finance statutes' definition of regulable ''political committee'' as entity having ''a major purpose'' to support or oppose nomination or election of clearly identified candidate was overbroad and vague and violated First Amendment right to freedom of speech on its face; by failing to restrict definition to entities having ''the major purpose'' of supporting/opposing identified candidate, statute impermissibly expanded definition, and also failed

to provide potentially regulated entities with any idea of how to comply, and narrower means existed to achieve state's regulatory objectives. North Carolina Right to Life, Inc. v. Leake, 2008, 525 F.3d 274. Elections ⚷ 311

3. Jurisdiction

Requisite case or controversy existed with regard to nonprofit corporation's challenge to North Carolina statute subjecting to risk of criminal prosecution officers of entity with purpose of influencing or attempting to influence election result that failed to register and file certain disclosures, despite state's claim that it did not interpret statute to reach entities, like corporation, engaging only in issue advocacy; by its terms, statute applied to corporation's activities and facially restricted expressive activity by the class to which corporation belonged, thereby presenting credible threat of prosecution and chilling corporation's exercise of its free speech rights. North Carolina Right to Life, Inc. v. Bartlett, 1999, 168 F.3d 705, certiorari denied 120 S.Ct. 1156, 528 U.S. 1153, 145 L.Ed.2d 1069. Federal Courts ⚷ 13.20; Constitutional Law ⚷ 980

Case or controversy requirement was satisfied with respect to challenges asserted by nonprofit corporation and its political action committee to North Carolina statutes prohibiting corporate contributions and expenditures for political purpose and requiring political committee soliciting contributions to advise those solicited of intended recipient, despite state's claims that statutes would not be applied to corporation or committee; statutes applied under their plain terms, state previously had interpreted statutes in manner reaching conduct at issue, and threat of criminal prosecution under statute chilled First Amendment rights of corporation and committee. North Carolina Right to Life, Inc. v. Bartlett, 1999, 168 F.3d 705, certiorari denied 120 S.Ct. 1156, 528 U.S. 1153, 145 L.Ed.2d 1069. Federal Courts ⚷ 13.20; Constitutional Law ⚷ 980

4. Venue

Statute governing prosecution for violations of election laws is legislative determination that crime of violating any section of article regulating contributions and expenditures in political campaigns, when committed by ''individual other than a candidate,'' is committed where individual resides, and thus, venue lies solely in that county, subject only to defendant's right to move for change of venue. State v. Bolt, 1986, 344 S.E.2d 51, 81 N.C.App. 133. Criminal Law ⚷ 108(1)

§ 163–278.7. Appointment of political treasurers

(a) Each candidate, political committee, and referendum committee shall appoint a treasurer and, under verification, report the name and address of the treasurer to the Board. Only an individual who resides in North Carolina shall be appointed as a treasurer. A candidate may appoint himself or any other individual, including any relative except his spouse, as his treasurer, and, upon failure to file report designating a treasurer, the candidate shall be concluded to have appointed himself as treasurer and shall be required to personally fulfill the duties and responsibilities imposed upon the appointed treasurer and subject to the penalties and sanctions hereinafter provided.

(b) Each appointed treasurer shall file with the Board at the time required by G.S. 163–278.9(a)(1) a statement of organization that includes:

(1) The Name, Address and Purpose of the Candidate, Political Committee, or Referendum Committee. — When the political committee or referendum committee is created pursuant to G.S. 163–278.19(b), the name shall be or include the name of the corporation, insurance company,

business entity, labor union or professional association whose officials, employees, or members established the committee. When the political committee or referendum committee is not created pursuant to G.S. 163–278.19(b), the name shall be or include the economic interest, if identifiable, principally represented by the committee's organizers or intended to be advanced by use of the committee's receipts.

(2) The names, addresses, and relationships of affiliated or connected candidates, political committees, referendum committees, political parties, or similar organizations;

(3) The territorial area, scope, or jurisdiction of the candidate, political committee, or referendum committee;

(4) The name, address, and position with the candidate or political committee of the custodian of books and accounts;

(5) The name and party affiliation of the candidate(s) whom the committee is supporting or opposing, and the office(s) involved;

(5a) The name of the referendum(s) which the referendum committee is supporting or opposing, and whether the committee is supporting or opposing the referendum;

(6) The name of the political committee or political party being supported or opposed if the committee is supporting the ticket of a particular political or political party;

(7) A listing of all banks, safety deposit boxes, or other depositories used, including the names and numbers of all accounts maintained and the numbers of all such safety deposit boxes used, provided that the Board shall keep any account number included in any report filed after March 1, 2003, and required by this Article confidential except as necessary to conduct an audit or investigation, except as required by a court of competent jurisdiction, or unless confidentiality is waived by the treasurer. Disclosure of an account number in violation of this subdivision shall not give rise to a civil cause of action. This limitation of liability does not apply to the disclosure of account numbers in violation of this subdivision as a result of gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable.

(8) The name or names and address or addresses of any assistant treasurers appointed by the treasurer. Such assistant treasurers shall be authorized to act in the name of the candidate, political committee, or referendum committee and shall be fully responsible for any act or acts committed by the assistant treasurer. The treasurer shall

be fully liable for any violation of this Article committed by any assistant treasurer; and

(9) Any other information which might be requested by the Board that deals with the campaign organization of the candidate or referendum committee.

(c) Any change in information previously submitted in a statement of organization shall be reported to the Board within a 10–day period following the change.

(d) A candidate, political committee or referendum committee may remove his or its treasurer. In case of the death, resignation or removal of his or its treasurer before compliance with all obligations of a treasurer under this Article, such candidate, political committee or referendum committee shall appoint a successor within 10 days of the vacancy of such office, and certify the name and address of the successor in the manner provided in the case of an original appointment.

(e) Every treasurer of a referendum committee shall receive, prior to every election in which the referendum committee is involved, training from the State Board of Elections as to the duties of the office, including the requirements of G.S. 163–278.13(e1), provided that the treasurer may designate an employee or volunteer of the committee to receive the training.

(f) Every treasurer of a political committee shall participate in training as to the duties of the office within three months of appointment and at least once every four years thereafter. The State Board of Elections shall provide the training as to the duties of the office in person, through regional seminars, and through interactive electronic means. The treasurer may designate an assistant treasurer to participate in the training, if one is named under subdivision (b)(8) of this section. The treasurer may choose to participate in training prior to each election in which the political committee is involved. All such training shall be free of charge to the treasurer and assistant treasurer.

Added by Laws 1973, c. 1272, § 1. Amended by Laws 1979, c. 500, § 2; Laws 1979, c. 1073, §§ 4, 5; Laws 1979, c. 1073, § 16; Laws 1979, c. 1073, § 18; Laws 1979, c. 1073, § 20; Laws 1987, c. 113, § 1; Laws 1995, c. 315, § 1, eff. Sept. 1, 1995; S.L. 2002–159, § 57.1, eff. Jan. 1, 2003; S.L. 2004–203, § 59(a), eff. Jan. 1, 2003; S.L. 2005–430, § 10.1, eff. Dec. 1, 2005; S.L. 2006–195, § 7, eff. Oct. 1, 2006; S.L. 2009–534, § 4, eff. Dec. 1, 2009.

Historical and Statutory Notes

Laws 1995, c. 315, § 2, provides:

"This act becomes effective September 1, 1995, and applies to all elections on or after that date."

2002 Legislation

S.L. 2002–159, § 57.1(a), eff. Jan. 1, 2003, rewrote subd. (b)(7) which prior thereto read:

"(7) A listing of all banks, safety deposit boxes, or other depositories used, including the names and numbers of all

accounts maintained and the numbers of all such safety deposit boxes used;''.

S.L. 2002–159, § 57.1(b), provides:

''This section becomes effective January 1, 2003, and applies to any report filed on or after that date. The State Board of Elections may redact, and may authorize county boards of elections to redact, account numbers from public copies of reports filed prior to January 1, 2003.''

2004 Legislation

S.L. 2004–203, § 59(a), eff. Jan. 1, 2003, in subd. (b)(7) in the first sentence, inserted ''filed after March 1, 2003, and''.

2005 Legislation

S.L. 2005–430, § 10.1, eff. Dec. 1, 2005, added subsec. (f).

S.L. 2005–430, § 11, eff. Dec. 1, 2005, provides:

''This act becomes effective December 1, 2005, and applies to all contributions and expenditures made or accepted on or after that date.''

2006 Legislation

S.L. 2006–195, § 7, eff. Oct. 1, 2006, rewrote subd. (b)(8) and subsec. (f), which prior thereto read:

''(8) The name or names and address or addresses of any assistant treasurers appointed by the treasurer. Such assistant treasurers shall be authorized to act in the name of the treasurer, who shall be fully responsible for any act or acts committed by an assistant treasurer, and the treasurer shall be fully liable for any violation of this Article committed by any assistant treasurer.''; and

''(f) The State Board of Elections shall provide training for every treasurer of a political committee, prior to the election in which the political committee is involved, as to the duties of the office. The State Board of Elections shall provide each treasurer with a CD-ROM, DVD, videotape, or other electronic document containing training as to the duties of the office, and shall conduct regional seminars for in-person training. All such training shall be free of charge to the treasurer.''

S.L. 2006–195, § 9, provides:

''Sections 1 through 6 of this act become effective January 1, 2007, and apply to all contributions made and accepted on and after that date. The repeal of G.S. 163–278.20 is not effective retroactively and shall not be deemed to render lawful or unlawful any action occurring before its effective date. Sections 7 and 8 of this act become effective October 1, 2006. The remainder of this act is effective when it becomes law.''

2009 Legislation

S.L. 2009–534, § 4, in subsec. (a), inserted the second sentence relating to appointment of a treasurer.

Administrative Code References

Procedures for political committees, see 8 NCAC 1.0004.

§ 163–278.7A. Gifts from federal political committees

It shall be permissible for a federal political committee, as defined by the Federal Election Campaign Act and regulations adopted pursuant thereto, to make contributions to a North Carolina candidate or political committee registered under this Article with the State Board of Elections or a county board of elections, provided that the contributing committee does all the following:

(1) Is registered with the State Board of Elections consistent with the provisions of this Article.

(2) Complies with reporting requirements specified by the State Board of Elections. Those requirements shall not be more stringent than those required of North Carolina political committees registered under this Article, unless the federal political committee makes any contribution to a North Carolina candidate or political committee in any election in excess of four thousand dollars ($4,000) for that

election. ''Election'' shall be as defined in G.S. 163–278.13(d).

(3) Makes its contributions within the limits specified in this Article.

(4) Appoints an assistant or deputy treasurer who is a resident of North Carolina and stipulates to the State Board of Elections that the designated in-State resident assistant or deputy treasurer shall be authorized to produce whatever records reflecting political activity in North Carolina the State Board of Elections deems necessary.

Added by Laws 1995 (Reg. Sess., 1996), c. 593, § 1, eff. June. 20, 1996. Amended by S.L. 2003–274, § 1.

Historical and Statutory Notes

2003 Legislation

S.L. 2003–274, § 1, eff. Jan. 1, 2004, rewrote the section, which prior thereto read:

''It shall be permissible for a federal political committee, as defined by the Federal Election Campaign Act and regulations adopted pursuant thereto, to make contributions to a North Carolina candidate or political committee registered under this Article with the State Board of Elections or a county board of elections, provided that the contributing committee:

''(1) Is registered with the State Board of Elections consistent with the provisions of this Article;

''(2) Complies with reporting requirements specified by the State Board of Elections;

''(3) Makes its contributions within the limits specified in this Article; and

''(4) Appoints an assistant or deputy treasurer who is a resident of North Carolina and stipulates to the State Board of Elections that the designated in-State resident assistant or deputy treasurer shall be authorized to produce whatever records reflecting political activity in North Carolina the State Board of Elections deems necessary.''

S.L. 2003–274, § 2, provides:

''This act is effective when the State Board of Elections develops the technological capacity to implement it, but no later than January 1, 2004.''

§ 163–278.8. Detailed accounts to be kept by political treasurers

(a) The treasurer of each candidate, political committee, and referendum committee shall keep detailed accounts, current within not more than seven days after the date of receiving a contribution or making an expenditure, of all contributions received and all expenditures made by or on behalf of the candidate, political committee, or referendum committee. The accounts shall include the information required by the State Board of Elections on its forms.

(b) Accounts kept by the treasurer of a candidate, political committee, or referendum committee or the accounts of a treasurer or political committee at any bank or other depository listed under G.S. 163–278.7(b)(7), may be inspected, before or after the election to which the accounts refer, by a member, designee, agent, attorney or employee of the Board who is making an investigation pursuant to G.S. 163–278.22.

(c) Repealed by S.L. 2004–125, § 5(a), eff. July 20, 2004.

(d) Repealed by S.L. 2006–195, § 4, eff. Jan. 1, 2007.

(e) All expenditures for media expenses shall be made by a verifiable form of payment. The State Board of Elections shall prescribe methods to ensure an audit trail for every expenditure so that the identity of each payee can be determined. All media expenditures in any amount shall be accounted for and reported individually and separately with specific descriptions to provide a reasonable understanding of the expenditure.

(f) All expenditures for nonmedia expenses (except postage) of more than fifty dollars ($50.00) shall be made by a verifiable form of payment. The State Board of Elections shall prescribe methods to ensure an audit trail for every expenditure so that the identity of each payee can be determined. All expenditures for nonmedia expenses of fifty dollars ($50.00) or less may be made by check or by cash payment. All nonmedia expenditures of more than fifty dollars ($50.00) shall be accounted for and reported individually and separately with a specific description to provide a reasonable understanding of the expenditure, but expenditures of fifty dollars ($50.00) or less may be accounted for and reported in an aggregated amount, but in that case the treasurer shall account for and report that the treasurer made expenditures of fifty dollars ($50.00) or less each, the amounts, dates, and the purposes for which made. In the case of a nonmedia expenditure required to be accounted for individually and separately with a specific description to provide a reasonable understanding of the expenditure by this subsection, if the expenditure was to an individual, the report shall list the name and address of the individual.

(g) All proceeds from loans shall be recorded separately with a detailed analysis reflecting the amount of the loan, the source, the period, the rate of interest, and the security pledged, if any, and all makers and endorsers.

(h) The treasurer shall maintain all moneys of the political committee in a bank account or bank accounts used exclusively by the political committee and shall not commingle those funds with any other moneys.

Added by Laws 1973, c. 1272, § 1. Amended by Laws 1977, c. 635, § 1; Laws 1981, c. 814, § 1; Laws 1985, c. 353, § 1; Laws 1985, c. 353, § 2; Laws 1993 (Reg. Sess., 1994), c. 744, § 1, eff. Jan. 1, 1995; S.L. 1999–424, § 7(m), eff. Aug. 5, 1999; S.L. 2004–125, § 5(a), eff. July 20, 2004; S.L. 2005–430, §§ 2, 3, eff. Dec. 1, 2005; S.L. 2006–161, §§ 2, 3, eff. Jan. 1, 2007; S.L. 2006–195, § 4, eff. Jan. 1, 2007; S.L. 2008–150, § 10(a), eff. Sept. 1, 2008.

Historical and Statutory Notes

Laws 1993, c. 744, § 2, provides:

"This act becomes effective January 1, 1995, and applies to the reporting of all contributions accepted on or after that date. This act applies to all reports filed on or after January 1, 1995, but only to the extent that they describe

contributions accepted on or after January 1, 1995.''

2004 Legislation

S.L. 2004–125, § 5(a), eff. July 20, 2004, repealed subsec. (c).

S.L. 2004–125, §§ 5(c) and 7, provide:

''Section 5.(c) This section applies to any contribution made on or after January 1, 2003.''

''Section 7. This act is effective when it becomes law [July 20, 2004], except as otherwise provided in this act, and except that any criminal penalty resulting from this act becomes effective October 1, 2004.''

2005 Legislation

S.L. 2005–430, § 2, eff. Dec. 1, 2005, in subsec. (e), at the end of the first sentence substituted ''a verifiable form of payment'' for ''check only'' and inserted the second sentence.

S.L. 2005–430, § 3, eff. Dec. 1, 2005, in subsec. (f), at the end of the first sentence substituted ''a verifiable form of payment'' for ''check only'' and inserted the second sentence.

S.L. 2005–430, § 11, eff. Dec. 1, 2005, provides:

''This act becomes effective December 1, 2005, and applies to all contributions and expenditures made or accepted on or after that date.''

2006 Legislation

S.L. 2006–161, § 2, eff. Jan. 1, 2007, amended subsec. (e) by inserting ''with specific descriptions to provide a reasonable understanding of the expenditure.''

S.L. 2006–161, § 3, eff. Jan. 1, 2007, amended subsec. (f) by inserting ''with specific descriptions to provide a reasonable understanding of the expenditure'' in two places and substituted ''the treasurer'' for ''he''.

S.L. 2006–161, § 6, provides:

''Sections 1 and 5 of this act become effective October 1, 2006, and apply to all candidates and candidate campaign committees with active accounts with the State Board of Elections or a county board of elections on or after that date. Sections 2, 3, and 4 of this act become effective January 1, 2007, and apply to all political committees and referendum committees with active accounts with the State Board of Elections or a county board of elections on or after that date. The remainder of this act becomes effective January 1, 2007.''

S.L. 2006–195, § 4, eff. Jan. 1, 2007, amended subsec. (a) by inserting ''The accounts shall include the information required by the State Board of Elections on its forms.'' and repealed subsec. (d).

S.L. 2006–195, § 9, provides:

''Sections 1 through 6 of this act become effective January 1, 2007, and apply to all contributions made and accepted on and after that date. The repeal of G.S. 163–278.20 is not effective retroactively and shall not be deemed to render lawful or unlawful any action occurring before its effective date. Sections 7 and 8 of this act become effective October 1, 2006. The remainder of this act is effective when it becomes law.''

2008 Legislation

S.L. 2008–150, § 10(a), added subsec. (h).

Administrative Code References

Procedures for political committees, see 8 NCAC 1.0004.

§ 163–278.8A. Campaign sales by political party executive committees

(a) Exempt Purchase Price Not Treated as ''Contribution.''—Notwithstanding the provisions of G.S. 163–278.6(6), the purchase price of goods or services sold by a political party executive committee as provided in subsection (b) of this section shall not be treated as a ''contribution'' for purposes of account-keeping under G.S. 163–278.8, for purposes of the reporting of contributions under G.S. 163–278.11, or for the purpose of the limit on contributions under G.S. 163–278.13. The treasurer is not required to obtain, maintain, or report the name or other identifying informa-

tion of the purchaser of the goods or services, as long as the requirements of subsection (b) of this section are satisfied. However, the proceeds from the sales of those goods and services shall be treated as contributions for other purposes, and expenditures of those proceeds shall be reported as expenditures under this Article.

(b) Exempt Purchase Price.—A purchase price for goods or services sold by a political party executive committee qualifies for the exemption provided in subsection (a) of this section as long as the sale of the goods or services adheres to a plan that the treasurer has submitted to and that has been approved in writing by the Executive Director of the State Board of Elections. The Executive Director shall approve the treasurer's plan upon and only upon finding that all the following requirements are satisfied:

(1) That the price to be charged for the goods or services is reasonably close to the market price for the goods or services.

(2) That the total amount to be raised from sales under all plans by the committee does not exceed ten thousand dollars ($10,000) per election cycle.

(3) That no purchaser makes total purchases under the plan that exceed fifty dollars ($50.00).

(4) That the treasurer include in the report under G.S. 163–278.11, covering the relevant time period, all of the following:

a. A description of the plan.

b. The amount raised from sales under the plan.

c. The number of purchases made.

(5) That the treasurer shall include in the appropriate report under G.S. 163–278.11 any in-kind contribution made to the political party executive committee in providing the goods or services sold under the plan and that no in-kind contribution accepted as part of the plan violates any provision of this Article.

The Executive Director may require a format for submission of a plan, but that format shall not place undue paperwork burdens upon the treasurer. As used in this subdivision, the term ''election cycle'' has the same meaning as in G.S. 163–278.6(7c).

Added by S.L. 2008–150, § 8(a), eff. Aug. 15, 2008.

Historical and Statutory Notes

2008 Legislation

S.L. 2008–150, § 8(b), provides:

''This section becomes effective August 15, 2008, or on the date of preclearance under Section 5 of the Voting Rights Act of 1965, whichever occurs later, except that with respect to county political party executive committees in counties not subject to Section 5 of the Voting Rights Act it is effective when it becomes law. This section applies to contributions made or accepted on or

after the effective date. If preclearance is denied to this section, this section is repealed on the date of denial.''

§ 163–278.9. Statements filed with Board

(a) Except as provided in G.S. 163–278.10A, the treasurer of each candidate and of each political committee shall file with the Board under certification of the treasurer as true and correct to the best of the knowledge of that officer the following reports:

(1) Organizational Report.—The appointment of the treasurer as required by G.S. 163–278.7(a), the statement of organization required by G.S. 163–278.7(b), and a report of all contributions and expenditures not previously reported shall be filed with the Board no later than the tenth day following the day the candidate files notice of candidacy or the tenth day following the organization of the political committee, whichever occurs first. Any candidate whose campaign is being conducted by a political committee which is handling all contributions and expenditures for his campaign shall file a statement with the Board stating such fact at the time required herein for the organizational report. Thereafter, the candidate's political committee shall be responsible for filing all reports required by law.

(2) Repealed by S.L. 1999–31, § 7(a), eff. Jan. 1, 2000.

(3), (4) Deleted by S.L. 1997–515, § 1, eff. Jan. 1, 1998.

(4a) 48–Hour Report.—A political committee or political party that receives a contribution or transfer of funds shall disclose within 48 hours of receipt a contribution or transfer of one thousand dollars ($1,000) or more received before an election but after the period covered by the last report due before that election. The disclosure shall be by report to the State Board of Elections identifying the source and amount of the funds. The State Board of Elections shall specify the form and manner of making the report, including the reporting of in-kind contributions.

(5) Repealed by Laws 1985, c.164, § 1.

(5a) Quarterly Reports.—During even-numbered years during which there is an election for that candidate or in which the campaign committee is supporting or opposing a candidate, the treasurer shall file a report by mailing or otherwise delivering it to the Board no later than seven working days after the end of each calendar quarter covering the prior calendar quarter, except that:

a. The report for the first quarter shall also cover the period in April through the seventeenth day before the primary, the first quarter report shall be due seven days

after that date, and the second quarter report shall not include that period if a first quarter report was required to be filed; and

b. The report for the third quarter shall also cover the period in October through the seventeenth day before the election, the third quarter report shall be due seven days after that date, and the fourth quarter report shall not include that period if a third quarter report was required to be filed.

(6) Seminannual Reports.—If contributions are received or expenditures made for which no reports are otherwise required by this Article, any and all such contributions and expenditures shall be reported by the last Friday in July, covering the period through the last day of June, and shall be reported by the last Friday in January, covering the period through the last day of December.

(b) Except as otherwise provided in this Article, each report shall be current within seven days prior to the date the report is due and shall list all contributions received and expenditures made which have not been previously reported.

(c) Repealed by Laws 1985, c. 164, § 6.1.

(d) Candidates and committees for municipal offices are not subject to subsections (a), (b) and (c) of this section, unless they make contributions or expenditures concerning elections covered by this Part. Reports for those candidates and committees are covered by Part 2 of this Article.

(e) Notwithstanding subsections (a) through (c) of this section, any political party (including a State, district, county, or precinct committee thereof) which is required to file reports under those subsections and under the Federal Election Campaign Act of 1971, as amended (2 U.S.C. 434), shall instead of filing the reports required by those subsections, file with the State Board of Elections:

(1) The organizational report required by subsection (a)(1) of this section, and

(2) A copy of each report required to be filed under 2 U.S.C. 434, such copy to be filed on the same day as the federal report is required to be filed.

(f) Any report filed under subsection (e) of this section may include matter required by the federal law but not required by this Article.

(g) Any report filed under subsection (e) of this section must contain all the information required by G.S. 163–278.11, notwithstanding that the federal law may set a higher reporting threshold.

(h) Any report filed under subsection (e) of this section may reflect the cumulative totals required by G.S. 163–278.11 in an attachment, if the federal law does not permit such information in the body of the report.

(i) Any report or attachment filed under subsection (e) of this section must be certified.

(j) Treasurers for the following entities shall electronically file each report required by this section that shows a cumulative total for the election cycle in excess of five thousand dollars ($5,000) in contributions, in expenditures, or in loans, according to rules adopted by the State Board of Elections:

(1) A candidate for statewide office;

(2) A State, district, county, or precinct executive committee of a political party, if the committee makes contributions or independent expenditures in excess of five thousand dollars ($5,000) that affect contests for statewide office;

(3) A political committee that makes contributions in excess of five thousand dollars ($5,000) to candidates for statewide office or makes independent expenditures in excess of five thousand dollars ($5,000) that affect contests for statewide office.

The State Board of Elections shall provide the software necessary to file an electronic report to a treasurer required to file an electronic report at no cost to the treasurer.

(k) All reports under this section must be filed by a treasurer or assistant treasurer who has completed all training as to the duties of the office required by G.S. 163–278.7(f).

Added by Laws 1973, c. 1272, § 1. Amended by Laws 1975, c. 565, § 1; Laws 1979, c. 500, § 3; Laws 1979, c. 500, § 16; Laws 1979, c. 730; Laws 1981, c. 837, § 2; Laws 1985, c. 164, § 1; Laws 1985, c. 164, § 6; Laws 1985, c. 164, § 6.1; Laws 1985, c. 164, § 6.2; Laws 1987 (Reg. Sess., 1988), c. 1028, § 6; Laws 1991 (Reg. Sess., 1992), c. 1032, § 10A; S.L. 1997–515, § 1(a), eff. Jan. 1, 1998; S.L. 1997–515, §§ 4(d1), 5(a), eff. Sept. 17, 1997; S.L. 1997–515, § 12(a), eff. Dec. 1, 1997; S.L. 1999–31, § 7(a), (b), eff. Jan. 1, 2000; S.L. 2001–235, § 2, eff. June 22, 2001; S.L. 2001–419, § 7, eff. Jan. 1, 2002; S.L. 2001–487, § 97(b), eff. Dec. 16, 2001; S.L. 2002–159, § 21(d), eff. Oct. 11, 2002; S.L. 2006–195, § 5.1, eff. Jan. 1, 2007; S.L. 2006–195, § 8, eff. Oct. 1, 2006; S.L. 2008–150, §§ 9(c), 9(d), eff. Dec. 1, 2008; S.L. 2008–150, § 11(a), eff. Oct. 1, 2008.

Historical and Statutory Notes

S.L. 1997–515, §§ 1(c), 4(f), 5(b), and 15, provide:

''Section 1(c). Subsection (a) of this section becomes effective January 1, 1998, and applies to all financial activity occurring on or after that date. Subsection (b) of this section is effective when it becomes law.''

''Section 4(f). This section applies to primaries, elections, and referenda beginning in 1998.''

''Section 5(b). This section applies to reports to be filed during or after 1998.''

''Section 15. Except as otherwise provided herein, this act is effective

when it becomes law. Prosecutions for, or sentences based on, offenses occurring before the relevant effective dates in this act are not abated or affected by this act, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.''

S.L. 1999–31, § 7(c), provides:

''Section 7.(c) This section becomes effective January 1, 2000, and applies to all reports due on or after that date.''

2001 Legislation

S.L. 2001–235, § 2, eff. June 22, 2001, in subsec. (i), substituted ''certified'' for ''made under oath''.

S.L. 2001–419, § 7, eff. Jan. 1, 2002, in the introductory paragraph of subsec. (j), inserted ''a cumulative total for the election cycle''.

S.L. 2001–487, § 97(b), eff. Dec. 16, 2001, rewrote the introductory paragraph of subsec. (a), which prior thereto read:

''(a) Except as provided in G.S. 163–278.10A, the treasurer of each candidate and of each political committee shall file under verification with the Board the following reports:''.

2002 Legislation

S.L. 2002–159, § 21(d), eff. Oct. 11, 2002, rewrote subsec. (4a), which prior thereto read:

''(4a) 48-Hour Report.—A political committee or political party that receives a contribution or transfer of funds from any political committee shall disclose within 48 hours of receipt a contribution or transfer of one thousand dollars ($1,000) or more received after the last preelection report but before an election. The disclosure shall be by report to the State Board of Elections identifying the source and amount of the funds. The State Board of Elections shall specify the form and manner of making the report.''

2006 Legislation

S.L. 2006–195, § 5.1, eff. Jan. 1, 2007, amended subsec. (g) by deleting ''G.S. 163–278.8 or'' after ''information required by'' and before ''G.S. 163–278.11''.

S.L. 2006–195, § 8, eff. Oct. 1, 2006, added subsec. (k).

S.L. 2006–195, § 9, provides:

''Sections 1 through 6 of this act become effective January 1, 2007, and apply to all contributions made and accepted on and after that date. The repeal of G.S. 163–278.20 is not effective retroactively and shall not be deemed to render lawful or unlawful any action occurring before its effective date. Sections 7 and 8 of this act become effective October 1, 2006. The remainder of this act is effective when it becomes law.''

2008 Legislation

S.L. 2008–150, § 9(c), in subsec. (a)(5a), in the introductory paragraph, following ''is supporting'', inserted ''or opposing''.

S.L. 2008–150, § 9(d), in subsec. (d), in the first sentence, added '', unless they make contributions or expenditures concerning elections covered by this Part.''

S.L. 2008–150, § 11(a), in subsec. (a)(4a), in the first sentence, following ''transfer of funds'', deleted ''from any political subcommittee'', and in the last sentence, added '', including the reporting of in-kind contributions.''

§ 163–278.9A. Statements filed by referendum committees

(a) The treasurer of each referendum committee shall file under verification with the Board the following reports:

(1) Organizational Report.—The appointment of the treasurer as required by G.S. 163-278.7(a), the statement of organization required by G.S. 163-278.7(b), and a report of all contributions and expenditures shall be filed with the Board no later than the tenth day following the organization of the referendum committee.

(2) Pre-Referendum Report.—The treasurer shall file a report with the Board no later than the tenth day preceding the referendum.

(2a) 48–Hour Report.—A referendum committee that receives a contribution or transfer of funds shall disclose within 48 hours of receipt a contribution or transfer of one thousand dollars ($1,000) or more received before a referendum but after the period covered by the last report due before that referendum. The disclosure shall be by report to the State Board of Elections identifying the source and amount of such funds. The State Board of Elections shall specify the form and manner of making the report, including the reporting of in-kind contributions.

(3) Final Report.—The treasurer shall file a final report no later than the tenth day after the referendum. If the final report fails to disclose a final accounting of all contributions and expenditures, a supplemental final report shall be filed no later than January 7, after the referendum, and shall be current through December 31 after the referendum.

(4) Annual Reports.—If contributions are received or expenditures made during a calendar year for which no reports are otherwise required by this Article, any and all such contributions and expenditures shall be reported by January 7 of the following year.

(b) Except as otherwise provided in this Article, each report shall be current within seven days prior to the date the report is due and shall list all contributions received and expenditures made which have not been previously reported.

Added by Laws 1979, c. 1073, § 6. Amended by S.L. 1997–515, § 12(b), eff. Dec. 1, 1997; S.L. 2002–159, § 21(e), eff. Oct. 11, 2002; S.L. 2008–150, § 11(b), eff. Oct. 1, 2008.

Historical and Statutory Notes

S.L. 1997–515, § 15, provides:

''Except as otherwise provided herein, this act is effective when it becomes law. Prosecutions for, or sentences based on, offenses occurring before the relevant effective dates in this act are not abated or affected by this act, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.''

2002 Legislation

S.L. 2002–159, § 21(e), eff. Oct. 11, 2002, rewrote subd. (a)(2a), which prior thereto read:

''(2a) 48-Hour Report.—A referendum committee that receives a contribution or transfer of funds from any political committee shall disclose within 48 hours of receipt a contribution or transfer of one thousand dollars ($1,000) or more received after the last preelection report but before an election. The disclosure shall be by report to the State Board of Elections identifying the source and amount of such funds. The State Board of Elections shall specify the form and manner of making the report.''

2008 Legislation

S.L. 2008–150, § 11(b), in the first sentence, following ''transfer of funds'', deleted ''from any political committee'', and in the last sentence, added '', including the reporting of in-kind contributions.''

§ 163–278.10. Procedure for inactive candidate or committee

If no contribution is received or expenditure made by or on behalf of a candidate, political committee, or referendum committee during a period described in G.S. 163-278.9, the treasurer shall file with the Board, at the time required by G.S. 163-278.9, a statement to that effect and it shall not be required that any inactive candidate or committee so filing a report of inactivity file any additional reports required by G.S. 163-278.9 so long as the candidate or committee remains inactive.

Added by Laws 1973, c. 1272, § 1. Amended by Laws 1979, c. 1073, § 20.

§ 163–278.10A. Threshold of $1,000 for financial reports for certain candidates

(a) Notwithstanding any other provision of this Chapter, a candidate for a county office, municipal office, local school board office, soil and water conservation district board of supervisors, or sanitary district board shall be exempted from the reports of contributions, loans, and expenditures required in G.S. 163–278.9(a), 163–278.40B, 163–278.40C, 163–278.40D, and 163–278.40E if to further the candidate's campaign that candidate:

(1) Does not receive more than one thousand dollars ($1,000) in contributions, and

(2) Does not receive more than one thousand dollars ($1,000) in loans, and

(3) Does not spend more than one thousand dollars ($1,000).

To qualify for the exemption from those reports, the candidate's treasurer shall file a certification that the candidate does not intend to receive in contributions or loans or expend more than one thousand dollars ($1,000) to further the candidate's campaign. The certification shall be filed with the Board at the same time the candidate files the candidate's Organizational Report as required in G.S. 163–278.7, G.S. 163–278.9, and G.S. 163–278.40A. If the candidate's campaign is being conducted by a political committee which is handling all contributions, loans, and expenditures for the candidate's campaign, the treasurer of the political committee shall file a certification of intent to stay within the threshold amount. If the intent to stay within the threshold changes, or if the one-thousand-dollar ($1,000) threshold is exceeded, the treasurer shall immediately notify the Board and shall be responsible for filing all reports required in G.S. 163–278.9 and 163–278.40B, 163–278.40C, 163–278.40D, and 163–278.40E; provided that any contribution, loan, or expenditure which would have been required to be reported on an earlier report but for this section shall be included on the next report required after the intent changes or the threshold is exceeded.

(b) The exemption from reporting in subsection (a) of this section applies to political party committees under the same terms as for candidates, except that the term ''to further the candidate's campaign'' does not relate to a political party committee's exemption, and all contributions, expenditures, and loans during an election shall be counted against the political party committee's threshold amount.

Added by Laws 1987 (Reg. Sess., 1988), c. 1028, § 2. Amended by Laws 1987 (Reg. Sess., 1988), c. 1081, § 3; Laws 1989, c. 449; Laws 1989, c. 770, § 53; S.L. 1997–515, § 4(e), eff. Sept. 17, 1997; S.L. 2001–235, § 3, eff. June 22, 2001; S.L. 2009–534, § 5, eff. Dec. 1, 2009.

Historical and Statutory Notes

S.L. 1997–515, §§ 4(f) and 15, provide:

''Section 4(f). This section applies to primaries, elections, and referenda beginning in 1998.''

''Section 15. Except as otherwise provided herein, this act is effective when it becomes law. Prosecutions for, or sentences based on, offenses occurring before the relevant effective dates in this act are not abated or affected by this act, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.''

2001 Legislation

S.L. 2001–235, § 3, eff. June 22, 2001, in the second paragraph of subsec. (a), in the first sentence, deleted ''under oath'' following ''file a certification''.

2009 Legislation

S.L. 2009–534, § 5, rewrote section, which prior thereto read:

''Threshold of $3,000 for Financial Reports

''(a) Notwithstanding any other provision of this Chapter, a candidate shall be exempted from the reports of contributions, loans, and expenditures required in G.S. 163-278.9(a), 163-278.40B, 163-278.40C, 163-278.40D, and 163-278.40E if to further his campaign that candidate:

''(1) Does not receive more than three thousand dollars ($3,000) in contributions, and

''(2) Does not receive more than three thousand dollars ($3,000) in loans, and

''(3) Does not spend more than three thousand dollars ($3,000).

''To qualify for the exemption from those reports, the candidate's treasurer shall file a certification that he does not intend to receive in contributions or loans or expend more than three thousand dollars ($3,000) to further his campaign. The certification shall be filed with the Board at the same time the candidate files his Organizational Report as required in G.S. 163-278.7, G.S. 163-278.9, and G.S. 163-278.40A. If the candidate's campaign is being conducted by a political committee which is handling all contributions, loans, and expenditures for his campaign, the treasurer of the political committee shall file a certification of intent to stay within the threshold amount. If the intent to stay within the threshold changes, or if the three thousand dollar ($3,000) threshold is exceeded, the treasurer shall immediately notify the Board and shall be responsible for filing all reports required in G.S. 163-278.9 and 163-278.40B, 163-278.40C, 163-278.40D, and 163-278.40E; provided that any contribution, loan, or expenditure which would have been required to be reported on an earlier report but for this section shall be included on the next report required after the intent changes or the threshold is exceeded.

''(b) The exemption in subsection (a) of this section applies to political party committees under the same terms as for candidates, except that the term 'to further his campaign' does not relate to a political party committee's exemption, and all contributions, expenditures, and loans during an election shall be counted against the political party committee's threshold amount.''

Local Modifications

Town of Chapel Hill: S.L. 1999–255, § 4.

§ 163–278.11. Contents of treasurer's statement of receipts and expenditures

(a) Statements filed pursuant to provisions of this Article shall set forth the following:

(1) Contributions. — Except as provided in subsection (a1) of this section, a list of all contributions received by or on behalf of a candidate, political committee, or referendum committee. The statement shall list the name and complete mailing address of each contributor, the amount contributed, the principal occupation of the contributor, and the date such contribution was received. The total sum of all contributions to date shall be plainly exhibited. Forms for required reports shall be prescribed by the Board. As used in this section, ''principal occupation of the contributor'' means the contributor's:

a. Job title or profession; and

b. Employer's name or employer's specific field of business activity.

The State Board of Elections shall prepare a schedule of specific fields of business activity, adapting or modifying as it deems suitable the business activity classifications of the Internal Revenue Code or other relevant classification schedules. In reporting a contributor's specific field of business activity, the treasurer shall use the classification schedule prepared by the State Board.

(2) Expenditures. — A list of all expenditures required under G.S. 163–278.8 made by or on behalf of a candidate, political committee, or referendum committee. The statement shall list the name and complete mailing address of each payee, the amount paid, the purpose, and the date such payment was made. The total sum of all expenditures to date shall be plainly exhibited. Forms for required reports shall be prescribed by the Board. In accounting for all expenditures in accordance with G.S. 163–278. 8(e) and G.S. 163–278.8(f), the payee shall be the individual or person to whom the candidate, political committee, or referendum committee is obligated to make the expenditure. If the expenditure is to a financial institution for revolving credit or a reimbursement for a payment to a financial institution for revolving credit, the statement shall also include a specific itemization of the goods and services purchased with the revolving credit. If the obligation is for more than one good or service, the statement shall include a specific itemization of the obligation so as to provide a reasonable understanding of the obligation.

(3) Loans. — Every candidate and treasurer shall attach to the campaign transmittal submitted with each report an addendum listing all proceeds derived from loans for funds used or to be used in this campaign. The addendum shall be in the form as prescribed by the State Board of Elections and shall list the amount of the loan, the source, the period, the rate of interest, and the security pledged, if any, and all makers and endorsers.

(a1) Threshold for Reporting Identity of Contributor.—A treasurer shall not be required to report the name, address, or principal occupation of any individual who contributes fifty dollars ($50.00) or less to the treasurer's committee during an election as defined in G.S. 163–278.13. The State Board of Elections shall provide on its reporting forms for the reporting of contributions below that threshold. On those reporting forms, the State Board may require date and amount of contributions below the threshold, but may treat differently for reporting purposes contributions below the threshold that are made in different modes and in different settings.

(b) Statements shall reflect anything of value paid for or contributed by any person or individual, both as a contribution and expenditure. A political party executive committee that makes an expenditure that benefits a candidate or group of candidates shall report the expenditure, including the date, amount, and purpose of the expenditure and the name of and office sought by the candidate or candidates on whose behalf the expenditure was made. A candidate who benefits from the expenditure shall report the expenditure or the proportionate share of the expenditure from which the candidate benefitted as an in-kind contribution if the candidate or the candidate's committee has coordinated with the political party executive committee concerning the expenditure.

(c) Best Efforts. — When a treasurer shows that best efforts have been used to obtain, maintain, and submit the information required by this Article for the candidate or political committee, any report of that candidate or committee shall be considered in compliance with this Article and shall not be the basis for criminal prosecution or the imposition of civil penalties, other than forfeiture of a contribution improperly accepted under this Article. The State Board of Elections shall promulgate rules that specify what are ''best efforts'' for purposes of this Article, adapting as it deems suitable the provisions of 11 C.F.R. § 104.7. The rules shall include a provision that if the treasurer, after complying with this Article and the rules, does not know the occupation of the contributor, it shall suffice for the treasurer to report ''unable to obtain''.

Added by Laws 1973, c. 1272, § 1. Amended by Laws 1977, c. 635, § 2; Laws 1979, c. 1073, § 20; S.L. 1997–515, §§ 2(a), (b), 3(a), eff. Feb. 1, 1998; S.L. 2006–161, § 4, eff. Jan. 1, 2007; S.L. 2006–195, § 5, eff. Jan. 1, 2007; S.L. 2007–391, § 35(a), eff. Aug. 19, 2007.

Historical and Statutory Notes

S.L. 1997–515, §§ 2(c) and 3(b), provide:

''This section becomes effective February 1, 1998, and applies to all reports due on or after that date.''

S.L. 1997–515, § 15, provides:

''Except as otherwise provided herein, this act is effective when it becomes law. Prosecutions for, or sentences based on, offenses occurring before the relevant effective dates in this act are not abated or affected by this act, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.''

2006 Legislation

S.L. 2006–161, § 4, eff. Jan. 1, 2007, amended subd. (a)(2) by inserting the last three sentences.

S.L. 2006–161, § 6, provides:

''Sections 1 and 5 of this act become effective October 1, 2006, and apply to all candidates and candidate campaign committees with active accounts with the State Board of Elections or a county board of elections on or after that date. Sections 2, 3, and 4 of this act become effective January 1, 2007, and apply to all political committees and referendum committees with active accounts with the State Board of Elections or a county board of elections on or after that date. The remainder of this act becomes effective January 1, 2007.''

S.L. 2006–195, § 5, eff. Jan. 1, 2007, rewrote the section, which prior thereto read:

''(a) Statements filed pursuant to provisions of this Article shall set forth the following:

''(1) Contributions.—A list of all contributions required to be listed under G.S. 163–278.8 received by or on behalf of a candidate, political committee, or referendum committee. The statement shall list the name and complete mailing address of each contributor, the amount contributed, the principal occupation of the contributor, and the date such contribution was received. The total sum of all contributions to date shall be plainly exhibited. Forms for required reports shall be prescribed by the Board. As used in this section, ''principal occupation of the contributor'' means the contributor's:

''a. Job title or profession; and

''b. Employer's name or employer's specific field of business activity.

''The State Board of Elections shall prepare a schedule of specific fields of business activity, adapting or modifying as it deems suitable the business activity classifications of the Internal Revenue Code or other relevant classification schedules. In reporting a contributor's specific field of business activity, the treasurer shall use the classification schedule prepared by the State Board.

''(2) Expenditures.—A list of all expenditures required under G.S. 163-278.8 made by or on behalf of a candidate, political committee, or referendum committee. The statement shall list the name and complete mailing address of each payee, the amount paid, the purpose, and the date such payment was made. The total sum of all expenditures to date shall be plainly exhibited. Forms for required reports shall be prescribed by the Board.

''(3) Loans.—Every candidate and treasurer shall attach to the campaign transmittal submitted with each report an addendum listing all proceeds derived from loans for funds used or to be used in this campaign. The addendum shall be in the form as prescribed by the State Board of Elections and shall list the amount of the loan, the source, the period, the rate of interest, and the security pledged, if any, and all makers and endorsers.

''(b) Statements shall reflect anything of value paid for or contributed by any person or individual, both as a contribution and expenditure. A political party executive committee that makes an expenditure that benefits a candidate or group of candidates shall report the expenditure, including the date, amount, and purpose of the expenditure and the name of and office sought by the candidate or candidates on whose behalf the expenditure was made. A candidate who benefits from the expenditure shall report the expenditure or the proportionate share of the expenditure from which the candidate benefitted as an in-kind contribution if the candidate or the candidate's committee has coordinated with the political party executive committee concerning the expenditure.

''(c) Best Efforts.—When a treasurer shows that best efforts have been used to obtain, maintain, and submit the information required by this Article for the candidate or political committee,

any report of that candidate or committee shall be considered in compliance with this Article. The State Board of Elections shall promulgate rules that specify what are ''best efforts'' for purposes of this Article, adapting as it deems suitable the provisions of 11 C.F.R. § 104.7. The rules shall include the provision that if the treasurer, after complying with the rules, does not know the occupation of the contributor, it shall suffice for the treasurer to report ''unable to obtain''.''

S.L. 2006–195, § 9, provides:

''Sections 1 through 6 of this act become effective January 1, 2007, and apply to all contributions made and accepted on and after that date. The repeal of G.S. 163–278.20 is not effective retroactively and shall not be deemed to render lawful or unlawful any action occurring before its effective date. Sections 7 and 8 of this act become effective October 1, 2006. The remainder of this act is effective when it becomes law.''

2007 Legislation

S.L. 2007–391, § 35(a), in subsec. (a1), in the first sentence, deleted ''resident of the State'' following ''any individual''.

§ 163–278.12. Special reporting of contributions and independent expenditures

(a) Subject to G.S. 163–278.39 and G.S. 163–278.14, individuals and other entities not otherwise prohibited from doing so may make independent expenditures. In the event an individual or other entity making independent expenditures but not otherwise required to report them makes independent expenditures in excess of one hundred dollars ($100.00), that individual or entity shall file a statement of such independent expenditure with the appropriate board of elections in the manner prescribed by the State Board of Elections.

(b) Any entity other than an individual that is permitted to make contributions but is not otherwise required to report them shall report each contribution in excess of one hundred dollars ($100.00) with the appropriate board of elections in the manner prescribed by the State Board of Elections.

(c) In assuring compliance with subsections (a) and (b) of this section, the State Board of Elections shall require the identification of each entity making a donation of more than one hundred dollars ($100.00) to the entity filing the report if the donation was made for the purpose of furthering the reported independent expenditure or contribution.

(d) Contributions or expenditures required to be reported under this section shall be reported within 30 days after they exceed one hundred dollars ($100.00) or 10 days before an election the contributions or expenditures affect, whichever occurs earlier.

Added by Laws 1973, c. 1272, § 1. Amended by Laws 1979, c. 107, § 15; Laws 1979, c. 1073, § 20; S.L. 1999–31, § 2(d), eff. May 4, 1999; S.L. 2004–127, § 16, eff. July 26, 2004.

Historical and Statutory Notes

2004 Legislation

S.L. 2004–127, § 16, eff. July 26, 2004, in subsec. (a), substituted ''163–278.39'' for ''163–278.16(f)''.

§ 163–278.12A. Repealed by S.L. 2004–125, § 4, eff. July 20, 2004

Historical and Statutory Notes

The repealed section, which related to disclosure of spending for material that names candidates, was derived from S.L. 1997–515, § 11(a).

See, §§ 163–278.81, 163–278.91.

§ 163–278.13. Limitation on contributions

(a) No individual, political committee, or other entity shall contribute to any candidate or other political committee any money or make any other contribution in any election in excess of four thousand dollars ($4,000) for that election.

(b) No candidate or political committee shall accept or solicit any contribution from any individual, other political committee, or other entity of any money or any other contribution in any election in excess of four thousand dollars ($4,000) for that election.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, it shall be lawful for a candidate or a candidate's spouse, parents, brothers and sisters to make a contribution to the candidate or to the candidate's treasurer of any amount of money or to make any other contribution in any election in excess of four thousand dollars ($4,000) for that election.

(d) For the purposes of this section, the term ''an election'' means any primary, second primary, or general election in which the candidate or political committee may be involved, without regard to whether the candidate is opposed or unopposed in the election, except that where a candidate is not on the ballot in a second primary, that second primary is not ''an election'' with respect to that candidate.

(d1) Notwithstanding subsections (a) and (b) of this section, a candidate or political committee may accept a contribution knowing that the contribution is to be reimbursed to the entity making the contribution and knowing the candidate or political committee has funds sufficient to reimburse the entity making the contribution if all of the following conditions are met:

(1) The entity submits sufficient information of the contribution to the candidate or political committee for reimbursement within 45 days of the contribution.

(2) The candidate or political committee makes a reimbursement to the entity making the contribution within seven days of submission of sufficient information.

(3) The candidate or political committee indicates on its report under G.S. 163–278.11 that the good, service, or other item resulting in the reimbursement is an expenditure of the candidate or political committee, and notes if the contribution was by credit card.

(4) The contribution does not exceed one thousand dollars ($1,000.00).

(d2) Any contribution, or portion thereof, made under subsection (d1) of this section that is not submitted for reimbursement in accordance with subsection (d1) of this section shall be treated as a contribution for purposes of this section. Any contribution, or portion thereof, made under subsection (d1) of this section that is not reimbursed in accordance with subsection (d1) of this section shall be treated as a contribution for purposes of this section.

(e) Except as provided in subsections (e2), (e3), and (e4) of this section, this section shall not apply to any national, State, district or county executive committee of any political party. For the purposes of this section only, the term ''political party'' means only those political parties officially recognized under G.S. 163–96.

(e1) No referendum committee which received any contribution from a corporation, labor union, insurance company, business entity, or professional association may make any contribution to another referendum committee, to a candidate or to a political committee.

(e2) In order to make meaningful the provisions of Article 22D of this Chapter, the following provisions shall apply with respect to candidates for justice of the Supreme Court and judge of the Court of Appeals:

(1) No candidate shall accept, and no contributor shall make to that candidate, a contribution in any election exceeding one thousand dollars ($1,000) except as provided for elsewhere in this subsection.

(2) A candidate may accept, and a family contributor may make to that candidate, a contribution not exceeding two thousand dollars ($2,000) in an election if the contributor is that candidate's parent, child, brother, or sister.

(3) Repealed by S.L. 2008–150, § 7(a), eff. Aug. 2, 2008.

(e3) Notwithstanding the provisions of subsections (a) and (b) of this section, no candidate for superior court judge or district court judge shall accept, and no contributor shall make to that candidate, a contribution in any election exceeding one thousand dollars ($1,000), except as provided in subsection (c) of this section. As used in this subsection, ''candidate'' is also a political committee authorized by the candidate for that candidate's election. Nothing in this subsection shall prohibit a candidate or the spouse of that candidate from making a contribution or loan secured entirely by that individual's assets to that candidate's own campaign.

(e4) In order to make meaningful the provisions of the North Carolina Voter–Owned Elections Act, as set forth in Article 22J of this Chapter, no candidate for an office subject to that Article shall accept, and no contributor shall make to that candidate, a contribution during the period beginning 21 days before the day of the general election and ending the day after the general election if that contribution causes the candidate to exceed the ''trigger for matching funds'' defined in G.S. 163–278.96(17). As used in this subsection, the term ''candidate'' also includes ''candidate campaign committee'' as defined in G.S. 163–278.38Z(3). Nothing in this subsection shall prohibit a candidate from making a contribution or loan secured entirely by that candidate's assets to that candidate's own campaign or to a political committee, the principal purpose of which is to support that candidate's campaign. This subsection applies with respect to a candidate only if both of the following statements are true regarding that candidate:

(1) That candidate is opposed in the general election by a certified candidate as defined in Article 22J of this Chapter.

(2) That certified candidate has not received the maximum matching funds available under G.S. 163–278.99B(c).

The recipient of a contribution that apparently violates this subsection has three days to return the contribution or file a detailed statement with the State Board of Elections explaining why the contribution does not violate this subsection.

(e5) The contribution limits of subsections (a) and (b) of this section do not apply to contributions made to an independent expenditure political committee. For purposes of this section, an ''independent expenditure political committee'' is a political committee whose treasurer makes and abides by a certification to the State Board of Elections that the political committee does not and will not make contributions, directly or indirectly, to candidates or to political committees that make contributions to candidates. The State Board of Elections shall provide forms for implementation of this subsection. This subsection shall not apply to a candidate or a political committee controlled by a candidate. The exception of this subsection is in addition to any other exception provided by law.

(f) Any individual, candidate, political committee, referendum committee, or other entity that violates the provisions of this section is guilty of a Class 2 misdemeanor.

Added by Laws 1973, c. 1272, § 1. Amended by Laws 1979, c. 1073, § 8; Laws 1979, c. 1073, § 20; Laws 1981, c. 225; Laws 1987, c. 565, § 15; Laws 1993, c. 539, § 1113, eff. Oct. 1, 1994; Laws 1994 (1st Ex. Sess.), c. 24, § 14(c), eff. March 26, 1994; S.L. 1997–515, § 8(a), eff. Jan. 1, 1998; S.L. 1999–31, § 5(c), eff. May 4, 1999; S.L. 2002–158, § 2, eff. Jan. 1, 2003; S.L. 2006–192, § 15, 16 eff. Aug. 3, 2006; S.L. 2006–192, § 17, eff. Jan. 1, 2007; S.L. 2007–391, § 36, eff. Aug. 19, 2007; S.L. 2007–540, §§ 2, 3, eff. Aug. 31, 2007; S.L. 2008–150, §§ 6(c), 7(a), eff. Aug. 2, 2008.

Historical and Statutory Notes

Laws 1993, c. 539, § 1359, provides:

''This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.'' [Amended by Laws 1994, Ex. Sess., c. 24, § 14(c), eff. March 26, 1994.]

S.L. 1997–515, § 8(b) and (15), provide:

''Section 8(b). This section becomes effective January 1, 1998, and applies to all elections occurring on or after that date.''

''Section 15. Except as otherwise provided herein, this act is effective when it becomes law. Prosecutions for, or sentences based on, offenses occurring before the relevant effective dates in this act are not abated or affected by this act, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.''

2002 Legislation

S.L. 2002–158, § 2, eff. Jan. 1, 2003, added subsec. (e2).

2006 Legislation

S.L. 2006–192, § 15, eff. Aug. 3, 2006, amended subsec. (e) by substituting ''Except as provided in subsections (e2) and (e3) of this section, this,'' for ''This''.

S.L. 2006–192, § 16, eff. Aug. 3, 2006, amended subd. (e2)(3) by inserting ''if that contribution causes the candidate to exceed the ''trigger for rescue funds'' defined in G.S. 163–278.62(18)''.

S.L. 2006–192, § 17, eff. Jan. 1, 2007, added subsec. (e3).

S.L. 2006–192, § 19, provides:

''Sections 2 through 5 of this act are effective January 1, 2007, and apply to all primaries and elections conducted on or after that date. Sections 8 and 9 of this act are effective when this act becomes law and apply to vacancies occurring on or after that date. Section 17 of this act and the portion of Section 15 of this act that affects G.S. 163–278.13(e3) become effective January 1, 2007, and apply to contributions made or accepted on or after that date. Section 18 of this act becomes effective for taxable years beginning on or after January 1, 2006. The remainder of this act is effective when it becomes law.''

2007 Legislation

S.L. 2007–391, § 36, added subsecs. (d1) and (d2).

S.L. 2007–510, § 1(c), provides:

''Chapter 163 of the General Statutes is amended by deleting the term 'rescue' wherever it appears and substituting the term 'matching.'''

S.L. 2007–540, § 2, in subsec. (e) substituted ''(e2), (e3), and (e4)'' for ''(e2) and (e3)''.

S.L. 2007–540, § 3, added subsec. (e4).

S.L. 2007–540, § 4 provides:

''Section 4. The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.''

S.L. 2007–540, § 6 provides:

''Section 6. Sections 1 through 3 of this act are effective when this act becomes law. For purposes of the 2008 election, the beginning date for the voluntary funding limitation as enacted in G.S. 163–278.98(e)(1) and (2) in Section 1 of this act shall be set administratively by the State Board of Elections. This act applies to elections for Auditor, Superintendent of Public Instruction, and Commissioner of Insurance in 2008 and thereafter. Section 5 of this act becomes effective July 1, 2007. The State Board of Elections shall make the kind of report required in G.S. 163–278.97(c), as enacted in this act, as soon as feasible before the 2008 election. The State Board of Elections shall make the determination required in G.S. 163–278.99(b), as enacted in this act, as soon as feasible before the 2008 election. The remainder of this act is effective when it becomes law.'' [Amended by S.L. 2007–484, § 43.8(c)].

2008 Legislation

S.L. 2008–150, § 6(c), added subsec. (e5).

Cross References

Misdemeanor sentencing and punishment, see § 15A–1340.13 et seq.
Voter-Owned Elections Fund, requirements for participation, see § 163–278.98.

Notes of Decisions

Construction and application 2
Political committees 2.5
Standing 3
Validity 1

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1. Validity

North Carolina campaign finance statutes' dollar limit on campaign contributions infringed First Amendment's free speech guarantee when applied to political committee that made solely independent expenditures, i.e. expenditures made without consultation or coordination with a political candidate; committee was far removed from candidates, and state did not proffer systematic and concrete evidence of corruption flowing from independent-expenditure political committees. North Carolina Right to Life, Inc. v. Leake, 2008, 525 F.3d 274. Constitutional Law ⚷ 1699; Constitutional Law ⚷ 1708; Elections ⚷ 311

In North Carolina election and campaign finance law, $4,000 limitation on contributions made to independent expenditure political action committees (IEPAC) was substantially overbroad and in violation of associational rights; State failed to proffer sufficiently convincing evidence which demonstrated that there was danger of corruption due to presence of unchecked contributions to IEPACs that would have justified restriction. North Carolina Right To Life, Inc. v. Leake, 2003, 344 F.3d 418, vacated 124 S.Ct. 2065, 541 U.S. 1007, 158 L.Ed.2d 617, on remand 482 F.Supp.2d 686. Constitutional Law ⚷ 1469; Elections ⚷ 311

Statutory limit on individual contributions made to any political committee or candidate during an election cycle was unconstitutional under First Amendment as applied to committee engaged solely in making independent expenditures, and other like committees; state defendants offered no evidence that the contributions, which directly fund such committees' independent expenditures, had any significant tendency to corrupt. North Carolina Right to Life, Inc. v. Leake, 2007, 482 F.Supp.2d 686, affirmed in part, reversed in part 525 F.3d 274. Constitutional Law ⚷ 1469; Elections ⚷ 311

Likelihood of succeeding on merits requirement, for issuance of preliminary injunction, was not satisfied by First Amendment challenge to statute providing for public financing of candidates for judicial office, imposing reporting requirements on candidates choosing not to participate in public financing, providing for supplemental "rescue" payments to candidates accepting financing when opponents rejecting financing report contributions and expenditures over "triggering" levels, and providing 21-day freeze on contributions if triggering level was exceeded, despite claim that effect of statute was to penalize contributions, past a certain level, by causing additional contributions to be made to opponents from public fund; provisions did not affect ability of nonparticipating candidates to spend their own money, or raise it from other sources, other than those narrowly tailored to advance public concerns regarding integrity of election process. Jackson v. Leake, 2006, 476 F.Supp.2d 515, affirmed 524 F.3d 427, certiorari denied 129 S.Ct. 490, 172 L.Ed.2d 357. Civil Rights ⚷ 1457(7)

2. Construction and application

Statute governing prosecution for violations of article within election laws regulating contributions and expenditures in political campaigns is clearly mandatory in its language. State v. Bolt, 1986, 344 S.E.2d 51, 81 N.C.App. 133. Elections ⚷ 309

2.5. Political committees

Fact that political committee that made solely independent expenditures shared staff and facilities with sister and parent entities that made expenditures in consultation or coordination with political candidates did not render committee subject to North Carolina statutory limit on campaign contributions; there was no evidence that committee had abused its corporate form, and no showing that any legal authority considered committee as identical to other entities, and thus application of contribution limits to committee violat-

ed its free speech rights. North Carolina Right to Life, Inc. v. Leake, 2008, 525 F.3d 274. Elections ⚷ 317.2

3. Standing

Sitting appellate court judge did not have standing to challenge statute providing for public financing of judicial election campaigns, when she would not be standing for election for six more years, despite claim that knowledge whether statute was constitutional was needed well in advance for fund raising planning. Jackson v. Leake, 2006, 476 F.Supp.2d 515, affirmed 524 F.3d 427, certiorari denied 129 S.Ct. 490, 172 L.Ed.2d 357. Elections ⚷ 317.5

Candidate for state appellate court judgeship had standing to challenge statute providing for public financing of judicial election campaigns; while candidate was nonparticipant in funding portion of statute, his reported expenditures were sufficient to trigger ''rescue'' provisions of statute, under which his opponent received additional funds, and he was subject to prohibition on receipt of campaign funds for period beginning 21 days prior to election. Jackson v. Leake, 2006, 476 F.Supp.2d 515, affirmed 524 F.3d 427, certiorari denied 129 S.Ct. 490, 172 L.Ed.2d 357. Elections ⚷ 317.5

§ 163–278.13A. Repealed by S.L. 1997–515, § 9(a), eff. Jan. 1, 1998

Historical and Statutory Notes

The repealed section provided prohibited fund raising from lobbyists for legislators or council of state members while the General Assembly is in session.

§ 163–278.13B. Limitation on fund-raising during legislative session

(a) Definitions. —For purposes of this section:

(1) ''Limited contributor'' means a lobbyist registered under Chapter 120C of the General Statutes, that lobbyist's agent, that lobbyist's principal as defined in G.S. 120C–100(11) or a political committee that employs or contracts with or whose parent entity employs or contracts with a lobbyist registered under Chapter 120C of the General Statutes.

(2) ''Limited contributee'' means a member of or candidate for the Council of State, a member of or candidate for the General Assembly.

(3) The General Assembly is in ''regular session'' from the date set by law or resolution that the General Assembly convenes until the General Assembly either adjourns sine die or recesses or adjourns for more than 10 days.

(4) A contribution is ''made'' during regular session if the check or other instrument is dated during the session, or if the check or other instrument is delivered to the limited contributee during session, or if the limited contributor pledges during the session to deliver the check or other instrument at a later time.

(5) A contribution is ''accepted'' during regular session if the check or other instrument is dated during the session, or if the limited contributee receives the check or other instru-

ment during session and does not return it within 10 days, or agrees during session to receive the check or other instrument at a later time.

(b) Prohibited Solicitations. —While the General Assembly is in regular session, no limited contributee or the real or purported agent of a limited contributee shall:

(1) Solicit a contribution from a limited contributor to be made to that limited contributee or to be made to any other candidate, officeholder, or political committee; or

(2) Solicit a third party, requesting or directing that the third party directly or indirectly solicit a contribution from a limited contributor or relay to the limited contributor the limited contributee's solicitation of a contribution.

It shall not be deemed a violation of this section for a limited contributee to serve on a board or committee of an organization that makes a solicitation of a limited contributor as long as that limited contributee does not directly participate in the solicitation and that limited contributee does not directly benefit from the solicitation.

(c) Prohibited Contributions. —While the General Assembly is in regular session:

(1) No limited contributor shall make or offer to make a contribution to a limited contributee.

(2) No limited contributor shall make a contribution to any candidate, officeholder, or political committee, directing or requesting that the contribution be made in turn to a limited contributee.

(3) No limited contributor shall transfer any amount of money or anything of value to any entity, directing or requesting that the entity use what was transferred to contribute to a limited contributee.

(4) No limited contributee or the real or purported agent of a limited contributee prohibited from solicitation by subsection (b) of this section shall accept a contribution from a limited contributor.

(5) No limited contributor shall solicit a contribution from any individual or political committee on behalf of a limited contributee. This subdivision does not apply to a limited contributor soliciting a contribution on behalf of a political party executive committee if the solicitation is solely for a separate segregated fund kept by the political party limited to use for activities that are not candidate-specific, including generic voter registration and get-out-the-vote efforts, pollings, mailings, and other general activities and advertising that do not refer to a specific individual candidate.

(d) Exception. —The provisions of this section do not apply with regard to a limited contributee during the three weeks prior to the day of a second primary if that limited contributee is a candidate who will be on the ballot in that second primary.

(e) Prosecution. —A violation of this section is a Class 2 misdemeanor.

Added by S.L. 1997–515, § 9(b), eff. Jan. 1, 1998. Amended by S.L. 1999–31, § 5(d), eff. May 4, 1999; S.L. 1999–453, § 6(a), eff. Oct. 1, 1999; S.L. 2000–136, § 1, eff. July 17, 2000; S.L. 2006–201, § 21, eff. Jan. 1, 2007.

Historical and Statutory Notes

S.L. 1997–515, § 9(c) and 15, provide:

''Section 9(c). This section becomes effective January 1, 1998, and applies to all contributions solicited, made, or accepted on or after that date.''

''Section 15. Except as otherwise provided herein, this act is effective when it becomes law. Prosecutions for, or sentences based on, offenses occurring before the relevant effective dates in this act are not abated or affected by this act, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.''

Subsecs. (c1) and (d) were redesignated as subsecs. (d) and (e), respectively, by the Revisor of Statutes.

S.L. 1999–453, §§ 1, 6(b) and 10 provide:

''Section 1. This act shall be called 'The Campaign Reform Act of 1999'.''

''Section 6(b). This section becomes effective October 1, 1999, and applies to all contributions made, accepted, or solicited on or after that date.''

''Section 10. Prosecutions for, or sentences based on, offenses occurring before the relevant effective date in this act are not abated or affected by this act, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.''

2000 Legislation

S.L. 2000–136, § 1, eff. July 17, 2000, in subd. (a)(2), deleted '', or a political committee the purpose of which is to assist a member or members of or candidate or candidates for the Council of State of General Assembly'' following ''General Assembly''; in subd. (b)(2), inserted ''solicit a contribution from a limited contributor or'', substituted ''limited'' for ''prohibited'' in two places, and added the second paragraph; and in subd. (c)(4), inserted ''or the real or purported agent of a limited contributee prohibited from solicitation by subsection (b) of this section''.

By letter dated Aug. 1, 2000, the U.S. Department of Justice Civil Rights Division and Voting Section had no objection to the limitations on fund-raising during legislative sessions proposed by Senate Bill 767. Senate Bill 767 was adopted as S.L. 2000–136.

2006 Legislation

S.L. 2006–201, § 21, eff. Jan. 1, 2007, amended subd. (a)(1) by substituting ''under Chapter 120C'' for ''pursuant to Article 9A of Chapter 120'' in two places and ''120C–100(11)'' for ''120–47.1(7)''.

S.L. 2006–201, § 25, provides:

''Sections 4 through 15 and Sections 17 through 21 of this act become effective January 1, 2007, and G.S. 120C–304, as enacted by Section 18 of this act, applies to appointments made on or after that date. Sections 16, 24, and 25 of this act are effective when the act becomes law. The remainder of this act becomes effective October 1, 2006, and applies to covered persons and legislative employees on or after January 1, 2007, to gifts received on or after January 1, 2007, to acts and conflicts of interest that arise on or after January 1, 2007, and to offenses committed on or after January 1, 2007. Prosecutions for offenses or ethics violations committed before January 1, 2007, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.''

Cross References

Misdemeanor sentencing and punishment, see § 15A–1340.13 et seq.

Notes of Decisions

Federal preemption 2
Standing 3
Validity 1

1. Validity

First Amendment rights of free speech and association of lobbyist and political action committee were not impermissibly burdened by North Carolina statutes prohibiting lobbyists and political committees employing them from contributing to members of or candidates for General Assembly or Council of State while General Assembly was in session and similarly prohibiting such persons from soliciting lobbyists and their political committee employers; restrictions, which merely placed temporary hold on contributions and solicitations, were narrowly tailored and served compelling state interest in preventing corruption and appearance of corruption. North Carolina Right to Life, Inc. v. Bartlett, 1999, 168 F.3d 705, certiorari denied 120 S.Ct. 1156, 528 U.S. 1153, 145 L.Ed.2d 1069. Constitutional Law ⚷ 1721; Constitutional Law ⚷ 1481; Elections ⚷ 311; Statutes ⚷ 24; Constitutional Law ⚷ 1698

North Carolina statutes restricting solicitation of and political contributions by lobbyists and their political committee employers while General Assembly was in session did not violate equal protection principles by treating lobbyists and political committees differently than general population with respect to fundamental right to associate, given state's strong reasons for doing so, including avoidance of corruption and appearance of corruption. North Carolina Right to Life, Inc. v. Bartlett, 1999, 168 F.3d 705, certiorari denied 120 S.Ct. 1156, 528 U.S. 1153, 145 L.Ed.2d 1069. Constitutional Law ⚷ 3637; Elections ⚷ 311; Statutes ⚷ 24

North Carolina statutes restricting lobbyists and their political committee employers from making contributions to General Assembly members and candidates while General Assembly was in session did not impermissibly force lobbyists to forego constitutional right to petition government for redress of grievances; North Carolina's interests in preventing corruption and appearance of corruption were compelling, while burden on right of association was minimal. North Carolina Right to Life, Inc. v. Bartlett, 1999, 168 F.3d 705, certiorari denied 120 S.Ct. 1156, 528 U.S. 1153, 145 L.Ed.2d 1069. Constitutional Law ⚷ 1481; Elections ⚷ 311; Statutes ⚷ 24

North Carolina statute prohibiting state legislators or candidates from soliciting contributions from lobbyists while General Assembly is in session was not narrowly tailored to advance asserted purpose of preventing corruption or appearance of corruption, and thus constituted impermissible restriction on political speech in violation of First Amendment; prohibition applied to both incumbents and nonincumbents, did not account for fact that corruption may occur at any time, whether or not General Assembly is in session, and did not discriminate between contributions on basis of whether they had potential to corrupt. North Carolina Right to Life, Inc. v. Bartlett, 1998, 3 F.Supp.2d 675, affirmed in part, reversed in part 168 F.3d 705, certiorari denied 120 S.Ct. 1156, 528 U.S. 1153, 145 L.Ed.2d 1069. Constitutional Law ⚷ 1721; Statutes ⚷ 24

Statute that prohibited independent political committees from accepting contributions on behalf of members of, or candidates for, General Assembly or Council of State while General Assembly was in session was impermissible restriction on free political speech, as it was not narrowly drawn to serve compelling governmental interest in prevention of corruption or appearance of corruption among both incumbents and challengers while General Assembly was in session. Winborne v. Easley, 1999, 136 N.C.App. 191, 523 S.E.2d 149, appeal dismissed 351 N.C. 480, 543 S.E.2d 511, stay denied 351 N.C. 480, 543 S.E.2d 512. Constitutional Law ⚷ 1698; Elections ⚷ 311

Statute that prohibits, while General Assembly is in session, incumbents from soliciting or accepting contributions from lobbyists and prohibits lobbyists from making contributions to incumbents, and which also prohibits lobbyists or their related political committees from indirectly threatening incumbents,

while General Assembly is in session, with contributions to challengers, was enacted for compelling governmental interest, i.e. prevention of corruption or appearance of corruption among both incumbents and challengers while General Assembly is in session, for purpose of determining whether statute was impermissible restriction on political free speech. Winborne v. Easley, 1999, 136 N.C.App. 191, 523 S.E.2d 149, appeal dismissed 351 N.C. 480, 543 S.E.2d 511, stay denied 351 N.C. 480, 543 S.E.2d 512. Constitutional Law ⚷ 1721; Elections ⚷ 311

Statute that prohibited political action committees (PACs) from making contributions to members of, or candidates for, General Assembly or Council of State while General Assembly was in session was not unconstitutionally overbroad as applied to challenger, despite his claim that he had no influence to ''peddle''; rationale for including challengers was to prevent lobbyists and their political committees from using ''threat'' of contribution to challenger as pressure to cause incumbent to vote on issue which lobbyist or related political committee opposed or championed and to eliminate that outside influence from being asserted against incumbent, and there was no showing that statute invidiously discriminated against challenger. Winborne v. Easley, 1999, 136 N.C.App. 191, 523 S.E.2d 149, appeal dismissed 351 N.C. 480, 543 S.E.2d 511, stay denied 351 N.C. 480, 543 S.E.2d 512. Constitutional Law ⚷ 1463; Elections ⚷ 311; Constitutional Law ⚷ 1469

Issue of whether statutory definition of ''limited contributee'' was unconstitutionally overbroad was properly before trial court in candidate's action challenging statute that prohibited political action committees (PACs) from making contributions to members of, or candidates for, General Assembly or Council of State while General Assembly was in session; complaint alleged that statute was unconstitutional because it was ''not narrowly tailored to serve any substantial state interest'' and was ''impermissibly over broad,'' and that candidate was ''deprived of contributions to his campaign'' because of threat that statute would be enforced. Winborne v. Easley, 1999, 136 N.C.App. 191, 523 S.E.2d 149, appeal dismissed 351 N.C. 480, 543 S.E.2d 511, stay denied 351 N.C. 480, 543 S.E.2d 512. Constitutional Law ⚷ 967

2. Federal preemption

The Federal Election Campaign Act (''FECA'') of 1971 preempts North Carolina law prohibiting a member of the General Assembly from accepting contributions from lobbyists while running for the Congress. North Carolina law has been preempted to the extent it applies to candidates for federal office. Op.Atty.Gen., Southerland, May 4, 1998.

3. Standing

Lobbyist and political action committee had standing to challenge North Carolina statute prohibiting members of, and candidates for, General Assembly and Council of State from soliciting lobbyists or political committees employing lobbyists while General Assembly was in session, inasmuch as restriction was inextricably intertwined with statute restricting contributions by such parties under same circumstances, which lobbyist and committee had standing to challenge. North Carolina Right to Life, Inc. v. Bartlett, 1999, 168 F.3d 705, certiorari denied 120 S.Ct. 1156, 528 U.S. 1153, 145 L.Ed.2d 1069. Constitutional Law ⚷ 703

§ 163–278.13C. Campaign contributions prohibition

(a) No lobbyist may make a contribution as defined in G.S. 163–278.6 to a candidate or candidate campaign committee as defined in G.S. 163–278.38Z when that candidate meets any of the following criteria:

(1) Is a legislator as defined in G.S. 120C–100.

(2) Is a public servant as defined in G.S. 138A–3(30)a. and G.S. 120C–104.

(b) No lobbyist may collect contributions from multiple contributors, take possession of such multiple contributions, or transfer or

deliver the collected multiple contributions to the intended recipient. This section shall apply only to contributions to a candidate or candidate campaign committee as defined in G.S. 163–278.38Z when that candidate is a legislator as defined in G.S. 120C–100 or a public servant as defined in G.S. 138A–3(30)a.

(c) This section shall not apply to a lobbyist, who has filed a notice of candidacy for office under G.S. 163–106 or Article 11 of Chapter 163 of the General Statutes or has been nominated under G.S. 163–114 or G.S. 163–98, making a contribution to that lobbyist's candidate campaign committee.

(d) For purposes of this section, the term ''lobbyist'' shall mean an individual registered as a lobbyist under Chapter 120C of the General Statutes.

Added by S.L. 2007–347, § 5(a), eff. Aug. 9, 2007. Amended by S.L. 2007–347, § 5(b), eff. Aug. 9, 2007; S.L. 2008–213, § 86, eff. Aug. 15, 2008.

Historical and Statutory Notes

2006 Legislation

S.L. 2006–201, § 25, provides:

''Sections 4 through 15 and Sections 17 through 21 of this act become effective January 1, 2007, and G.S. 120C–304, as enacted by Section 18 of this act, applies to appointments made on or after that date. Sections 16, 24, and 25 of this act are effective when the act becomes law. The remainder of this act becomes effective October 1, 2006, and applies to covered persons and legislative employees on or after January 1, 2007, to gifts received on or after January 1, 2007, to acts and conflicts of interest that arise on or after January 1, 2007, and to offenses committed on or after January 1, 2007. Prosecutions for offenses or ethics violations committed before January 1, 2007, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.''

2007 Legislation

S.L. 2007–347, § 5(a), recodified G.S. 120C–302 as G.S. 163–278.13C.

Notes of Decisions

Construction and application 1

1. Construction and application

Lobbyist had standing to bring action alleging that North Carolina statute barring state campaign contributions from lobbyists violated her First Amendment free speech and association rights; statute facially restricted expressive activity of class to which lobbyist belonged, and violators were subject to prosecution. Preston v. Leake, 2009, 629 F.Supp.2d 517. Constitutional Law ⚷ 728; Constitutional Law ⚷ 863

North Carolina statute completely barring lobbyists from making state campaign contributions did not violate lobbyist's First Amendment free speech and association rights, where statute did not prevent candidates from amassing resources necessary for effective advocacy, and lobbyists were not prevented from otherwise expressing support for or opposition to candidates, volunteering for candidate, making contributions to their employer's political committees and then making recommendations as to who committee should support, or soliciting others to make contributions to candidate. Preston v. Leake, 2009, 629 F.Supp.2d 517. Constitutional Law ⚷ 1469; Constitutional Law ⚷ 1698; Elections ⚷ 311

§ 163–278.14. No contributions in names of others; no anonymous contributions; contributions in excess of fifty dollars; no contribution without specific designation of contributor

(a) No individual, political committee, or other entity shall make any contribution anonymously or in the name of another. No candidate, political committee, referendum committee, political party, or treasurer shall knowingly accept any contribution made by any individual or person in the name of another individual or person or made anonymously. If a candidate, political committee, referendum committee, political party, or treasurer receives anonymous contributions or contributions determined to have been made in the name of another, he shall pay the money over to the Board, by check, and all such moneys received by the Board shall be deposited in the Civil Penalty and Forfeiture Fund of the State of North Carolina.

(b) No entity shall make, and no candidate, committee or treasurer shall accept, any monetary contribution in excess of fifty dollars ($50.00) unless such contribution is in the form of a check, draft, money order, credit card charge, debit, or other noncash method that can be subject to written verification. No contribution in the form of check, draft, money order, credit card charge, debits, or other noncash method may be made or accepted unless it contains a specific designation of the intended contributee chosen by the contributor. The State Board of Elections may prescribe guidelines as to the reporting and verification of any method of contribution payment allowed under this Article. For contributions by money order, the State Board shall prescribe methods to ensure an audit trail for every contribution so that the identity of the contributor can be determined. For a contribution made by credit card, the credit card account number of a contributor is not a public record.

(c) No political committee or referendum committee shall make any contribution unless in doing so it reports to the recipient the contributor's name as required in G.S. 163–278.7(b)(1).

Added by Laws 1973, c. 1272, § 1. Amended by Laws 1979, c. 1073, § 19; Laws 1987, c. 113, § 2; S.L. 1999–453, § 4(a), eff. Dec. 1, 1999; S.L. 2001–319, § 10(a), eff. July 28, 2001; S.L. 2002–159, § 55(k), eff. Jan. 1, 2003; S.L. 2004–125, § 5(b), eff. July 20, 2004; S.L. 2005–430, § 1, eff. Dec. 1, 2005; S.L. 2006–195, §§ 1, 5.2, eff. Jan. 1, 2007; S.L. 2007–484, § 23, eff. Aug. 30, 2007.

Historical and Statutory Notes

S.L. 1999–453, §§ 1, 4(b) and 10 provide:

''Section 1. This act shall be called 'The Campaign Reform Act of 1999'.''

''Section 4(b). This section becomes effective December 1, 1999, and applies to offenses committed on and after that date.''

''Section 10. Prosecutions for, or sentences based on, offenses occurring before the relevant effective date in this act are not abated or affected by this act, and the statutes that would be ap-

plicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.''

2001 Legislation

S.L. 2001–319, § 10(a), eff. July 28, 2001, in subsec. (a), substituted ''Civil Penalty and Forfeiture Fund'' for ''general fund''.

2002 Legislation

S.L. 2002–159, § 55(k), eff. Jan. 1, 2003, rewrote subsec. (b), which prior thereto read:

''(b) No individual or person shall give, and no candidate, committee or treasurer shall accept, any monetary contribution in excess of one hundred dollars ($100.00) unless such contribution be in the form of a check, draft, or money order.''

S.L. 2002–159, § 55(p), provides:

''Subsections 55(a) through 55(n) of this section become effective January 1, 2003, and apply to all primaries and elections held on and after that date. Subsection 55(*o*) is effective when this act becomes law.''

2004 Legislation

S.L. 2004–125, § 5(b), eff. July 20, 2004, in the first sentence of subsec. (b), substituted ''entity'' for ''individual or person''.

S.L. 2004–125, §§ 5(c) and 7, provide:

''Section 5(c). This section applies to any contribution made on or after January 1, 2003.''

''Section 7. This act is effective when it becomes law [July 20, 2004], except as otherwise provided in this act, and except that any criminal penalty resulting from this act becomes effective October 1, 2004.''

2005 Legislation

S.L. 2005–430, § 1, eff. Dec. 1, 2005, in subsec. (b) inserted the third sentence.

S.L. 2005–430, § 11, eff. Dec. 1, 2005, provides:

''This act becomes effective December 1, 2005, and applies to all contributions and expenditures made or accepted on or after that date.''

2006 Legislation

S.L. 2006–195, § 1, eff. Jan. 1, 2007, rewrote subsec. (b), which prior thereto read:

''(b) No entity shall give, and no candidate, committee or treasurer shall accept, any monetary contribution in excess of one hundred dollars ($ 100.00) unless such contribution be in the form of a check, draft, money order, credit card charge, debit, or other noncash method that can be subject to written verification. The State Board of Elections may prescribe guidelines as to the reporting and verification of any method of contribution payment allowed under this Article. For contributions by money order, the State Board shall prescribe methods to ensure an audit trail for every contribution so that the identity of the contributor can be determined. For a contribution made by credit card, the credit card account number of a contributor is not a public record.

S.L. 2006–195, § 5.2, eff. Jan. 1, 2007, amended subsec. (a) by substituting ''anonymously'' for ''anonymously, except as provided in G.S. 163–278.8(d)'' in two places.

S.L. 2006–195, § 9, provides:

''Sections 1 through 6 of this act become effective January 1, 2007, and apply to all contributions made and accepted on and after that date. The repeal of G.S. 163–278.20 is not effective retroactively and shall not be deemed to render lawful or unlawful any action occurring before its effective date. Sections 7 and 8 of this act become effective October 1, 2006. The remainder of this act is effective when it becomes law.''

2007 Legislation

S.L. 2007–484, § 23, in the section name line, substituted ''fifty dollars; no contribution without specific designation of contributor'' for ''one hundred dollars''.

§ 163–278.14A. Evidence that communications are ''to support or oppose the nomination or election of one or more clearly identified candidates''

(a) The following shall be means of proving that an individual or other entity acted ''to support or oppose the nomination or election of one or more clearly identified candidates'': presenting

evidence of financial sponsorship of''; and communications to the general public that use phrases such as ''vote for'', ''reelect'', ''support'', ''cast your ballot for'', ''(name of candidate) for (name of office)'', ''(name of candidate) in (year)'', ''vote against'', ''defeat'', ''reject'', ''vote pro-(policy position)'' or ''vote anti-(policy position)'' accompanied by a list of candidates clearly labeled ''pro-(policy position)'' or ''anti-(policy position)'', or communications of campaign words or slogans, such as posters, bumper stickers, advertisements, etc., which say ''(name of candidate)'s the One'', ''(name of candidate) '98'', ''(name of candidate)!'', or the names of two candidates joined by a hyphen or slash.

(b) Notwithstanding the provisions of subsection (a) of this section, a communication shall not be subject to regulation as a contribution or expenditure under this Article if it:

(1) Appears in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, or magazine, unless those facilities are owned or controlled by any political party, or political committee;

(2) Is distributed by a corporation solely to its stockholders and employees; or

(3) Is distributed by any organization, association, or labor union solely to its members or to subscribers or recipients of its regular publications, or is made available to individuals in response to their request, including through the Internet.

Added by S.L. 1999–453, § 3(a), eff. Aug. 12, 1999. Amended by S.L. 2008–150, § 6(b), eff. Aug. 2, 2008.

Historical and Statutory Notes

S.L. 1999–453, §§ 1, 10 provide:

''Section 1. This act shall be called 'The Campaign Reform Act of 1999'.''

''Section 10. Prosecutions for, or sentences based on, offenses occurring before the relevant effective date in this act are not abated or affected by this act, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.''

2008 Legislation

S.L. 2008–150, § 6(b), rewrote subsec. (a), which prior thereto read:

''(a) Either of the following shall be means, but not necessarily the exclusive or conclusive means, of proving that an individual or other entity acted ''to support or oppose the nomination or election of one or more clearly identified candidates:''

''(1) Evidence of financial sponsorship of''; and communications to the general public that use phrases such as ''vote for'', ''reelect'', ''support'', ''cast your ballot for'', ''(name of candidate) for (name of office)'', ''(name of candidate) in (year)'', ''vote against'', ''defeat'', ''reject'', ''vote pro-(policy position)'' or ''vote anti-(policy position)'' accompanied by a list of candidates clearly labeled ''pro-(policy position)'' or ''anti-(policy position)'', or communications of campaign words or slogans, such as posters, bumper stickers, advertisements, etc., which say ''(name of candidate)'s the One'', ''(name of candidate) '98'', ''(name of candidate)!'', or the names of two candidates joined by a hyphen or slash.

''(2) Evidence of financial sponsorship of communications whose essential nature expresses electoral advocacy to the general public and goes beyond a mere discussion of public issues in that

they direct voters to take some action to nominate, elect, or defeat a candidate in an election. If the course of action is unclear, contextual factors such as the language of the communication as a whole, the timing of the communication in relation to events of the day, the distribution of the communication to a significant number of registered voters for that candidate's election, and the cost of the communication may be considered in determining whether the action urged could only be interpreted by a reasonable person as advocating the nomination, election, or defeat of that candidate in that election.''

Notes of Decisions

Validity 1

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1. Validity

North Carolina campaign finance statute that employed ''reasonable person'' test and permitted examination of ''contextual factors,'' including timing, distribution, and cost, in determining whether ''essential nature'' of given communication was in support of specific candidate and therefore regulable, was vague and overbroad and violated First Amendment on its face; statute did not limit its reach to ''electioneering,'' and its approach was ad hoc and based on totality of circumstances, so that its scope extended to speech that was neither express advocacy nor its functional equivalent. North Carolina Right to Life, Inc. v. Leake, 2008, 525 F.3d 274. Constitutional Law ⚷ 1695; Elections ⚷ 311

Provision of North Carolina election and campaign finance law, relating to designation of entity as political committee in part based on financial sponsorship of certain communications, was vague and overbroad in violation of free speech clause, in that it allowed consideration of communication's context and reasonable person's interpretation, thereby shifting determination of express advocacy away from words in and of themselves to unpredictability of audience interpretation. North Carolina Right To Life, Inc. v. Leake, 2003, 344 F.3d 418, vacated 124 S.Ct. 2065, 541 U.S. 1007, 158 L.Ed.2d 617, on remand 482 F.Supp.2d 686. Constitutional Law ⚷ 1687; Elections ⚷ 311

Unconstitutional provisions of North Carolina campaign finance statute, which regulated issue advocacy by focusing on ''contextual factors'' such as the timing of the communication, the distribution of the communication, the cost of the communication and a reasonable person standard in evaluating the ''essential nature'' of the communication, were severable from remainder of statute. North Carolina Right to Life, Inc. v. Leake, 2007, 482 F.Supp.2d 686, affirmed in part, reversed in part 525 F.3d 274. Statutes ⚷ 64(2)

North Carolina campaign finance statute, which focused on ''contextual factors'' such as the timing of the communication, the distribution of the communication, the cost of the communication and a reasonable person standard in evaluating the ''essential nature'' of the communication, was unconstitutionally vague and overbroad in violation of First Amendment; statute failed narrow tailoring test by regulating a class of speech, pure issue advocacy, that could not possibly combat state's compelling interest in limiting electoral corruption. North Carolina Right to Life, Inc. v. Leake, 2007, 482 F.Supp.2d 686, affirmed in part, reversed in part 525 F.3d 274. Constitutional Law ⚷ 1695; Elections ⚷ 311

Because of vagueness concerns, *McConnell* exception, permitting regulation of the ''functional equivalent'' of express advocacy under First Amendment, was inapplicable in determining constitutionality of North Carolina campaign finance statute, which focused on ''contextual factors'' such as the timing of the communication, the distribution of the communication, the cost of the communication and a reasonable person standard in evaluating the ''essential nature'' of the communication. North Carolina Right to Life, Inc. v. Leake, 2007, 482 F.Supp.2d 686, affirmed in part, reversed in part 525 F.3d 274. Constitutional Law ⚷ 1695

§ 163–278.15. No acceptance of contributions made by corporations, foreign and domestic, or other prohibited sources

(a) No candidate, political committee, political party, or treasurer shall accept any contribution made by any corporation, foreign

or domestic, regardless of whether such corporation does business in the State of North Carolina, or made by any business entity, labor union, professional association, or insurance company. This section does not apply with regard to entities permitted to make contributions by G.S. 163–278.19(f).

(b) A candidate or political committee may accept a contribution knowing that the contribution is the proceeds of a loan made in the ordinary course of business by a financial institution if all of the following conditions are met:

(1) The full amount of the loan is secured by collateral placed, or by guaranties given, by one or more individuals or entities who are not prohibited by this Article from making contributions to the candidate or political committee. The value of the collateral posted by each individual or entity, or the amount of each guaranty, may not exceed the contribution limitations applicable under this Article to each individual or entity. The value of collateral posted may exceed the contribution limitations applicable under this Article in cases where the amount of the loan secured by that collateral does not exceed the contribution limitations applicable to the individual or entity.

(2) During the time that any loan remains outstanding and unpaid, then the value of any collateral posted, or the amount of each guaranty, for that loan shall be considered to be a contribution by the individual or entity securing the loan. If the loan, or any portion of the loan, is repaid to the financial institution by the candidate or political committee to whom the loan was made during the contribution limitation period for the same ''election'' as defined in G.S. 163–278.13(d) in which the loan was made, the individual or entity securing the loan shall be eligible to further contribute to that candidate or political committee up to the amount of the repayment. If multiple individuals or entities secured the loan that is repaid to the financial institution by the candidate or political committee, then the amount repaid shall be prorated amongst the multiple individuals or entities.

(3) If the loan is to the candidate or political committee, only the candidate, the candidate's spouse, or the political committee to whom the loan was made may repay the loan.

The State Board of Elections shall develop forms for reporting the proceeds of loans in a full and accurate manner.

Added by Laws 1973, c. 1272, § 1. Amended by S.L. 1999–31, § 5(e), eff. May 4, 1999; S.L. 2006–262, § 4.1(c), eff. Aug. 27, 2006; S.L. 2006–195, § 6, eff. Jan. 1, 2007.

Historical and Statutory Notes

2006 Legislation

S.L. 2006–195, § 6, eff. Jan. 1, 2007, rewrote the catchline and section, which prior thereto read:

''§ 163–278.15. No acceptance of contributions made by corporations, foreign and domestic

''No candidate, political committee, political party, or treasurer shall accept any contribution made by any corporation, foreign or domestic, regardless of whether such corporation does business in the State of North Carolina. This section does not apply with regard to entities permitted to make contributions by G.S. 163–278.19(f).''

S.L. 2006–195, § 9, provides:

''Sections 1 through 6 of this act become effective January 1, 2007, and apply to all contributions made and accepted on and after that date. The repeal of G.S. 163–278.20 is not effective retroactively and shall not be deemed to render lawful or unlawful any action occurring before its effective date. Sections 7 and 8 of this act become effective October 1, 2006. The remainder of this act is effective when it becomes law.''

S.L. 2006–262, § 4.1(c), eff. Aug. 27, 2006, amended section by designating the existing text as subsec. (a) and adding subsec. (b).

S.L. 2006–262, § 5, provides:

''Section 4 of this act becomes effective January 1, 2007. The remainder of this act is effective when it becomes law, except that any criminal penalty resulting from this act becomes effective October 1, 2006. Prosecutions for offenses committed before October 1, 2006, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.''

§ 163–278.16. Regulations regarding timing of contributions and expenditures

(a) Except as provided in G.S. 163–278.6(14) and G.S. 163–278.12, no contribution may be received or expenditure made by or on behalf of a candidate, political committee, or referendum committee:

(1) Until the candidate, political committee, or referendum committee appoints a treasurer and certifies the name and address of the treasurer to the Board; and

(2) Unless the contribution is received or the expenditure made by or through the treasurer of the candidate, political committee, or referendum committee.

(b) to (e) Repealed by Laws 1975, c. 565, § 2.

(f), (g) Deleted by S.L. 1999–453, § 2(b), eff. Jan. 1, 2000.

Added by Laws 1973, c. 1272, § 1. Amended by Laws 1975, c. 565, § 2; Laws 1979, c. 500, § 4; Laws 1979, c. 1073, § 19; Laws 1979, c. 1073, § 20; Laws 1987, c. 652; S.L. 1997–515, § 13.1(a), eff. Dec. 1, 1997; S.L. 1999–31, §§ 1(d), 4(b), eff. May 4, 1999; S.L. 1999–453, § 2(b), eff. Jan. 1, 2000.

Historical and Statutory Notes

S.L. 1997–515, § 13.1(b), provides:

''This section becomes effective December 1, 1997.''

S.L. 1999–453, §§ 1, 2(d) and 10 provide:

''Section 1. This act shall be called 'The Campaign Reform Act of 1999'.''

''Section 2. (d) This section becomes effective January 1, 2000, and applies to all contributions and expenditures made or accepted on or after that date.''

''Section 10. Prosecutions for, or sentences based on, offenses occurring before the relevant effective date in this

act are not abated or affected by this act, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.''

§ 163–278.16A. Restriction on use of State funds by declared candidate for Council of State for advertising or public service announcements using their names, pictures, or voices

After December 31 prior to a general election in which a Council of State office will be on the ballot, no declared candidate for that Council of State office shall use or permit the use of State funds for any advertisement or public service announcement in a newspaper, on radio, or on television that contains that declared candidate's name, picture, or voice, except in case of State or national emergency and only if the announcement is reasonably necessary to that candidate's official function. For purposes of this section, ''declared candidate'' means someone who has publicly announced an intention to run.

Added by S.L. 1997–515, § 13(a), eff. Jan. 1, 1998.

Historical and Statutory Notes

S.L. 1997–515, § 15, provides:

''Except as otherwise provided herein, this act is effective when it becomes law. Prosecutions for, or sentences based on, offenses occurring before the relevant effective dates in this act are not abated or affected by this act, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.''

Cross References

Use of public position for private gain, see § 138A–31.

Notes of Decisions

Construction and application 1

1. Construction and application

Statutory prohibition on use of state funds for campaign-like public service announcements (PSAs) only precluded PSAs after December 31 prior to reelection year, and did not preclude state attorney general from running all PSAs after effective date of statute. Fuller v. Easley, 2001, 145 N.C.App. 391, 553 S.E.2d 43. Elections ⚷ 317.2

Prohibition on use of state funds for campaign-like public service announcements (PSAs) did not bar all PSAs, but rather, applied only to prohibit PSAs in years when declared Council of State candidates were on election ballot. Fuller v. Easley, 2001, 145 N.C.App. 391, 553 S.E.2d 43. Elections ⚷ 317.2

Given that proceeds of attorney general's lawsuits did not fall within purview of statute that prohibited candidate from appearing in public service announcements (PSAs) during years when candidate was up for reelection and were not contributions or donations that had to be reported as campaign contributions, taxpayer was not entitled to equitable relief with regard to attorney general's failure to report proceeds or alleged use of proceeds for PSAs. Fuller v. Easley, 2001, 145 N.C.App. 391, 553 S.E.2d 43. Elections ⚷ 317.4

§ 163–278.16B. Use of contributions for certain purposes

(a) A candidate or candidate campaign committee may use contributions only for the following purposes:

(1) Expenditures resulting from the campaign for public office by the candidate or candidate's campaign committee.

(2) Expenditures resulting from holding public office.

(3) Donations to an organization described in section 170(c) of the Internal Revenue Code of 1986 (26 U.S.C. § 170(c)), provided that the candidate or the candidate's spouse, children, parents, brothers, or sisters are not employed by the organization.

(4) Contributions to a national, State, or district or county committee of a political party or a caucus of the political party.

(5) Contributions to another candidate or candidate's campaign committee.

(6) To return all or a portion of a contribution to the contributor.

(7) Payment of any penalties against the candidate or candidate's campaign committee for violation of this Article imposed by a board of elections or a court of competent jurisdiction.

(8) Payment to the Escheat Fund established by Chapter 116B of the General Statutes.

(9) Legal expense donation not in excess of four thousand dollars ($4,000) per calendar year to a legal expense fund established pursuant to Article 22M of Chapter 163 of the General Statutes.

(b) As used in this section, the term ''candidate campaign committee'' means the same as in G.S. 163–278.38Z(3).

(c) Contributions made to a candidate or candidate campaign committee do not become a part of the personal estate of the individual candidate. The candidate may file with the board a written designation of those funds that directs to which of the permitted uses in subsection (a) of this section they shall be paid in the event of the death or incapacity of the candidate. After the payment of permitted outstanding debts of the account, the candidate's filed written designation shall control. If the candidate files no such written designation, the funds after payment of permitted outstanding debts shall be distributed in accordance with subdivision (a)(8) of this section.

Added by S.L. 2006–161, § 1, eff. Oct. 1, 2006. Amended by S.L. 2007–391, § 30, eff. Aug. 19, 2007; S.L. 2008–213, § 87, eff. Aug. 15, 2008; S.L. 2009–534, § 2(h), eff. Dec. 1, 2009.

Historical and Statutory Notes

2006 Legislation

S.L. 2006–161, § 6, provides:

''Sections 1 and 5 of this act become effective October 1, 2006, and apply to all candidates and candidate campaign committees with active accounts with the State Board of Elections or a county board of elections on or after that date.

Sections 2, 3, and 4 of this act become effective January 1, 2007, and apply to all political committees and referendum committees with active accounts with the State Board of Elections or a county board of elections on or after that date. The remainder of this act becomes effective January 1, 2007.''

2007 Legislation

S.L. 2007–391, § 30, in subsec. (c), in the second sentence, substituted ''The candidate may file'' for ''A candidate or the candidate who directs the candidate campaign committee may file''.

2009 Legislation

S.L. 2009–534, § 2(h), inserted subd. (a)(9) relating to a legal expense donation.

Cross References

Voter-Owned Elections Fund, requirements for participation, see § 163–278.98.

§ 163–278.17. Statements of media receiving campaign expenditures

(a) Repealed by Laws 1985, c. 183, § 1.

(b) Each media shall require written authority for each expenditure from each candidate, treasurer or individual making or authorizing an expenditure.

A candidate may authorize advertisement paid for by a treasurer appointed by the candidate. All authorizations of expenditures signed by a candidate, treasurer or individual shall be deemed public records and copies of said authorizations shall be available for inspection during normal business hours at the office(s) of the media making the publication or broadcast nearest to the place(s) of publication or broadcast.

(c) Repealed by Laws 1985, c. 183, § 2.

Added by Laws 1973, c. 1272, § 1. Amended by Laws 1975, c. 565, § 3; Laws 1979, c. 500, § 5, 6; Laws 1979, c. 1073, § 9; Laws 1985, c. 183, § 1; Laws 1985, c. 183, § 2.

§ 163–278.18. Normal commercial charges for political advertising

(a) No media and no supplier of materials or services shall charge or require a candidate, treasurer, political party, or individual to pay a charge for advertising, materials, space, or services purchased for or in support of or in opposition to any candidate, political committee, or political party that is higher than the normal charge it requires other customers to pay for comparable advertising, materials, space, or services purchased for other purposes.

(b) A newspaper, magazine, or other advertising medium shall not charge any candidate, treasurer, political committee, political party, or individual for any advertising for or in support of or in opposition to any candidate, political committee or political party at a rate higher than the comparable rate charged to other persons for advertising of comparable frequency and volume; and every

candidate, treasurer, political party or individual, with respect to political advertising, shall be entitled to the same discounts afforded by the advertising medium to other advertisers under comparable conditions and circumstances.

Added by Laws 1973, c. 1272, § 1. Amended by Laws 1977, c. 856.

§ 163–278.19. Violations by corporations, business entities, labor unions, professional associations and insurance companies

(a) Except as provided in subsections (a2), (b), (d), (e), (f), and (g) of this section it shall be unlawful for any corporation, business entity, labor union, professional association or insurance company directly or indirectly:

(1) To make any contribution to a candidate or political committee or to make any expenditure to support or oppose the nomination or election of a clearly identified candidate;

(2) To pay or use or offer, consent or agree to pay or use any of its money or property for any contribution to a candidate or political committee or for any expenditure to support or oppose the nomination or election of a clearly identified candidate; or

(3) To compensate, reimburse, or indemnify any person or individual for money or property so used or for any contribution or expenditure so made;

and it shall be unlawful for any officer, director, stockholder, attorney, agent or member of any corporation, business entity, labor union, professional association or insurance company to aid, abet, advise or consent to any such contribution or expenditure, or for any person or individual to solicit or knowingly receive any such contribution or expenditure. Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party. Any officer, director, stockholder, attorney, agent or member of any corporation, business entity, labor union, professional association or insurance company aiding or abetting in any contribution or expenditure made in violation of this section shall be guilty of a Class 2 misdemeanor, and shall in addition be liable to such corporation, business entity, labor union, professional association or insurance company for the amount of such contribution or expenditure, and the same may be recovered of him upon suit by any stockholder or member thereof.

(a1) A transfer of funds shall be deemed to have been a contribution or expenditure made indirectly if it is made to any committee or political party account, whether inside or outside this State, with the intent or purpose of being exchanged in whole or in part for any other funds to be contributed or expended in an election

for North Carolina office or to offset any other funds contributed or expended in an election for North Carolina office.

(a2) Proceeds of loans made in the ordinary course of business by financial institutions may be used for contributions made in compliance with this Chapter. Financial institutions may also grant revolving credit to political committees and referendum committees in the ordinary course of business.

(b) It shall, however, be lawful for any corporation, business entity, labor union, professional association or insurance company to communicate with its employees, stockholders or members and their families on any subject; to conduct nonpartisan registration and get-out-the-vote campaigns aimed at their employees, stockholders, or members and their families; or for officials and employees of any corporation, insurance company or business entity or the officials and members of any labor union or professional association to establish, administer, contribute to, and to receive and solicit contributions to a separate segregated fund to be utilized for political purposes, and those individuals shall be deemed to become and be a political committee as that term is defined in G.S. 163–278.6(14) or a referendum committee as defined in G.S 163–278.6(18b); provided, however, that it shall be unlawful for any such fund to make a contribution or expenditure by utilizing contributions secured by physical force, job discrimination, financial reprisals or the threat of force, job discrimination or financial reprisals, or by dues, fees, or other moneys required as a condition of membership or employment or as a requirement with respect to any terms or conditions of employment, including, without limitation, hiring, firing, transferring, promoting, demoting, or granting seniority or employment-related benefits of any kind, or by moneys obtained in any commercial transaction whatsoever.

(c) A violation of this section is a Class 2 misdemeanor. In addition, the acceptance of any contribution, expenditure, payment, reimbursement, indemnification, or anything of value under subsection (a) shall be a Class 2 misdemeanor.

(d) Whenever a candidate or treasurer is an officer, director, stockholder, attorney, agent, or employee of any corporation, business entity, labor union, professional association or insurance company, and by virtue of his position therewith uses office space and communication facilities of the corporation, business entity, labor union, professional association or insurance company in the normal and usual scope of his employment, the fact that the candidate or treasurer receives telephone calls, mail, or visits in such office which relates to activities prohibited by this Article shall not be considered a violation under this section.

(e) Notwithstanding the prohibitions specified in this Article and Article 22 of this Chapter, a political committee organized under

provisions of this Article shall be entitled to receive and the corporation, business entity, labor union, professional association, or insurance company designated on the committee's organizational report as the parent entity of the employees or members who organized the committee is authorized to give reasonable administrative support that shall include record keeping, computer services, billings, mailings to members of the committee, membership development, fund-raising activities, office supplies, office space, and such other support as is reasonably necessary for the administration of the committee.

The approximate cost of any reasonable administrative support shall be submitted to the committee, in writing, and the committee shall include that cost on the report required by G.S. 163–278.9(a)(6). Also included in the report shall be the approximate allocable portion of the compensation of any officer or employee of the corporation, business entity, labor union, professional association, or insurance company who has devoted more than thirty-five percent (35%) of his time during normal business hours of the corporation, business entity, labor union, professional association, or insurance company during the period covered by the required report. The approximate cost submitted by the parent corporation, business entity, labor union, professional association, or insurance company shall be entered on the committee's report as the final entry on its list of ''contributions'' and a copy of the written approximate cost received by it shall be attached.

The reasonable administrative support given by a corporation, business entity, labor union, professional association, or insurance company shall be designated on the books of the corporation, business entity, labor union, professional association, or insurance company as such and may not be treated by it as a business deduction for State income tax purposes.

(f) This section does not prohibit a contribution or independent expenditure by an entity that:

(1) Has as an express purpose promoting social, educational, or political ideas and not to generate business income;

(2) Does not have shareholders or other persons which have an economic interest in its assets and earnings; and

(3) Was not established by a business corporation, by an insurance company, by a business entity, including, but not limited to, those chartered under Chapter 55, Chapter 55A, Chapter 55B, or Chapter 58 of the General Statutes, by a professional association, or by a labor union and does not receive substantial revenue from such entities. Substantial revenue is rebuttably presumed to be more than ten percent (10%) of total revenues in a calendar year.

(g) If a political committee has as its only purpose accepting contributions and making expenditures to influence elections, and that political committee incorporates as a nonprofit corporation to shield its participants from liability created outside this Chapter, that political committee is not considered to be a corporation for purposes of this section. Incorporation of a political committee does not relieve any individual, person, or other entity of any liability, duty, or obligation created pursuant to any provision of this Chapter. To obtain the benefits of this subsection, an incorporating political committee must state exactly the following language as the only purpose for which the corporation can be organized: ''to accept contributions and make expenditures to influence elections as a political committee pursuant to G.S. 163–278.6(14) only.'' No political committee shall do business as a political committee after incorporation unless it has been certified by the State Board of Elections as being in compliance with this subsection.

Added by Laws 1973, c. 1272, § 1. Amended by Laws 1975, c. 565, § 6; Laws 1985, c. 354, § 1; Laws 1987, c. 113, § 3; Laws 1987, c. 565, § 16; Laws 1993, c. 539, §§ 1115, 1116, eff. Oct. 1, 1994; Laws 1993, c. 539, § 1359; Laws 1993, c. 553, § 69, eff. July 24, 1993; Laws 1994 (1st Ex. Sess.), c. 24, § 14(c), eff. March 26, 1994; S.L. 1999–31, §§ 4(d), 5(a), 6(b), eff. May 4, 1999; S.L. 2001–487, § 97(a), eff. Dec. 16, 2001; S.L. 2002–159, §§ 57.3(a), 57.3(b), eff. Jan. 1, 2003; S.L. 2006–195, § 3, eff. Jan. 1, 2007; S.L. 2006–262, §§ 4.1(a), 4.1(b), 4.3, eff. Aug. 27, 2006.

Historical and Statutory Notes

Laws 1993, c. 539, § 1359, provides:

''This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.'' [Amended by Laws 1994, Ex. Sess., c. 24, § 14(c), eff. March 26, 1994.]

2001 Legislation

S.L. 2001–487, § 97(a), eff. Dec. 16, 2001, in the second paragraph of subsec. (e), in the first sentence, deleted ''annual'' following ''cost on the'' and in the third sentence, deleted ''annual'' following ''on the committee's''.

2002 Legislation

S.L. 2002–159, § 57.3(a), eff. Jan. 1, 2003, in the introductory paragraph of subsec. (a), substituted ''(f), and (g)'' for ''and (f)''.

S.L. 2002–159, § 57.3(b), eff. Jan. 1, 2003, added subsec. (g).

2006 Legislation

S.L. 2006–262, § 4.1(a), eff. Aug. 27, 2006, amended subsec. (a) by inserting ''(a2)'' and, in subd. (a)(1), deleted ''(except a loan of money by a national or State bank or federal or State savings and loan association made in accordance with the applicable banking or savings and loan association laws and regulations and in the ordinary course of business)'' after ''political committee'' and before ''or to make''.

S.L.2006–262, § 4.1(b), eff. Aug. 27, 2006, added subsec. (a2).

S.L. 2006–262, § 4.3, eff. Aug. 27, 2006, amended subsec. (e) by deleting '', but not be limited to'' after ''support that shall'' and before ''record keeping'' and inserted ''membership development, fund-raising activities, office supplies, office space,''.

S.L. 2006–262, § 5, provides:

''Section 4 of this act becomes effective January 1, 2007. The remainder of this act is effective when it becomes law, except that any criminal penalty resulting from this act becomes effective October 1, 2006. Prosecutions for of-

fenses committed before October 1, 2006, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.''

Cross References

Legal expense funds, applicability of limitations on contributions, see § 163–278.316.

Misdemeanor sentencing and punishment, see § 15A–1340.13 et seq.

Administrative Code References

State Board of Elections, departmental rules, municipal financing of election campaigns, see 8 NCAC 1.0105.

Notes of Decisions

Construction and application 2
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Validity 1

1. Validity

North Carolina statutes prohibiting corporate expenditures or contributions for political purposes were substantially overbroad and unconstitutionally vague, given failure to make exception for nonprofit corporations presenting minimal risk of distorting political process. North Carolina Right to Life, Inc. v. Bartlett, 1999, 168 F.3d 705, certiorari denied 120 S.Ct. 1156, 528 U.S. 1153, 145 L.Ed.2d 1069. Constitutional Law ⚷ 1469; Elections ⚷ 311

North Carolina statutes making it unlawful for any corporation to directly or indirectly make any contribution or expenditure for any political purpose whatsoever, were facially overbroad and violated First Amendment's guarantee of protection for political speech; statutes prohibited all nonprofit corporations from making expenditures, regardless of whether corporations posed real or perceived threat to political process, and could result in burdening innocent entities with expenditure limitations properly designed for traditional for-profit corporations. North Carolina Right to Life, Inc. v. Bartlett, 1998, 3 F.Supp.2d 675, affirmed in part, reversed in part 168 F.3d 705, certiorari denied 120 S.Ct. 1156, 528 U.S. 1153, 145 L.Ed.2d 1069. Constitutional Law ⚷ 1700; Elections ⚷ 311; Constitutional Law ⚷ 1707

Statute making it unlawful for any corporation or labor union to make any contribution or expenditure in aid or in opposition to any candidate, on its face, and as applied by trial court in finding for political candidate in action by public relations corporation to recover for unlawful advances made to candidate, was constitutional. Louchheim, Eng & People, Inc. v. Carson, 1978, 241 S.E.2d 401, 35 N.C.App. 299. Elections ⚷ 311

2. Construction and application

Where election of public officer had been certified at time contribution was made by insurance company to breakfast held in his honor, he was not ''candidate'' for political office within meaning of statute prohibiting use of funds of insurance companies for political purposes and summons were therefore insufficient to charge criminal offense under such statute. State v. Charlotte Liberty Mut. Ins. Co., 1979, 251 S.E.2d 867, 39 N.C.App. 557, affirmed 258 S.E.2d 343, 298 N.C. 270. Elections ⚷ 317.2

Purpose of federal statute regulating campaign contributions and expenditures by corporations and labor unions is to protect populace from undue influence by corporations and labor unions, and to insure responsiveness of elected officials to public at large; purposes of state statute making it unlawful for any corporation or labor union to make any contribution or expenditure in aid of or in opposition to any candidate are identical to those of its federal counterpart. Louchheim, Eng & People, Inc. v. Carson, 1978, 241 S.E.2d 401, 35 N.C.App. 299. Elections ⚷ 317.2

3. Illegal expenditures

Expenditure by public relations corporation of substantial sums of money for purchase of media advertising for political candidate's campaign until candidate's committee could raise sufficient funds to cover these expenses constituted illegal expenditures within

meaning of statute making it unlawful for any corporation or labor union to make any contribution or expenditure in aid or in opposition to any candidate. Louchheim, Eng & People, Inc. v. Carson, 1978, 241 S.E.2d 401, 35 N.C.App. 299. Elections ⚷ 317.2

Fact that political candidate recognized moral obligation to public relations corporation which had expended substantial sums of money for purchase of media advertising for candidate's campaign and attempted to satisfy such obligation in part with worthless check did not alter unlawful complexion of corporation's expenditures. Louchheim, Eng & People, Inc. v. Carson, 1978, 241 S.E.2d 401, 35 N.C.App. 299. Elections ⚷ 317.2

4. Criminal proceedings

Case or controversy requirement was satisfied with respect to challenges asserted by nonprofit corporation and its political action committee to North Carolina statutes prohibiting corporate contributions and expenditures for political purpose and requiring political committee soliciting contributions to advise those solicited of intended recipient, despite state's claims that statutes would not be applied to corporation or committee; statutes applied under their plain terms, state previously had interpreted statutes in manner reaching conduct at issue, and threat of criminal prosecution under statute chilled First Amendment rights of corporation and committee. North Carolina Right to Life, Inc. v. Bartlett, 1999, 168 F.3d 705, certiorari denied 120 S.Ct. 1156, 528 U.S. 1153, 145 L.Ed.2d 1069. Federal Courts ⚷ 13.20; Constitutional Law ⚷ 980

Summonses charging two insurance companies and their presidents with making $500 contribution to postelection, preinaugural breakfast for reelected Commissioner of Insurance failed to charge a criminal offense proscribed by statute governing contributions by insurance companies in aid of a political party or contributions in behalf of or opposition to a candidate. (Per Curiam with three Judges concurring in affirmance.) State v. Charlotte Liberty Mut. Ins. Co., 1979, 258 S.E.2d 343, 298 N.C. 270. Elections ⚷ 328(1)

§ 163–278.19A. Contributions allowed

Notwithstanding any other provision of this Chapter, it is lawful for any person as defined in G.S. 163-278.6(13) to contribute to a referendum committee.

Added by Laws 1979, c. 1073, § 7.

§ 163–278.19B. Political party headquarters building funds

Notwithstanding the provisions of G.S. 163–278.19, a person prohibited by that section from making a contribution may donate to political parties and political parties may accept from such a person money and other things of value donated to a political party headquarters building fund. Donations to the political party headquarters building fund shall be subject to all the following rules:

(1) The donations solicited and accepted are designated to the political party headquarters building fund.

(2) Potential donors to that fund are advised that all donations will be exclusively for the political party headquarters building fund.

(3) The political party establishes a separate segregated bank account into which shall be deposited only donations for the political party headquarters building fund from persons prohibited by G.S. 163–278.19 from making contributions.

(4) The donations deposited in the separate segregated bank account for the political party headquarters building fund will be spent only to purchase a headquarters building, to construct a headquarters building, to renovate a headquarters building, to pay a mortgage on a headquarters building, or to repay donors if a headquarters building is not purchased, constructed, or renovated. Donations deposited into that account shall not be used for headquarters rent, utilities, or equipment other than fixtures.

(5) The political party executive committee shall report donations to and spending by a political party headquarters building fund on every report required to be made by G.S. 163–278.9. If a committee is excused from making general campaign finance reports under G.S. 163–278.10A, that committee shall nonetheless report donations in any amount to and spending in any amount by the political party headquarters building fund at the times required for reports in G.S. 163–278.9.

If all the criteria set forth in subdivisions (1) through (5) of this section are complied with, then donations to and spending by a political party headquarters building fund do not constitute contributions or expenditures as defined in G.S. 163–278.6. If those criteria are complied with, then donations may be made to a political party headquarters building fund.

Added by S.L. 1999–426, § 9(a), eff. Aug. 5, 1999.

§ 163–278.20. Repealed by S.L. 2006–195, § 2, eff. Jan. 1, 2007

Historical and Statutory Notes

The repealed section, which related to disclosure of political connections before soliciting contributions, was derived from:

Laws 1973, c. 1272, § 1.
Laws 1979, c. 1073, § 10.
Laws 1979, c. 1073, § 19.
Laws 1989, c. 94, § 1.
Laws 1993, c. 539, § 1117, eff. Oct. 1, 1994.
Laws 1994 (1st Ex. Sess.), c. 24, § 14(c), eff. March 26, 1994.

§ 163–278.21. Promulgation of policy and administration through State Board of Elections

The State Board of Elections shall have responsibility, adequate staff, equipment and facilities, for promulgating all regulations necessary for the enforcement and administration of this Article and to prevent the circumvention of the provisions of this Article. The State Board of Elections shall empower the Executive Director with the responsibility for the administrative operations required to administer this Article and may delegate or assign to him such other duties from time to time by regulations or orders of the State Board of Elections.

Added by Laws 1973, c. 1272, § 1. Amended by Laws 1975, c. 798, § 7; S.L. 1999–453, § 5(c), eff. Aug. 12, 1999; S.L. 2001–319, § 11, eff. July 28, 2001.

Historical and Statutory Notes

S.L. 1999–453, §§ 1, 5(d) and 10 provide:

''Section 1. This act shall be called 'The Campaign Reform Act of 1999'.''

''Section 5. (d) This section is effective when this act becomes law and applies to rules adopted by the State Board of Elections on or after that date.''

''Section 10. Prosecutions for, or sentences based on, offenses occurring before the relevant effective date in this act are not abated or affected by this act, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.''

2001 Legislation

S.L. 2001–319, § 11, eff. July 28, 2001, substituted ''Executive Director'' for ''Executive Secretary-Director'' and ''State Executive Secretary-Director'' throughout this section.

Administrative Code References

Procedures for political committees, see 8 NCAC 1.0004.

State Board of Elections, departmental rules, municipal financing of election campaigns, see 8 NCAC 1.0105.

§ 163–278.22. Duties of State Board

It shall be the duty and power of the State Board:

(1) To prescribe forms of statements and other information required to be filed by this Article, to furnish such forms to the county boards of elections and individuals, media or others required to file such statements and information, and to prepare, publish and distribute or cause to be distributed to all candidates at the time they file notices of candidacy a manual setting forth the provisions of this Article and a prescribed uniform system for accounts required to file statements by this Article.

(2) To accept and file any information voluntarily supplied that exceeds the requirements of this Article.

(3) To develop a filing, coding, and cross-indexing system consonant with the purposes of this Article.

(4) To make statements and other information filed with it available to the public at a charge not to exceed actual cost of copying.

(5) To preserve reports and statements filed under this Article. Such reports and statements, after a period of two years following the election year, may be transferred to the Department of Cultural Resources, Office of Archives and History, and shall be preserved for a period of 10 years.

(6) To prepare and publish such reports as it may deem appropriate.

(7) To make investigations to the extent the Board deems necessary with respect to statements filed under the provisions of this Article and with respect to alleged failures to file any statement required under the provisions of this Article or Article 22M of the General Statutes and, upon complaint under oath by any registered voter, with respect

to alleged violations of any part of this Article or Article 22M of the General Statutes.

(8) After investigation, to report apparent violations by candidates, political committees, referendum committees, legal expense funds, individuals or persons to the proper district attorney as provided in G.S. 163–278.27.

(9) To prescribe and furnish forms of statements and other material to the county boards of elections for distribution to candidates and committees required to be filed with the county boards.

(10) To instruct the chairman and director of elections of each county board as to their respective duties and responsibilities relative to the administration of this Article.

(11) To require appropriate certification of delinquent or late filings from the county boards of elections and to execute the same responsibilities relative to such reports as provided in G.S. 163–278.27.

(12) To assist county boards of elections in resolving questions arising from the administration of this Article.

(13) To require county boards of elections to hold such hearings, make such investigations, and make reports to the State Board as the State Board deems necessary in the administration of this Article.

(14) To calculate, assess, and collect civil penalties pursuant to this Article.

Added by Laws 1973, c. 1272, § 1. Amended by Laws 1975, c. 798, § 8; Laws 1977, c. 626, § 1; Laws 1979, c. 500, § 9; Laws 1979, c. 500, § 12,13; Laws 1979, c. 1073, § 18; Laws 1995, c. 243, § 1, eff. Jan. 1, 1996; S.L. 1997–515, § 7(e), eff. Jan. 1, 1998; S.L. 2002–159, § 35(n), eff. Oct. 11, 2002; S.L. 2007–349, §§ 2, 3, eff. Jan. 1, 2008.

Historical and Statutory Notes

Laws 1995, c. 243, § 1, provides:

''Wherever the term 'supervisor' appears in the General Statutes of North Carolina or in any local act in reference to the county supervisor of elections as provided in G.S. 163–35, the term is changed to read 'director.' ''

S.L. 1997–515, §§ 7(f) and 15 provide:

''Section 7(f). This section becomes effective January 1, 1998, and applies to all reports due on or after that date.''

''Section 15. Except as otherwise provided herein, this act is effective when it becomes law. Prosecutions for, or sentences based on, offenses occurring before the relevant effective dates in this act are not abated or affected by this act, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.''

2002 Legislation

S.L. 2002–159, § 35(n), eff. Oct. 11, 2002, rewrote the section, which prior thereto read:

''It shall be the duty and power of the State Board:

''(1) To prescribe forms of statements and other information required to be filed by this Article, to furnish such forms to the county boards of elections and individuals, media or others required to file such statements and information, and to prepare, publish and distribute or cause to be distributed to all candidates at the time they file notices

of candidacy a manual setting forth the provisions of this Article and a prescribed uniform system for accounts required to file statements by this Article;

''(2) To accept and file any information voluntarily supplied that exceeds the requirements of this Article;

''(3) To develop a filing, coding, and cross-indexing system consonant with the purposes of this Article;

''(4) To make statements and other information filed with it available to the public at a charge not to exceed actual cost of copying;

''(5) To preserve reports and statements filed under this Article. Such reports and statements, after a period of two years following the election year, may be transferred to the Department of Cultural Resources, Division of Archives and History, and shall be preserved for a period of 10 years.

''(6) To prepare and publish such reports as it may deem appropriate;

''(7) To make investigations to the extent the Board deems necessary with respect to statements filed under the provisions of this Article and with respect to alleged failures to file any statement required under the provisions of this Article, and, upon complaint under oath by any registered voter, with respect to alleged violations of any part of this Article; and

''(8) After investigation, to report apparent violations by candidates, political committees, referendum committees, individuals or persons to the proper district attorney as provided in G.S. 163-278.27.

''(9) To prescribe and furnish forms of statements and other material to the county boards of elections for distribution to candidates and committees required to be filed with the county boards.

''(10) To instruct the chairman and director of elections of each county board as to their respective duties and responsibilities relative to the administration of this Article.

''(11) To require appropriate certification of delinquent or late filings from the county boards of elections and to execute the same responsibilities relative to such reports as provided in G.S. 163-278.27.

''(12) To assist county boards of elections in resolving questions arising from the administration of this Article.

''(13) To require county boards of elections to hold such hearings, make such investigations, and make reports to the State Board as the State Board deems necessary in the administration of this Article.

''(14) To calculate, assess, and collect civil penalties pursuant to this Article.''

2007 Legislation

S.L. 2007–349, § 2, in subd. (7) inserted ''or Article 22M of the General Statutes'' in two locations.

S.L. 2007–349, § 3, in subd. (8) inserted ''legal expense funds,''.

Cross References

Legal expense funds, detailed accounts kept by treasurer, see § 163–278.307.

Administrative Code References

Procedures for political committees, see 8 NCAC 1.0004.

Notes of Decisions

Injunctions 1

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1. Injunctions

Voter failed to state claim for mandatory injunction to compel board of elections to hold a hearing on his allegations that a political committee had violated state campaign finance laws; board had performed its statutory duty by investigating allegations, and concluding, in its discretion, that no hearing was required. Batdorff v. North Carolina State Bd. of Elections, 2002, 150 N.C.App. 108, 563 S.E.2d 43, review allowed 356 N.C. 159, 568 S.E.2d 186, review dismissed as improvidently granted 356 N.C. 661, 576 S.E.2d 325. Injunction ⚷ 118(2)

Voter failed to state claim for mandatory injunction to compel political committee to provide reports about campaign financing; board of elections had already examined reports submitted by committee, and concluded that they were adequate. Batdorff v. North Car-

olina State Bd. of Elections, 2002, 150 N.C.App. 108, 563 S.E.2d 43, review allowed 356 N.C. 159, 568 S.E.2d 186, review dismissed as improvidently granted 356 N.C. 661, 576 S.E.2d 325. Injunction ⚷ 118(2)

§ 163–278.23. Duties of Executive Director of Board

The Executive Director of the Board shall inspect or cause to be inspected each statement filed with the Board under this Article within 30 days after the date it is filed. The Executive Director shall advise, or cause to be advised, no more than 30 days and at least five days before each report is due, each candidate or treasurer whose organizational report has been filed, of the specific date each report is due. He shall immediately notify any individual, candidate, treasurer, political committee, referendum committee, media, or other entity that may be required to file a statement under this Article if:

(1) It appears that the individual, candidate, treasurer, political committee, referendum committee, media, or other entity has failed to file a statement as required by law or that a statement filed does not conform to this Article; or

(2) A written complaint is filed under oath with the Board by any registered voter of this State alleging that a statement filed with the Board does not conform to this Article or to the truth or that an individual, candidate, treasurer, political committee, referendum committee, media, or other entity has failed to file a statement required by this Article.

The entity that is the subject of the complaint will be given an opportunity to respond to the complaint before any action is taken requiring compliance.

The Executive Director of the Board of Elections shall issue written opinions to candidates, the communications media, political committees, referendum committees, or other entities upon request, regarding filing procedures and compliance with this Article. Any such opinion so issued shall specifically refer to this paragraph. If the candidate, communications media, political committees, referendum committees, or other entities rely on and comply with the opinion of the Executive Director of the Board of Elections, then prosecution or civil action on account of the procedure followed pursuant thereto and prosecution for failure to comply with the statute inconsistent with the written ruling of the Executive Director of the Board of Elections issued to the candidate or committee involved shall be barred. Nothing in this paragraph shall be construed to prohibit or delay the regular and timely filing of reports. The Executive Director shall file all opinions issued pursuant to this section with the Codifier of Rules to be published unedited in the North Carolina Register and the North Carolina Administrative Code.

This section applies to Articles 22B, 22D, 22E, 22F, 22G, 22H, and 22M of the General Statutes to the same extent that it applies to this Article.

Added by Laws 1973, c. 1272, § 1. Amended by Laws 1975, c. 334; Laws 1975, c. 565, § 4; Laws 1979, c. 500, § 7; Laws 1979, c. 1073, § 12, 13; Laws 1979, c. 1073, § 17; Laws 1985, c. 759, § 6.1; S.L. 1999–424, § 6(c), eff. Aug. 5, 1999; S.L. 1999–453, § 5(b), eff. Aug. 12, 1999; S.L. 1999–456, § 63, eff. Aug. 13, 1999; S.L. 2001–319, § 11, eff. July 28, 2001; S.L. 2005–430, § 8, eff. Dec. 1, 2005; S.L. 2007–349, § 6, eff. Jan. 1, 2008.

Historical and Statutory Notes

S.L. 1999–453, §§ 1, 5(d) and 10 provide:

''Section 1. This act shall be called 'The Campaign Reform Act of 1999'.''

''Section 5. (d) This section is effective when this act becomes law and applies to rules adopted by the State Board of Elections on or after that date.''

''Section 10. Prosecutions for, or sentences based on, offenses occurring before the relevant effective date in this act are not abated or affected by this act, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.''

2001 Legislation

S.L. 2001–319, § 11, eff. July 28, 2001, substituted ''Executive Director'' for ''Executive Secretary-Director'' and ''State Executive Secretary-Director'' throughout this section.

2005 Legislation

S.L. 2005–430, § 8, eff. Dec. 1, 2005, added the fourth paragraph relating to application of the section to Articles 22B, 22D, 22E and 22F.

S.L. 2005–430, § 11, provides:

''This act becomes effective December 1, 2005, and applies to all contributions and expenditures made or accepted on or after that date.''

2007 Legislation

S.L. 2007–349, § 6, in the fourth undesignated paragraph, substituted ''22F, 22G, 22H, and 22M'' for ''and 22F''.

Administrative Code References

Procedures for political committees, see 8 NCAC 1.0004.

§ 163–278.24. Statements examined within four months

Within four months after the date of each election or referendum, the Executive Director shall examine or cause to be examined each statement filed with the Board under this Article, and, referring to the election or referendum, determine whether the statement conforms to law and to the truth.

Added by Laws 1973, c. 1272, § 1. Amended by Laws 1979, c. 500, § 8; Laws 1979, c. 1073, § 14; Laws 1985, c. 183, § 3; S.L. 2001–319, § 11, eff. July 28, 2001.

Historical and Statutory Notes

2001 Legislation

S.L. 2001–319, § 11, eff. July 28, 2001, substituted ''Executive Director'' for ''Executive Secretary-Director'' and ''State Executive Secretary-Director'' throughout this section.

§ 163–278.25. Issuance of declaration of nomination or certificate of election

No declaration of nomination and no certificate of election shall be granted to any candidate until the candidate or his treasurer has filed the statements referring to the election he is required to file under this Article. Within 24 hours after reaching a decision that a declaration of nomination or certificate of election should not be granted, the Board shall give written notice of that decision, by telegraph or certified mail, to the candidate and the candidate's treasurer. Failure to grant certification shall not affect a successful candidate's title to an office to which he has been otherwise duly elected.

Added by Laws 1973, c. 1272, § 1.

§ 163–278.26. Appeals from State Board of Elections; early docketing

Any candidate for nomination or election who is denied a declaration of nomination or certificate of election, pursuant to G.S. 163-278.25, may, within five days after the action of the Board under that section, appeal to the Superior Court of Wake County for a final determination of any questions of law or fact which may be involved in the Board's action. The cause shall be entitled "In the Matter of the Candidacy of . . . . . ." It shall be placed on the civil docket of that court and shall have precedence over all other civil actions. In the event of an appeal, the chairman of the Board shall certify the record to the clerk of that court within five days after the appeal is noted.

The record on appeal shall consist of all reports filed by the candidate or his treasurer with the Board pursuant to this Article, and a memorandum of the Board setting forth with particularity the reasons for its action in denying the candidate a declaration of nomination or certificate of election. Written notice of the appeal shall be given to the Board by the candidate or his attorney, and may be effected by mail or personal delivery. On appeal, the cause shall be heard de novo.

Added by Laws 1973, c. 1272, § 1.

§ 163–278.27. Criminal penalties; duty to report and prosecute

(a) Any individual, candidate, political committee, referendum committee, treasurer, person or media who intentionally violates the applicable provisions of G.S. 163–278.7, 163–278.8, 163–278.9, 163–278.10, 163–278.11, 163–278.12, 163–278.13, 163–278.13B, 163–278.14, 163–278.16, 163–278.16B, 163–278.17, 163–278.18, 163–278.19, 163–278.20, 163–278.39, 163–278.40A, 163–278.40B, 163–278.40C, 163–278.40D, 163–278.40E, or 163–278.40J is guilty of a Class 2 misdemeanor. The statute of limitations shall run

from the day the last report is due to be filed with the appropriate board of elections for the election cycle for which the violation occurred.

(a1) A violation of G.S. 163–278.32 by making a certification knowing the information to be untrue is a Class I felony.

(b) Whenever the Board has knowledge of or has reason to believe there has been a violation of any section of this Article, it shall report that fact, together with accompanying details, to the following prosecuting authorities:

(1) In the case of a candidate for nomination or election to the State Senate or State House of Representatives: report to the district attorney of the prosecutorial district in which the candidate for nomination or election resides;

(2) In the case of a candidate for nomination or election to the office of Governor, Lieutenant Governor, Secretary of State, State Auditor, State Treasurer, State Superintendent of Public Instruction, State Attorney General, State Commissioner of Agriculture, State Commissioner of Labor, State Commissioner of Insurance, and all other State elective offices, Justice of the Supreme Court, Judge of the Court of Appeals, judge of a superior court, judge of a district court, and district attorney of the superior court: report to the district attorney of the prosecutorial district in which Wake County is located;

(3) In the case of an individual other than a candidate, including, without limitation, violations by members of political committees, referendum committees or treasurers: report to the district attorney of the prosecutorial district in which the individual resides; and

(4) In the case of a person or any group of individuals: report to the district attorney or district attorneys [of] the prosecutorial district or districts in which any of the officers, directors, agents, employees or members of the person or group reside.

(c) Upon receipt of such a report from the Board, the appropriate district attorney shall prosecute the individual or persons alleged to have violated a section or sections of this Article.

(d) As a condition of probation, a sentencing judge may order that the costs incurred by the State Board of Elections in investigating and aiding the prosecution of a case be paid to the State Board of Elections by the defendant on such terms and conditions as set by the judge.

Added by Laws 1973, c. 1272, § 1. Amended by Laws 1979, c. 500, § 10; Laws 1979, c. 1073, § 15; Laws 1979, c. 1073, § 19; Laws 1981, c. 837, § 4; Laws 1987, c. 565, § 17; Laws 1993, c. 539, § 1118; Laws 1994 (1st Ex. Sess.), c. 24, § 14(c), eff. March 26, 1994; S.L. 1999–453, § 2(c), eff. Jan. 1, 2000; S.L. 2001–419, § 2, eff. Jan. 1, 2002; S.L. 2006–161, § 5, eff. Oct. 1, 2006; S.L. 2007–391, § 1(b), eff. Dec. 1, 2007; S.L. 2008–150, § 9(b), eff. Dec. 1, 2008; S.L. 2008–187, § 29, eff. Aug. 7, 2008.

Historical and Statutory Notes

Laws 1993, c. 539, § 1359, provides:

''This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.'' [Amended by Laws 1994, Ex. Sess., c. 24, § 14(c), eff. March 26, 1994.]

1999 Legislation

S.L. 1999–453, §§ 1, 2(d) and 10 provide:

''Section 1. This act shall be called 'The Campaign Reform Act of 1999'.''

''Section 2. (d) This section becomes effective January 1, 2000, and applies to all contributions and expenditures made or accepted on or after that date.''

''Section 10. Prosecutions for, or sentences based on, offenses occurring before the relevant effective date in this act are not abated or affected by this act, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.''

2001 Legislation

S.L. 2001–419, § 2, eff. Jan. 1, 2002, rewrote the section, which prior thereto read:

''§ 163-278.27. Penalty for violations; duty to report and prosecute

''(a) Any individual, candidate, political committee, referendum committee, treasurer, person or media who violates the applicable provisions of G.S. 163–278.7, 163–278.8, 163–278.9, 163–278.10, 163–278.11, 163–278.12, 163–278.14, 163–278.16, 163–278.17, 163–278.18, 163–278.39, 163–278.40A, 163–278.40B, 163–278.40C, 163–278.40D or 163–278.40E is guilty of a Class 2 misdemeanor.

''(b) Whenever the Board has knowledge of or has reason to believe there has been a violation of any section of this Article, it shall report that fact, together with accompanying details, to the following prosecuting authorities:

''(1) In the case of a candidate for nomination or election to the State Senate or State House of Representatives: report to the district attorney of the prosecutorial district in which the candidate for nomination or election resides;

''(2) In the case of a candidate for nomination or election to the office of Governor, Lieutenant Governor, Secretary of State, State Auditor, State Treasurer, State Superintendent of Public Instruction, State Attorney General, State Commissioner of Agriculture, State Commissioner of Labor, State Commissioner of Insurance, and all other State elective offices, Justice of the Supreme Court, Judge of the Court of Appeals, judge of a superior court, judge of a district court, and district attorney of the superior court: report to the district attorney of the prosecutorial district in which Wake County is located;

''(3) In the case of an individual other than a candidate, including, without limitation, violations by members of political committees, referendum committees or treasurers: report to the district attorney of the prosecutorial district in which the individual resides; and

''(4) In the case of a person or any group of individuals: report to the district attorney or district attorneys the prosecutorial district or districts in which any of the officers, directors, agents, employees or members of the person or group reside.

''(c) Upon receipt of such a report from the Board, the appropriate district attorney shall prosecute the individual or persons alleged to have violated a section or sections of this Article.''

2006 Legislation

S.L. 2006–161, § 5, eff. Oct. 1, 2006, amended subsec. (a) by inserting ''163–278.16B,''.

S.L. 2006–161, § 6, provides:

''Sections 1 and 5 of this act become effective October 1, 2006, and apply to all candidates and candidate campaign committees with active accounts with the State Board of Elections or a county board of elections on or after that date. Sections 2, 3, and 4 of this act become effective January 1, 2007, and apply to all political committees and referendum committees with active accounts with the State Board of Elections or a county board of elections on or after that date. The remainder of this act becomes effective January 1, 2007.''

2007 Legislation

S.L. 2007–391, § 1(b), added subsec. (a1).

S.L. 2007–391, § 1(c), provides:

''This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.''

Cross References

Misdemeanor sentencing and punishment, see § 15A–1340.13 et seq.

Administrative Code References

Procedures for political committees, see 8 NCAC 1.0104.

Notes of Decisions

Construction and application 1

1. Construction and application

Lobbyist had standing to bring action alleging that North Carolina statute barring state campaign contributions from lobbyists violated her First Amendment free speech and association rights; statute facially restricted expressive activity of class to which lobbyist belonged, and violators were subject to prosecution. Preston v. Leake, 2009, 629 F.Supp.2d 517. Constitutional Law ⚷ 728; Constitutional Law ⚷ 863

Statute governing prosecution for violations of article within election laws regulating contributions and expenditures in political campaigns is clearly mandatory in its language. State v. Bolt, 1986, 344 S.E.2d 51, 81 N.C.App. 133. Elections ⚷ 309

Statute governing prosecution for violations of election laws is legislative determination that crime of violating any section of article regulating contributions and expenditures in political campaigns, when committed by ''individual other than a candidate,'' is committed where individual resides, and thus, venue lies solely in that county, subject only to defendant's right to move for change of venue. State v. Bolt, 1986, 344 S.E.2d 51, 81 N.C.App. 133. Criminal Law ⚷ 108(1)

§ 163–278.28. Issuance of injunctions; special prosecutors named

(a) The superior courts of this State shall have jurisdiction to issue injunctions or grant any other equitable relief appropriate to enforce the provisions of this Article upon application by any registered voter of the State.

(b) If the Board makes a report to a district attorney under G.S. 163-278.27 and no prosecution is initiated within 45 days after the report is made, any registered voter of the prosecutorial district to whose district attorney a report has been made, or any board of elections in that district, may, by verified affidavit, petition the superior court for that district for the appointment of a special prosecutor to prosecute the individuals or persons who have or who are believed to have violated any section of this Article. Upon receipt of a petition for the appointment of a special prosecutor, the superior court shall issue an order to show cause, directed at the individuals or persons alleged in the petition to be in violation of this Article, why a special prosecutor should not be appointed. If there is no answer to the order, the court shall appoint a special prosecutor. If there is an answer, the court shall hold a hearing on the order, at which both the petitioning and answering parties may be heard, to determine whether a prima facie case of a violation and failure to prosecute exists. If there is such a prima

facie case, the court shall so find and shall thereupon appoint a special prosecutor to prosecute the alleged violators. The special prosecutor shall take the oath required of assistant district attorneys by G.S. 7A-63, shall serve as an assistant district attorney pro tem of the appropriate district, and shall prosecute the alleged violators.

Added by Laws 1973, c. 1272, § 1. Amended by Laws 1979, c. 500, § 11.

Notes of Decisions

Standing 1

1. Standing

Taxpayer, on challenge to state attorney general's filing of lawsuits and use of proceeds, in action against attorney general, state treasurer, and unknown boards of education, had standing to sue to enforce state election laws through injunctions or other equitable relief, where taxpayer alleged that he was registered voter of county in which suit was filed. Fuller v. Easley, 2001, 145 N.C.App. 391, 553 S.E.2d 43. Injunction ⚷ 114(2)

§ 163–278.29. Compelling self-incriminating testimony; individual so testifying excused from prosecution

No individual shall be excused from attending or testifying or producing any books, papers, or other documents before any court upon any proceeding or trial of another for the violation of any of the provisions of this Article, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him, but such individual may be subpoenaed and required to testify by and for the State relative to any offense arising under the provisions of this Article; but such individual shall not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may be compelled to testify or produce evidence, documentary or otherwise, and no compelled testimony so given or produced shall be used against him upon any criminal proceeding, but such individual so compelled to testify with respect to any acts of his own shall be immune from prosecution on account thereof.

Added by Laws 1973, c. 1272, § 1.

§ 163–278.30. Candidates for federal offices to file information reports

Candidates for nomination in a party primary or for election in a general or special election to the offices of United States Senator, member of the United States House of Representatives, President or Vice–President of the United States shall file with the Board all reports they or political committee treasurers or other agents acting for them are required to file under the Federal Election Campaign Act of 1971, P.L. 92–225, as amended (T. 2, U.S.C. section 439). Those reports shall be filed with the Board at the

times required by that act. The Board shall, with respect to those reports, have the following duties only:

(1) To receive and maintain in an orderly manner all reports and statements required to be filed with it;

(2) To preserve reports and statements filed under the Federal Election Campaign Act. Such reports and statements, after a period of two years following the election year, may be transferred to the Department of Cultural Resources, Division of Archives and History, and shall be preserved for a period of 10 years or for such period as may be required by federal law.

(3) To make the reports and statements filed with it available for public inspection and copying during regular office hours, commencing as soon as practicable but not later than the end of the day during which they were received, and to permit copying of any such report or statement by hand or by duplicating machine, requested by any individual, at the expense of such individual; and

(4) To compile and maintain a current list of all statements or parts of statements pertaining to each candidate.

Any duty of a candidate to file and the State Board to receive and make available under this section may be met by an agreement between the State Board and the Federal Election Commission, the effect of which is for the Federal Election Commission to provide promptly to the State Board the information required by this section.

Added by Laws 1973, c. 1272, § 1. Amended by Laws 1979, c. 500, § 14; S.L. 2002–159, § 55(*l*), eff. Jan. 1, 2003.

Historical and Statutory Notes

2002 Legislation

S.L. 2002–159, § 55(*l*), eff. Jan. 1, 2003, added the second paragraph.

S.L. 2002–159, § 55(p), provides:

''Subsections 55(a) through 55(n) of this section become effective January 1, 2003, and apply to all primaries and elections held on and after that date. Subsection 55(*o*) is effective when this act becomes law.''

§ 163–278.31. Repealed by Laws 1985, c. 183, § 4

Historical and Statutory Notes

The repealed section placed a limit on media expenses in certain statewide races.

§ 163–278.32. Statements under oath

Any statement required to be filed under this Article shall be signed and certified as true and correct by the individual, media, candidate, treasurer or others required to file it, and shall be

certified as true and correct to the best of the knowledge of the individual, media, candidate, treasurer or others filing the statement; provided further that the candidate shall certify as true and correct to the best of his knowledge the organizational report and appointment of treasurer filed for the candidate or the candidate's principal campaign committee. A certification under this Article shall be treated as under oath, and any person making a certification under this Article knowing the information to be untrue is guilty of a Class I felony.

Added by Laws 1973, c. 1272, § 1. Amended by S.L. 1999–426, § 10(a), eff. Aug. 5, 1999; S.L. 2001–235, § 1, eff. June 22, 2001; S.L. 2007–391, § 1(a), eff. Dec. 1, 2007.

Historical and Statutory Notes

2001 Legislation

S.L. 2001–235, § 1, eff. June 22, 2001, rewrote the section, which prior thereto read:

''Any statement required to be filed under this Article shall be signed and certified as true and correct by the individual, media, candidate, treasurer or others required to file it, and shall be verified by the oath or affirmation of the individual, media, candidate, treasurer or others filing the statement, taken before any officer authorized to administer oaths; provided further that the candidate shall certify as true and correct to the best of his knowledge the organizational report and appointment of treasurer filed for the candidate or the candidate's principal campaign committee.''

2007 Legislation

S.L. 2007–391, § 1(a), rewrote the second sentence, which prior thereto read: ''Any person making a certification under this Article knowing the information to be untrue may be prosecuted for perjury under G.S. 14–209.''

S.L. 2007–391, § 1(c), provides:

''This act becomes effective December 1, 2007, and applies to offenses committed on or after that date.''

§ 163–278.33. Applicability of Article 22

Sections 163–271 through 163–278 shall be applicable to the offices covered by this Article and G.S. 163–271 through 163–278 shall be applicable to all elective offices not covered by this Article.

Added by Laws 1973, c. 1272, § 3. Amended by Laws 1975, c. 50; Laws 1975, c. 565, § 10; S.L. 2002–159, § 21(f), eff. Oct. 11, 2002.

Historical and Statutory Notes

2002 Legislation

S.L. 2002–159, § 21(f), eff. Oct. 11, 2002, substituted ''G.S. 163–271'' for ''G.S. 163–269''.

§ 163–278.34. Civil penalties

(a) Civil Penalties for Late Filing.—Except as provided in G.S. 163–278.9 and G.S. 163–278.9A, all reports, statements or other documents required by this Article to be filed with the Board shall be filed either by manual delivery to or by mail addressed to the Board. Timely filing shall be complete if postmarked on the day the reports, statements or other documents are to be delivered to

the Board. If a report, statement or other document is not filed within the time required by this Article, then the individual, person, media, candidate, political committee, referendum committee or treasurer responsible for filing shall pay to the State Board of Elections election enforcement costs and a civil late penalty as follows:

(1) Two hundred fifty dollars ($250.00) per day for each day the filing is late for a report that affects statewide elections, not to exceed a total of ten thousand dollars ($10,000); and

(2) Fifty dollars ($50.00) per day for each day the filing is late for a report that affects only nonstatewide elections, not to exceed a total of five hundred dollars ($500.00).

If the form is filed by mail, no civil late penalty shall be assessed for any day after the date of postmark. No civil late penalty shall be assessed for any day when the Board office at which the report is due is closed. The State Board shall immediately notify, or cause to be notified, late filers, from which reports are apparently due, by mail, of the penalties under this section. The State Board of Elections may waive a late penalty if it determines there is good cause for the waiver.

If the Board determines by clear and convincing evidence that the late filing constitutes a willful attempt to conceal contributions or expenditures, the Board may assess a civil penalty in an amount to be determined by that Board, plus the costs of investigation, assessment, and collection. The civil penalty shall not exceed three times the amount of the contributions and expenditures willfully attempted to be concealed.

(b) Civil Penalties for Illegal Contributions and Expenditures.— If an individual, person, political committee, referendum committee, candidate, or other entity intentionally makes or accepts a contribution or makes an unlawful expenditure in violation of this Article, then that entity shall pay to the State Board of Elections, in an amount to be determined by that Board, a civil penalty and the costs of investigation, assessment, and collection. The civil penalty shall not exceed three times the amount of the unlawful contribution or expenditure involved in the violation. The State Board of Elections may, in addition to the civil penalty, order that the amount unlawfully received be paid to the State Board by check, and any money so received by the State Board shall be deposited in the Civil Penalty and Forfeiture Fund of North Carolina.

(c) Civil Remedies Other Than Penalties. – The State Board of Elections, in lieu of or in addition to imposing a civil penalty under subsection (a) or (b) of this section, may take one or more of the following actions with respect to a violation for which a civil penalty could be imposed:

(1) Issue an order requiring the violator to cease and desist from the violation found.
(2) Issue an order to cease receiving contributions and making expenditures until a delinquent report has been filed and any civil penalty satisfied.
(3) Issue an order requiring the violator to take any remedial action deemed appropriate by the Board.
(4) Issue an order requiring the violator to file any report, statement, or other information as required by this Article or the rules adopted by the Board.
(5) Publicly reprimand the violator for the violation.

(d) Facts in Mitigation. – An individual or other entity notified that a penalty has been assessed against it may submit an affidavit to the State Board of Elections stating the facts in mitigation. The State Board of Elections may waive a civil penalty in whole or in part if it determines there is good cause for the waiver.

(e) Calculation and Assessment. – The State Board shall calculate and assess the amount of the civil penalty due under subsection (a) or (b) of this section and shall notify the person who is assessed the civil penalty of the amount. The notice of assessment shall be served by any means authorized under G.S. 1A–1, Rule 4, and shall direct the violator either to pay the assessment or to contest the assessment within 30 days by filing a petition for a contested case under Article 3 of Chapter 150B of the General Statutes. If a violator does not pay a civil penalty assessed by the Board within 30 days after it is due, the Board shall request the Attorney General to institute a civil action to recover the amount of the assessment. The civil action may be brought in the superior court of any county where the report was due to be filed or any county where the violator resides or maintains an office. A civil action must be filed within three years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment. The State Board of Elections shall pay the clear proceeds of civil penalties collected under this section to the Civil Penalty and Forfeiture Fund pursuant to G.S. 115C–457.2. The State Board of Elections shall reduce the monies collected by the enforcement costs and the collection costs to determine the clear proceeds payable to the Civil Penalty and Forfeiture Fund. Monies set aside for the costs of enforcement and the costs of collection shall be credited to accounts of the State Board of Elections.

(f) Notifying and Consulting With District Attorney. – Before assessing a civil penalty under subsection (b) of this section or imposing a civil remedy under subsection (c) of this section, the State Board of Elections shall notify and consult with the district

attorney who would be responsible under G.S. 163–278.27 for bringing a criminal prosecution concerning the violation.

Added by Laws 1973, c. 1272, § 1. Amended by Laws 1975, c. 565, § 5; Laws 1979, c. 1073, § 19; S.L. 1997–515, § 7(a), eff. Jan. 1, 1998; S.L. 2001–353, § 10, eff. Aug. 10, 2001; S.L. 2001–419, § 1, eff. Jan. 1, 2002; S.L. 2007–391, §§ 2(a), 37, eff. Aug. 19, 2007.

Historical and Statutory Notes

S.L. 1997–515, §§ 7(f) and 15, provide:

''Section 7(f). This section becomes effective January 1, 1998, and applies to all reports due on or after that date.''

''Section 15. Except as otherwise provided herein, this act is effective when it becomes law. Prosecutions for, or sentences based on, offenses occurring before the relevant effective dates in this act are not abated or affected by this act, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.''

2001 Legislation

S.L. 2001–353, § 10, eff. Aug. 10, 2001, in the second paragraph of subsec. (a), inserted the first two sentences and substituted ''by mail'' for ''by registered or certified mail, return receipt requested''.

S.L. 2001–419, § 1, eff. Jan. 1, 2002, rewrote the section, which prior thereto read:

''§ 163–278.34. Filings; penalty for late filings

''(a) Except as provided in G.S. 163-278.9, all reports, statements or other documents required by this Article to be filed with the Board shall be filed either by manual delivery to or by mail addressed to the Board. Timely filing shall be complete if postmarked on the day the reports, statements or other documents are to be delivered to the Board. If a report, statement or other document is not filed within the time required by this Article, then the individual, person, media, candidate, political committee, referendum committee or treasurer responsible for filing shall pay to the State Board of Elections election enforcement costs and a civil late penalty as follows:

''(1) Two hundred fifty dollars ($250.00) per day for each day the filing is late for a report that affects statewide elections, not to exceed a total of ten thousand dollars ($10,000); and

''(2) Fifty dollars ($50.00) per day for each day the filing is late for a report that affects only nonstatewide elections, not to exceed a total of five hundred dollars ($500.00).

''The State Board shall immediately notify, or cause to be notified, late filers, from which reports are apparently due, by registered or certified mail, return receipt requested, of the penalties under this section.

''(a1) The State Board shall calculate and assess the amount of the civil penalty due under subsection (a) of this section and shall notify the person who is assessed the civil penalty of the amount. The notice of assessment shall be served by any means authorized under G.S. 1A-1, Rule 4, and shall direct the violator either to pay the assessment or to contest the assessment within 30 days by filing a petition for a contested case under Article 3 of Chapter 150B of the General Statutes. If a violator does not pay a civil penalty assessed by the Board within 30 days after it is due, the Board shall request the Attorney General to institute a civil action to recover the amount of the assessment. The civil action may be brought in the superior court of any county where the report was due to be filed or any county where the violator resides or maintains an office. A civil action must be filed within three years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment. Consistent with G.S. 115C-437, the State Controller shall pay the clear proceeds of civil penalties collected under this section to the County School Fund in the county in which the person charged with the violation resides. The State Controller shall reduce the monies collected by the enforcement costs and the collection costs to determine the clear proceeds payable to the County School Fund. Monies set aside for the costs of enforcement and the costs of collection

shall be credited to accounts of the State Board of Elections.

''(b) The State Board of Elections may waive a late penalty if it determines there is reasonable cause.''

2007 Legislation

S.L. 2007–391, § 2(a), in subsec. (a), added the second undesignated paragraph relating to civil penalty.

S.L. 2007–391, § 2(b), provides:

''This section is effective when this act becomes law and applies to all offenses committed on or after that date.''

S.L. 2007–391, § 37, in subsec. (b), in the subsection header, inserted ''and Expenditures'' and in the first sentence, inserted ''or makes an unlawful expenditure''.

Cross References

Reporting requirements for lobbyists, see § 120C–401.
Statements of lobbyist's principal lobbying expenses required, see § 147–54.38.
Voter-Owned Elections Act, enforcement and penalties, see § 163–278.99D.
Voting systems, vendor penalties, see § 163–165.9A.

§ 163–278.34A. Presumptions

In any proceeding brought pursuant to this Article in which a presumption arises from the proof of certain facts, the defendant may offer some evidence to rebut the presumption, but the State bears the ultimate burden of proving the essential elements of its case.

Added by S.L. 1999–31, § 1(c), eff. May 4, 1999. Amended by S.L. 1999–453, § 3.1(a), eff. Aug. 12, 1999.

Historical and Statutory Notes

S.L. 1999–453, §§ 1 and 10, provide:

''Section 1. This act shall be called 'The Campaign Reform Act of 1999'.''

''Section 10. Prosecutions for, or sentences based on, offenses occurring before the relevant effective date in this act are not abated or affected by this act, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.''

§ 163–278.35. Preservation of records

All reports, records and accounts required by this Article to be made, kept, filed, or maintained by any individual, media, candidate or treasurer shall be preserved and retained by the individual, media, candidate or treasurer for at least two years counting from the date of the election to which such reports, records and accounts refer.

Added by Laws 1973, c. 1272, § 1.

§ 163–278.36. Repealed by S.L. 2007–349, § 4, eff. Jan. 1, 2008

Historical and Statutory Notes

The repealed section, which related to reporting of donated funds by elected officials, was derived from Laws 1977, c. 615; S.L. 1999–31, § 4(c).

§ 163–278.37. County boards of elections to preserve reports

The county boards of elections shall preserve all reports and statements filed with them pursuant to this Article for such period of time as directed by the State Board of Elections.

Added by Laws 1979, c. 500, § 15.

§ 163–278.38. Effect of failure to comply

The failure to comply with the provisions of this Article shall not invalidate the results of any referendum.

Added by Laws 1979, c. 1073, § 11.

Part 1A. Disclosure Requirements for Media Advertisements

§ 163–278.38Z. Definitions

As used in this Part:

(1) ''Advertisement'' means any message appearing in the print media, on television, or on radio that constitutes a contribution or expenditure under this Article.

(2) ''Candidate'' means any individual who, with respect to a public office listed in G.S. 163–278.6(18), has filed a notice of candidacy or a petition requesting to be a candidate, or has been certified as a nominee of a political party for a vacancy, or has otherwise qualified as a candidate in a manner authorized by law, or has filed a statement of organization under G.S. 163–278.7 and is required to file periodic financial disclosure statements under G.S. 163–278.9.

(3) ''Candidate campaign committee'' means any political committee organized by or under the direction of a candidate.

(4) ''Full–screen'' means the only picture appearing on the television screen during the oral disclosure statement contains the disclosing person, that the picture occupies all visible space on the television screen, and that the image of the disclosing person occupies at least fifty percent (50%) of the vertical height of the television screen.

(5) ''Political action committee'' has the same meaning as ''political committee'' in G.S. 163–278.6(14), except that ''political action committee'' does not include any political party or political party organization.

(6) ''Political party organization'' means any political party executive committee or any political committee that operates under the direction of a political party executive committee or political party chair.

(7) ''Print media'' means billboards, cards, newspapers, newspaper inserts, magazines, mass mailings, pamphlets, fliers, periodicals, and outdoor advertising facilities. A ''mass mailing'' is a mailing with more than 500 pieces.

(8) ''Radio'' means any radio broadcast station that is subject to the provisions of 47 U.S.C. §§ 315 and 317.

(9) ''Scan line'' means a standard term of measurement used in the electronic media industry calculating a certain area in a television advertisement.

(10) ''Sponsor'' means a candidate, candidate committee, political party organization, political action committee, referendum committee, individual, or other entity that purchases an advertisement.

(11) ''Television'' means any television broadcast station, cable television system, wireless-cable multipoint distribution system, satellite company, or telephone company transmitting video programming that is subject to the provisions of 47 U.S.C. §§ 315 and 317.

(12) ''Unobscured'' means the only printed material that may appear on the television screen is a visual disclosure statement required by law, and nothing is blocking the view of the disclosing person's face.

Added by S.L. 1999–453, § 2(a), eff. Jan. 1, 2000. Recodified from § 163–278.39B by S.L. 2004–203, § 12(a), eff. Aug. 17, 2004.

Historical and Statutory Notes

1999 Legislation

S.L. 1999–453, §§ 1, 2(d) and 10 provide:

''Section 1. This act shall be called 'The Campaign Reform Act of 1999'.''

''Section 2(d). This section becomes effective January 1, 2000, and applies to all contributions and expenditures made or accepted on or after that date.''

''Section 10. Prosecutions for, or sentences based on, offenses occurring before the relevant effective date in this act are not abated or affected by this act, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.''

Subd. (5), Print media, was redesignated as subd. (7) by the Revisor of Statutes. Subd. (6), Political action committee, was redesignated as subd. (5) by the Revisor of Statutes. Subd. (7), Political party organization, was redesignated as subd. (6) by the Revisor of Statutes.

Cross References

Lobbying, definitions, see § 120C–100.
Prohibitions on campaign contributions, see § 120C–302.

§ 163–278.39. Basic disclosure requirements for all political campaign advertisements

(a) Basic Requirements. —It shall be unlawful for any sponsor to sponsor an advertisement in the print media or on radio or television that constitutes an expenditure or contribution required to be disclosed under this Article unless all the following conditions are met:

(1) It bears the legend or includes the statement: ''Paid for by _____ [Name of candidate, candidate campaign committee, political party organization, political action committee, referendum committee, individual, or other sponsor].'' In television advertisements, this disclosure shall be made by visual legend.

(2) The name used in the labeling required in subdivision (1) of this subsection is the name that appears on the statement of organization as required in G.S. 163–278.7(b)(1).

(3) Repealed by S.L. 2001–353, § 5, eff. Aug. 10, 2001.

(4) The sponsor states in the advertisement its position for or against a ballot measure, provided that this subdivision applies only if the advertisement is made for or against a ballot measure.

(5) In a print media advertisement supporting or opposing the nomination or election of one or more clearly identified candidates, the sponsor states whether it is authorized by a candidate. The visual legend in the advertisement shall state either ''Authorized by [name of candidate], candidate for [name of office]'' or ''Not authorized by a candidate.'' This subdivision does not apply if the sponsor of the advertisement is the candidate the advertisement supports or that candidate's campaign committee.

(6) In a print media advertisement that identifies a candidate the sponsor is opposing, the sponsor discloses in the advertisement the name of the candidate who is intended to benefit from the advertisement. This subdivision applies only when the sponsor coordinates or consults about the advertisement or the expenditure for it with the candidate who is intended to benefit.

If an advertisement described in this section is jointly sponsored, the disclosure statement shall name all the sponsors.

(b) Size Requirements. –In a print media advertisement covered by subsection (a) of this section, the height of all disclosure statements required by that subsection shall constitute at least five percent (5%) of the height of the printed space of the advertisement, provided that the type shall in no event be less than 12 points in size. In an advertisement in a newspaper or a newspaper insert, the total height of the disclosure statement need not constitute five percent of the printed space of the advertisement if the type of the disclosure statement is at least 28 points in size. If a single advertisement consists of multiple pages, folds, or faces, the disclosure requirement of this section applies only to one page, fold, or face. In a television advertisement covered by subsection (a) of this section, the visual disclosure legend shall constitute 32 scan lines in size. In a radio advertisement covered by subsection (a) of this section, the disclosure statement shall last at least two

seconds, provided the statement is spoken so that its contents may be easily understood.

(c) Misrepresentation of Authorization. —Notwithstanding G.S. 163–278.27(a), any candidate, candidate campaign committee, political party organization, political action committee, referendum committee, individual, or other sponsor making an advertisement in the print media or on radio or television bearing any legend required by subsection (a) of this section that misrepresents the sponsorship or authorization of the advertisement is guilty of a Class 1 misdemeanor.

Added by S.L. 1999–453, § 2(a), eff. Jan. 1, 2000. Amended by S.L. 2001–317, § 1, eff. July 28, 2001; S.L. 2001–353, § 5, eff. Aug. 10, 2001.

Historical and Statutory Notes

S.L. 1999–453, §§ 1, 2(d) and 10 provide:

''Section 1. This act shall be called 'The Campaign Reform Act of 1999'.''

''Section 2(d). This section becomes effective January 1, 2000, and applies to all contributions and expenditures made or accepted on or after that date.''

''Section 10. Prosecutions for, or sentences based on, offenses occurring before the relevant effective date in this act are not abated or affected by this act, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.''

2001 Legislation

S.L. 2001–317, § 1, eff. July 28, 2001, in subsec. (b), inserted the second sentence and in the fifth sentence, substituted ''two seconds, provided the statement is spoken so that its contents may be easily understood'' for ''three seconds''.

S.L. 2001–353, § 5, eff. Aug. 10, 2001, repealed subd. (a)(3), which prior thereto read:

''(3) The sponsor states in the advertisement its position for or against the candidate, provided that this subdivision applies only if the advertisement supports or opposes the nomination or election of one or more clearly identified candidates.''

Cross References

Misdemeanor sentencing and punishment, see § 15A–1340.13 et seq.

§ 163–278.39A. Disclosure requirements for television and radio advertisements supporting or opposing the nomination or election of one or more clearly identified candidates

(a) Expanded Disclosure Requirements. — Any political campaign advertisement on radio or television shall comply with the expanded disclosure requirements set forth in this section. To the extent that it provides the same information required by G.S. 163–278.39, a statement made pursuant to this section satisfies the requirements of G.S. 163–278.39 for the same advertisement.

(b) Disclosure Requirements for Television.—

(1) Candidate advertisements on television.—Television advertisements purchased by a candidate or by a candidate campaign committee supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the

candidate and containing at least the following words: ''I am (or ''This is _____'') [name of candidate], candidate for [name of office], and I (or ''my campaign _____'') sponsored this ad.'' This subdivision applies only to an advertisement that mentions the name of, shows the picture of, transmits the voice of, or otherwise refers to an opposing candidate for the same office as the sponsoring candidate.

(2) Political party advertisements on television.—Television advertisements purchased by a political party organization supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chair, executive director, or treasurer of the political party organization and containing at least the following words: ''The [name of political party organization] sponsored this ad opposing/supporting [name of candidate] for [name of office].'' The disclosed name of the political party organization shall include the name of the political party as it appears on the ballot.

(3) Political action committee advertisements on television.—Television advertisements purchased by a political action committee supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chief executive officer or treasurer of the political action committee and containing at least the following words: ''The [name of political action committee] political action committee sponsored this ad opposing/supporting [name of candidate] for [name of office].'' The name of the political action committee used in the advertisement shall be the name that appears on the statement of organization as required in G.S. 163–278.7(b)(1).

(4) Advertisements on television by an individual.—Television advertisements purchased by an individual supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the individual and containing at least the following words: ''I am [individual's name], and I sponsored this advertisement opposing/supporting [name of candidate] for [name of office].''

(5) Advertisements on television by another sponsor.—Television advertisements purchased by a sponsor other than a candidate, a candidate campaign committee, a political party organization, a political action committee, or an individual which supports or opposes the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chief execu-

tive or principal decision maker of the sponsor and containing at least the following words: ''[Name of sponsor] sponsored this ad.''

(6) All advertisements on television.—In any television advertisement described in subdivisions (1) through (4) of this subsection, an unobscured, full-screen picture containing the disclosing individual, either in photographic form or through the actual appearance of the disclosing individual on camera, shall be featured throughout the duration of the disclosure statement.

(c) Disclosure Requirements for Radio.—

(1) Candidate advertisements on radio.—Radio advertisements purchased by a candidate or by a candidate campaign committee supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the candidate and containing at least the following words: ''I am (or ''This is _____'') [name of candidate], candidate for [name of office], and this ad was paid for (or ''sponsored'' or ''furnished'') by [name of candidate campaign committee that paid for the advertisement].'' This subdivision applies only to an advertisement that mentions the name of, transmits the voice of, or otherwise refers to an opposing candidate for the same office as the sponsoring candidate.

(2) Political party advertisements on radio.—Radio advertisements purchased by a political party organization supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chair, executive director, or treasurer of the political party organization and containing at least the following words: ''This ad opposing/supporting [name of candidate] for [name of office] was paid for (or ''sponsored'' or ''furnished'') by [name of political party].'' The disclosed name of the political party organization shall include the name of the political party as it appears on the ballot.

(3) Political action committee advertisements on radio.—Radio advertisements purchased by a political action committee supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chief executive officer or treasurer of the political action committee and containing at least the following words: ''This ad opposing/supporting [name of candidate] for [name of office] was paid for (or ''sponsored'' or ''furnished'') by [name of political action committee] political action committee.'' The name

of the political action committee used in the advertisement shall be the name that appears on the statement of organization as required by G.S. 163–278.7(b)(1).

(4) Advertisements on radio by an individual.—Radio advertisements purchased by an individual supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the individual and containing at least the following words: ''I am [individual's name], and this ad opposing/supporting [name of candidate] for [name of office] was paid for (or ''sponsored'' or ''furnished'') by me.''

(5) Advertisements on radio by another sponsor.—Radio advertisements purchased by a sponsor other than a candidate, a candidate campaign committee, a political party organization, a political action committee, or an individual which supports or opposes the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chief executive or principal decision maker of the sponsor and containing at least the following words: ''[Name of sponsor] paid for (or ''sponsored'' or ''furnished'') this ad.''

(d) Placement of Disclosure Statement in Television and Radio Advertisements.—In advertisements on television, a sponsor may place the disclosure statement required by this section at any point during the advertisement, except if the duration of the advertisement is more than five minutes, the disclosure statement shall be made both at the beginning and end of the advertisement. The sponsor may provide the oral disclosure statement required by this section at the same time as the visual disclosure required under the Communications Act of 1934, 47 U.S.C. §§ 315 and 317, is shown. But any visual disclosure legend shall be at least 32 scan lines in size. For advertisements on radio, the placement of the oral disclosure statement shall comply with the requirements of the Communications Act of 1934, 47 U.S.C. §§ 315 and 317.

(e) Choice of Supporting or Opposing a Candidate.—In its oral disclosure statement, a sponsoring political party organization, political action committee, individual, or other noncandidate sponsor shall choose either to identify an advertisement as supporting or opposing the nomination or election of one or more clearly identified candidates.

(e1) Joint Sponsors.—If an advertisement described in this section is jointly sponsored, the disclosure statement shall name all the sponsors and the disclosing individual shall be one of those sponsors. If a candidate is one of the sponsors, that candidate shall be the disclosing individual, and if more than one candidate

is the sponsor, at least one of the candidates shall be the disclosing individual.

(f) Legal Remedy.—Pursuant to the conditions established in subdivisions (1), (2), and (3) of this subsection, a candidate for an elective office who complied with the television and radio disclosure requirements throughout that candidate's entire campaign shall have a monetary remedy in a civil action against (i) an opposing candidate or candidate committee whose television or radio advertisement violates these disclosure requirements and (ii) against any political party organization, political action committee, individual, or other sponsor whose advertisement for that elective office violates these disclosure requirements:

(1) Any plaintiff candidate in a statewide race in an action under this section shall complete and file a Notice of Complaint Regarding Failure to Disclose on Television or Radio Campaign Advertising with the State Board of Elections after the airing of the advertisement but no later than the first Friday after the Tuesday on which the election occurred. Candidates in nonstatewide races may file the notice during the same time period with one county board of elections within the electoral area in which they are candidates. The timely filing of this notice preserves the candidate's right to bring an action in superior court any time within 90 days after the election. A candidate shall bring the civil action in the county where the candidate filed the notice.

(2) Upon receiving a favorable verdict in accordance with existing law, the plaintiff candidate shall receive a monetary award of actual damages. The price of actual damages shall be calculated as the total dollar amount of television and radio advertising time that was aired and that the plaintiff candidate correctly identifies as being in violation of the disclosure requirements of this section.

The plaintiff candidate shall also receive an award that trebles the amount of actual damages if:

a. The plaintiff candidate can establish having notified or attempted to notify the sponsor of the advertisement properly by return-receipt mail about the failure of a particular advertisement or advertisements to comply with the disclosure requirements of this section, and

b. After the notice or attempted notice, the advertisement continued to be aired.

The treble damages shall be calculated from the date on which the return-receipt notice was accepted or rejected by a defendant sponsoring candidate or candidate committee, political party organization, political action committee, or individual. The plaintiff candidate or candidate committee

shall send a copy of any return-receipt mailing to the relevant board of elections as provided in subdivision (1) of this subsection within five days after the notice is returned to the possession of the candidate or candidate committee.

The plaintiff candidate may bring the civil action personally or authorize his or her candidate campaign committee to bring the civil action.

(3) A candidate who violates the disclosure requirements of State law in this section and that candidate's campaign committee shall be jointly and severally liable for the payment of damages and attorneys' fees. If the candidate is held personally liable for any payment of damages or attorneys' fees, the candidate shall not use or be reimbursed by funds from the candidate's campaign committee in paying any amount.

(g) Relation to the Communications Act of 1934.—Television advertisements by a sponsor supporting or opposing the nomination or election of one or more clearly identified candidates shall comply with the oral disclosure requirements under State law in this section. Those advertisements shall also comply with disclosure requirements under the Communications Act of 1934, 47 U.S.C. §§ 315 and 317 by use of visual legends. The content of those visual legends is specified by the Communications Act of 1934, 47 U.S.C. §§ 315 and 317, and G.S. 163–278.39(a)(1). The size of those visual legends is determined by G.S. 163–278.39(b), which satisfies requirements under the Communications Act of 1934, 47 U.S.C. §§ 315 and 317. In the case of radio advertisements, the oral disclosure requirements under State law in this section incorporate the content requirements under the Communications Act of 1934, 47 U.S.C. §§ 315 and 317.

(h) No Additional Liability of Television or Radio Outlets. – Television or radio outlets shall not be liable under this Part for carriage of political advertisements that fail to include the disclosure requirements provided for in this Part.

(i) No Criminal Liability. —Nothing in this section regarding the disclosure requirements in subsections (b) and (c) of this section shall be relied upon or otherwise interpreted to create criminal liability.

Added by S.L. 1999–453, § 2(a), eff. Jan. 1, 2000. Amended by S.L. 2000–140, §§ 83, 84, eff. July 21, 2000; S.L. 2001–317, § 2, eff. July 28, 2001.

Historical and Statutory Notes

S.L. 1999–453, §§ 1, 2(d) and 10 provide:

''Section 1. This act shall be called 'The Campaign Reform Act of 1999'.''

''Section 2. (d) This section becomes effective January 1, 2000, and applies to all contributions and expendi-

tures made or accepted on or after that date.''

''Section 10. Prosecutions for, or sentences based on, offenses occurring before the relevant effective date in this act are not abated or affected by this act, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.''

2000 Legislation

S.L. 2000–140, § 83, eff. July 21, 2000, in subsec. (a), in the first sentence, substituted ''In addition to the basic disclosure requirements in G.S. 163–278.39, any'' for ''Any'' and added the second sentence.

Section 84 of S.L. 2000–140, in subsec. (i), deleted ''for any person'' following ''liability''.

2001 Legislation

S.L. 2001–317, § 2, eff. July 28, 2001, throughout subsec. (h), substituted ''Part'' for ''section''.

§ 163–278.39B. Recodified as § 163–278.38Z by S.L. 2004–203, § 12(a), eff. Aug. 17, 2004

§ 163–278.39C. Scope of disclosure requirements

The disclosure requirements of this Part apply to any sponsor of an advertisement in the print media or on radio or television the cost or value of which constitutes an expenditure or contribution required to be disclosed under this Article, except that the disclosure requirements of this Part:

(1) Do not apply to an individual who makes uncoordinated independent expenditures aggregating less than one thousand dollars ($1,000) in a political campaign; and

(2) Do not apply to an individual who incurs expenses with respect to a referendum.

The disclosure requirements of this Part do not apply to any advertisement the expenditure for which is required to be disclosed by G.S. 163–278.12A alone and by no other law.

Added by S.L. 1999–453, § 2(a), eff. Jan. 1, 2000.

Historical and Statutory Notes

S.L. 1999–453, §§ 1, 2(d) and 10 provide:

''Section 1. This act shall be called 'The Campaign Reform Act of 1999'.''

''Section 2. (d) This section becomes effective January 1, 2000, and applies to all contributions and expenditures made or accepted on or after that date.''

''Section 10. Prosecutions for, or sentences based on, offenses occurring before the relevant effective date in this act are not abated or affected by this act, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.''

Part 2. Municipal Campaign Reporting

§ 163–278.40. Definitions

When used in this Part, words and phrases have the same meaning as in G.S. 163-278.6, except that:

(1) The term ''board'' means the county board of elections;

(2) The term ''city'' means any incorporated city, town, or village.

Added by Laws 1981, c. 837, § 3. Amended by S.L. 1997–515, § 4(d), eff. Sept. 17, 1997.

Historical and Statutory Notes

S.L. 1997–515, §§ 4(f) and (10), provide:

''Section 4(f). This section applies to primaries, elections, and referenda beginning in 1998.''

''Section 10. Except as otherwise provided herein, this act is effective when it becomes law. Prosecutions for, or sentences based on, offenses occurring before the relevant effective dates in this act are not abated or affected by this act, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.''

§ 163–278.40A. Organizational report

(a) Each candidate and political committee in a city election shall appoint a treasurer and, under verification, report the name and address of the treasurer to the board. A candidate may appoint himself or any other individual, including any relative except his spouse, as his treasurer. If the candidate fails to designate a treasurer, the candidate shall be deemed to have appointed himself as treasurer. A candidate or political committee may remove his or its treasurer.

(b) The organizational report shall state the bank account and number of such campaign fund. Each report required by this Part shall reflect all contributions, expenditures and loans made in behalf of a candidate. The organizational report shall be filed with the county board of elections within 10 days after the candidate files a notice of candidacy with the county board of elections, or within 10 days following the organization of the political committee, whichever occurs first.

Added by Laws 1981, c. 837, § 3.

§ 163–278.40B. Campaign report; partisan election

In any city election conducted on a partisan basis in accordance with G.S. 163–279(a)(2) and 163–291, the following reports shall be filed in addition to the organizational report:

(1) Thirty–five–day Report. – The treasurer shall file a report with the board 35 days before the primary.

(1a) Pre–primary Report. – The treasurer shall file a report with the board no later than the tenth day preceding each primary election.

(2) Pre–election Report. – The treasurer shall file a report 10 days before the election, unless a second primary is held and the candidate appeared on the ballot in the second primary, in which case the report shall be filed 10 days before the second primary.

(3) Repealed by Session Laws 1985, c. 164, s. 2.

(4) Semiannual Reports. – If contributions are received or expenditures made during any part of a calendar year, for which no reports are otherwise required by this section, any and all those contributions and expenditures shall be reported on semiannual reports due on the last Friday in July, covering the period through June 30, and due on the last Friday in January, covering the period through December 31 of the previous year.

Added by Laws 1985, c. 164, § 2. Amended by Laws 1987 (Reg. Sess., 1988), c. 1028, § 7; S.L. 2001–419, § 3, eff. Jan. 1, 2002.

Historical and Statutory Notes

2001 Legislation

S.L. 2001–419, § 3, eff. Jan. 1, 2002, rewrote the section, which prior thereto read:

''In any city election conducted on a partisan basis in accordance with G.S. 163–279(a)(2) and 163–291, the following reports shall be filed in addition to the organizational report:

''(1) Pre-primary Report.--The treasurer shall file a report with the board no later than the tenth day preceding each primary election.

''(2) Pre-election Report.--The treasurer shall file a report 10 days prior to the election, unless a second primary is held and the candidate appeared on the ballot in the second primary, in which case the report shall be filed 10 days before the second primary.

''(3) Repealed by Laws 1985, c. 164, § 2.

''(4) Annual Report.--If contributions are received or expenditures made during a calendar year, for which no reports are otherwise required by this section, any and all contributions and expenditures shall be reported by the last Friday in January of the following year.''

§ 163–278.40C. Campaign report; nonpartisan election and runoff

If any city election conducted under the nonpartisan election and runoff basis in accordance with G.S. 163–279(a)(4) and 163–293, the following reports shall be filed in addition to the organizational report:

(1) Thirty-five-day Report. – The treasurer shall file a report with the board 35 days before the election.

(1a) Pre-election Report. – The treasurer shall file a report with the board 10 days before the election.

(1b) Pre-runoff Report. – The treasurer shall file a report with the board 10 days before the runoff if the candidate is in a runoff.

(2) Repealed by Session Laws 1985, c. 164, s. 3.

(3) Semiannual Reports. – If contributions are received or expenditures made during any part of a calendar year, for which no reports are otherwise required by this section, any and all those contributions and expenditures shall be reported on semiannual reports due on the last Friday in July, covering the period through June 30, and due on the

last Friday in January, covering the period through December 31 of the previous year.

Added by Laws 1985, c. 164, § 3. Amended by Laws 1987 (Reg. Sess., 1988), c. 1028, § 8; S.L. 2001–419, § 4, eff. Jan. 1, 2002.

Historical and Statutory Notes

2001 Legislation

S.L. 2001–419, § 4, eff. Jan. 1, 2002, rewrote the section, which prior thereto read:

''If any city election conducted under the nonpartisan election and runoff basis in accordance with G.S. 163–279(a)(4) and 163–293, the following reports shall be filed in addition to the organizational report:

''(1) Pre-election Report.--The treasurer shall file a report with the board no later than 10 days prior to the election.

''(2) Repealed by Laws 1985, c. 164, § 3, eff. Jan. 1, 1986.

''(3) Annual Report.--If contributions are received or expenditures made during a calendar year, for which no reports are otherwise required by this section, any and all such contributions and expenditures shall be reported by the last Friday in January of the following year.''

§ 163–278.40D. Campaign report; nonpartisan primary and elections

In any city election conducted under the nonpartisan primary method in accordance with G.S. 163–279(a)(3) and 163–294, the following reports shall be filed in addition to the organizational report:

(1) Thirty-five-day Report. – The treasurer shall file a report with the board 35 days before the primary if the candidate is in a primary or the same length of time before the election if the candidate is not in a primary.

(1a) Pre–primary and Pre-election Reports. – The treasurer shall file a report 10 days before the primary if the candidate is in a primary and 10 days before the election.

(2) Repealed by Session laws 1985, c. 164, s. 4.

(3) Semiannual Reports. – If contributions are received or expenditures made during any part of a calendar year, for which no reports are otherwise required by this section, any and all those contributions and expenditures shall be reported on semiannual reports due on the last Friday in July, covering the period through June 30, and due on the last Friday in January, covering the period through December 31 of the previous year.

Added by Laws 1985, c. 164, § 4. Amended by Laws 1987 (Reg. Sess., 1988), c. 1028, § 9; S.L. 2001–419, § 5, eff. Jan. 1, 2002.

Historical and Statutory Notes

2001 Legislation

S.L. 2001–419, § 5, eff. Jan. 1, 2002, rewrote the section, which prior thereto read:

''In any city election conducted under the nonpartisan primary method in accordance with G.S. 163–279(a)(3) and 163–294, the following reports shall be

filed in addition to the organizational report:

''(1) Pre-primary Report.--The treasurer shall file a report 10 days prior to the primary if the candidate is in a primary or 10 days prior to the election, if the candidate is not in a primary.

''(2) Repealed by Laws 1985, c. 164, § 4.

''(3) Annual Report.--If contributions are received or expenditures made during a calendar year, for which no reports are otherwise required by this section, any and all contributions and expenditures shall be reported by the last Friday in January of the following year.''

§ 163–278.40E. Campaign report; nonpartisan plurality

In any city election conducted under the nonpartisan plurality method under G.S. 163–279(a)(1) and 163–292, the following reports shall be filed in addition to the organizational report:

(1) Thirty-five-day Report. – The treasurer shall file a report with the board 35 days before the election.

(1a) Pre-election Report. – The treasurer shall file a report 10 days before the election.

(2) Repealed by Session Laws 1985, c. 164, s. 5.

(3) Semiannual Reports. – If contributions are received or expenditures made during any part of a calendar year, for which no reports are otherwise required by this section, any and all those contributions and expenditures shall be reported on semiannual reports due on the last Friday in July, covering the period through June 30, and due on the last Friday in January, covering the period through December 31 of the previous year.

Added by Laws 1985, c. 164, § 5. Amended by Laws 1987 (Reg. Sess., 1988), c. 1028, § 10; S.L. 2001–419, § 6, eff. Jan. 1, 2002.

Historical and Statutory Notes

2001 Legislation

S.L. 2001–419, § 6, eff. Jan. 1, 2002, rewrote the section, which prior thereto read:

''In any city election conducted under the nonpartisan plurality method under G.S. 163–279(a)(1) and 163–292, the following reports shall be filed in addition to the organizational report:

''(1) Pre-election Report.--The treasurer shall file a report 10 days prior to the election.

''(2) Repealed by Laws 1985, c. 164, § 5.

''(3) Annual Report.--If contributions are received or expenditures made during a calendar year, for which no reports are otherwise required by this section, any and all such contributions and expenditures shall be reported by the last Friday in January of the following year.''

§ 163–278.40F. Form of report

Forms of reports under this Part shall be prescribed by the board.

Added by Laws 1981, c. 837, § 3.

§ 163–278.40G. Content

Except as otherwise provided in this Part, each report shall be current within seven days prior to the date the report is due and

shall list all contributions received and expenditures made which have not been previously reported.

Added by Laws 1981, c. 837, § 3.

§ 163–278.40H. Notice of reports due

The director of the board shall advise, or cause to be advised, no less than five days nor more than 15 days before each report is due each candidate or treasurer whose organizational report has been filed under G.S. 163-278.40A of the specific date each report is due. He shall immediately notify any individual, candidate, treasurer, or political committee, to file a statement under this Part if:

(1) It appears that the individual, candidate, treasurer, or political committee has failed to file a statement as required by law or that a statement filed does not conform to this Part; or

(2) A written complaint is filed under oath with the board by any registered voter of this State alleging that a statement filed with the board does not conform to this Part or to the truth or that an individual, candidate, treasurer, or political committee has failed to file a statement required by this Part.

Added by Laws 1981, c. 837, § 3. Amended by Laws 1995, c. 243, § 1, eff. Jan. 1, 1996.

Historical and Statutory Notes

Laws 1995, c. 243, § 1, provides:

"Wherever the term 'supervisor' appears in the General Statutes of North Carolina or in any local act in reference to the county supervisor of elections as provided in G.S. 163–35, the term is changed to read 'director.' "

§ 163–278.40I. Part 1 to apply

(a) Except as provided in this Part or in G.S. 163-278.9(d), the provisions of Part 1 shall apply to municipal elections covered by this Part.

(b) G.S. 163-278.7, 163-278.9(a), (b) and (c), 163-278.22(1) and (9), the first paragraph of 163-278.23, 163-278.24, 163-278.25, and 163-278.26 shall not apply to this Part.

Added by Laws 1981, c. 837, § 3.

§ 163–278.40J. Other committees report by municipal schedule

A candidate or political committee that appoints a treasurer under G.S. 163–278.7 shall make reports according to the schedule under this Part if it makes contributions or expenditures concerning municipal elections.

Added by S.L. 2008–150, § 9(a), eff. Dec. 1, 2008.

Article 22B

Appropriations from the North Carolina Political Parties Financing Fund

Section

163–278.41. Appropriations in general election years and other years.
163–278.42. Distribution of campaign funds; legitimate expenses permitted.
163–278.43. Annual report to State Board of Elections; suspension of disbursements; willful violations a misdemeanor; adoption of rules; reporting by candidates and political committees.
163–278.44. Crime; punishment.
163–278.45. Definitions.

§ 163–278.41. Appropriations in general election years and other years

(a) Following the conclusion of the last primary or nominating convention held by a political party in a general election year in which a presidential election is held, the State chair of that political party may apply to the State Board of Elections (State Board) for the disbursement of all funds deposited with the State Treasurer on behalf of that party in the North Carolina Political Parties Financing Fund (Political Parties Fund) to be administered by the State Board of Elections and in which shall be placed money contributed by taxpayers, as provided in G.S. 105–159.1. If the regular date set for a primary in G.S. 163–1 or nominating convention in G.S. 163–98 is temporarily postponed for one election year, the State party chair may apply for the disbursement after the regular date set in those sections for that party's primary or convention, even though the primary has not occurred under the temporary schedule. Upon receipt of that application, the State Board shall forthwith, and every 30 days thereafter, pay over to said chairman all funds currently held by the State Treasurer on behalf of that chair's political party, but provided that all such payments shall cease 30 days after the State Board of Elections has certified all of the results of the general election to the Secretary of State. Upon receipt of that application, the State Board shall pay over to the chair all funds currently held by the State Treasurer in the ''Presidential Election Year Candidates Fund'' of that party, which funds shall be allocated and disbursed during the presidential election year by the same procedure as the funds received from the Political Parties Fund are allocated. Any remaining funds of the political party in the hands of the State Treasurer shall thereafter be held by the State Treasurer until eligible for distribution pursuant to this section.

(b) Following the conclusion of the last primary or nominating convention held by a political party in a general election year in which there is not a presidential election, the State chair of the

political party may apply to the State Board for the disbursement of all funds deposited on behalf of such party in the Political Parties Fund. If the regular date set for a primary in G.S. 163–1 or nominating convention in G.S. 163–98 is temporarily postponed for one election year, the State party chair may apply for the disbursement after the regular date set in those sections for that party's primary or convention, even though the primary has not occurred under the temporary schedule. Upon receipt of such application, the State Board shall forthwith, and every 30 days thereafter, pay over to said chairman all funds currently held by the State Treasurer on behalf of that chair's political party provided that all such payments to the chairman shall cease 30 days after the State Board of Elections has certified all of the results of the general election. Any remaining funds of the political party in the hands of the State Treasurer shall thereafter be held by the State Treasurer until eligible for distribution pursuant to this section.

(c) In each year in which no general election is held, each State chair of a political party on behalf of which funds have been deposited in the Political Parties Fund may, on or between August 1 and September 1 thereof, apply to the State Board for payment of an amount not to exceed fifty percent (50%) of the then available funds credited to the account of that party. Upon receipt of such application, the State Board shall pay over to that State chair an amount not to exceed fifty percent (50%) of the then available funds credited to the account of that party. Additionally and upon receipt of that application, the State Board shall direct the State Treasurer to place fifty percent (50%) of those available funds in a separate interest bearing account to be known as the ''Presidential Election Year Candidates Fund of the (name of the party) Party'' to be disbursed in accord with the provisions of subsection (a) above. Any remaining funds of the political party in the hands of the State Treasurer shall thereafter be held by the State Treasurer until eligible for distribution by the State Board pursuant to this section. Any interest earned on the funds deposited in such Presidential Election Year Campaign Fund shall be credited thereto.

Added by Laws 1975, c. 775, § 2. Amended by Laws 1977 (2nd Sess.), c. 1298, § 2; Laws 1983, c. 700, § 5; Laws 1985, c. 768, §§ 19 to 21; Laws 1987 (Reg. Sess., 1988), c. 1063, § 3; Laws 1991, c. 347, § 1; S.L. 2003–434 (Ex. Sess.), § 14, eff. Nov. 25, 2003.

Historical and Statutory Notes

2003 Legislation

S.L. 2003–434 (Ex. Sess.), § 14, eff. Nov. 25, 2003, rewrote the section, which prior thereto read:

''(a) Following the conclusion of the last primary or nominating convention held by a political party in a general election year in which a presidential election is held, the State chairman of that political party may apply to the State Board of Elections (State Board) for the disbursement of all funds deposited with the State Treasurer on behalf of such party in the North Carolina

Political Parties Financing Fund (Political Parties Fund) to be administered by the State Board of Elections and in which shall be placed money contributed by taxpayers, as provided in G.S. 105-159.1. Upon receipt of such application, the State Board shall forthwith, and every 30 days thereafter, pay over to said chairman all funds currently held by the State Treasurer on behalf of said chairman's political party, but provided that all such payments shall cease 30 days after the State Board of Elections has certified all of the results of the general election to the Secretary of State. Additionally and upon receipt of such application, the State Board shall pay over to the said chairman all funds currently held by the State Treasurer in the 'Presidential Election Year Candidates Fund' of that party, which funds shall be allocated and disbursed during the presidential election year by the same procedure as the funds received from the Political Parties Fund are allocated. Any remaining funds of the political party in the hands of the State Treasurer shall thereafter be held by him until eligible for distribution pursuant to this section.

''(b) Following the conclusion of the last primary or nominating convention held by a political party in a general election year in which there is not a presidential election, the State chairman of the political party may apply to the State Board for the disbursement of all funds deposited on behalf of such party in the Political Parties Fund. Upon receipt of such application, the State Board shall forthwith, and every 30 days thereafter, pay over to said chairman all funds currently held by the State Treasurer on behalf of said chairman's political party provided that all such payments to the said chairman shall cease 30 days after the State Board of Elections has certified all of the results of the general election to the Secretary of State. Any remaining funds of the political party in the hands of the State Treasurer shall thereafter be held by him until eligible for distribution pursuant to this section.

''(c) In each year in which no general election is held, each State chairman of a political party on behalf of which funds have been deposited in the Political Parties Fund may, on or between August 1 and September 1 thereof, apply to the State Board for payment of an amount not to exceed fifty percent (50%) of the then available funds credited to the account of his party. Upon receipt of such application, the State Board shall pay over to said State chairman an amount not to exceed fifty percent (50%) of the then available funds credited to the account of his party. Additionally and upon receipt of such application, the State Board shall direct the State Treasurer to place fifty percent (50%) of the said available funds in a separate interest bearing account to be known as the 'Presidential Election Year Candidates Fund of the (name of the party) Party' to be disbursed in accord with the provisions of subsection (a) above. Any remaining funds of the political party in the hands of the State Treasurer shall thereafter be held by him until eligible for distribution by the State Board pursuant to this section. Any interest earned on the funds deposited in such Presidential Election Year Campaign Fund shall be credited thereto.''

S.L. 2003–434 (Ex. Sess.), § 16, provides:

''Sections 1, 2, 3, 4, and 5 of this act are effective when it becomes law. The remainder of this act is effective when it becomes law and applies to any case pending on or filed after that date, to any case regardless of when the case was filed, and to any action of a court affecting the validity of an act apportioning or redistricting State legislative or congressional districts.''

§ 163–278.42. Distribution of campaign funds; legitimate expenses permitted

(a) In a general election year in which a presidential election is held, every State chairman of a political party shall disburse fifty percent (50%) of all funds received from the North Carolina Political Parties Financing Fund to that political party. The remaining fifty percent (50%) of such funds shall be allocated by the special committee established by subsection (d) of this section and used for one or more of the purposes permitted by subsection (e)

of this section. Any candidate may elect to decline in whole or in part any funds that the party chooses to distribute to the candidate.

(b) In a general election year in which there is not a presidential election, every State chairman of a political party shall disburse fifty percent (50%) of all funds received from the Political Parties Fund to that political party. The remaining fifty percent (50%) of such funds shall be allocated by the special committee established in subsection (d) of this section and used for one or more of the purposes permitted by subsection (e) of this section. Any candidate may elect to decline in whole or in part any funds that the party chooses to distribute to the candidate.

(c) In each year in which no general election is held, every State chairman of a political party shall disburse all funds received from the Political Parties Fund to that political party.

(d) The allocation of the remaining fifty percent (50%) of the funds under subsections (a) or (b) of this section shall be made by a committee composed of the State Chairman of that political party, the Treasurer of that party, the Congressional District Chairmen of that party, and a number of persons that shall not exceed the number of congressional districts in North Carolina appointed by the State Chairman of that party, and the State Chairman shall serve as Chairman of this committee. The allocation of funds shall be in the sole discretion of the committee, but must be for a purpose permitted by subsection (e) of this section and if allocated to a candidate, shall be disbursed by the State Chairman of that party only to the Treasurer of that candidate or committee appointed under Article 22A of this Chapter or under the Federal Election Campaign Act of 1971, Chapter 14 of Title 2, United States Code.

(e) A political party shall expend funds distributed from the Political Parties Fund or from the ''Presidential Election Year Candidates Fund'' only for legitimate campaign expenses. By way of illustration but not by way of limitation, the following are examples of legitimate campaign expenses:

(1) Radio, television, newspaper, and billboard advertising for and on behalf of a political party or candidate;

(2) Leaflets, fliers, buttons, and stickers;

(3) Campaign staff salaries, provided each staff member is listed by name and by the amount paid as salary and the amount paid as campaign expense reimbursement;

(4) Travel expenses, lodging and food for candidate and staff;

(4a) Expenses to ensure compliance with federal and State campaign finance and reporting laws;

(4b) Contributions to or expenses on behalf of candidates of that political party;

(5) Party headquarters operations related to upcoming general elections, including the purchase, maintenance and programming of computers to provide lists of voters, party workers, officers, committee members and participants in party functions, patterns of voting and other data for use in general election campaigns and party activities and functions prior thereto, the establishment and updating computer file systems of voter registration lists, State, district, county and precinct officers and committee member lists, party clubs or organization lists, the organizing of voter registration, fund raising and get-out-the-vote programs at the county level when conducted by State party personnel, and the preparation of reports required to be filed by State and federal laws and systems needed to prepare the same and keep records incident thereto.

(f) All moneys and funds previously designated by taxpayers being held by the North Carolina Secretary of Revenue and being held by the North Carolina State Treasurer which moneys and funds have not been disbursed or delivered to a political party as of June 16, 1978, when disbursed shall be allocated by the State Chairman of the political party as follows: sixty-two and one-half percent (62½%) of such funds to the political party for legitimate general election campaign expenditures; thirty-seven and one-half percent (37½%) to the eligible candidates as determined by the committee established under this Article.

(g) It shall be unlawful for any political party to use either directly or indirectly any part of funds distributed from the Political Parties Fund or the Presidential Election Year Candidates Fund of any political party for the support or assistance either directly or indirectly of any candidate in a primary election, for support or assistance relating to the selection of a candidate at a political convention or by the executive committee of a party, for the payment or repayment of any debt or obligation of whatsoever kind or nature incurred by any person, candidate or political committee in a primary election, the selection of a candidate at a political convention or by the executive committee of a party, or for the support, promotion or opposition of a national, State or local referendum, bond election or constitutional amendment.

Added by Laws 1975, c. 775, § 2. Amended by Laws 1977 (2nd Sess.), c. 1298, § 2; Laws 1983, c. 700, §§ 1 to 4; Laws 1985, c. 768, §§ 22, 23; Laws 1985 (Reg. Sess., 1986), c. 866; Laws 1987 (Reg. Sess., 1988), c. 1063, § 3; Laws 1991, c. 636, § 20(b); Laws 1991 (Reg. Sess., 1992), c. 1032, § 10B; Laws 1993, c. 553, § 70, eff. July 24, 1993; S.L. 2009–534, § 10.1, eff. Dec. 1, 2009.

Historical and Statutory Notes

2009 Legislation

S.L. 2009–534, § 10.1, in subsec. (d), substituted ''a number of persons that shall not exceed the number of congressional districts in North Carolina'' for ''two persons'' in the first sentence.

§ 163–278.43. Annual report to State Board of Elections; suspension of disbursements; willful violations a misdemeanor; adoption of rules; reporting by candidates and political committees

(a) The State chairman of each political party receiving funds from the Political Parties Fund or the Presidential Election Year Candidates Fund or both shall maintain a full and complete record of the party's receipts and any and all subsequent expenditures and disbursements thereof, and such shall be substantiated by any records, receipts, and information that the Executive Director of the State Board of Elections shall require. Such record shall be centrally located and shall be readily available at reasonable hours for public inspection.

(b) By December 31 of each year, the State chairman of each political party receiving funds from the Political Parties Fund or a Presidential Election Year Candidates Fund in the 12 preceding months shall file with the State Board of Elections an itemized statement reporting all receipts, expenditures and disbursements from the date of the last report and attached to such report shall be the verification of such chairman that all such funds received were expended in accordance with the provisions of this Article. If the Executive Secretary of the State Board of Elections determines and finds as a fact that any such funds were not disbursed or expended in accordance with this Article, he shall order such political party to reimburse the amount improperly expended or disbursed to the General Fund of the State and such political party shall not receive further disbursements from the Political Parties Fund or a Presidential Election Year Candidates Fund until such reimbursement has been accomplished in full. A copy of any such order shall be forwarded to the State Treasurer, which shall constitute notice to him to suspend further disbursements from the campaign fund.

(c) Repealed by Laws 1985, c. 259.

(c1) The State Board shall review each application and certify that the political party is eligible to receive the funds requested. The State Board shall establish rules for the administration and enforcement of this Article.

(c2) The treasurer of any political committee or candidate receiving any funds from the Political Parties Fund or a Presidential Election Year Candidates Fund through a political party shall report such receipts as contributions according to the method and timetable set forth in Article 22A of this Chapter. The treasurer

shall report disbursements of such funds as expenditures or loans according to the method and timetable set forth in Article 22A of this Chapter. The reports shall be made to the proper board of elections according to Article 22A of this Chapter. There is no requirement that a candidate or a political committee other than a political party shall maintain funds from the Political Parties Fund or a Presidential Election Year Candidates Fund in a separate account.

(d) Repealed by Laws 1985, c. 259.

Added by Laws 1975, c. 775, § 2. Amended by Laws 1977 (2nd Sess.), c. 1298, § 2; Laws 1979, c. 926, § 1; Laws 1985, c. 259, § 1; Laws 1985, c. 259, § 2; Laws 1987 (Reg. Sess., 1988), c. 1063, § 3; Laws 1991, c. 347, § 2; Laws 1991 (Reg. Sess., 1992), c. 1032, § 10C.

§ 163–278.44. Crime; punishment

Any individual person, candidate, political committee, or treasurer who willfully and intentionally violates any of the provisions of this Article, shall be guilty of a Class 2 misdemeanor.

Added by Laws 1977 (2nd Sess.), c. 1298, § 2. Amended by Laws 1987, c. 565, § 18; Laws 1993, c. 539, § 1119, eff. Oct. 1, 1994; Laws 1994 (1st Ex. Sess.), c. 24, § 14(c), eff. March 26, 1994.

Historical and Statutory Notes

Laws 1993, c. 539, § 1359, provides:

''This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.'' [Amended by Laws 1994, Ex. Sess., c. 24, § 14(c), eff. March 26, 1994.]

Cross References

Misdemeanor sentencing and punishment, see § 15A–1340.13 et seq.

§ 163–278.45. Definitions

The terms ''candidate,'' ''expend,'' ''individual,'' ''person,'' ''political committee,'' and ''treasurer'' as used in this Article shall be as defined in G.S. 163-278.6.

Added by Laws 1977 (2nd Sess.), c. 1298, § 2.

Article 22C

Appropriations from the North Carolina Candidates Financing Fund [Repealed]

Section

163–278.46 to 163–278.57. Repealed.
163–278.58 to 163–278.60. Reserved.

§§ 163–278.46 to 163–278.57. Repealed by S.L. 2002–158, § 5, eff. Jan. 1, 2003

Historical and Statutory Notes

Repealed § 163–278.46, which related to establishment of Candidates Fund, administrative expenses, and financing in case of insufficiency , was derived from Laws 1987 (Reg. Sess., 1988), c. 1063, § 1 and Laws 1991, c. 397, § 1.

Repealed § 163–278.47, which related to application and eligibility, was derived from Laws 1987 (Reg. Sess., 1988), c. 1063, § 1 and Laws 1991, c. 397, § 1.

Repealed § 163–278.48, which related to expenditure limits, was derived from Laws 1987 (Reg. Sess., 1988), c. 1063, § 1 and Laws 1991, c. 397, § 1.

Repealed § 163–278.49, which related to qualified campaign expenditures, was derived from Laws 1987 (Reg. Sess., 1988), c. 1063, § 1 and Laws 1991, c. 397, § 1.

Repealed § 163–278.50, which related to distribution of funds, was derived from Laws 1987 (Reg. Sess., 1988), c. 1063, § 1 and Laws 1991, c. 397, § 1.

Repealed § 163–278.51, which related to withdrawal of application, was derived from Laws 1987 (Reg. Sess., 1988), c. 1063, § 1 and Laws 1991, c. 397, § 1.

Repealed § 163–278.52, which related to penalties and fines, was derived from Laws 1987 (Reg. Sess., 1988), c. 1063, § 1 and Laws 1991, c. 397, § 1.

Repealed § 163–278.53, which related to criminal punishment, was derived from:

Laws 1987 (Reg. Sess., 1988), c. 1063, § 1.
Laws 1991, c. 397, § 1.
Laws 1993, c. 539, § 1325.
Laws 1994 (1st Ex. Sess.), c. 24, § 14(c).

Repealed § 163–278.54, which related to a sixty-day post-election report to State Board and audit, was derived from Laws 1987 (Reg. Sess., 1988), c. 1063, § 1 and Laws 1991, c. 397, § 1.

Repealed § 163–278.55, which related to return of unspent money within 90 days of election, was derived from Laws 1987 (Reg. Sess., 1988), c. 1063, § 1 and Laws 1991, c. 397, § 1.

Repealed § 163–278.56, which related to duties of the state board, was derived from Laws 1987 (Reg. Sess., 1988), c. 1063, § 1 and Laws 1991, c. 397, § 1.

Repealed § 163–278.57, which related to definitions of terms, was derived from Laws 1987 (Reg. Sess., 1988), c. 1063, § 1 and Laws 1991, c. 397, § 1.

See, generally, § 163–278.61 et seq.

§§ 163–278.58 to 163–278.60. Reserved

Article 22D

The North Carolina Public Campaign Fund

Section

163–278.61. Purpose of the North Carolina Public Campaign Fund.
163–278.62. Definitions.
163–278.63. North Carolina Public Campaign Fund established; sources of funding.
163–278.64. Requirements for participation; certification of candidates.
163–278.64A. Special participation provisions for candidates in vacancy elections.
163–278.65. Distribution from the Fund.
163–278.66. Reporting requirements.
163–278.67. Matching funds.
163–278.68. Enforcement and administration.
163–278.69. Voter education.
163–278.70. Civil penalty.
163–278.71 to 163–278.79. Reserved.

Historical and Statutory Notes

2002 Legislation

S.L. 2002–158, § 16, provides:

''Section 1 of this act is effective when it becomes law, provided that distributions from the Fund shall begin in the 2004 election year. Section 2 becomes effective January 1, 2003. Section 3 becomes effective July 1, 2003. Sections 4 and 6(a) become effective for taxable years beginning on or after January 1, 2003. Section 5 becomes effective January 1, 2003. Sections 7 through 13 become effective with respect to primaries and elections held on or after January 1, 2004. Except as otherwise provided in this act, this act is effective when it becomes law.''

2005 Legislation

S.L. 2005–276, § 23A.1(d), eff. July 1, 2005, substituted ''Public Campaign Fund'' for ''Public Campaign Financing Fund'' throughout the General Statutes.

§ 163–278.61. Purpose of the North Carolina Public Campaign Fund

The purpose of this Article is to ensure the fairness of democratic elections in North Carolina and to protect the constitutional rights of voters and candidates from the detrimental effects of increasingly large amounts of money being raised and spent to influence the outcome of elections, those effects being especially problematic in elections of the judiciary, since impartiality is uniquely important to the integrity and credibility of the courts. Accordingly, this Article establishes the North Carolina Public Campaign Fund as an alternative source of campaign financing for candidates who demonstrate public support and voluntarily accept strict fund-raising and spending limits. This Article is available to candidates for justice of the Supreme Court and judge of the Court of Appeals in elections to be held in 2004 and thereafter.

Added by S.L. 2002–158, § 1, eff. Oct. 10, 2002. Amended by S.L. 2005–276, § 23A.1(d), eff. July 1, 2005.

Historical and Statutory Notes

2002 Legislation

S.L. 2002–158, § 16, provides:

''Section 1 of this act is effective when it becomes law, provided that distributions from the Fund shall begin in the 2004 election year. Section 2 becomes effective January 1, 2003. Section 3 becomes effective July 1, 2003. Sections 4 and 6(a) become effective for taxable years beginning on or after January 1, 2003. Section 5 becomes effective January 1, 2003. Sections 7 through 13 become effective with respect to primaries and elections held on or after January 1, 2004. Except as otherwise provided in this act, this act is effective when it becomes law.''

2005 Legislation

S.L. 2005–276, § 23A.1(d), eff. July 1, 2005, substituted ''Public Campaign Fund'' for ''Public Campaign Financing Fund'' throughout the General Statutes.

Notes of Decisions

Mootness 3
Purpose 2
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Standing 4
Validity 1

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1. Validity

Provision of North Carolina statute governing public funding for candidates for judicial office barring receipt by nonparticipants of further contributions

for 21 day period prior to election if expenditure threshold was exceeded was closely drawn to advance state's important interest in avoiding the danger of corruption in judicial elections, and thus, provision did not violate the First Amendment; the ban minimized a nonparticipating candidate's ability to unfairly take advantage of participating candidate by delaying contributions until the last minute, when it would be too late for additional matching funds to be disbursed under the program to the participating candidate. North Carolina Right To Life Committee Fund For Independent Political Expenditures v. Leake, 2008, 524 F.3d 427, certiorari denied 129 S.Ct. 490, 172 L.Ed.2d 357. Constitutional Law ⚷ 1477; Elections ⚷ 311

Reporting provision of North Carolina statute governing public funding for candidates for judicial office, which required nonparticipating candidates to file report within 24 hours of raising or spending funds in excess of 80 percent of the matching funds trigger amount, and requiring nonparticipating candidates to then disclose each additional amount received in excess of $1000, was substantially related to important governmental interests of providing the electorate with information, deterring actual corruption and avoiding any appearance thereof, and gathering the data necessary to enforce more substantive electioneering restrictions; thus, reporting requirement did not violate First Amendment. North Carolina Right To Life Committee Fund For Independent Political Expenditures v. Leake, 2008, 524 F.3d 427, certiorari denied 129 S.Ct. 490, 172 L.Ed.2d 357. Constitutional Law ⚷ 1477; Elections ⚷ 311

Provision of matching funds to participating candidates under North Carolina statute governing public funding for candidates for judicial office did not burden the First Amendment rights of nonparticipating candidates, or political action committees seeking to make expenditures on behalf of nonparticipating candidates; candidates remained free to raise and spend as much money, and engage in as much political speech, as they desired, candidates would not be jailed, fined, or censured if they exceeded the trigger amounts, and the only arguably adverse consequence that would occur was the distribution of matching funds to any candidates participating in the public financing system. North Carolina Right To Life Committee Fund For Independent Political Expenditures v. Leake, 2008, 524 F.3d 427, certiorari denied 129 S.Ct. 490, 172 L.Ed.2d 357. Constitutional Law ⚷ 2054; Elections ⚷ 311

North Carolina public campaign financing statute providing for matching funds for participating candidates running for state judicial office was not coercive, as would violate the First Amendment; although the incentives to choose public financing were not insubstantial, as the program provided a maximum of $649,950 for a supreme court general election, they did not effectively mandate a candidate's participation in the public financing program, which would prohibit the candidate from spending his or her own funds. North Carolina Right To Life Committee Fund For Independent Political Expenditures v. Leake, 2008, 524 F.3d 427, certiorari denied 129 S.Ct. 490, 172 L.Ed.2d 357. Constitutional Law ⚷ 1477; Elections ⚷ 311

2. Purpose

Purpose of the North Carolina statute providing optional public funding for candidates seeking election to state judicial office is to protect North Carolina's citizens from the detrimental effects of increasingly large amounts of money being raised and spent to influence the outcome of judicial elections. North Carolina Right To Life Committee Fund For Independent Political Expenditures v. Leake, 2008, 524 F.3d 427, certiorari denied 129 S.Ct. 490, 172 L.Ed.2d 357. Elections ⚷ 311

3. Mootness

First Amendment challenge to North Carolina's public campaign financing statute asserted by candidate for state judicial office who opted not to participate in public financing program was not rendered moot by candidate's loss in election, notwithstanding that candidate did not allege that he planned to run for election in the future, where there was reasonable expectation that the statute would be applied against candidate during future election cycles. North Carolina Right To Life Committee Fund For Independent Political Expenditures v. Leake, 2008, 524 F.3d 427, certiorari denied 129 S.Ct. 490, 172 L.Ed.2d 357. Constitutional Law ⚷ 977

4. Standing

Political action committee had standing to challenge constitutionality of North Carolina statute providing for public funding of candidates for judicial office; committee allegedly chose not to make expenditures on behalf of candidates not participating in the public funding program due to fear that such expenditures might result in disbursement of matching funds to the participating candidates under the statute, leaving committee essentially financing political speech it opposed. North Carolina Right To Life Committee Fund For Independent Political Expenditures v. Leake, 2008, 524 F.3d 427, certiorari denied 129 S.Ct. 490, 172 L.Ed.2d 357. Constitutional Law ⚷ 863

5. Review

Strict scrutiny standard did not apply to First Amendment challenge to provision of North Carolina statute governing public funding for candidates for judicial office barring receipt by nonparticipants of further contributions for 21 day period prior to election if expenditure threshold was exceeded; rather, to survive a First Amendment challenge, the provision had to be closely drawn to match a sufficiently important governmental interest. North Carolina Right To Life Committee Fund For Independent Political Expenditures v. Leake, 2008, 524 F.3d 427, certiorari denied 129 S.Ct. 490, 172 L.Ed.2d 357. Constitutional Law ⚷ 1477

§ 163–278.62. Definitions

The following definitions apply in this Article:

(1) Board. – The State Board of Elections.

(2) Candidate. – An individual who becomes a candidate as described in G.S. 163–278.6(4). The term includes a political committee authorized by the candidate for that candidate's election.

(3) Certified candidate. – A candidate running for office who chooses to receive campaign funds from the Fund and who is certified under G. S. 163–278.64(c).

(4) Contested primary and contested general election. – An election in which there are more candidates than the number to be elected. A distribution from the Fund pursuant to this Article is not a ''contribution'' and is not subject to the limitations of G.S. 163–278.13 or the prohibitions of G.S. 163–278.15 or G.S. 163–278.19.

(5) Contribution. – Defined in G.S. 163–278.6. A distribution from the Fund pursuant to this Article is not a ''contribution'' and is not subject to the limitations of G.S. 163–278.13 or the prohibitions of G.S. 163–278.15 or 163–278.19.

(5a) Electioneering communication. — As defined in G.S. 163–278.80 and G.S. 163–278.90, except that it is made during the period beginning 30 days before absentee ballots become available for a primary and ending on primary election day and during the period 60 days before absentee ballots become available for a general election and ending on general election day.

(6) Expenditure. – Defined in G.S. 163–278.6.

(7) Fund. – The North Carolina Public Campaign Fund established in G.S. 163–278.63.

(8) Independent expenditure. – Defined in G.S. 163–278.6.

(9) Maximum qualifying contributions. – An amount of qualifying contributions equal to 60 times the filing fee for candidacy for the office.

(10) Minimum qualifying contributions. – An amount of qualifying contributions equal to 30 times the filing fee for candidacy for the office.

(11) Nonparticipating candidate. – A candidate running for office who is not seeking to be certified under G.S. 163–278.64(c).

(12) Office. – A position on the North Carolina Court of Appeals or North Carolina Supreme Court.

(13) Participating candidate. – A candidate for office who has filed a declaration of intent to participate under G.S. 163–278.64.

(14) Political committee. – Defined in G.S. 163–278.6.

(15) Qualifying contribution.—A contribution of not less than ten dollars ($10.00) and not more than five hundred dollars ($500.00) in the form prescribed for noncash monetary contributions in G.S. 163–278.14(b) to the candidate or the candidate's committee that meets both of the following conditions:

a. Made by an individual who is a registered voter in this State at the time of the submittal of the report specified in G.S. 163–278.64(c).

b. Made during the qualifying period and obtained with the approval of the candidate or candidate's committee.

(16) Qualifying period. – The period beginning September 1 in the year before the election and ending on the day of the primary of the election year.

(17) Referendum committee. – Defined in G.S. 163–278.6.

(18) Trigger for matching funds. – The dollar amount at which matching funds are released for certified candidates. In the case of a primary, the trigger equals the maximum qualifying contributions for participating candidates. In the case of a contested general election, the trigger equals the base level of funding available under G.S. 163–278.65(b)(4).

Added by S.L. 2002–158, § 1, eff. Oct. 10, 2002. Amended by S.L. 2005–276, § 23A.1(d), eff. July 1, 2005; S.L. 2007–510, §§ 1(c), 1(d), eff. Aug. 30, 2007; S.L. 2009–543, § 1, eff. Aug. 28, 2009.

Historical and Statutory Notes

2002 Legislation

S.L. 2002–158, § 16, provides:

"Section 1 of this act is effective when it becomes law, provided that distributions from the Fund shall begin in the 2004 election year. Section 2 becomes effective January 1, 2003. Sec-

tion 3 becomes effective July 1, 2003. Sections 4 and 6(a) become effective for taxable years beginning on or after January 1, 2003. Section 5 becomes effective January 1, 2003. Sections 7 through 13 become effective with respect to primaries and elections held on or after January 1, 2004. Except as otherwise provided in this act, this act is effective when it becomes law.''

2005 Legislation

S.L. 2005–276, § 23A.1(d), eff. July 1, 2005, substituted ''Public Campaign Fund'' for ''Public Campaign Financing Fund'' throughout the General Statutes.

2007 Legislation

S.L. 2007–510, § 1(c), provides:

''Chapter 163 of the General Statutes is amended by deleting the term 'rescue' wherever it appears and substituting the term 'matching.'''

S.L. 2007–510, § 1(d), added subd. (5a).

2009 Legislation

S.L. 2009–543, § 1, rewrote subd. (15), which prior thereto read:

''(15) Qualifying contribution. – A contribution of not less than ten dollars ($10.00) and not more than five hundred dollars ($500.00) in the form of a check or money order to the candidate or the candidate's committee that meets both of the following conditions:

''a. Made by any registered voter in this State.

''b. Made during the qualifying period and obtained with the approval of the candidate or candidate's committee.''

§ 163–278.63. North Carolina Public Campaign Fund established; sources of funding

(a) Establishment of Fund. — The North Carolina Public Campaign Fund is established to finance the election campaigns of certified candidates for office and to pay administrative and enforcement costs of the Board related to this Article. The Fund is a special, dedicated, nonlapsing, nonreverting fund. All expenses of administering this Article, including production and distribution of the Voter Guide required by G.S. 163–278.69 and personnel and other costs incurred by the Board, including public education about the Fund, shall be paid from the Fund and not from the General Fund. Any interest generated by the Fund is credited to the Fund. The Board shall administer the Fund.

(b) Sources of Funding. — Money received from all the following sources must be deposited in the Fund:

(1) Money from the North Carolina Candidates Financing Fund.

(2) Designations made to the Public Campaign Fund by individual taxpayers pursuant to G.S. 105–159.2.

(3) Repealed by S.L. 2005–276, § 23A.1(c), eff. Jan. 1, 2006.

(4) Public Campaign Fund revenues distributed for an election that remain unspent or uncommitted at the time the recipient is no longer a certified candidate in the election.

(5) Money ordered returned to the Public Campaign Fund in accordance with G.S. 163–278.70.

(6) Voluntary donations made directly to the Public Campaign Fund. Corporations, other business entities, labor unions, and professional associations may make donations to the Fund.

(7) Money collected from the fifty-dollar ($50.00) surcharge on attorney membership fees in G.S. 84–34.

(c) Determination of Fund Amount. – By October 1, 2003, and every two years thereafter, the Board, in conjunction with the Advisory Council for the Public Campaign Fund, shall prepare and provide to the Joint Legislative Commission on Governmental Operations of the General Assembly a report documenting, evaluating, and making recommendations relating to the administration, implementation, and enforcement of this Article. In its report, the Board shall set out the funds received to date and the expected needs of the Fund for the next election.

Added by S.L. 2002–158, § 1, eff. Oct. 10, 2002. Amended by S.L. 2005–276, § 23A–1(c), eff. Jan. 1, 2006; S.L. 2005–276, § 23A.1(d), eff. July 1, 2005; S.L. 2006–192, § 14.1, eff. Aug. 3, 2006.

Historical and Statutory Notes

2002 Legislation

S.L. 2002–158, § 16, provides:

''Section 1 of this act is effective when it becomes law, provided that distributions from the Fund shall begin in the 2004 election year. Section 2 becomes effective January 1, 2003. Section 3 becomes effective July 1, 2003. Sections 4 and 6(a) become effective for taxable years beginning on or after January 1, 2003. Section 5 becomes effective January 1, 2003. Sections 7 through 13 become effective with respect to primaries and elections held on or after January 1, 2004. Except as otherwise provided in this act, this act is effective when it becomes law.''

2005 Legislation

S.L. 2005–276, § 23A.1(c), eff. Jan. 1, 2006, repealed subd. (3), which prior thereto read:

''(3) Any contributions made by attorneys in accordance with G.S. 105–41.''; and added subd. (b)(7).

S.L. 2005–276, § 23A.1(d), eff. July 1, 2005, substituted ''Public Campaign Fund'' for ''Public Campaign Financing Fund'' throughout the General Statutes.

S.L. 2005–276, § 23A.1(e), provides:

''Subsections (a), (b), and (c) of this section become effective January 1, 2006, and apply to the membership fees due for 2006. The remainder of this section is effective when it becomes law.''

2006 Legislation

S.L. 2006–192, § 14.1, eff. Aug. 3, 2006, amended subsec. (a) by inserting ''including public education about the Fund''.

S.L. 2006–192, § 19, provides:

''Sections 2 through 5 of this act are effective January 1, 2007, and apply to all primaries and elections conducted on or after that date. Sections 8 and 9 of this act are effective when this act becomes law and apply to vacancies occurring on or after that date. Section 17 of this act and the portion of Section 15 of this act that affects G.S. 163–278.13(e3) become effective January 1, 2007, and apply to contributions made or accepted on or after that date. Section 18 of this act becomes effective for taxable years beginning on or after January 1, 2006. The remainder of this act is effective when it becomes law.''

§ 163–278.64. Requirements for participation; certification of candidates

(a) Declaration of Intent to Participate. – Any individual choosing to receive campaign funds from the Fund shall first file with the Board a declaration of intent to participate in the act as a candidate for a stated office. The declaration of intent shall be filed before or during the qualifying period and before collecting any qualifying contributions. In the declaration, the candidate

shall swear or affirm that only one political committee, identified with its treasurer, shall handle all contributions, expenditures, and obligations for the participating candidate and that the candidate will comply with the contribution and expenditure limits set forth in subsection (d) of this section and all other requirements set forth in this Article or adopted by the Board. Failure to comply is a violation of this Article.

(b) Demonstration of Support of Candidacy.—Participating candidates who seek certification to receive campaign funds from the Fund shall first, during the qualifying period, obtain qualifying contributions from at least 350 registered voters in an aggregate sum that at least equals the amount of minimum qualifying contributions described in G.S. 163–278.62(10) but that does not exceed the amount of maximum qualifying contributions described in G.S. 163–278.62(9).

No payment, gift, anything of value, or the opportunity to win anything of value shall be given in exchange for a qualifying contribution.

(c) Certification of Candidates. — Upon receipt of a submittal of the record of demonstrated support by a participating candidate, the Board shall determine whether or not the candidate has complied with all the following requirements:

(1) Signed and filed a declaration of intent to participate in this Article.
(2) Submitted a report itemizing the appropriate number of qualifying contributions received from registered voters, which the Board shall verify through a random sample or other means it adopts. The report shall include the county of residence of each registered voter listed.
(3) Filed a valid notice of candidacy pursuant to Article 25 of this Chapter.
(4) Otherwise met the requirements for participation in this Article.

The Board shall certify candidates complying with the requirements of this section as soon as possible and no later than five business days after receipt of a satisfactory record of demonstrated support.

(d) Restrictions on Contributions and Expenditures for Participating and Certified Candidates. – The following restrictions shall apply to contributions and expenditures with respect to participating and certified candidates:

(1) Beginning January 1 of the year before the election and before the filing of a declaration of intent, a candidate for office may accept in contributions up to ten thousand dollars ($10,000) from sources and in amounts permitted by Article 22A of this Chapter and may expend up to ten

thousand dollars ($10,000) for any campaign purpose. A candidate who exceeds either of these limits shall be ineligible to file a declaration of intent or receive funds from the Public Campaign Fund.

(2) From the filing of a declaration of intent through the end of the qualifying period, a candidate may accept only qualifying contributions, contributions under ten dollars ($10.00) from North Carolina voters, and personal and family contributions permitted under subdivision (4) of this subsection. The total contributions the candidate may accept during this period shall not exceed the maximum qualifying contributions for that candidate. In addition to these contributions, the candidate may only expend during this period the remaining money raised pursuant to subdivision (1) of this subsection and possible matching funds received pursuant to G.S. 163–278.67. Except for personal and family contributions permitted under subdivision (4) of this subsection, multiple contributions from the same contributor to the same candidate shall not exceed five hundred dollars ($500.00).

(3) After the qualifying period and through the date of the general election, the candidate shall expend only the funds the candidate receives from the Fund pursuant to G.S. 163–278.65(b)(4) plus any funds remaining from the qualifying period and possible matching funds.

(4) During the qualifying period, the candidate may contribute up to one thousand dollars ($1,000) of that candidate's own money to the campaign. Debt incurred by the candidate for a campaign expenditure shall count toward that limit. The candidate may accept in contributions one thousand dollars ($1,000) from each member of that candidate's family consisting of spouse, parent, child, brother, and sister. Up to five hundred dollars ($500.00) of a contribution from the candidate's family member may be treated as a qualifying contribution if it meets the requirements of G.S. 163–278.62(15)a. and b.

(5) A candidate and the candidate's committee shall limit the use of all revenues permitted by this subsection to expenditures for campaign- related purposes only. The Board shall publish guidelines outlining permissible campaign-related expenditures. In establishing those guidelines, the Board shall differentiate expenditures that reasonably further a candidate's campaign from expenditures for personal use that would be incurred in the absence of the candidacy. In establishing the guidelines, the Board shall review relevant provisions of G.S. 163–278.42(e), the Federal Election Campaign Act, and rules adopted pursuant to it, and similar provisions in other states.

(6) Any contribution received by a participating or certified candidate that falls outside that permitted by this subsection shall be returned to the donor as soon as practicable. Contributions intentionally made, solicited, or accepted in violation of this Article are subject to civil penalties as specified in G.S. 163–278.70. The funds involved shall be forfeited to the Civil Penalty and Forfeiture Fund.

(7) A candidate shall return to the Fund any amount distributed for an election that is unspent and uncommitted at the date of the election, or at the time the individual ceases to be a certified candidate, whichever occurs first. For accounting purposes, all qualifying, personal, and family contributions shall be considered spent before revenue from the Fund is spent or committed.

(e) Revocation. – A candidate may revoke, in writing to the Board, a decision to participate in the Public Campaign Fund at any time before the deadline set by the Board for the candidate's submission of information for the Voter Guide described in G.S. 163–278.69. After a timely revocation, that candidate may accept and expend outside the limits of this Article without violating this Article. Within 10 days after revocation, a candidate shall return to the Board all money received from the Fund.

Added by S.L. 2002–158, § 1, eff. Oct. 10, 2002. Amended by S.L. 2004–203, § 60, eff. Aug. 17, 2004; S.L. 2005–276, § 23A.1(d), eff. July 1, 2005; S.L. 2005–430, §§ 4, 5, eff. Dec. 1, 2005; S.L. 2007–510, § 1(c), eff. Aug. 30, 2007; S.L. 2009–543, §§ 2, 3, eff. Aug. 28, 2009.

Historical and Statutory Notes

2002 Legislation

S.L. 2002–158, § 16, provides:

''Section 1 of this act is effective when it becomes law, provided that distributions from the Fund shall begin in the 2004 election year. Section 2 becomes effective January 1, 2003. Section 3 becomes effective July 1, 2003. Sections 4 and 6(a) become effective for taxable years beginning on or after January 1, 2003. Section 5 becomes effective January 1, 2003. Sections 7 through 13 become effective with respect to primaries and elections held on or after January 1, 2004. Except as otherwise provided in this act, this act is effective when it becomes law.''

2004 Legislation

S.L. 2004–203, § 60, eff. Aug. 17, 2004, in subd. (d)(5), added the third and fourth sentences.

2005 Legislation

S.L. 2005–276, § 23A.1(d), eff. July 1, 2005, substituted ''Public Campaign Fund'' for ''Public Campaign Financing Fund'' throughout the General Statutes.

S.L. 2005–430, § 4, eff. Dec. 1, 2005, in subsec. (c), at the end of the introductory paragraph deleted '', if they apply to that candidate'', and rewrote subd. (c)(3) which prior thereto read:

''Qualified to receive votes on the ballot as a candidate for the office.''

S.L. 2005–430, § 5, eff. Dec. 1, 2005, rewrote subds. (d)(2) and (d)(4) which prior thereto read:

''(2) From the filing of a declaration of intent through the end of the qualifying period, a candidate shall expend no more than an amount equal to the maximum qualifying contributions for that candidate, not including possible rescue funds or the remaining money raised pursuant to subdivision (1) of this subsection. Contributions a candidate may use to expend to that limit shall be limited to qualifying contributions, and personal and family contributions permitted by subdivision (4) of this subsection.''

''(4) During the qualifying period, the candidate may contribute up to one thousand dollars ($1,000) of that candidate's own money to the campaign and may accept in contributions one thousand dollars ($1,000) from each member of that candidate's family consisting of spouse, parent, child, brother, and sister.''

S.L. 2005–430, § 11, eff. Dec. 1, 2005, provides:

''This act becomes effective December 1, 2005, and applies to all contributions and expenditures made or accepted on or after that date.''

2007 Legislation

S.L. 2007–510, § 1(c), provides:

''Chapter 163 of the General Statutes is amended by deleting the term 'rescue' wherever it appears and substituting the term 'matching.'''

2009 Legislation

S.L. 2009–543, § 2, in subsec. (b), in the second paragraph, inserted '', or the opportunity to win anything of value'' and made a nonsubstantive change.

S.L. 2009–543, § 3, in subds. (d)(2) and (d)(4), added the fourth sentences.

§ 163–278.64A. Special participation provisions for candidates in vacancy elections

(a) Participation Provisions Modified. — Candidates involved in elections described in G.S. 163–329 may participate in the Fund subject to the provisions of G.S. 163–278.64 as modified by this section. The Board shall adapt other provisions of this Article, including G.S. 163–278.67, to those elections.

(b) Qualifying. — The State Board of Elections shall designate a special qualifying period of no less than four weeks for these candidates, beginning at the close of the notice-of-candidacy filing period. To receive certification, a participating candidate shall raise at least 225 qualifying contributions, totaling at least 20 times the amount of the filing fee for the office, for a four-week qualifying period. If the State Board of Elections sets a longer qualifying period, then for each additional week that the qualifying period extends beyond four weeks, the minimum number of qualifying contributions required for certification shall increase by 25, and the minimum amount of the qualifying contributions shall increase by two times the filing fee. The minimum qualifying contributions shall not exceed the limit set by G.S. 163–278.64(b).

(c) Allocations. — Certified candidates shall receive one percent (1%) of the funding to which they would be eligible under G.S. 163–278.65 times the number of calendar days between the end of the special qualifying period and the day of the general election. That amount shall not exceed one hundred percent (100%) of the funding to which they would be eligible under G.S. 163–278.65.

Added by S.L. 2006–192, § 10, eff. Aug. 3, 2006.

Historical and Statutory Notes

2006 Legislation

S.L. 2006–192, § 19, provides:

''Sections 2 through 5 of this act are effective January 1, 2007, and apply to all primaries and elections conducted on or after that date. Sections 8 and 9 of this act are effective when this act becomes law and apply to vacancies occurring on or after that date. Section 17 of this act and the portion of Section 15 of this act that affects G.S. 163–278.13(e3) become effective January 1, 2007, and apply to contributions

made or accepted on or after that date. Section 18 of this act becomes effective for taxable years beginning on or after January 1, 2006. The remainder of this act is effective when it becomes law.''

§ 163–278.65. Distribution from the Fund

(a) Timing of Fund Distribution. – The Board shall distribute to a certified candidate revenue from the Fund in an amount determined under subdivision (b)(4) of this section within five business days after the certified candidate's name is approved to appear on the ballot in a contested general election, but no earlier than five business days after the primary.

(b) Amount of Fund Distribution. – By August 1, 2003, and no less frequently than every two years thereafter, the Board shall determine the amount of funds, rounded to the nearest one hundred dollars ($100.00), to be distributed to certified candidates as follows:

(1) Uncontested primaries. – No funds shall be distributed.

(2) Contested primaries. – No funds shall be distributed except as provided in G.S. 163–278.67.

(3) Uncontested general elections. – No funds shall be distributed.

(4) Contested general elections. – Funds shall be distributed to a certified candidate for a position on the Court of Appeals in an amount equal to 125 times the candidate's filing fee as set forth in G.S. 163–107. Funds shall be distributed to a certified candidate for a position on the Supreme Court in an amount equal to 175 times the candidate's filing fee as set forth in G.S. 163–107.

(c) Method of Fund Distribution. — The Board, in consultation with the State Treasurer and the State Controller, shall develop a rapid, reliable method of conveying funds to certified candidates. In all cases, the Board shall distribute funds to certified candidates in a manner that is expeditious, ensures accountability, and safeguards the integrity of the Fund. If the money in the Fund is insufficient to fully fund all certified candidates, then the available money shall be distributed proportionally, according to each candidate's eligible funding, and the candidate may raise additional money in the same manner as a noncertified candidate for the same office up to the unfunded amount of the candidate's eligible funding.

Added by S.L. 2002–158, § 1, eff. Oct. 10, 2002. Amended by S.L. 2006–192, § 11, eff. Aug. 3, 2006.

Historical and Statutory Notes

2002 Legislation

S.L. 2002–158, § 16, provides:

''Section 1 of this act is effective when it becomes law, provided that distributions from the Fund shall begin in

the 2004 election year. Section 2 becomes effective January 1, 2003. Section 3 becomes effective July 1, 2003. Sections 4 and 6(a) become effective for taxable years beginning on or after January 1, 2003. Section 5 becomes effective January 1, 2003. Sections 7 through 13 become effective with respect to primaries and elections held on or after January 1, 2004. Except as otherwise provided in this act, this act is effective when it becomes law.''

2006 Legislation

S.L. 2006–192, § 11, eff. Aug. 3, 2006, amended subsec. (c) by adding '', and the candidate may raise additional money in the same manner as a noncertified candidate for the same office up to the unfunded amount of the candidate's eligible funding.''

S.L. 2006–192, § 19, provides:

''Sections 2 through 5 of this act are effective January 1, 2007, and apply to all primaries and elections conducted on or after that date. Sections 8 and 9 of this act are effective when this act becomes law and apply to vacancies occurring on or after that date. Section 17 of this act and the portion of Section 15 of this act that affects G.S. 163–278.13(e3) become effective January 1, 2007, and apply to contributions made or accepted on or after that date. Section 18 of this act becomes effective for taxable years beginning on or after January 1, 2006. The remainder of this act is effective when it becomes law.''

§ 163–278.66. Reporting requirements

(a) Reporting by Noncertified Candidates and Other Entities.— Any noncertified candidate with a certified opponent shall report total contributions received to the Board by facsimile machine or electronically within 24 hours after the total amount of contributions received exceeds eighty percent (80%) of the trigger for matching funds as defined in G.S. 163–278.62(18). Any entity making independent expenditures in support of or opposition to a certified candidate or in support of a candidate opposing a certified candidate, or paying for electioneering communications, referring to one of those candidates, shall report the total expenditures or payments made to the Board by facsimile machine or electronically within 24 hours after the total amount of expenditures or payments made for the purpose of making the independent expenditures or electioneering communications exceeds five thousand dollars ($5,000). After the initial 24–hour filing, the noncertified candidate or other reporting entity shall comply with an expedited reporting schedule. The schedule and forms for reports required by this subsection shall be supplied by the Board.

(b) Reporting by Participating and Certified Candidates. — Notwithstanding other provisions of law, participating and certified candidates shall report any money received, including all previously unreported qualifying contributions, all campaign expenditures, obligations, and related activities to the Board according to procedures developed by the Board. A certified candidate who ceases to be certified or ceases to be a candidate or who loses an election shall file a final report with the Board and return any unspent revenues received from the Fund. In developing these procedures, the Board shall utilize existing campaign reporting procedures whenever practical.

(c) Timely Access to Reports. — The Board shall ensure prompt public access to the reports received in accordance with this

Article. The Board may utilize electronic means of reporting and storing information

Added by S.L. 2002–158, § 1, eff. Oct. 10, 2002. Amended by S.L. 2003–278, § 2, eff. June 27, 2003; S.L. 2006–192, § 12, eff. Aug. 3, 2006; S.L. 2007–510, §§ 1(a), 1(c), eff. Aug. 30, 2007; S.L. 2008–150, § 10.2(a), eff. Aug. 2, 2008; S.L. 2009–570, § 25, eff. Aug. 28, 2009.

Historical and Statutory Notes

2002 Legislation

S.L. 2002–158, § 16, provides:

''Section 1 of this act is effective when it becomes law, provided that distributions from the Fund shall begin in the 2004 election year. Section 2 becomes effective January 1, 2003. Section 3 becomes effective July 1, 2003. Sections 4 and 6(a) become effective for taxable years beginning on or after January 1, 2003. Section 5 becomes effective January 1, 2003. Sections 7 through 13 become effective with respect to primaries and elections held on or after January 1, 2004. Except as otherwise provided in this act, this act is effective when it becomes law.''

2003 Legislation

S.L. 2003–278, § 2, eff. June 27, 2003, in subsec. (a), inserted ''or in support of a candidate opposing a certified candidate'' after ''($3,000) in support of or opposition to a certified candidate''.

2006 Legislation

S.L. 2006–192, § 12, eff. Aug. 3, 2006, amended subsec. (a) by deleting ''in excess of three thousand dollars ($3,000)'' after ''expenditures'' and before ''in support'' and substituted ''five thousand dollars ($5,000)'' for ''fifty percent (50%) of the trigger for rescue funds''.

S.L. 2006–192, § 19, provides:

''Sections 2 through 5 of this act are effective January 1, 2007, and apply to all primaries and elections conducted on or after that date. Sections 8 and 9 of this act are effective when this act becomes law and apply to vacancies occurring on or after that date. Section 17 of this act and the portion of Section 15 of this act that affects G.S. 163–278.13(e3) become effective January 1, 2007, and apply to contributions made or accepted on or after that date. Section 18 of this act becomes effective for taxable years beginning on or after January 1, 2006. The remainder of this act is effective when it becomes law.''

2007 Legislation

S.L. 2007–510, § 1(a), rewrote subsec. (a), which prior thereto read:

''(a) Reporting by Noncertified Candidates and Independent Expenditure Entities. — Any noncertified candidate with a certified opponent shall report total income, expenses, and obligations to the Board by facsimile machine or electronically within 24 hours after the total amount of campaign expenditures or obligations made, or funds raised or borrowed, exceeds eighty percent (80%) of the trigger for rescue funds as defined in G.S. 163–278.62(18). Any entity making independent expenditures in support of or opposition to a certified candidate or in support of a candidate opposing a certified candidate shall report the total funds received, spent, or obligated for those expenditures to the Board by facsimile machine or electronically within 24 hours after the total amount of expenditures or obligations made, or funds raised or borrowed, for the purpose of making the independent expenditures, exceeds five thousand dollars ($5,000). After this 24–hour filing, the noncertified candidate or independent expenditure entity shall comply with an expedited reporting schedule by filing additional reports after receiving each additional amount in excess of one thousand dollars ($1,000) or after making or obligating to make each additional expenditure(s) in excess of one thousand dollars ($1,000). The schedule and forms for reports required by this subsection shall be made according to procedures developed by the Board.''

S.L. 2007–510, § 1(c), provides:

''Chapter 163 of the General Statutes is amended by deleting the term 'rescue' wherever it appears and substituting the term 'matching.'''

2008 Legislation

S.L. 2008–150, § 10.2(a), rewrote subsec. (a), which prior thereto read:

''(a) Reporting by Noncertified Candidates and Independent Expenditure Entities.—Any noncertified candidate with a certified opponent shall report

total income, expenses, and obligations to the Board by facsimile machine or electronically within 24 hours after the total amount of campaign expenditures or obligations made, or funds raised or borrowed, exceeds eighty percent (80%) of the trigger for matching funds as defined in G.S. 163–278.62(18). Any entity making independent expenditures in support of or opposition to a certified candidate or in support of a candidate opposing a certified candidate, or paying for electioneering communications, referring to one of those candidates, shall report the total funds received, spent, or obligated for those expenditures or payments to the Board by facsimile machine or electronically within 24 hours after the total amount of expenditures or obligations made, or funds raised or borrowed, for the purpose of making the independent expenditures or electioneering communications exceeds five thousand dollars ($5,000). After this 24–hour filing, the noncertified candidate or other reporting entity shall comply with an expedited reporting schedule by filing additional reports after receiving each additional amount in excess of one thousand dollars ($1,000) or after making or obligating to make each additional expenditure(s) or payment(s) in excess of one thousand dollars ($1,000). The schedule and forms for reports required by this subsection shall be made according to procedures developed by the Board.''

2009 Legislation

S.L. 2009–570, § 25, in subsec. (a), rewrote the subsection nameline, which prior thereto read: ''Noncertified and Independent Expenditure Entities''.

Notes of Decisions

Challenges 2
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1. Validity

Provision of North Carolina statute governing public funding for candidates for judicial office barring receipt by nonparticipants of further contributions for 21 day period prior to election if expenditure threshold was exceeded was closely drawn to advance state's important interest in avoiding the danger of corruption in judicial elections, and thus, provision did not violate the First Amendment; the ban minimized a nonparticipating candidate's ability to unfairly take advantage of participating candidate by delaying contributions until the last minute, when it would be too late for additional matching funds to be disbursed under the program to the participating candidate. North Carolina Right To Life Committee Fund For Independent Political Expenditures v. Leake, 2008, 524 F.3d 427, certiorari denied 129 S.Ct. 490, 172 L.Ed.2d 357. Constitutional Law ⚷ 1477; Elections ⚷ 311

Likelihood of succeeding on merits requirement, for issuance of preliminary injunction, was not satisfied by First Amendment challenge to statute providing for public financing of candidates for judicial office, imposing reporting requirements on candidates choosing not to participate in public financing, providing for supplemental ''rescue'' payments to candidates accepting financing when opponents rejecting financing report contributions and expenditures over ''triggering'' levels, and providing 21-day freeze on contributions if triggering level was exceeded, despite claim that effect of statute was to penalize contributions, past a certain level, by causing additional contributions to be made to opponents from public fund; provisions did not affect ability of nonparticipating candidates to spend their own money, or raise it from other sources, other than those narrowly tailored to advance public concerns regarding integrity of election process. Jackson v. Leake, 2006, 476 F.Supp.2d 515, affirmed 524 F.3d 427, certiorari denied 129 S.Ct. 490, 172 L.Ed.2d 357. Civil Rights ⚷ 1457(7)

Likelihood of succeeding on merits requirement, for issuance of preliminary injunction, was not satisfied by First Amendment challenge to statute prohibiting candidates for judicial office, who did not accept public funding, from receiving any contributions or loans during 21 days immediately preceding election, if contribution or loan would trigger ''rescue funds'' provision of statute, under which participating opponents would be entitled to receive extra compensation; provision was narrowly tailored to remedy scenario, with potential for corruption, under which nonparticipating candidate would receive infusion of money so close to elec-

tion that participating candidate could not be furnished timely additional assistance. Jackson v. Leake, 2006, 476 F.Supp.2d 515, affirmed 524 F.3d 427, certiorari denied 129 S.Ct. 490, 172 L.Ed.2d 357. Civil Rights ⚷ 1457(7)

First Amendment requirement, that statute regulating campaign expenditures be narrowly tailored to satisfy state's compelling interest in providing electorate with information regarding election financing, preventing corruption, and data gathering related to other restrictions, was satisfied by statute calling for candidates for judicial office not participating in public campaign funding provide frequent reports on campaign contributions and expenditures when these approached and exceed target triggering potential ''rescue'' payments made available to their opponents who did accept public financing. Jackson v. Leake, 2006, 476 F.Supp.2d 515, affirmed 524 F.3d 427, certiorari denied 129 S.Ct. 490, 172 L.Ed.2d 357. Constitutional Law ⚷ 1469; Elections ⚷ 311

2. Challenges

Political action committee had standing to challenge constitutionality of statute providing for public funding of candidates for judicial office; payment intended to be made to nonparticipating candidate could be sufficient to trigger rescue provision, under which opponent receiving public financing could receive additional funds, leaving committee essentially financing political speech it opposed. Jackson v. Leake, 2006, 476 F.Supp.2d 515, affirmed 524 F.3d 427, certiorari denied 129 S.Ct. 490, 172 L.Ed.2d 357. Elections ⚷ 317.5

Sitting appellate court judge did not have standing to challenge statute providing for public financing of judicial election campaigns, when she would not be standing for election for six more years, despite claim that knowledge whether statute was constitutional was needed well in advance for fund raising planning. Jackson v. Leake, 2006, 476 F.Supp.2d 515, affirmed 524 F.3d 427, certiorari denied 129 S.Ct. 490, 172 L.Ed.2d 357. Elections ⚷ 317.5

Candidate for state appellate court judgeship had standing to challenge statute providing for public financing of judicial election campaigns; while candidate was nonparticipant in funding portion of statute, his reported expenditures were sufficient to trigger ''rescue'' provisions of statute, under which his opponent received additional funds, and he was subject to prohibition on receipt of campaign funds for period beginning 21 days prior to election. Jackson v. Leake, 2006, 476 F.Supp.2d 515, affirmed 524 F.3d 427, certiorari denied 129 S.Ct. 490, 172 L.Ed.2d 357. Elections ⚷ 317.5

3. Mootness

''Capable of repetition, yet evading review'' exception to mootness doctrine did not apply to require trial court to declare whether expenditures by nonprofit corporation to certain judicial candidates were either contributions in excess of the limits allowed by the Campaign Finance Act or contributions involving unlawful coordination of spending with a political party to influence elections, and, if so, determine whether defeated candidate was entitled to rescue funds; amendments following election required Board of Elections to consider disbursements for ''electioneering communications,'' in addition to ''independent expenditures,'' when determining whether to issue rescue funds to certified candidate, without any exception for disbursements that were ''coordinated.'' Calabria v. North Carolina State Bd. of Elections, 2009, 680 S.E.2d 738. Declaratory Judgment ⚷ 212; Elections ⚷ 317.5

''Collateral legal consequences'' exception to mootness doctrine on ground of leaving unresolved allegations of misconduct did not apply to require trial court to declare whether expenditures by non-profit corporation to certain judicial candidates were either contributions in excess of the limits allowed by the Campaign Finance Act or contributions involving unlawful coordination of spending with a political party to influence elections, and, if so, determine whether defeated candidate was entitled to rescue funds, where persons allegedly responsible for such coordination, the non-profit and political party, were not parties to action. Calabria v. North Carolina State Bd. of Elections, 2009, 680 S.E.2d 738. Declaratory Judgment ⚷ 212; Elections ⚷ 317.5

''Public interest'' exception to mootness doctrine did not apply to require trial court to declare whether expenditures by non-profit corporation to certain judicial candidates were either contributions in excess of the limits allowed by the Campaign Finance Act or contributions involving unlawful coordination

of spending with a political party to influence elections, and, if so, determine whether defeated candidate was entitled to rescue funds, where post-election amendments to Act required the Board of Elections to consider disbursements for type of communications which gave rise to underlying action, making no exception from issuance of rescue funds for those disbursements that were ''coordinated'' with a political party. Calabria v. North Carolina State Bd. of Elections, 2009, 680 S.E.2d 738. Declaratory Judgment ⚷ 212; Elections ⚷ 317.5

§ 163–278.67. Matching funds

(a) When Matching Funds Become Available. — When any report or group of reports shows that ''funds in opposition to a certified candidate or in support of an opponent to that candidate'' as described in this section, exceed the trigger for matching funds as defined in G.S. 163–278.62(18), the Board shall issue immediately to that certified candidate an additional amount equal to the reported excess within the limits set forth in this section. ''Funds in opposition to a certified candidate or in support of an opponent to that candidate'' shall be equal to the sum of subdivisions (1) and (2) as follows:

(1) The greater of the following:

a. Campaign expenditures or obligations made, or funds raised or borrowed, whichever is greater, reported by any one nonparticipating candidate who is an opponent of a certified candidate. Where a certified candidate has more than one nonparticipating candidate as an opponent, the measure shall be taken from the nonparticipating candidate showing the highest relevant dollar amount.

b. The funds distributed in accordance with G.S. 163–278.65(b) to a certified opponent of the certified candidate.

(2) The aggregate total of all expenditures and payments reported in accordance with G.S. 163–278.66(a) of entities making independent expenditures or electioneering communications in opposition to the certified candidate or in support of any opponent of that certified candidate.

(b) Limit on Matching Funds Before Date of Primary.—Total matching funds to a certified candidate before the date of the primary shall be limited to an amount equal to two times the maximum qualifying contributions for the office sought. Matching funds are available to a certified candidate with an opponent in the primary or to a certified candidate who is clearly referred to in expenditures reportable under G.S. 163–278.99A made in opposition to that candidate.

(c) Limit on Matching Funds in Contested General Election. — Total matching funds to a certified candidate in a contested general election shall be limited to an amount equal to two times the amount described in G.S. 163–278.65(b)(4).

(c1) Expedited Distribution of Matching Funds.—When a candidate becomes entitled to any amount of matching funds under subsection (a) of this section, the Board shall authorize the issuance of that amount to the candidate as soon as practicable. The Department of Administration shall transfer that amount to the candidate as soon as practicable and in no event later than 12 hours after receiving notice from the Board that the candidate has become entitled to it. The Department of Administration shall develop a method of rapidly transferring funds to a candidate or otherwise fulfilling the requirements of this subsection in conjunction with the Board. The candidate shall return to the Board as soon as practicable any amount of the matching funds that the candidate has not spent at the date of the election or at the time the individual ceases to be a certified candidate, whichever occurs first.

(d) Determinations by Board. — In the case of electioneering communications, the Board shall determine which candidate, if any, is entitled to receive matching funds as a result of the communication. The Board shall issue matching funds based on the communication only if it ascertains that the communication is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. In making its determination, the Board shall not consider evidence external to the communication itself of the intent of the sponsor or the effect of the communication. The Board shall notify each candidate it determines is entitled to receive matching funds based on those communications, the sponsor of those communications, and any candidate who is an opponent of the candidate it determines is entitled to the matching funds. The Board shall give the sponsor of the communication and any opposing candidate an adequate opportunity to rebut the determination of the Board. In considering the rebuttal, all candidates in the race and the sponsor shall be given adequate and equal opportunity to be heard. The Board shall adopt procedures for implementing this subsection, balancing in those procedures adequacy of opportunity to rebut and adequacy and equality of opportunity to be heard on the rebuttal with the need to expedite the decision on awarding matching funds. The Board shall distribute the matching funds, if any, at the conclusion of its process.

(e) Proportional Measuring of Multicandidate Communications. — In calculating the amount of matching funds a certified candidate is eligible to receive under this section, the Board shall include the proportion of expenditures, obligations, or payments for multicandidate communications that pertain to the candidate.

(f) No Matching Funds for Certain Communications Involving All Candidates.—No matching funds are available under this section as a result of an expenditure that supports all candidates for

the same office or opposes all candidates for the same office. No matching funds are available under this section as a result of an electioneering communication that the Board ascertains is susceptible of no reasonable interpretation other than as an appeal to vote for all candidates for the same office or to vote against all candidates for the same office.

Added by S.L. 2002–158, § 1, eff. Oct. 10, 2002. Amended by S.L. 2007–510, §§ 1(b), 1(c), eff. Aug. 30, 2007; S.L. 2008–150, § 7(b), eff. Aug. 2, 2008; S.L. 2009–543, §§ 4, 5, eff. Aug. 28, 2009.

Historical and Statutory Notes

2002 Legislation

S.L. 2002–158, § 16, provides:

''Section 1 of this act is effective when it becomes law, provided that distributions from the Fund shall begin in the 2004 election year. Section 2 becomes effective January 1, 2003. Section 3 becomes effective July 1, 2003. Sections 4 and 6(a) become effective for taxable years beginning on or after January 1, 2003. Section 5 becomes effective January 1, 2003. Sections 7 through 13 become effective with respect to primaries and elections held on or after January 1, 2004. Except as otherwise provided in this act, this act is effective when it becomes law.''

2007 Legislation

S.L. 2007–510, § 1(b), rewrote the section, which prior thereto read:

''§ 163–278.67. Rescue funds

''(a) When Rescue Funds Become Available. – When any report or group of reports shows that 'funds in opposition to a certified candidate or in support of an opponent to that candidate' as described in this section, exceed the trigger for rescue funds as defined in G.S. 163–278.62(18), the Board shall issue immediately to that certified candidate an additional amount equal to the reported excess within the limits set forth in this section. 'Funds in opposition to a certified candidate or in support of an opponent to that candidate' shall be equal to the sum of the following:

''(1) Campaign expenditures or obligations made, or funds raised or borrowed, whichever is greater, reported by any one uncertified opponent of a certified candidate. Where a certified candidate has more than one uncertified opponent, the measure shall be taken from the uncertified candidate showing the highest relevant dollar amount.

''(2) The sum of all expenditures reported in accordance with G.S. 163–278.66 of entities making independent expenditures in opposition to the certified candidate or in support of any opponent of that certified candidate.

''(b) Limit on Rescue Funds in Contested Primary. – Total rescue funds to a certified candidate in a contested primary shall be limited to an amount equal to two times the maximum qualifying contributions for the office sought.

''(c) Limit on Rescue Funds in Contested General Election. – Total rescue funds to a certified candidate in a contested general election shall be limited to an amount equal to two times the amount described in G.S. 163–278.65(b)(4).''

S.L. 2007–510, § 1(c), provides:

''Chapter 163 of the General Statutes is amended by deleting the term 'rescue' wherever it appears and substituting the term 'matching.'''

2008 Legislation

S.L. 2008–150, § 7(b), inserted subsec. (c1).

2009 Legislation

S.L. 2009–543, § 4, rewrote subsec. (b), which prior thereto read:

''(b) Limit on Matching Funds in Contested Primary. — Total matching funds to a certified candidate in a contested primary shall be limited to an amount equal to two times the maximum qualifying contributions for the office sought.''

S.L. 2009–543, § 5, added subsec. (f).

Notes of Decisions

Challenges 2 **Mootness 3**

Validity 1

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1. Validity

Likelihood of succeeding on merits requirement, for issuance of preliminary injunction, was not satisfied by First Amendment challenge to statute providing for public financing of candidates for judicial office, imposing reporting requirements on candidates choosing not to participate in public financing, providing for supplemental ''rescue'' payments to candidates accepting financing when opponents rejecting financing report contributions and expenditures over ''triggering'' levels, and providing 21-day freeze on contributions if triggering level was exceeded, despite claim that effect of statute was to penalize contributions, past a certain level, by causing additional contributions to be made to opponents from public fund; provisions did not affect ability of nonparticipating candidates to spend their own money, or raise it from other sources, other than those narrowly tailored to advance public concerns regarding integrity of election process. Jackson v. Leake, 2006, 476 F.Supp.2d 515, affirmed 524 F.3d 427, certiorari denied 129 S.Ct. 490, 172 L.Ed.2d 357. Civil Rights ⚷ 1457(7)

Likelihood of succeeding on merits requirement, for issuance of preliminary injunction, was not satisfied by First Amendment challenge to statute prohibiting candidates for judicial office, who did not accept public funding, from receiving any contributions or loans during 21 days immediately preceding election, if contribution or loan would trigger ''rescue funds'' provision of statute, under which participating opponents would be entitled to receive extra compensation; provision was narrowly tailored to remedy scenario, with potential for corruption, under which nonparticipating candidate would receive infusion of money so close to election that participating candidate could not be furnished timely additional assistance. Jackson v. Leake, 2006, 476 F.Supp.2d 515, affirmed 524 F.3d 427, certiorari denied 129 S.Ct. 490, 172 L.Ed.2d 357. Civil Rights ⚷ 1457(7)

First Amendment requirement, that statute regulating campaign expenditures be narrowly tailored to satisfy state's compelling interest in providing electorate with information regarding election financing, preventing corruption, and data gathering related to other restrictions, was satisfied by statute calling for candidates for judicial office not participating in public campaign funding provide frequent reports on campaign contributions and expenditures when these approached and exceed target triggering potential ''rescue'' payments made available to their opponents who did accept public financing. Jackson v. Leake, 2006, 476 F.Supp.2d 515, affirmed 524 F.3d 427, certiorari denied 129 S.Ct. 490, 172 L.Ed.2d 357. Constitutional Law ⚷ 1469; Elections ⚷ 311

2. Challenges

Political action committee had standing to challenge constitutionality of statute providing for public funding of candidates for judicial office; payment intended to be made to nonparticipating candidate could be sufficient to trigger rescue provision, under which opponent receiving public financing could receive additional funds, leaving committee essentially financing political speech it opposed. Jackson v. Leake, 2006, 476 F.Supp.2d 515, affirmed 524 F.3d 427, certiorari denied 129 S.Ct. 490, 172 L.Ed.2d 357. Elections ⚷ 317.5

Sitting appellate court judge did not have standing to challenge statute providing for public financing of judicial election campaigns, when she would not be standing for election for six more years, despite claim that knowledge whether statute was constitutional was needed well in advance for fund raising planning. Jackson v. Leake, 2006, 476 F.Supp.2d 515, affirmed 524 F.3d 427, certiorari denied 129 S.Ct. 490, 172 L.Ed.2d 357. Elections ⚷ 317.5

Candidate for state appellate court judgeship had standing to challenge statute providing for public financing of judicial election campaigns; while candidate was nonparticipant in funding portion of statute, his reported expenditures were sufficient to trigger ''rescue'' provisions of statute, under which his opponent received additional funds, and he was subject to prohibition on receipt of campaign funds for period beginning 21 days prior to election. Jackson v. Leake, 2006, 476 F.Supp.2d 515, affirmed 524 F.3d 427, certiorari denied 129 S.Ct. 490, 172 L.Ed.2d 357. Elections ⚷ 317.5

3. Mootness

''Public interest'' exception to mootness doctrine did not apply to require trial court to declare whether expenditures by non-profit corporation to certain judicial candidates were either contributions in excess of the limits allowed by the Campaign Finance Act or contributions involving unlawful coordination of spending with a political party to influence elections, and, if so, determine whether defeated candidate was entitled to rescue funds, where post-election amendments to Act required the Board of Elections to consider disbursements for type of communications which gave rise to underlying action, making no exception from issuance of rescue funds for those disbursements that were ''coordinated'' with a political party. Calabria v. North Carolina State Bd. of Elections, 2009, 680 S.E.2d 738. Declaratory Judgment ⚷ 212; Elections ⚷ 317.5

''Collateral legal consequences'' exception to mootness doctrine on ground of leaving unresolved allegations of misconduct did not apply to require trial court to declare whether expenditures by non-profit corporation to certain judicial candidates were either contributions in excess of the limits allowed by the Campaign Finance Act or contributions involving unlawful coordination of spending with a political party to influence elections, and, if so, determine whether defeated candidate was entitled to rescue funds, where persons allegedly responsible for such coordination, the non-profit and political party, were not parties to action. Calabria v. North Carolina State Bd. of Elections, 2009, 680 S.E.2d 738. Declaratory Judgment ⚷ 212; Elections ⚷ 317.5

''Capable of repetition, yet evading review'' exception to mootness doctrine did not apply to require trial court to declare whether expenditures by non-profit corporation to certain judicial candidates were either contributions in excess of the limits allowed by the Campaign Finance Act or contributions involving unlawful coordination of spending with a political party to influence elections, and, if so, determine whether defeated candidate was entitled to rescue funds; amendments following election required Board of Elections to consider disbursements for ''electioneering communications,'' in addition to ''independent expenditures,'' when determining whether to issue rescue funds to certified candidate, without any exception for disbursements that were ''coordinated.'' Calabria v. North Carolina State Bd. of Elections, 2009, 680 S.E.2d 738. Declaratory Judgment ⚷ 212; Elections ⚷ 317.5

§ 163–278.68. Enforcement and administration

(a) Enforcement by the Board. – The Board, with the advice of the Advisory Council for the Public Campaign Fund, shall administer the provisions of this Article.

(b) Advisory Council for the Public Campaign Fund. — There is established under the Board the Advisory Council for the Public Campaign Fund to advise the Board on the rules, procedures, and opinions it adopts for the enforcement and administration of this Article and on the funding needs and operation of the Public Campaign Fund. The Advisory Council shall consist of five members to be appointed as follows:

(1) The Governor shall name two members from a list of individuals nominated by the State Chair of the political party with which the greatest number of registered voters is affiliated. The State Chair of that party shall submit to the Governor the names of five nominees.

(2) The Governor shall name two members from a list of individuals nominated by the State Chair of the political party with which the second greatest number of registered

voters is affiliated. The State Chair of that party shall submit to the Governor the names of five nominees.

(3) The Board shall name one member by unanimous vote of all members of the Board. If the Board cannot reach unanimity on the appointment of that member, the Advisory Council shall consist of the remaining members.

No individual shall be eligible to be a member of the Advisory Council who would be ineligible to serve on a county board of elections in accordance with G.S. 163–30. The initial members shall be appointed by December 1, 2002. Of the initial appointees, two are appointed for one-year terms, two are appointed for two-year terms, and one is appointed for a three-year term according to random lot. Thereafter, appointees are appointed to serve four-year terms. An individual may not serve more than two full terms, except that regardless of the time of appointment each term shall end on December 31. A member shall continue on the Advisory Council beyond the expired term until a successor is appointed. The appointed members receive the legislative per diem pursuant to G.S. 120–3.1. One of the Advisory Council members shall be elected by the members as Chair. A vacancy during an unexpired term shall be filled in the same manner as the regular appointment for that term, but a vacancy appointment is only for the unexpired portion of the term.

(c) Appeals. – The initial decision on an issue concerning qualification, certification, or distribution of funds under this Article shall be made by the Executive Director of the Board. The procedure for challenging that decision is as follows:

(1) An individual or entity aggrieved by a decision by the Executive Director of the Board may appeal to the full Board within three business days of the decision. The appeal shall be in writing and shall set forth the reasons for the appeal.

(2) Within five business days after an appeal is properly made, and after due notice is given to the parties, the Board shall hold a hearing. The appellant has the burden of providing evidence to demonstrate that the decision of the Executive Director was improper. The Board shall rule on the appeal within three business days after the completion of the hearing.

(d) Board to Adopt Rules and Issue Opinions. – The Board shall adopt rules and issue opinions to ensure effective administration of this Article. Such rules and opinions shall include, but not be limited to, procedures for obtaining qualifying contributions, certification of candidates, addressing circumstances involving special elections, vacancies, recounts, withdrawals, or replacements, collection of revenues for the Fund, distribution of Fund revenue to certified candidates, return of unspent Fund disbursements, and

compliance with this Article. The Board shall adopt procedures for the distribution of matching money that further the purpose and avoid the subversion of G.S. 163–278.67. For races involving special elections, recounts, vacancies, withdrawals, or replacement candidates, the Board shall establish procedures for qualification, certification, disbursement of Fund revenues, and return of unspent Fund revenues. The Board shall fulfill each of these duties in consultation with the Advisory Council on the Public Campaign Fund.

(e) Report to the Public. – The Advisory Council for the Public Campaign Fund shall issue a report by March 1, 2005, and every two years thereafter that evaluates and makes recommendations about the implementation of this Article and the feasibility of expanding its provisions to include other candidates for State office based on the experience of the Fund and the experience of similar programs in other states. The Advisory Council shall also evaluate and make recommendations regarding how to address activities that could undermine the purpose of this Article, including spending that appears to target candidates receiving money from the Fund but that does not meet the definition of ''independent expenditures.''

Added by S.L. 2002–158, § 1, eff. Oct. 10, 2002. Amended by S.L. 2005–276, § 23A.1(d), eff. July 1, 2005; S.L. 2006–192, § 13, eff. Aug. 3, 2006; S.L. 2007–510, § 1(c), eff. Aug. 30, 2007.

Historical and Statutory Notes

2002 Legislation

S.L. 2002–158, § 16, provides:

''Section 1 of this act is effective when it becomes law, provided that distributions from the Fund shall begin in the 2004 election year. Section 2 becomes effective January 1, 2003. Section 3 becomes effective July 1, 2003. Sections 4 and 6(a) become effective for taxable years beginning on or after January 1, 2003. Section 5 becomes effective January 1, 2003. Sections 7 through 13 become effective with respect to primaries and elections held on or after January 1, 2004. Except as otherwise provided in this act, this act is effective when it becomes law.''

2005 Legislation

S.L. 2005–276, § 23A.1(d), eff. July 1, 2005, substituted ''Public Campaign Fund'' for ''Public Campaign Financing Fund'' throughout the General Statutes.

2006 Legislation

S.L. 2006–192, § 13, eff. Aug. 3, 2006, amended subsec. (b) by substituting '', except that regardless of the time of appointment each term shall end on December 31. A member shall continue on the Advisory Council beyond the expired term until a successor is appointed''.

S.L. 2006–192, § 19, provides:

''Sections 2 through 5 of this act are effective January 1, 2007, and apply to all primaries and elections conducted on or after that date. Sections 8 and 9 of this act are effective when this act becomes law and apply to vacancies occurring on or after that date. Section 17 of this act and the portion of Section 15 of this act that affects G.S. 163–278.13(e3) become effective January 1, 2007, and apply to contributions made or accepted on or after that date. Section 18 of this act becomes effective for taxable years beginning on or after January 1, 2006. The remainder of this act is effective when it becomes law.''

2007 Legislation

S.L. 2007–510, § 1(c), provides:

''Chapter 163 of the General Statutes is amended by deleting the term 'rescue' wherever it appears and substituting the term 'matching.'''

§ 163–278.69. Voter education

(a) Judicial Voter Guide.—The Board shall publish a Judicial Voter Guide that explains the functions of the appellate courts and the laws concerning the election of appellate judges, the purpose and function of the Public Campaign Fund, and the laws concerning voter registration. The Board shall distribute the Guide to as many voting-age individuals in the State as practical, through a mailing to all residences or other means it deems effective. The distribution shall occur no more than 28 days nor fewer than seven days before the one-stop voting period provided in G.S. 163–227.2 for the primary and no more than 28 days nor fewer than seven days before the one-stop voting period provided in G.S. 163–227.2 for the general election.

(b) Candidate Information.—The Judicial Voter Guide shall include information concerning all candidates for the Supreme Court and the Court of Appeals, as provided by those candidates according to a format provided to the candidates by the Board. The Board shall request information for the Guide from each candidate according to the following format:

(1) Place of residence.
(2) Education.
(3) Occupation.
(4) Employer.
(5) Date admitted to the bar.
(6) Legal/judicial experience.
(7) Candidate statement. Concerning that statement, the Board shall send to the candidates instructions as follows: ''Your statement may include information such as your qualifications, your endorsements, your ratings, why you are seeking judicial office, why you would make a good judge, what distinguishes you from your opponent(s), your acceptance of spending and fund-raising limits to qualify to receive funds from the Public Campaign Fund, and any other information relevant to your candidacy. The State Board of Elections will reject any portion of any statement which it determines contains obscene, profane, or defamatory language. The candidate shall have three days to resubmit the candidate statement if the Board rejects a portion of the statement.

The entire entry for a candidate shall be limited to 250 words.''

(c) Disclaimer. — The Judicial Voter Guide shall contain the following statement: ''Statements by candidates do not express or reflect the opinions of the State Board of Elections.''

Added by S.L. 2002–158, § 1, eff. Oct. 10, 2002. Amended by S.L. 2005–276, § 23A.1(d), eff. July 1, 2005; S.L. 2005–430, § 6, eff. Dec. 1, 2005; S.L. 2006–192, § 14, eff. Aug. 3, 2006; S.L. 2007–391, § 4(a), eff. Aug. 19, 2007; S.L. 2009–543, § 6, eff. Aug. 28, 2009.

Historical and Statutory Notes

2002 Legislation

S.L. 2002–158, § 16, provides:

''Section 1 of this act is effective when it becomes law, provided that distributions from the Fund shall begin in the 2004 election year. Section 2 becomes effective January 1, 2003. Section 3 becomes effective July 1, 2003. Sections 4 and 6(a) become effective for taxable years beginning on or after January 1, 2003. Section 5 becomes effective January 1, 2003. Sections 7 through 13 become effective with respect to primaries and elections held on or after January 1, 2004. Except as otherwise provided in this act, this act is effective when it becomes law.''

2005 Legislation

S.L. 2005–276, § 23A.1(d), eff. July 1, 2005, substituted ''Public Campaign Fund'' for ''Public Campaign Financing Fund'' throughout the General Statutes.

S.L. 2005–430, § 6, eff. Dec. 1, 2005, in subsec. (a), in the first sentence deleted ''Financing'' following ''Public Campaign'' and rewrote the third sentence which prior thereto read, ''The distribution shall occur no more than 28 day nor fewer than seven days before the primary and no more than 28 days nor fewer than seven days before the general election.''

S.L. 2005–430, § 11, eff. Dec. 1, 2005, provides:

''This act becomes effective December 1, 2005, and applies to all contributions and expenditures made or accepted on or after that date.''

2006 Legislation

S.L. 2006–192, § 14, eff. Aug. 3, 2006, amended subsec. (c) by substituting ''Statements by candidates'' for ''The above statements''.

S.L. 2006–192, § 19, provides:

''Sections 2 through 5 of this act are effective January 1, 2007, and apply to all primaries and elections conducted on or after that date. Sections 8 and 9 of this act are effective when this act becomes law and apply to vacancies occurring on or after that date. Section 17 of this act and the portion of Section 15 of this act that affects G.S. 163–278.13(e3) become effective January 1, 2007, and apply to contributions made or accepted on or after that date. Section 18 of this act becomes effective for taxable years beginning on or after January 1, 2006. The remainder of this act is effective when it becomes law.''

2007 Legislation

S.L. 2007–391, § 4(a), in subsec. (a), in the third sentence, substituted ''28'' for ''14'' in two locations.

2009 Legislation

S.L. 2009–543, § 6, in subsec. (b), subd. (7), in the first sentence, deleted '', limited to 150 words'' following ''Candidate statement''; and added the second paragraph.

§ 163–278.70. Civil penalty

In addition to any other penalties that may be applicable, any individual, political committee, or other entity that violates any provision of this Article is subject to a civil penalty of up to ten thousand dollars ($10,000) per violation or three times the amount of any financial transactions involved in the violation, whichever is greater. In addition to any fine, for good cause shown, a candidate found in violation of this Article may be required to return to the Fund all amounts distributed to the candidate from the Fund. If the Board makes a determination that a violation of this Article has occurred, the Board shall calculate and assess the amount of the civil penalty and shall notify the entity that is assessed the civil penalty of the amount that has been assessed. The Board shall then proceed in the manner prescribed in G.S. 163–278.34. In determining whether or not a candidate is in violation of this Article, the Board may consider as a mitigating factor any circumstances out of the candidate's control.

Added by S.L. 2002–158, § 1, eff. Oct. 10, 2002.

Historical and Statutory Notes

2002 Legislation

S.L. 2002–158, § 16, provides:

''Section 1 of this act is effective when it becomes law, provided that distributions from the Fund shall begin in the 2004 election year. Section 2 becomes effective January 1, 2003. Section 3 becomes effective July 1, 2003. Sections 4 and 6(a) become effective for taxable years beginning on or after January 1, 2003. Section 5 becomes effective January 1, 2003. Sections 7 through 13 become effective with respect to primaries and elections held on or after January 1, 2004. Except as otherwise provided in this act, this act is effective when it becomes law.''

§§ 163–278.71 to 163–278.79. Reserved

Article 22E

Electioneering Communications

Section

163–278.80. Definitions.
163–278.81. Disclosure of Electioneering Communications.
163–278.82. Prohibition of corporate and labor disbursements for electioneering communications.
163–278.83. Penalties.
163–278.84. Determination of electioneering communication.
163–278.85 to 163–278.89. Reserved.

Historical and Statutory Notes

2004 Legislation

S.L. 2004–125, § 7, provides:

''This act is effective when it becomes law [July 20, 2004], except as otherwise provided in this act, and except that any criminal penalty resulting from this act becomes effective October 1, 2004.''

§ 163–278.80. Definitions

As used in this Article, the following terms have the following definitions:

(1) The term ''disclosure date'' means either of the following:

a. The first date during any calendar year when an electioneering communication is aired after an entity has incurred expenses for the direct costs of producing or airing electioneering communications aggregating in excess of ten thousand dollars ($10,000).

b. Any other date during that calendar year by which an entity has incurred expenses for the direct costs of producing or airing electioneering communications aggregating in excess of ten thousand dollars ($10,000) since the most recent disclosure date for that calendar year.

(2) The term ''electioneering communication'' means any broadcast, cable, or satellite communication that has all the following characteristics:

a. Refers to a clearly identified candidate for a statewide office or the General Assembly.

b. Is aired within one of the following time periods:

1. 60 days before a general or special election for the office sought by the candidate, or

2. 30 days before a primary election or a convention of a political party that has authority to nominate a candidate for the office sought by the candidate.

c. Is targeted to the relevant electorate.

(3) The term ''electioneering communication'' does not include any of the following:

a. A communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, unless those facilities are owned or controlled by any political party, political committee, or candidate.

b. A communication that constitutes an expenditure or independent expenditure under Article 22A of this Chapter.

c. A communication that constitutes a candidate debate or forum conducted pursuant to rules adopted by the Board or that solely promotes that debate or forum and is made by or on behalf of the person sponsoring the debate or forum.

d. A communication made while the General Assembly is in session which, incidental to advocacy for or against a specific piece of legislation pending before the General Assembly, urges the audience to communicate with a member or members of the General Assembly concerning that piece of legislation.

e. A communication that meets all of the following criteria:

1. Does not mention any election, candidacy, political party, opposing candidate, or voting by the general public.

2. Does not take a position on the candidate's character or qualifications and fitness for office.

3. Proposes a commercial transaction.

(4) The term ''prohibited source'' means any corporation, insurance company, labor union, or professional association. The term ''prohibited source'' does not include an entity that meets all the criteria set forth in G.S. 163–278.19(f).

(5) The term ''targeted to the relevant electorate'' means a communication which refers to a clearly identified candidate for statewide office or the General Assembly and which can be received by 50,000 or more individuals in

the State in the case of a candidacy for statewide office and 7,500 or more individuals in the district in the case of a candidacy for General Assembly.

(6) The term ''501(c)(4) organization'' means either of the following:

a. An organization described in section 501(c)(4) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of that Code.

b. An organization that has submitted an application to the Internal Revenue Service for determination of its status as an organization described in sub-subdivision a. of this subdivision.

(7) Except as otherwise provided in this Article, the definitions in Article 22A of this Chapter apply in this Article.

Added by S.L. 2004–125, § 1. Amended by S.L. 2006–182, § 1(a), eff. Aug. 1, 2006; S.L. 2009–534, § 7(a), (b), eff. Dec. 1, 2009.

Historical and Statutory Notes

2004 Legislation

S.L. 2004–125, § 7, provides:

''This act is effective when it becomes law [July 20, 2004], except as otherwise provided in this act, and except that any criminal penalty resulting from this act becomes effective October 1, 2004.''

2006 Legislation

S.L. 2006–182, § 1(a), eff. Aug. 1, 2006, amended subd. (1) by substituting ''incurred expenses'' for ''made disbursements'' in two places.

S.L. 2006–182, §§ 4 and 5, provide:

''Section 4. The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

''Section 5. This act is effective when it becomes law, except that any criminal penalty resulting from this act becomes effective October 1, 2006.''

2009 Legislation

S.L. 2009–534, § 7(a), in the introductory paragraph of sub-subd. (2)b., substituted ''Is aired'' for ''Is made''.

S.L. 2009–534,§ 7(b), inserted sub-subd. (3)e, relating to a specified communication.

§ 163–278.81. Disclosure of Electioneering Communications

(a) Statement Required. — Every individual, committee, association, or any other organization or group of individuals that incurs an expense for the direct costs of producing or airing electioneering communications in an aggregate amount in excess of ten thousand dollars ($10,000) during any calendar year shall, within 24 hours of each disclosure date, file with the Board a statement containing the information described in subsection (b) of this section.

(b) Contents of Statement. — Each statement required to be filed by this section shall be made under the penalty of perjury in G.S. 14–209 and shall contain the following information:

(1) The identification of the entity incurring the expense, of any entity sharing or exercising direction or control over

the activities of that entity, and of the custodian of the books and accounts of the entity incurring the expense.

(2) The principal place of business of the entity incurring the expense if the entity is not an individual.

(3) The amount of each expense incurred of more than one thousand dollars ($1,000) during the period covered by the statement and the identification of the entity to whom the expense was incurred.

(4) The elections to which the electioneering communications pertain and the names, if known, of the candidates identified or to be identified.

(5) The names and addresses of all entities that provided funds or anything of value whatsoever in an aggregate amount of more than one thousand dollars ($1,000) during the period beginning on the first day of the preceding calendar year and ending on the disclosure date to a segregated bank account that consists of funds provided solely by entities other than prohibited sources. Nothing in this subdivision is to be construed as a prohibition on the use of funds in such a segregated account for a purpose other than electioneering communications. If the provider is an individual, the statement shall also contain the principal occupation of the provider. The ''principal occupation of the provider'' shall mean the same as the ''principal occupation of the contributor'' in G.S. 163–278.11.

(6) Repealed by Session Laws 2005–430, s. 9(a), effective December 1, 2005, and applicable to all contributions and expenditures made or accepted on or after that date.

Added by S.L. 2004–125, § 1. Amended by S.L. 2005–430, § 9, eff. Dec. 1, 2005; S.L. 2006–182, § 2(a), eff. Aug. 1, 2006.

Historical and Statutory Notes

2004 Legislation

S.L. 2004–125, § 7, provides:

''This act is effective when it becomes law [July 20, 2004], except as otherwise provided in this act, and except that any criminal penalty resulting from this act becomes effective October 1, 2004.''

2005 Legislation

S.L. 2005–430, § 9(a), eff. Dec. 1, 2005, rewrote subd. (b)(5) and deleted subd. (b)(6).

S.L. 2005–430, § 11, eff. Dec. 1, 2005, provides:

''This act becomes effective December 1, 2005, and applies to all contributions and expenditures made or accepted on or after that date.''

2006 Legislation

S.L. 2006–182, § 2(a), eff. Aug. 1, 2006, rewrote section, which prior thereto read:

''(a) Statement Required. — Every individual, committee, association, or any other organization or group of individuals that makes a disbursement for the direct costs of producing and airing electioneering communications in an aggregate amount in excess of ten thousand dollars ($10,000) during any calendar year shall, within 24 hours of each disclosure date, file with the Board a statement containing the information described in subsection (b) of this section.

''(b) Contents of Statement. — Each statement required to be filed by this section shall be made under the penalty of perjury in G.S. 14–209 and shall contain the following information:

''(1) The identification of the entity making the disbursement, of any entity sharing or exercising direction or control over the activities of that entity, and of the custodian of the books and accounts of the entity making the disbursement.

''(2) The principal place of business of the entity making the disbursement if the entity is not an individual.

''(3) The amount of each disbursement of more than one thousand dollars ($1,000) during the period covered by the statement and the identification of the entity to whom the disbursement was made.

''(4) The elections to which the electioneering communications pertain and the names, if known, of the candidates identified or to be identified.

''(5) The names and addresses of all contributors who contributed an aggregate amount of more than one thousand dollars ($1,000) during the period beginning on the first day of the preceding calendar year and ending on the disclosure date to a segregated bank account that consists of funds contributed solely by entities other than prohibited sources. Nothing in this subdivision is to be construed as a prohibition on the use of funds in such a segregated account for a purpose other than electioneering communications.

''(6) Repealed by S.L. 2005–430, § 9(a), eff. Dec. 1, 2005.''

S.L. 2006–182, §§ 4 and 5, provide:

''Section 4. The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

''Section 5. This act is effective when it becomes law, except that any criminal penalty resulting from this act becomes effective October 1, 2006.''

§ 163–278.82. Prohibition of corporate and labor disbursements for electioneering communications

(a) Prohibition. — No prohibited source may make any disbursement for the costs of producing or airing any electioneering communication. No individual, committee, association, or any other organization or group of individuals, including but not limited to, a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986), which has received any funds or anything of value whatsoever from a prohibited source may make any disbursement for the costs of producing or airing any electioneering communication, unless that individual, committee, association, or other organization or group of individuals maintains a segregated bank account that consists of funds provided solely by entities other than prohibited sources. For purposes of this section, the term ''funds or anything of value whatsoever'' shall not include monies paid to an individual, committee, association, or other organization or group of individuals for services rendered or other payment of debt owed. It shall be unlawful for any person or entity to create, establish, or organize more than one political organization (as defined in section 527(c)(1) of the Internal Revenue Code) with the intent to avoid or evade the prohibitions on disbursements for electioneering communications from prohibited sources or the reporting requirements contained in this Article.

(b) Direct or Indirect Disbursement. — An electioneering communication shall be treated as made by a prohibited source if the

prohibited source directly or indirectly disburses any amount for any of the costs of the communication.

(c) Segregated Fund. — Any disbursement for an electioneering communication made from an account must be made from a segregated account into which no funds from a prohibited source have been directly or indirectly introduced.

(d) Limitation on Prohibition.—The prohibition in this section shall not apply unless the electioneering communication at issue is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.

Added by S.L. 2004–125, § 1. Amended by S.L. 2005–430, § 9(b), eff. Dec. 1, 2005; S.L. 2006–182, § 3(a), eff. Aug. 1, 2006; S.L. 2008–150, § 10.3(a), eff. Aug. 2, 2008.

Historical and Statutory Notes

2004 Legislation

S.L. 2004–125, § 7, provides:

''This act is effective when it becomes law [July 20, 2004], except as otherwise provided in this act, and except that any criminal penalty resulting from this act becomes effective October 1, 2004.''

2005 Legislation

S.L. 2005–430, § 9(b), eff. Dec. 1, 2005, in subsec. (a), at the end of the third sentence substituted ''entities other than prohibited sources'' for ''individuals'' preceding ''directly to that account'', and added subsec. (c).

S.L. 2005–430, § 11, eff. Dec. 1, 2005, provides:

''This act becomes effective December 1, 2005, and applies to all contributions and expenditures made or accepted on or after that date.''

2006 Legislation

S.L. 2006–182, § 3(a), eff. Aug. 1, 2006, rewrote subsec. (a), which prior thereto read:

''(a) Prohibition. — No prohibited source may make any disbursement for the costs of producing or airing any electioneering communication. No individual, committee, association, or any other organization or group of individuals, including but not limited to, a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986), which has received any payment from a prohibited source may make any disbursement for the costs of producing and airing any electioneering communication. For the purpose of this section, the term 'electioneering communication' does not include a communication by a section 501(c)(4) organization or a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986) if the communication is paid for exclusively by funds provided by individuals and the disbursements for costs of producing and airing the communication are paid out of a segregated bank account that consists of funds contributed solely by entities other than prohibited sources directly to that account.''

S.L. 2006–182, §§ 4 and 5, provide:

''Section 4. The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

''Section 5. This act is effective when it becomes law, except that any criminal penalty resulting from this act becomes effective October 1, 2006.''

2008 Legislation

S.L. 2008–150, § 10.3(a), added subsec. (d).

§ 163–278.83. Penalties

Except as otherwise provided in this Article, a violation of this Article is a Class 2 misdemeanor. The State Board of Elections has the same authority to compel from any individual, committee,

association, or any other organization or group of individuals covered by this Article the disclosures required by this Article that the Board has to compel the disclosures required by Article 22A of this Chapter. The civil penalties and remedies in G.S. 163–278.34 shall apply to violations of this Article, and where those provisions apply to violations involving contributions and expenditures they shall apply in the same manner to payments and disbursements in violation of G.S. 163–278.82.

Added by S.L. 2004–125, § 1. Amended by S.L. 2006–259, § 29(a), eff. Aug. 23, 2006.

Historical and Statutory Notes

2004 Legislation

S.L. 2004–125, § 7, provides:

''This act is effective when it becomes law [July 20, 2004], except as otherwise provided in this act, and except that any criminal penalty resulting from this act becomes effective October 1, 2004.''

2006 Legislation

S.L. 2006–259, § 29(a), eff. Aug. 23, 2006, amended section by substituting ''individual, committee, association, or any other organization or group of individuals'' for ''organization'', deleting ''from a political committee'' before ''the disclosures'' and after ''has to compel'', and inserting ''and remedies''.

§ 163–278.84. Determination of electioneering communication

(a) Any individual, committee, association, or any other organization or group of individuals that produces a communication to be aired to the relevant electorate in the time periods under G.S. 163–278.80(2)b. may, but is not required to, ask the State Board for a determination as to whether or not that communication is an electioneering communication prior to the airing of that communication.

(b) The State Board shall establish a process for determination as to whether a communication is an electioneering communication prior to the airing of that communication when it is requested under subsection (a) of this section. The responsibility for the determination may be delegated to the Executive Director. If the responsibility is delegated to the Executive Director, the process established by the State Board shall include an opportunity for immediate appeal to the State Board of the determination by the Executive Director.

Added by S.L. 2009–534, § 7(c), eff. Dec. 1, 2009.

§§ 163–278.85 to 163–278.89. Reserved

Article 22F

Mass Mailings and Telephone Banks: Electioneering Communications

Section

163–278.90. Definitions.
163–278.91. Disclosure of Electioneering Communications.
163–278.92. Prohibition of corporate and labor disbursements for electioneering communications.
163–278.93. Penalties.
163–278.94. Determination of electioneering communication.

Historical and Statutory Notes

2004 Legislation

S.L. 2004–125, § 7, provides:

''This act is effective when it becomes law [July 20, 2004], except as otherwise provided in this act, and except that any criminal penalty resulting from this act becomes effective October 1, 2004.''

§ 163–278.90. Definitions

As used in this Article, the following terms have the following definitions:

(1) The term ''disclosure date'' means either of the following:

a. The first date during any calendar year when an electioneering communication is transmitted after an entity has incurred expenses for the direct costs of producing or transmitting electioneering communications aggregating in excess of ten thousand dollars ($10,000).

b. Any other date during that calendar year by which an entity has incurred expenses for the direct costs of producing or transmitting electioneering communications aggregating in excess of ten thousand dollars ($10,000) since the most recent disclosure date for that calendar year.

(2) The term ''electioneering communication'' means any mass mailing or telephone bank that has all the following characteristics:

a. Refers to a clearly identified candidate for a statewide office or the General Assembly.

b. Is transmitted within one of the following time periods:

1. 60 days before a general or special an election for the office sought by the candidate, or

2. 30 days before a primary election or a convention of a political party that has authority to nominate a candidate for the office sought by the candidate.

c. Is targeted to the relevant electorate.

(3) The term ''electioneering communication'' does not include any of the following:

a. A communication appearing in a news story, commentary, or editorial distributed through any newspaper or periodical, unless that publication is owned or controlled by any political party, political committee, or candidate.

b. A communication that constitutes an expenditure or independent expenditure under Article 22A of this Chapter.

c. A communication that constitutes a candidate debate or forum conducted pursuant to rules adopted by the Board or that solely promotes that debate or forum and is made by or on behalf of the person sponsoring the debate or forum.

d. A communication that is distributed by a corporation solely to its shareholders or employees, or by a labor union or professional association solely to its members.

e. A communication made while the General Assembly is in session which, incidental to advocacy for or against a specific piece of legislation pending before the General Assembly, urges the audience to communicate with a member or members of the General Assembly concerning that piece of legislation.

f. A communication that meets all of the following criteria:

1. Does not mention any election, candidacy, political party, opposing candidate, or voting by the general public.

2. Does not take a position on the candidate's character or qualifications and fitness for office.

3. Proposes a commercial transaction.

(4) The term ''mass mailing'' means any mailing by United States mail or facsimile. Part 1A of Article 22A of this Chapter has its own internal definition of ''mass mailing'' under the definition of ''print media,'' and that definition does not apply in this Article.

(5) The term ''prohibited source'' means any corporation, insurance company, labor union, or professional association. The term ''prohibited source'' does not include an entity that meets all the criteria set forth in G.S. 163–278.19(f).

(5a) The term ''race'' means a ballot item, as defined in G.S. 163–165(2), in which the voters are to choose between or among candidates.

(6) The term ''targeted to the relevant electorate'' means:

a. With respect to a statewide race:

1. Transmitting, by mail or facsimile to a cumulative total of 50,000 or more addresses in the State, items

identifying one or more candidates in the same race within any 30-day period; or

2. Making a cumulative total of 50,000 or more telephone calls in the State identifying one or more candidates in the same race within any 30–day period.

b. With respect to a race for the General Assembly:

1. Transmitting, by mail or facsimile to a cumulative total of 2,500 or more addresses in the district, items identifying one or more candidates in the same race within any 30-day period; or

2. Making a cumulative total of 2,500 or more telephone calls in the district identifying one or more candidates in the same race within any 30–day period.

(7) The term ''telephone bank'' means telephone calls that are targeted to the relevant electorate, except when those telephone calls are made by volunteer workers, whether or not the design of the telephone bank system, development of calling instructions, or training of volunteers was done by paid professionals.

(8) The term ''501(c)(4) organization'' means either of the following:

a. An organization described in section 501(c)(4) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of that Code.

b. An organization that has submitted an application to the Internal Revenue Service for determination of its status as an organization described in sub-subdivision a. of this subdivision.

(9) Except as otherwise provided in this Article, the definitions in Article 22A of this Chapter apply in this Article.

Added by S.L. 2004–125, § 2. Amended by S.L. 2006–182, § 1(b), eff. Aug. 1, 2006; S.L. 2009–534, § 8(a), (b), eff. Dec. 1, 2009.

Historical and Statutory Notes

2004 Legislation

S.L. 2004–125, § 7, provides:

''This act is effective when it becomes law [July 20, 2004], except as otherwise provided in this act, and except that any criminal penalty resulting from this act becomes effective October 1, 2004.''

2006 Legislation

S.L. 2006–182, § 1(b), eff. Aug. 1, 2006, rewrote section, which prior thereto read:

''As used in this Article, the following terms have the following definitions:

''(1) The term 'disclosure date' means either of the following:

''a. The first date during any calendar year when an electioneering communication is transmitted after an entity has made disbursements for the direct costs of producing or transmitting electioneering communications aggregating in excess of ten thousand dollars ($10,000).

''b. Any other date during that calendar year by which an entity has made disbursements for the direct costs of producing or transmitting electioneering communications aggregating in excess of ten thousand dollars ($10,000) since the most recent disclosure date for that calendar year.

''(2) The term 'electioneering communication' means any mass mailing or telephone bank that has all the following characteristics:

''a. Refers to a clearly identified candidate for a statewide office or the General Assembly.

''b. Is made within one of the following time periods:

''1. 60 days before a general or special election for the office sought by the candidate, or

''2. 30 days before a primary election or a convention of a political party that has authority to nominate a candidate for the office sought by the candidate.

''c. Is targeted to the relevant electorate.

''(3) The term 'electioneering communication' does not include any of the following:

''a. A communication appearing in a news story, commentary, or editorial distributed through any newspaper or periodical, unless that publication is owned or controlled by any political party, political committee, or candidate.

''b. A communication that constitutes an expenditure or independent expenditure under Article 22A of this Chapter.

''c. A communication that constitutes a candidate debate or forum conducted pursuant to rules adopted by the Board or that solely promotes that debate or forum and is made by or on behalf of the person sponsoring the debate or forum.

''d. A communication that is distributed by a corporation solely to its shareholders or employees, or by a labor union or professional association solely to its members.

''e. A communication made while the General Assembly is in session which, incidental to advocacy for or against a specific piece of legislation pending before the General Assembly, urges the audience to communicate with a member or members of the General Assembly concerning that piece of legislation.

''(4) The term 'mass mailing' means any mailing by United States mail or facsimile that is targeted to the relevant electorate and is made by a commercial vendor or made from any commercial list. Part 1A of Article 22A of this Chapter has its own internal definition of 'mass mailing' under the definition of 'print media,' and that definition does not apply in this Article.

''(5) The term 'prohibited source' means any corporation, insurance company, labor union, or professional association. The term 'prohibited source' does not include an entity that meets all the criteria set forth in G.S. 163–278.19(f).

''(6) The term 'targeted to the relevant electorate' means a communication which refers to a clearly identified candidate for statewide office or the General Assembly and which:

''a. If transmitted by mail or facsimile in connection with a clearly identified candidate for statewide office, is transmitted to 50,000 or more addresses in the State, by the transmission of identical or substantially similar matter within any 30-day period, or, in connection with a clearly identified candidate for the General Assembly, is transmitted to 5,000 or more addresses in the district, by the transmission of identical or substantially identical matter within any 30-day period.

''b. If transmitted by telephone, in connection with a clearly identified candidate for statewide office, more than 50,000 telephone calls in the State of an identical or substantially similar nature within any 30-day period, or in the case of a clearly identified candidate for the General Assembly, more than 5,000 calls in the district of an identical or substantially similar nature within any 30-day period.

''(7) The term 'telephone bank' means telephone calls that are targeted to the relevant electorate, except when those telephone calls are made by volunteer workers, whether or not the design of the telephone bank system, development of calling instructions, or training of volunteers was done by paid professionals.

''(8) The term '501(c)(4) organization' means either of the following:

''a. An organization described in section 501(c)(4) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of that Code.

''b. An organization that has submitted an application to the Internal Revenue Service for determination of its status as an organization described in subsubdivision a. of this subdivision.

''(9) Except as otherwise provided in this Article, the definitions in Article

22A of this Chapter apply in this Article.''

S.L. 2006–182, §§ 4 and 5, provide:

''Section 4. The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

''Section 5. This act is effective when it becomes law, except that any criminal penalty resulting from this act becomes effective October 1, 2006.''

2009 Legislation

S.L. 2009–534, § 8(a), in the introductory paragraph of sub-subd. (2)b., substituted ''Is transmitted'' for ''Is made''.

S.L. 2009–534, § 8(b), inserted sub-subd. (3)f.

§ 163–278.91. Disclosure of Electioneering Communications

(a) Statement Required. — Every individual, committee, association, or any other organization or group of individuals who incurs an expense for the direct costs of producing or transmitting electioneering communications in an aggregate amount in excess of ten thousand dollars ($10,000) during any calendar year shall, within 24 hours of each disclosure date, file with the Board a statement containing the information described in subsection (b) of this section.

(b) Contents of Statement. — Each statement required to be filed by this section shall be made under the penalty of perjury in G.S. 14–209 and shall contain the following information:

(1) The identification of the entity incurring the expense, of any entity sharing or exercising direction or control over the activities of that entity, and of the custodian of the books and accounts of the entity incurring the expense.

(2) The principal place of business of the entity incurring the expense if the entity is not an individual.

(3) The amount of each expense incurred of more than one thousand dollars ($1,000) during the period covered by the statement and the identification of the entity to whom the expense was incurred.

(4) The elections to which the electioneering communications pertain and the names, if known, of the candidates identified or to be identified.

(5) The names and addresses of all entities that provided funds or anything of value whatsoever in an aggregate amount of more than one thousand dollars ($1,000) during the period beginning on the first day of the preceding calendar year and ending on the disclosure date to a segregated bank account that consists of funds provided solely by entities other than prohibited sources. Nothing in this subdivision is to be construed as a prohibition on the use of funds in such a segregated account for a purpose other than electioneering communications. If the provider is an individual, the statement shall also contain the principal occupation of the provider. The ''principal

occupation of the provider'' shall mean the same as the ''principal occupation of the contributor'' in G.S. 163–278.11.

(6) Repealed by Session Laws 2005–430, s. 9(c), effective December 1, 2005, and applicable to all contributions and expenditures made or accepted on or after that date.

Added by S.L. 2004–125, § 2. Amended by S.L. 2005–430, § 9(c), eff. Dec. 1, 2005; S.L. 2006–182, § 2(b), eff. Aug. 1, 2006.

Historical and Statutory Notes

2004 Legislation

S.L. 2004–125, § 7, provides:

''This act is effective when it becomes law [July 20, 2004], except as otherwise provided in this act, and except that any criminal penalty resulting from this act becomes effective October 1, 2004.''

2005 Legislation

S.L. 2005–430, § 9(c), eff. Dec. 1, 2005, rewrote subd. (b)(5), which prior thereto read:

''(5) If the disbursements were paid out of a segregated bank account that consists of funds contributed solely by individuals directly to that account for electioneering communications, the names and addresses of all contributors who contributed an aggregate amount of more than one thousand dollars ($1,000) during the period beginning on the first day of the preceding calendar year and ending on the disclosure date.Nothing in this subdivision is to be construed as a prohibition on the use of funds in such a segregated account for a purpose other than electioneering communications.''

and deleted subd. (b)(6).

S.L. 2005–430, § 11, eff. Dec. 1, 2005, provides:

''This act becomes effective December 1, 2005, and applies to all contributions and expenditures made or accepted on or after that date.''

2006 Legislation

S.L. 2006–182, § 2(b), eff. Aug. 1, 2006, rewrote section, which prior thereto read:

''(a) Statement Required. — Every individual, committee, association, or any other organization or group of individuals who makes a disbursement for the direct costs of producing and transmitting electioneering communications in an aggregate amount in excess of ten thousand dollars ($10,000) during any calendar year shall, within 24 hours of each disclosure date, file with the Board a statement containing the information described in subsection (b) of this section.

''(b) Contents of Statement. — Each statement required to be filed by this section shall be made under the penalty of perjury in G.S. 14–209 and shall contain the following information:

''(1) The identification of the entity making the disbursement, of any entity sharing or exercising direction or control over the activities of that entity, and of the custodian of the books and accounts of the entity making the disbursement.

''(2) The principal place of business of the entity making the disbursement if the entity is not an individual.

''(3) The amount of each disbursement of more than one thousand dollars ($1,000) during the period covered by the statement and the identification of the entity to whom the disbursement was made.

''(4) The elections to which the electioneering communications pertain and the names, if known, of the candidates identified or to be identified.

''(5) The names and addresses of all contributors who contributed an aggregate amount of more than one thousand dollars ($1,000) during the period beginning on the first day of the preceding calendar year and ending on the disclosure date to a segregated bank account that consists of funds contributed solely by entities other than prohibited sources. Nothing in this subdivision is to be construed as a prohibition on the use of funds in such a segregated account for a purpose other than electioneering communications.

''(6) Repealed by S.L. 2005–430, § 9(c), eff. Dec. 1, 2005.''

S.L. 2006–182, §§ 4 and 5, provide:

''Section 4. The provisions of this act are severable. If any provision of this

act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

''Section 5. This act is effective when it becomes law, except that any criminal penalty resulting from this act becomes effective October 1, 2006.''

§ 163–278.92. Prohibition of corporate and labor disbursements for electioneering communications

(a) Prohibition. — No prohibited source may make any disbursement for the costs of producing or transmitting any electioneering communication. No individual, committee, association, or any other organization or group of individuals, including but not limited to, a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986), which has received any funds or anything of value whatsoever from a prohibited source may make any disbursement for the costs of producing or transmitting any electioneering communication, unless that individual, committee, association, or other organization or group of individuals maintains a segregated bank account that consists of funds provided solely by entities other than prohibited sources. For purposes of this section, the term ''funds or anything of value whatsoever'' shall not include monies paid to an individual, committee, association, or other organization or group of individuals for services rendered or other payment of debt owed. It shall be unlawful for any person or entity to create, establish, or organize more than one political organization (as defined in section 527(c)(1) of the Internal Revenue Code) with the intent to avoid or evade the prohibitions on disbursements for electioneering communications from prohibited sources or the reporting requirements contained in this Article.

(b) Direct or Indirect Disbursement. — An electioneering communication shall be treated as made by a prohibited source if the prohibited source directly or indirectly disburses any amount for any of the costs of the communication.

(c) Segregated Fund. — Any disbursement for an electioneering communication made from an account must be made from a segregated account into which no funds from a prohibited source have been directly or indirectly introduced.

(d) Limitation on Prohibition.—The prohibition in this section shall not apply unless the electioneering communication at issue is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.

Added by S.L. 2004–125, § 2. Amended by S.L. 2005–430, § 9(d), eff. Dec. 1, 2005; S.L. 2006–182, § 3(b), eff. Aug. 1, 2006; S.L. 2008–150, § 10.3(b), eff. Aug. 2, 2008.

Historical and Statutory Notes

2004 Legislation

S.L. 2004–125, § 7, provides:

''This act is effective when it becomes law [July 20, 2004], except as otherwise provided in this act, and except that any criminal penalty resulting from this act becomes effective October 1, 2004.''

2005 Legislation

S.L. 2005–430, § 9(d), eff. Dec. 1, 2005, in subsec. (a), at the end of the third sentence substituted ''entities other than prohibited sources'' for ''individuals'' preceding ''directly to that account'', and added subsec. (c).

S.L. 2005–430, § 11, eff. Dec. 1, 2005, provides:

''This act becomes effective December 1, 2005, and applies to all contributions and expenditures made or accepted on or after that date.''

2006 Legislation

S.L. 2006–182, § 3(b), eff. Aug. 1, 2006, rewrote subsec. (a), which prior thereto read:

''(a) Prohibition. — No prohibited source may make any disbursement for the costs of producing or airing any electioneering communication. No individual, committee, association, or any other organization or group of individuals, including but not limited to, a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986), which has received any payment from a prohibited source may make any disbursement for the costs of producing and airing any electioneering communication. For the purpose of this section, the term 'electioneering communication' does not include a communication by a section 501(c)(4) organization or a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986) if the communication is paid for exclusively by funds provided by individuals and the disbursements for costs of producing and airing the communication are paid out of a segregated bank account that consists of funds contributed solely by entities other than prohibited sources directly to that account.''

S.L. 2006–182, §§ 4 and 5, provide:

''Section 4. The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

''Section 5. This act is effective when it becomes law, except that any criminal penalty resulting from this act becomes effective October 1, 2006.''

2008 Legislation

S.L. 2008–150, § 10.3(b), added subsec. (d).

§ 163–278.93. Penalties

Except as otherwise provided in this Article, a violation of this Article is a Class 2 misdemeanor. The State Board of Elections has the same authority to compel from any individual, committee, association, or any other organization or group of individuals covered by this Article the disclosures required by this Article that the Board has to compel the disclosures required by Article 22A of this Chapter. The civil penalties and remedies in G.S. 163–278.34 shall apply to violations of this Article, and where those provisions apply to violations involving contributions and expenditures they shall apply in the same manner to payments and disbursements in violation of G.S. 163–278.92.

Added by S.L. 2004–125, § 2. Amended by S.L. 2006–259, § 29(b), eff. Aug. 23, 2006.

Historical and Statutory Notes

2004 Legislation

S.L. 2004–125, § 7, provides:

''This act is effective when it becomes law [July 20, 2004], except as otherwise provided in this act, and except that any

criminal penalty resulting from this act becomes effective October 1, 2004.''

2006 Legislation

S.L. 2006–259, § 29(b), eff. Aug. 23, 2006, amended section by substituting ''individual, committee, association, or any other organization or group of individuals'' for ''organization'', deleting ''from a political committee'' before ''the disclosures'' and after ''has to compel'', and inserting ''and remedies''.

§ 163–278.94. Determination of electioneering communication

(a) Any individual, committee, association, or any other organization or group of individuals that produces a communication to be distributed to the relevant electorate in the time periods under G.S. 163–278.90(2)b. may, but is not required to, ask the State Board for a determination as to whether or not that communication is an electioneering communication prior to the airing of that communication.

(b) The State Board shall establish a process for determination as to whether a communication is an electioneering communication prior to the airing of that communication when it is requested under subsection (a) of this section. The responsibility for the determination may be delegated to the Executive Director. If the responsibility is delegated to the Executive Director, the process established by the State Board shall include an opportunity for immediate appeal to the State Board of the determination by the Executive Director.

Added by S.L. 2009–534, § 8(c), eff. Dec. 1, 2009.

Article 22J

The Voter-Owned Elections Act

Section

163–278.95. Purpose and establishment of Voter–Owned Elections Act.
163–278.96. Definitions.
163–278.97. Voter–Owned Elections Fund established; sources of funding.
163–278.98. Requirements for participation.
163–278.99. Distribution from the Fund.
163–278.99A. Reporting requirements.
163–278.99B. Matching funds.
163–278.99C. Unaffiliated and new-party candidates.
163–278.99D. Enforcement by the Board; civil penalty.
163–278.99E. Voter education.

§ 163–278.95. Purpose and establishment of Voter–Owned Elections Act

The purpose of this Article is to ensure the vitality and fairness of democratic elections in North Carolina to the end that any eligible citizen of this State can realistically choose to seek and run for public office. It is also the purpose of this Article to protect

the constitutional rights of voters and candidates from the detrimental effects of increasingly large amounts of money being raised and spent in North Carolina to influence the outcome of elections. It is essential to the public interest that the potential for corruption or the appearance of corruption is minimized and that the equal and meaningful participation of all citizens in the democratic process is ensured. Accordingly, this Article establishes the North Carolina Voter–Owned Elections Fund as an alternative source of campaign financing for candidates who obtain a sufficient number of qualifying contributions from registered voters and who voluntarily accept strict fund-raising and spending limits. This Article is available to candidates for the Council of State offices of Auditor, Superintendent of Public Instruction, and Commissioner of Insurance in elections to be held in 2008 and thereafter. Added by S.L. 2007–540, § 1, eff. Aug. 31, 2007.

Historical and Statutory Notes

2007 Legislation

S.L. 2007–540, § 4 provides:

''The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.''

S.L. 2007–540, § 6 provides:

''Sections 1 through 3 of this act are effective when this act becomes law. For purposes of the 2008 election, the beginning date for the voluntary funding limitation as enacted in G.S. 163–278.98(e)(1) and (2) in Section 1 of this act shall be set administratively by the State Board of Elections. This act applies to elections for Auditor, Superintendent of Public Instruction, and Commissioner of Insurance in 2008 and thereafter. Section 5 of this act becomes effective July 1, 2007. The State Board of Elections shall make the kind of report required in G.S. 163–278.97(c), as enacted in this act, as soon as feasible before the 2008 election. The State Board of Elections shall make the determination required in G.S. 163–278.99(b), as enacted in this act, as soon as feasible before the 2008 election. The remainder of this act is effective when it becomes law.'' [Amended by S.L. 2007–484, § 43.8(c)].

§ 163–278.96. Definitions

The following definitions apply in this Article:

(1) Board.—The State Board of Elections.

(2) Campaign-related expenditure.—An expenditure that benefits the candidate's current campaign in accordance with guidelines established by the Board.

(3) Candidate.—An individual who becomes a candidate as described in G.S. 163–278.6(4). The term includes a ''candidate campaign committee'' as defined in G.S. 163–278.38Z(3).

(4) Certified candidate.—A candidate for office who chooses to receive campaign funds from the Fund and who is certified under G.S. 163–278. 98(c).

(5) Contested primary and contested general election.—An election in which there are more candidates than the number to be elected.

(6) Contribution.—Defined in G.S. 163–278.6. A distribution from the Fund pursuant to this Article is not a ''contribution'' and is not subject to the limitations of G.S. 163–278.13 or the prohibitions of G.S. 163–278.15 or G.S. 163–278.19. Instead of being subject to G.S. 163–278.16B, distributions are subject to the guidelines issued by the Board pursuant to G.S. 163–278.98(e)(5).

(6a) Electioneering communication.—As defined in G.S. 163–278.80 and G.S. 163–278.90, except that it is made during the period beginning 30 days before absentee ballots become available for a primary and ending on primary election day and during the period 60 days before absentee ballots become available for a general election and ending on general election day.

(7) Expenditure.—Defined in G.S. 163–278.6.

(8) Fund.—The North Carolina Voter–Owned Elections Fund established in G.S. 163–278.97.

(9) Independent expenditure.—Defined in G.S. 163–278.6.

(10) Maximum qualifying contributions.—If the candidate has an uncontested primary, an amount equal to 100 times the filing fee for the office sought. If the candidate has a contested primary, 200 times the filing fee for the office sought.

(11) Nonparticipating candidate.—A candidate for office who is not seeking to be certified under G.S. 163–278.98(c).

(12) Office.—The Council of State offices of Auditor, Superintendent of Public Instruction, and Commissioner of Insurance.

(13) Participating candidate.—A candidate for office who has filed a declaration of intent to participate under G.S. 163–278.98(a).

(14) Political committee.—Defined in G.S. 163–278.6.

(15) Qualifying contribution.—A contribution of not less than ten dollars ($10.00) and not more than two hundred dollars ($200.00) in the form of a check or money order to the candidate that meets both of the following conditions:

a. Made by any registered voter in this State.

b. Made only during the qualifying period and obtained with the approval of the candidate or candidate's committee.

(16) Qualifying period.—The period beginning September 1 in the year before the election and ending on the day of the primary.

(17) Trigger for matching funds.—The dollar amount at which matching funds are released under G.S. 163–278.99B for

certified candidates. In the case of a contested primary, the trigger equals the maximum qualifying contributions for the candidate. In the case of a contested general election, the trigger equals the base level of funding available under G.S. 163–278.99(b)(4).

Added by S.L. 2007–540, § 1, eff. Aug. 31, 2007. Amended by S.L. 2007–484, § 43.8(a), eff. Aug. 30, 2007.

Historical and Statutory Notes

2007 Legislation

S.L. 2007–484, § 43.8(a), in subd. (17), substituted ''G.S. 163–278.99(b)(4)'' for ''G.S. 163–278.99(b)(2)'' by amending House Bill 1517 of the 2007 Regular Session [S.L. 2007–540, which enacted this section].

S.L. 2007–540, § 4 provides:

''The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.''

S.L. 2007–540, § 6 provides:

''Sections 1 through 3 of this act are effective when this act becomes law. For purposes of the 2008 election, the beginning date for the voluntary funding limitation as enacted in G.S. 163–278.98(e)(1) and (2) in Section 1 of this act shall be set administratively by the State Board of Elections. This act applies to elections for Auditor, Superintendent of Public Instruction, and Commissioner of Insurance in 2008 and thereafter. Section 5 of this act becomes effective July 1, 2007. The State Board of Elections shall make the kind of report required in G.S. 163–278.97(c), as enacted in this act, as soon as feasible before the 2008 election. The State Board of Elections shall make the determination required in G.S. 163–278.99(b), as enacted in this act, as soon as feasible before the 2008 election. The remainder of this act is effective when it becomes law.'' [Amended by S.L. 2007–484, § 43.8(c)].

§ 163–278.97. Voter–Owned Elections Fund established; sources of funding

(a) Establishment of Fund.—The North Carolina Voter–Owned Elections Fund is established to finance the election campaigns of certified candidates for office and to pay administrative and enforcement costs of the Board related to this Article. The Fund is a special, dedicated, nonlapsing, nonreverting fund. Any interest generated by the Fund is credited to the Fund. The Board shall administer the Fund.

(b) Sources of Funding.—Money received from all the following sources must be deposited in the Fund:

(1) Unspent Fund revenues distributed for an election that remain unspent or uncommitted at the time the recipient is no longer a certified candidate in the election.

(2) Money ordered returned to the Fund in accordance with G.S. 163–278.99D.

(3) Money paid to the Fund equal to excess contributions as provided in G.S. 163–278.98(e)(1).

(4) Voluntary donations made directly to the Fund.

(5) Appropriations from the General Fund.

(c) Evaluation and Determination of Fund Amount.—By January 1, 2011, and every four years thereafter, the Board, in conjunction with the Advisory Council established under G.S. 163–278.68(b), shall prepare and provide to the Joint Legislative Commission on Governmental Operations of the General Assembly a report documenting, evaluating, and making recommendations relating to the administration, implementation, and enforcement of this Article. In its report, the Board shall set out the funds received to date and the expected needs of the Fund during the next election cycle and make recommendations about the feasibility of expanding its provisions to include other candidates for State office based on the experience of this Article and the experience of similar programs in North Carolina and other states. The Board shall also evaluate and make recommendations regarding how to address activities that could undermine the purpose of this Article, including spending that appears to target candidates but is not reached by regulation.

Added by S.L. 2007–540, § 1, eff. Aug. 31, 2007.

Historical and Statutory Notes

2007 Legislation

S.L. 2007–540, § 4 provides:

''The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.''

S.L. 2007–540, § 6 provides:

''Sections 1 through 3 of this act are effective when this act becomes law. For purposes of the 2008 election, the beginning date for the voluntary funding limitation as enacted in G.S. 163–278.98(e)(1) and (2) in Section 1 of this act shall be set administratively by the State Board of Elections. This act applies to elections for Auditor, Superintendent of Public Instruction, and Commissioner of Insurance in 2008 and thereafter. Section 5 of this act becomes effective July 1, 2007. The State Board of Elections shall make the kind of report required in G.S. 163–278.97(c), as enacted in this act, as soon as feasible before the 2008 election. The State Board of Elections shall make the determination required in G.S. 163–278.99(b), as enacted in this act, as soon as feasible before the 2008 election. The remainder of this act is effective when it becomes law.'' [Amended by S.L. 2007–484, § 43.8(c)].

§ 163–278.98. Requirements for participation

(a) Declaration of Intent to Participate.—Any individual choosing to receive campaign funds from the Fund shall first file with the Board a declaration of intent to participate in the program established by this Article as a candidate for a stated office. The declaration of intent shall be filed before or during the qualifying period and before collecting any qualifying contributions. In the declaration, the candidate shall swear or affirm that only one political committee, identified with its treasurer, shall handle all contributions, campaign-related expenditures, and obligations for the participating candidate and that the candidate will comply with the contribution and expenditure limits set forth in subsection (e) of this section and all other requirements set forth in this

Article or adopted by the Board. Failure to comply is a violation of this Article.

(b) Demonstration of Support of Candidacy.—In order to be certified, participating candidates must obtain qualifying contributions from at least 750 registered voters in this State. The qualifying contributions shall be equal to at least 25 times the amount of the filing fee for the office. No payment, gift, or anything of value shall be given in exchange for a qualifying contribution.

(c) Certification of Candidates.—Upon receipt of a submittal of the record of qualifying contributions by a participating candidate, the Board shall determine whether or not the candidate has:

(1) Filed a completed declaration of intent to participate in this Article.
(2) Submitted a report itemizing the appropriate number of qualifying contributions received from registered voters, which the Board shall verify through a random sample or other means it adopts. The report shall include the county of residence of each registered voter listed.
(3) Filed a notice of candidacy with the State Board of Elections as a candidate for the office.
(4) Otherwise met the requirements for participation in this Article.

The Board shall certify candidates complying with the requirements of this section as soon as possible and no later than five business days after receipt of a satisfactory record of qualifying contributions.

(d) Final Report for Qualifying Contributions.—No later than five business days after the end of the qualifying period, all participating candidates shall submit a report to the Board of all previously unreported qualifying contributions, in accordance with procedures developed by the Board. Within seven business days after submittal of the final report, the Board shall determine, through a random audit or other means it adopts, whether the contributions abide by the definition of qualifying contributions, whether they must be returned to the donor, and whether they exceed the maximum amount of qualifying contributions.

(e) Restrictions on Contributions and Expenditures for Participating and Certified Candidates.—The following restrictions shall apply to contributions and expenditures with respect to participating and certified candidates:

(1) Beginning August 1 of the year before the election and before filing a declaration of intent, a candidate shall limit campaign-related expenditures to twenty thousand dollars ($20,000) and shall not accept more than twenty thousand dollars ($20,000) from sources and in amounts permitted by Article 22A of this Chapter. A candidate who exceeds

either of these limits shall be ineligible to file a declaration of intent or receive funds from the Fund. However, the acceptance of contributions in excess of that twenty thousand dollar ($20,000) limit does not render the candidate ineligible if the candidate pays to the Board an amount equal to the contributions accepted by the candidate in excess of that limit. The Board shall deposit all such payments into the Fund.

(2) From the filing of a declaration of intent through the end of the qualifying period, a candidate may accept only qualifying contributions, contributions under ten dollars ($10.00) from North Carolina voters, in-kind party contributions as permitted in subdivision (4) of this subsection, and personal and family contributions permitted under subdivision (4a) of this subsection. The total contributions the candidate may accept during this period shall not exceed the maximum qualifying contributions for that candidate. In addition to these contributions, the candidate may only expend during this period the remaining money raised pursuant to subdivision (1) of this subsection and possible matching funds received pursuant to G.S. 163–278.99B. If the candidate has any remaining money that was raised as contributions before August 1 of the year before the election, the candidate may not expend that money after filing the declaration of intent, except for purposes permitted under subdivision (2), (3), (6), (7), or (8) of G.S. 163–278.16B(a).

(3) After the qualifying period and through the date of the general election, the candidate shall cease campaign-related fund-raising activities and shall expend only the funds the candidate receives from the Fund pursuant to G.S. 163–278.99(b) plus any funds remaining from the qualifying period and possible matching funds.

(4) In addition to the amounts above, a candidate may accept in-kind contributions from political party executive committees, up to an aggregate value of thirty thousand dollars ($30,000) for the election cycle.

(4a) During the qualifying period, the candidate may contribute up to one thousand dollars ($1,000) of that candidate's own money to the campaign. Debt incurred by the candidate for a campaign expenditure shall count toward that limit. The candidate may accept in contributions one thousand dollars ($1,000) from each member of that candidate's family consisting of spouse, parent, child, brother, and sister.

(5) A candidate and the candidate's committee shall limit the use of all revenues permitted by this subsection to expendi-

tures for campaign-related purposes only. The Board shall publish guidelines outlining permissible campaign-related expenditures.

(6) Except as provided in subdivision (1) of this subsection, any contribution received by a participating or certified candidate that falls outside that permitted by this subsection shall be returned to the donor as soon as practicable. Contributions intentionally made, solicited, or accepted in violation of this Article are subject to civil penalties as specified in G.S. 163–278.99D. The funds involved shall be forfeited to the Civil Penalty and Forfeiture Fund.

(7) A candidate shall return to the Fund any amount distributed for an election that is unspent and uncommitted at the date of the election or at the time the individual ceases to be a certified candidate, whichever occurs first. For accounting purposes, all qualifying, personal, and family contributions shall be considered spent before revenue from the Fund is spent or committed.

(f) Revocation.—A candidate may revoke, in writing to the Board, a decision to participate in the Fund at any time. After a revocation, that candidate may accept and expend outside the limits of this Article without violating this Article. Within 10 days after revocation, a candidate shall return to the Board all money received from the Fund.

Added by S.L. 2007–540, § 1, eff. Aug. 31, 2007.

Historical and Statutory Notes

2007 Legislation

S.L. 2007–540, § 4 provides:

''The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.''

S.L. 2007–540, § 6 provides:

''Sections 1 through 3 of this act are effective when this act becomes law. For purposes of the 2008 election, the beginning date for the voluntary funding limitation as enacted in G.S. 163–278.98(e)(1) and (2) in Section 1 of this act shall be set administratively by the State Board of Elections. This act applies to elections for Auditor, Superintendent of Public Instruction, and Commissioner of Insurance in 2008 and thereafter. Section 5 of this act becomes effective July 1, 2007. The State Board of Elections shall make the kind of report required in G.S. 163–278.97(c), as enacted in this act, as soon as feasible before the 2008 election. The State Board of Elections shall make the determination required in G.S. 163–278.99(b), as enacted in this act, as soon as feasible before the 2008 election. The remainder of this act is effective when it becomes law.'' [Amended by S.L. 2007–484, § 43.8(c)].

§ 163–278.99. Distribution from the Fund

(a) Timing of Fund Distribution. — The Board shall distribute to a certified candidate revenue from the Fund in an amount determined under subdivision (b)(4) of this section as follows:

(1) One-third of the amount within five business days after the certified candidate's name is approved to appear on the

ballot in a contested general election, but no earlier than five business days after the primary.

(2) The remainder of the amount on August 1 before the general election.

(b) Amount of Fund Distribution. — By August 1, 2011, and no less frequently than every four years thereafter, the Board shall determine the amount of funds, rounded to the nearest one hundred dollars ($100.00), to be distributed to certified candidates as follows:

(1) Uncontested primaries. — No funds shall be distributed.

(2) Contested primaries. — No funds shall be distributed except as provided in G.S. 163–278.99B.

(3) Uncontested general elections. — No funds shall be distributed.

(4) Contested general elections. — The amount of funds to be distributed to a candidate is the average amount of campaign-related expenditures made by all candidates who won the immediately preceding three general elections for that office, but not less than three hundred thousand dollars ($300,000). For purposes of this subsection, ''campaign-related expenditures'' does not include loan repayments and contributions to a candidate, political committee, or political party.

(c) Method of Fund Distribution. — The Board, in consultation with the State Treasurer and the State Controller, shall develop a rapid, reliable method of conveying funds to certified candidates. In all cases, the Board shall distribute funds to certified candidates in a manner that is expeditious, ensures accountability, and safeguards the integrity of the Fund. If the money in the Fund is insufficient to fully fund all certified candidates, then the available money shall be distributed proportionally, according to each candidate's eligible funding, and the candidate may raise additional money in the same manner as a nonparticipating candidate for the same office up to the unfunded amount of the candidate's eligible funding.

Added by S.L. 2007–540, § 1, eff. Aug. 31, 2007.

Historical and Statutory Notes

2007 Legislation

S.L. 2007–540, § 4 provides:

''The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.''

S.L. 2007–540, § 6 provides:

''Sections 1 through 3 of this act are effective when this act becomes law. For purposes of the 2008 election, the beginning date for the voluntary funding limitation as enacted in G.S. 163–278.98(e)(1) and (2) in Section 1 of this act shall be set administratively by the State Board of Elections. This act applies to elections for Auditor, Superintendent of Public Instruction, and Commissioner of Insurance in 2008 and thereafter. Section 5 of this act becomes effective July 1, 2007. The State

Board of Elections shall make the kind of report required in G.S. 163–278.97(c), as enacted in this act, as soon as feasible before the 2008 election. The State Board of Elections shall make the determination required in G.S. 163–278.99(b), as enacted in this act, as soon as feasible before the 2008 election. The remainder of this act is effective when it becomes law.'' [Amended by S.L. 2007–484, § 43.8(c)].

§ 163–278.99A. Reporting requirements

(a) Reporting by Noncertified Candidates and Other Entities.—Any nonparticipating candidate with a certified opponent shall report total contributions received to the Board by facsimile machine or electronically within 24 hours after the total amount of contributions received exceeds eighty percent (80%) of the trigger for matching funds as defined in G.S. 163–278.96(17). Any entity making independent expenditures in support of or in opposition to a certified candidate, or in support of a candidate opposing a certified candidate, or paying for electioneering communications referring to one of those candidates, shall report the total funds received, spent, or obligated for those expenditures or payments to the Board by facsimile machine or electronically within 24 hours after the total amount of expenditures or obligations made, or funds raised or borrowed, for the purpose of making the independent expenditures or electioneering communications exceeds five thousand dollars ($5,000). After the initial 24–hour filing, the nonparticipating candidate or other reporting entity shall comply with an expedited reporting schedule. The schedule and forms for reports required by this subsection shall be supplied by the Board.

(b) Reporting by Participating and Certified Candidates.—Notwithstanding other provisions of law, participating and certified candidates shall report any money received and all campaign expenditures, obligations, and related activities to the Board according to procedures developed by the Board. Upon the filing of a final report for any losing primary election, special election, or general election, each candidate who has revenues from the Fund remaining unspent shall return those revenues to the Board. In developing these procedures, the Board shall utilize existing campaign reporting procedures wherever practicable.

(c) Timely Access to Reports.—The Board shall ensure prompt public access to the reports received in accordance with this Article. The Board may utilize electronic means of reporting and storing information.

Added by S.L. 2007–540, § 1, eff. Aug. 31, 2007. Amended by S.L. 2008–150, § 10.2(b), eff. Aug. 2, 2008; S.L. 2009–570, § 26, eff. Aug. 28, 2009.

Historical and Statutory Notes

2007 Legislation

S.L. 2007–540, § 4 provides:

''The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdic-

tion, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.''

S.L. 2007–540, § 6 provides:

''Sections 1 through 3 of this act are effective when this act becomes law. For purposes of the 2008 election, the beginning date for the voluntary funding limitation as enacted in G.S. 163–278.98(e)(1) and (2) in Section 1 of this act shall be set administratively by the State Board of Elections. This act applies to elections for Auditor, Superintendent of Public Instruction, and Commissioner of Insurance in 2008 and thereafter. Section 5 of this act becomes effective July 1, 2007. The State Board of Elections shall make the kind of report required in G.S. 163–278.97(c), as enacted in this act, as soon as feasible before the 2008 election. The State Board of Elections shall make the determination required in G.S. 163–278.99(b), as enacted in this act, as soon as feasible before the 2008 election. The remainder of this act is effective when it becomes law.'' [Amended by S.L. 2007–484, § 43.8(c)].

2008 Legislation

S.L. 2008–150, § 10.2(b), rewrote subsec. (a), which prior thereto read:

''Reporting by Noncertified Candidates and Other Entities.—Any nonparticipating candidate with a certified opponent shall report total income, expenses, and obligations to the Board by facsimile machine or electronically within 24 hours after the total amount of campaign-related expenditures or obligations made, or funds raised or borrowed, exceeds eighty percent (80%) of the trigger for matching funds as defined in G.S. 163–278.96(17). Any entity making independent expenditures in support of or in opposition to a certified candidate, or in support of a candidate opposing a certified candidate, or paying for electioneering communications referring to one of those candidates, shall report the total funds received, spent, or obligated for those expenditures or payments to the Board by facsimile machine or electronically within 24 hours after the total amount of expenditures or obligations made, or funds raised or borrowed, for the purpose of making the independent expenditures or electioneering communications exceeds five thousand dollars ($5,000). After this 24–hour filing, the nonparticipating candidate or other reporting entity shall comply with an expedited reporting schedule by filing additional reports after receiving an additional amount in excess of one thousand dollars ($1,000) or after making or obligating to make an additional expenditure or payment in excess of one thousand dollars ($1,000). The schedule and forms for reports required by this subsection shall be made according to procedures developed by the Board.''

2009 Legislation

S.L. 2009–570, § 26, in subsec. (a), in the fourth sentence, inserted ''be''.

§ 163–278.99B. Matching funds

(a) When Matching Funds Become Available.—When any report or group of reports shows that ''funds in opposition to a certified candidate or in support of an opponent to that candidate'' as described in this section exceed the trigger for matching funds as defined in G.S. 163–278.96(17), the Board shall issue immediately to that certified candidate an additional amount equal to the reported excess within the limits set forth in this section. ''Funds in opposition to a certified candidate or in support of an opponent to that candidate'' shall be equal to the sum of subdivisions (1) and (2) as follows:

(1) The greater of the following:

a. Campaign expenditures or obligations made, or funds raised or borrowed, whichever is greater, reported by any one nonparticipating opponent of a certified candidate. Where a certified candidate has more than one nonparticipating opponent, the measure shall be taken

from the nonparticipating candidate showing the highest relevant dollar amount.

b. The funds distributed in accordance with G.S. 163–278.99(b) to a certified opponent of the certified candidate.

(2) The aggregate total of all expenditures and payments reported in accordance with G.S. 163–278.99A(a) of entities making independent expenditures or electioneering communications in opposition to the certified candidate or in support of any opponent of that certified candidate.

(b) Limit on Matching Funds in Contested Primary.—Total matching funds to a certified candidate in a contested primary shall be limited to an amount equal to the maximum qualifying contributions for a candidate with a contested primary.

(c) Limit on Matching Funds in Contested General Election.—Total matching funds to a certified candidate in a contested general election shall be limited to an amount equal to two times the amount described in G.S. 163–278.99(b)(4).

(d) Determinations by Board.—In the case of electioneering communications, the Board shall determine which candidate, if any, is entitled to receive matching funds as a result of the communication. The Board shall issue matching funds based on the communication only if it ascertains that the communication is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. In making its determination, the Board shall not consider evidence external to the communication itself of the intent of the sponsor or the effect of the communication. The Board shall notify each candidate it determines is entitled to receive matching funds based on those communications, the sponsor of those communications, and any candidate who is an opponent of the candidate it determines is entitled to the matching funds. The Board shall give the sponsor of the communication and any opposing candidate an adequate opportunity to rebut the determination of the Board. In considering the rebuttal, all candidates in the race and the sponsor shall be given adequate and equal opportunity to be heard. The Board shall adopt procedures for implementing this subsection, balancing in those procedures adequacy of opportunity to rebut and adequacy and equality of opportunity to be heard on the rebuttal with the need to expedite the decision on awarding matching funds. The Board shall distribute the matching funds, if any, at the conclusion of its process.

(e) Proportional Measuring of Multicandidate Communications.—In calculating the amount of matching funds a certified candidate is eligible to receive under this section, the Board shall

include the proportion of expenditures, obligations, or payments for multicandidate communications that pertains to the candidate.

Added by S.L. 2007–540, § 1, eff. Aug. 31, 2007. Amended by S.L. 2007–484, §§ 43.8(b), 43.8(d), eff. Aug. 30, 2007.

Historical and Statutory Notes

2007 Legislation

S.L. 2007–484, § 43.8(b), in subsec. (c), substituted ''G.S. 163–278.99(b)(4)'' for ''G.S. 163–278.99(b)(2)'' by amending House Bill 1517 of the 2007 Regular Session [S.L. 2007–540, which enacted this section].

S.L. 2007–484, § 43.8(d), added subsec. (e) by amending House Bill 1517 of the 2007 Regular Session [S.L. 2007–540, which enacted this section].

S.L. 2007–540, § 4 provides:

''The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.''

S.L. 2007–540, § 6 provides:

''Sections 1 through 3 of this act are effective when this act becomes law. For purposes of the 2008 election, the beginning date for the voluntary funding limitation as enacted in G.S. 163–278.98(e)(1) and (2) in Section 1 of this act shall be set administratively by the State Board of Elections. This act applies to elections for Auditor, Superintendent of Public Instruction, and Commissioner of Insurance in 2008 and thereafter. Section 5 of this act becomes effective July 1, 2007. The State Board of Elections shall make the kind of report required in G.S. 163–278.97(c), as enacted in this act, as soon as feasible before the 2008 election. The State Board of Elections shall make the determination required in G.S. 163–278.99(b), as enacted in this act, as soon as feasible before the 2008 election. The remainder of this act is effective when it becomes law.'' [Amended by S.L. 2007–484, § 43.8(c)].

§ 163–278.99C. Unaffiliated and new-party candidates

Unaffiliated candidates certified pursuant to G.S. 163–122 and new-party candidates certified pursuant to G.S. 163–98 shall be eligible for revenues from the Fund in the same amounts and at the same time as specified in G.S. 163–278.99. For unaffiliated candidates and new-party candidates not certified to appear on the ballot by noon on the deadline set in G.S. 163–106(c) for candidate filing in the election year, the deadline for seeking certification to receive revenue from the Fund is noon on the first business day of July of the election year.

Added by S.L. 2007–540, § 1, eff. Aug. 31, 2007.

Historical and Statutory Notes

2007 Legislation

S.L. 2007–540, § 4 provides:

''The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.''

S.L. 2007–540, § 6 provides:

''Sections 1 through 3 of this act are effective when this act becomes law. For purposes of the 2008 election, the beginning date for the voluntary funding limitation as enacted in G.S. 163–278.98(e)(1) and (2) in Section 1 of this act shall be set administratively by the State Board of Elections. This act applies to elections for Auditor, Superintendent of Public Instruction, and Commissioner of Insurance in 2008 and thereafter. Section 5 of this act becomes effective July 1, 2007. The State Board of Elections shall make the kind of report required in G.S. 163–278.97(c), as enacted in this act, as soon as feasible before the 2008 election. The State Board of Elections shall

make the determination required in G.S. 163–278.99(b), as enacted in this act, as soon as feasible before the 2008 election. The remainder of this act is effective when it becomes law.'' [Amended by S.L. 2007–484, § 43.8(c)].

§ 163–278.99D. Enforcement by the Board; civil penalty

In addition to any other penalties that may be applicable, any individual, political committee, or other entity that violates any provision of this Article is subject to a civil penalty of up to ten thousand dollars ($10,000) per violation or three times the amount of any financial transactions involved in the violation, whichever is greater. In addition to any fine, for good cause shown, a candidate found in violation of this Article may be required to return to the Fund all amounts distributed to the candidate from the Fund. If the Board makes a determination that a violation of this Article has occurred, the Board shall calculate and assess the amount of the civil penalty and shall notify the entity that is assessed the civil penalty of the amount that has been assessed. The Board shall then proceed in the manner prescribed in G.S. 163–278.34. In determining whether or not a candidate is in violation of this Article, the Board may consider as a mitigating factor any circumstances out of the candidate's control.

Added by S.L. 2007–540, § 1, eff. Aug. 31, 2007.

Historical and Statutory Notes

2007 Legislation

S.L. 2007–540, § 4 provides:

''The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.''

S.L. 2007–540, § 6 provides:

''Sections 1 through 3 of this act are effective when this act becomes law. For purposes of the 2008 election, the beginning date for the voluntary funding limitation as enacted in G.S. 163–278.98(e)(1) and (2) in Section 1 of this act shall be set administratively by the State Board of Elections. This act applies to elections for Auditor, Superintendent of Public Instruction, and Commissioner of Insurance in 2008 and thereafter. Section 5 of this act becomes effective July 1, 2007. The State Board of Elections shall make the kind of report required in G.S. 163–278.97(c), as enacted in this act, as soon as feasible before the 2008 election. The State Board of Elections shall make the determination required in G.S. 163–278.99(b), as enacted in this act, as soon as feasible before the 2008 election. The remainder of this act is effective when it becomes law.'' [Amended by S.L. 2007–484, § 43.8(c)].

§ 163–278.99E. Voter education

(a) Voter Guide.—The Board shall publish a Voter Guide that explains the functions of office as defined in G.S. 163–278.96(12) and the laws concerning the election of the Council of State, the purpose and function of the Fund, and the laws concerning voter registration. The Board shall distribute the Guide to as many voting-age individuals in the State as practical, through a mailing to all residences or other means it deems effective. The State Board of Elections shall maintain a list of the addresses from which mailed Voter Guides are returned as undeliverable. That

list shall be available for public inspection. The distribution shall occur no more than 28 days nor fewer than seven days before the one-stop voting period provided in G.S. 163–227.2 for the primary and no more than 28 days nor fewer than seven days before the one-stop voting period provided in G.S. 163–227.2 for the general election.

(b) Candidate Information.—The Voter Guide shall include information concerning all candidates for office as defined in G.S. 163–278.96(12), as provided by those candidates according to a format provided to the candidates by the Board. The Board shall request information for the Guide from each candidate according to the following format:

(1) Place of residence.

(2) Education.

(3) Occupation.

(4) Employer.

(5) Previous elective offices held.

(6) Endorsements, limited to 50 words. Concerning endorsements, the Board shall send to the candidates instructions as follows: ''In order to have an endorsement published, you must provide written confirmation to the Board from the endorsing person or organization that you received that person's or organization's endorsement.''

(7) Candidate statement, limited to 150 words. Concerning that statement, the Board shall send to the candidates instructions as follows: ''Your statement may include information such as your qualifications, your endorsements, why you would make a good elected official, what distinguishes you from your opponent(s), and any other information relevant to your candidacy. The State Board of Elections will reject any portion of any statement which it determines contains obscene, profane, or defamatory language. The candidate shall have three days to resubmit the candidate statement if the Board rejects a portion of the statement.''

(c) Disclaimer.—The Voter Guide shall contain the following statement: ''Statements by candidates do not express or reflect the opinions of the State Board of Elections.''

(d) Relationship to the Judicial Voter Guide.—The Board may publish the Voter Guide in conjunction with the Judicial Voter Guide described in G.S. 163–278.69.

Added by S.L. 2007–540, § 1. Amended by S.L. 2007–391, § 4(b), eff. Aug. 19, 2007.

Historical and Statutory Notes

2007 Legislation

S.L. 2007–391, § 4(b), in subsec. (a), substituted ''28'' for ''14'' in two locations by amending House Bill 1517 of the 2007 Regular Session [S.L. 2007–540, which enacted this section].

S.L. 2007–540, § 4 provides:

''The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.''

S.L. 2007–540, § 6 provides:

''Sections 1 through 3 of this act are effective when this act becomes law. For purposes of the 2008 election, the beginning date for the voluntary funding limitation as enacted in G.S. 163–278.98(e)(1) and (2) in Section 1 of this act shall be set administratively by the State Board of Elections. This act applies to elections for Auditor, Superintendent of Public Instruction, and Commissioner of Insurance in 2008 and thereafter. Section 5 of this act becomes effective July 1, 2007. The State Board of Elections shall make the kind of report required in G.S. 163–278.97(c), as enacted in this act, as soon as feasible before the 2008 election. The State Board of Elections shall make the determination required in G.S. 163–278.99(b), as enacted in this act, as soon as feasible before the 2008 election. The remainder of this act is effective when it becomes law.'' [Amended by S.L. 2007–484, § 43.8(c)].

Article 22G

Candidate-Specific Communications

Section

163–278.100. Definitions.
163–278.101. Disclosure of candidate-specific communications.
163–278.102. Penalties.
163–278.103. Determination of candidate-specific communication.
163–278.104 to 163–278.109. Reserved.

§ 163–278.100. Definitions

As used in this Article, the following terms have the following definitions:

(1) The term ''candidate-specific communication'' means any broadcast, cable, or satellite communication that has all the following characteristics:

a. Refers to a clearly identified candidate for a statewide office or the General Assembly.

b. Is aired in an even-numbered year after the final date on which a Notice of Candidacy can be filed for the office, pursuant to G.S. 163–106(c) or G.S. 163–323, and through the day on which the general election is conducted, excluding the time period set in the definition for ''electioneering communication'' in G.S. 163–278.80(2)b.

c. Is targeted to the relevant electorate.

(2) The term ''candidate-specific communication'' does not include any of the following:

a. A communication appearing in a news story, commentary, or editorial distributed through the facilities of any

broadcasting station, unless those facilities are owned or controlled by any political party, political committee, or candidate.

b. A communication that constitutes an expenditure or independent expenditure under Article 22A of this Chapter.

c. A communication that constitutes a candidate debate or forum conducted pursuant to rules adopted by the Board or that solely promotes that debate or forum and is made by or on behalf of the person sponsoring the debate or forum.

d. A communication made while the General Assembly is in session which, incidental to advocacy for or against a specific piece of legislation pending before the General Assembly, urges the audience to communicate with a member or members of the General Assembly concerning that piece of legislation.

e. An electioneering communication as defined in Article 22E of this Chapter.

f. A communication that meets all of the following criteria:

1. Does not mention any election, candidacy, political party, opposing candidate, or voting by the general public.

2. Does not take a position on the candidate's character or qualifications and fitness for office.

3. Proposes a commercial transaction.

(3) The term ''disclosure date'' means either of the following:

a. The first date during any calendar year when a candidate-specific communication is aired after an entity has incurred expenses for the direct costs of producing or airing candidate-specific communications aggregating in excess of ten thousand dollars ($10,000).

b. Any other date during that calendar year by which an entity has incurred expenses for the direct costs of producing or airing candidate-specific communications aggregating in excess of ten thousand dollars ($10,000) since the most recent disclosure date for that calendar year.

(4) The term ''targeted to the relevant electorate'' means a communication which refers to a clearly identified candidate for statewide office or the General Assembly and which can be received by 50,000 or more individuals in the State in the case of a candidacy for statewide office and 7,500 or more individuals in the district in the case of a candidacy for General Assembly.

(5) Except as otherwise provided in this Article, the definitions in Article 22A of this Chapter apply in this Article.

Added by S.L. 2006–233, § 1, eff. Jan. 1, 2007. Amended by S.L. 2006–259, § 29(e), eff. Aug. 23, 2006; S.L. 2009–534, § 9(a), (b), eff. Dec. 1, 2009.

Historical and Statutory Notes

2006 Legislation

S.L. 2006–233, §§ 3 and 4, provide:

''Section 3. The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

''Section 4. In the General Assembly read three times and ratified this the 27th day of July, 2006.''

S.L. 2006–259, § 29(e), eff. Aug. 23, 2006, amended subd. (4) by substituting ''7,500'' for ''2,500''.

2009 Legislation

S.L. 2009–534, § 9(a), in sub-subd. (1)b., substituted ''Is aired'' for ''Is made''.

S.L. 2009–534, § 9(b), inserted sub-subd. (2)f.

§ 163–278.101. Disclosure of candidate-specific communications

(a) Statement Required. — Every individual, committee, association, or any other organization or group of individuals that incurs an expense for the direct costs of producing or airing candidate-specific communications in an aggregate amount in excess of ten thousand dollars ($10,000) during any calendar year shall, within 24 hours of each disclosure date, file with the Board a statement containing the information described in subsection (b) of this section.

(b) Contents of Statement. — Each statement required to be filed by this section shall be made under the penalty of perjury in G.S. 14–209 and shall contain the following information:

(1) The identification of the entity incurring the expense, of any entity sharing or exercising direction or control over the activities of that entity, and of the custodian of the books and accounts of the entity incurring the expense.

(2) The principal place of business of the entity incurring the expense if the entity is not an individual.

(3) The amount of each expense incurred of more than one thousand dollars ($1,000) during the period covered by the statement and the identification of the entity to whom the expense was incurred.

(4) The candidates in the candidate-specific communications that are identified or are to be identified.

(5) The identity of every provider of funds or anything of value whatsoever to the entity, providing an amount in excess of one thousand dollars ($1,000). If the provider is an individual, the statement shall also contain the principal occupation of the provider. The 'principal occupation of the

provider' shall mean the same as the 'principal occupation of the contributor' in G.S. 163–278.11.

(c) Creating Multiple Organizations. — It shall be unlawful for any person or entity to create, establish, or organize more than one political organization (as defined in section 527(c)(1) of the Internal Revenue Code) with the intent to avoid or evade the reporting requirements contained in this Article.

Added by S.L. 2006–233, § 1, eff. Jan. 1, 2007.

Historical and Statutory Notes

2006 Legislation

S.L. 2006–233, §§ 3 and 4, provide:

''Section 3. The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

''Section 4. In the General Assembly read three times and ratified this the 27th day of July, 2006.''

§ 163–278.102. Penalties

The State Board of Elections has the same authority to compel from any individual, committee, association, or any other organization or group of individuals covered by this Article the disclosures required by this Article that the Board has to compel the disclosures required by Article 22A of this Chapter. The civil penalties and remedies in G.S. 163–278.34 shall apply to violations of this Article.

Added by S.L. 2006–233, § 1, eff. Jan. 1, 2007. Amended by S.L. 2006–259, § 29(c), eff. Aug. 23, 2006.

Historical and Statutory Notes

2006 Legislation

S.L. 2006–233, §§ 3 and 4, provide:

''Section 3. The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

''Section 4. In the General Assembly read three times and ratified this the 27th day of July, 2006.''

S.L. 2006–259, § 29(c), eff. Aug. 23, 2006, amended section by substituting ''individual, committee, association, or any other organization or group of individuals'' for ''organization'', deleting ''from a political committee'' before ''the disclosures'' and after ''has to compel''.

§ 163–278.103. Determination of candidate-specific communication

(a) Any individual, committee, association, or any other organization or group of individuals that produces a communication to be aired to the relevant electorate in the time periods under G.S. 163–278.100(1)b. may, but is not required to, ask the State Board for a determination as to whether or not that communication is a candidate-specific communication prior to the airing of that communication.

(b) The State Board shall establish a process for determination as to whether a communication is a candidate-specific communication prior to the airing of that communication when it is requested under subsection (a) of this section. The responsibility for the determination may be delegated to the Executive Director. If the responsibility is delegated to the Executive Director, the process established by the State Board shall include an opportunity for immediate appeal to the State Board of the determination by the Executive Director.

Added by S.L. 2009–534, § 9(c), eff. Dec. 1, 2009.

§§ 163–278.104 to 163–278.109. Reserved

Article 22H

Mass Mailings and Telephone Banks: Candidate-Specific Communications

Section

163–278.110. Definitions.
163–278.111. Disclosure of candidate-specific communications.
163–278.112. Penalties.
163–278.113. Determination of candidate-specific communication.

§ 163–278.110. Definitions

As used in this Article, the following terms have the following definitions:

(1) The term ''candidate-specific communication'' means any mass mailing or telephone bank that has all the following characteristics:

a. Refers to a clearly identified candidate for a statewide office or the General Assembly.

b. Is transmitted in an even-numbered year after the final date on which a Notice of Candidacy can be filed for the office, pursuant to G.S. 163–106(c) or G.S. 163–323, and through the day on which the general election is conducted, excluding the time period set in the definition for ''electioneering communication'' in G.S. 163–278.90(2)b.

c. Is targeted to the relevant electorate.

(2) The term ''candidate-specific communication'' does not include any of the following:

a. A communication appearing in a news story, commentary, or editorial distributed through any newspaper or periodical, unless that publication is owned or controlled by any political party, political committee, or candidate.

b. A communication that constitutes an expenditure or independent expenditure under Article 22A of this Chapter.

c. A communication that constitutes a candidate debate or forum conducted pursuant to rules adopted by the Board or that solely promotes that debate or forum and is made by or on behalf of the person sponsoring the debate or forum.

d. A communication that is distributed by a corporation solely to its shareholders or employees or by a labor union or professional association solely to its members.

e. A communication made while the General Assembly is in session which, incidental to advocacy for or against a specific piece of legislation pending before the General Assembly, urges the audience to communicate with a member or members of the General Assembly concerning that piece of legislation.

f. An electioneering communication as defined in Article 22F of this Chapter.

g. A public opinion poll conducted by a newspaper, periodical, or other news gathering organization.

h. A communication that meets all of the following criteria:

1. Does not mention any election, candidacy, political party, opposing candidate, or voting by the general public.

2. Does not take a position on the candidate's character or qualifications and fitness for office.

3. Proposes a commercial transaction.

(3) The term ''disclosure date'' means either of the following:

a. The first date during any calendar year when a candidate-specific communication is transmitted after an entity has incurred expenses for the direct costs of producing or transmitting candidate-specific communications aggregating in excess of ten thousand dollars ($10,000).

b. Any other date during that calendar year by which an entity has incurred expenses for the direct costs of producing or transmitting candidate-specific communications aggregating in excess of ten thousand dollars ($10,000) since the most recent disclosure date for that calendar year.

(4) The term ''mass mailing'' means any mailing by United States mail or facsimile. Part 1A of Article 22A of this Chapter has its own internal definition of ''mass mailing'' under the definition of ''print media,'' and that definition does not apply in this Article.

(5) The term ''race'' means a ballot item, as defined in G.S. 163–165(2), in which the voters are to choose between or among candidates.

(6) The term ''targeted to the relevant electorate'' means:

a. With respect to a statewide race:

1. Transmitting, by mail or facsimile to a cumulative total of 50,000 or more addresses in the State, items identifying one or more candidates in the same race within any 30–day period; or

2. Making a cumulative total of 50,000 or more telephone calls in the State identifying one or more candidates in the same race within any 30–day period.

b. With respect to a race for the General Assembly:

1. Transmitting, by mail or facsimile to a cumulative total of 2,500 or more addresses in the district, items identifying one or more candidates in the same race within any 30–day period; or

2. Making a cumulative total of 2,500 or more telephone calls in the district identifying one or more candidates in the same race within any 30–day period.

(7) The term ''telephone bank'' means telephone calls that are targeted to the relevant electorate, except when those telephone calls are made by volunteer workers, whether or not the design of the telephone bank system, development of calling instructions, or training of volunteers was done by paid professionals.

(8) Except as otherwise provided in this Article, the definitions in Article 22A of this Chapter apply in this Article.

Added by S.L. 2006–233, § 2, eff. Jan. 1, 2007. Amended by S.L. 2007–391, § 31, eff. Aug. 19, 2007; S.L. 2007–510, § 2, eff. Aug. 30, 2007; S.L. 2009–534, § 10(a), (b), eff. Dec. 1, 2009.

Historical and Statutory Notes

2006 Legislation

S.L. 2006–233, §§ 3 and 4, provide:

''Section 3. The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

''Section 4. In the General Assembly read three times and ratified this the 27th day of July, 2006.''

2007 Legislation

S.L. 2007–391, § 31, added subd. (8).

S.L. 2007–510, § 2, added subd. (8) identical to the subd. (8) added by S.L. 2007–391, § 31.

2009 Legislation

S.L. 2009–534, § 10(a), in sub-subd. (1)b., substituted ''Is transmitted'' for ''Is made''.

S.L. 2009–534, § 10(b), inserted sub-subd. (2)h.

§ 163–278.111. Disclosure of candidate-specific communications

(a) Statement Required. — Every individual, committee, association, or any other organization or group of individuals that incurs

an expense for the direct costs of producing or transmitting candidate-specific communications in an aggregate amount in excess of ten thousand dollars ($10,000) during any calendar year shall, within 24 hours of each disclosure date, file with the Board a statement containing the information described in subsection (b) of this section.

(b) Contents of Statement. — Each statement required to be filed by this section shall be made under the penalty of perjury in G.S. 14–209 and shall contain the following information:

(1) The identification of the entity incurring the expense, of any entity sharing or exercising direction or control over the activities of that entity, and of the custodian of the books and accounts of the entity incurring the expense.

(2) The principal place of business of the entity incurring the expense if the entity is not an individual.

(3) The amount of each expense incurred of more than one thousand dollars ($1,000) during the period covered by the statement and the identification of the entity to whom the expense was incurred.

(4) The candidates in the candidate-specific communications that are identified or are to be identified.

(5) The identity of every provider of funds or anything of value whatsoever to the entity, providing an amount in excess of one thousand dollars ($1,000). If the provider is an individual, the statement shall also contain the principal occupation of the provider. The ''principal occupation of the provider'' shall mean the same as the ''principal occupation of the contributor'' in G.S. 163–278.11.

(c) Creating Multiple Organizations. — It shall be unlawful for any person or entity to create, establish, or organize more than one political organization (as defined in section 527(c)(1) of the Internal Revenue Code) with the intent to avoid or evade the reporting requirements contained in this Article.

Added by S.L. 2006–233, § 2, eff. Jan. 1, 2007.

Historical and Statutory Notes

2006 Legislation

S.L. 2006–233, §§ 3 and 4, provide:

''Section 3. The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

''Section 4. In the General Assembly read three times and ratified this the 27th day of July, 2006.''

§ 163–278.112. Penalties

The State Board of Elections has the same authority to compel from any individual, committee, association, or any other organization or group of individuals covered by this Article the disclo-

sures required by this Article that the Board has to compel the disclosures required by Article 22A of this Chapter. The civil penalties and remedies in G.S. 163–278.34 shall apply to violations of this Article.

Added by S.L. 2006–233, § 2, eff. Jan. 1, 2007. Amended by S.L. 2006–259, § 29(d), eff. Aug. 23, 2006.

Historical and Statutory Notes

2006 Legislation

S.L. 2006–233, §§ 3 and 4, provide:

''Section 3. The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

''Section 4. In the General Assembly read three times and ratified this the 27th day of July, 2006.''

S.L. 2006–259, § 29(d), eff. Aug. 23, 2006, amended section by substituting ''individual, committee, association, or any other organization or group of individuals'' for ''organization'', deleting ''from a political committee'' before ''the disclosures'' and after ''has to compel''.

§ 163–278.113. Determination of candidate-specific communication

(a) Any individual, committee, association, or any other organization or group of individuals that produces a communication to be distributed to the relevant electorate in the time periods under G.S. 163–278.110(1)b. may, but is not required to, ask the State Board for a determination as to whether or not that communication is a candidate-specific communication prior to the airing of that communication.

(b) The State Board shall establish a process for determination as to whether a communication is a candidate-specific communication prior to the airing of that communication when it is requested under subsection (a) of this section. The responsibility for the determination may be delegated to the Executive Director. If the responsibility is delegated to the Executive Director, the process established by the State Board shall include an opportunity for immediate appeal to the State Board of the determination by the Executive Director.

Added by S.L. 2009–534, § 10(c), eff. Dec. 1, 2009.

Article 22M

Legal Expense Funds

Section

163–278.300. Definitions.
163–278.301. Creation of legal expense funds.
163–278.302 to 163–278.305. Reserved.
163–278.306. Treasurer.
163–278.307. Detailed accounts to be kept by treasurer.

Section

163–278.308. Reports filed with Board.
163–278.309. Organizational report.
163–278.310. Quarterly report.
163–278.311 to 163–278.315. Reserved.
163–278.316. Limitations on legal expense donations.
163–278.317 to 163–278.319. Reserved.
163–278.320. Permitted uses of legal expense funds.
163–278.321 to 163–278.329. Reserved.

§ 163–278.300. Definitions

As used in this Article, the following terms mean:

(1) Board.—The State Board of Elections.

(2) Reserved.

(3) Elected officer.—Any individual serving in or seeking a public office. An individual is seeking a public office when that individual has filed any notice, petition, or other document required by law or local act as a condition of election to public office. An individual continues to be an elected officer for purposes of this Article as long as a legal action commenced while the individual was an elected officer continues. If a legal action is commenced after an individual ceases to serve in or seek public office but the legal action concerns subject matter in the individual's official capacity as an elected officer, for purposes of this Article, that individual is an elected officer as long as that legal action continues.

(4) Expenditure.—An expenditure means any purchase, advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge, subscription of money, anything of value whatsoever, and any contract, agreement, promise, or other obligation to make an expenditure, by a legal defense fund for a permitted use as provided in G.S. 163–278.320. An expenditure forgiven by a person or entity to whom it is owed shall be reported as a legal expense donation.

(5) Legal action.—A formal dispute in a judicial, legislative, or administrative forum, including but not limited to, a civil or criminal action filed in a court, a complaint or protest filed with a board of elections, an election contest filed under Article 3 of Chapter 120 of the General Statutes or G.S. 163–182.13A, or a complaint filed with the State Ethics Commission or Legislative Ethics Committee. The term ''legal action'' also includes investigations made or conducted before the commencement of any formal proceedings. The term ''legal action'' does not include the election itself or the campaign for election.

(5a) Legal expense donation.—A legal expense donation means any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, subscription of money, or anything of value whatsoever, and any contract, agreement, or other obligation to make a contribution to a legal expense fund for a permitted use as provided in G.S. 163–278.320. The term ''legal expense donation'' does not include either of the following:

a. The provision of legal services to an elected officer by the State or any of its political subdivisions when those services are authorized or required by law, or

b. The provision of free or pro bono legal advice or legal services, provided that any costs incurred or expenses advanced for which clients are liable under other provisions of law shall be deemed legal expense donations.

(6) Legal expense fund.—Any collection of money for the purpose of funding a legal action, or a potential legal action, taken by or against an elected officer in that elected officer's official capacity.

(7) Official capacity.—Related to or resulting from the campaign for public office or related to or resulting from holding public office. ''Official capacity'' is not limited to ''scope and course of employment'' as used in G.S. 143–300.3.

(8) Public office.—As defined in G.S. 163–278.6.

(9) Treasurer.—An individual appointed by an elected officer or other individual or group of individuals collecting money for a legal expense fund.

Added by S.L. 2007–349, § 1, eff. Jan. 1, 2008. Amended by S.L. 2009–534, § 2(a), eff. Dec. 1, 2009.

Historical and Statutory Notes

2009 Legislation

S.L. 2009–534, § 2(a), rewrote the introductory paragraph of subd. (2), which prior thereto read:

''(2) Contribution.—As defined in G.S. 163-278.6. The term 'contribution' does not include either of the following:''

; in sub-subd. (2)b., substituted ''legal expense donations'' for ''contributions''; and rewrote subd. (4), which prior thereto read:

''(4) Expenditure.—As defined in G.S. 163-278.6.''

Once subd. (2) was amended to define ''legal expense donation'', it was redesignated as subd. (5a) pursuant to direction of the Revisor of Statutes to maintain alphabetical order.

§ 163–278.301. Creation of legal expense funds

(a) An elected officer, or another individual or group of individuals on the elected officer's behalf, shall create a legal expense fund if given a legal expense donation, other than from that elected officer's self, spouse, parents, brothers, or sisters, for any of the following purposes:

(1) To fund an existing legal action taken by or against the elected officer in that elected officer's official capacity.

(2) To fund a potential legal action taken by or against an elected officer in that elected officer's official capacity.

(b) This section shall not apply to any payment to the State or any of its political subdivisions.

(c) The legal expense fund shall comply with all provisions of this Article.

(d) If an elected officer funds legal actions entirely from that elected officer's own legal expense donations or those of the elected officer's spouse, parents, brothers, or sisters, that elected officer is not required to create a legal expense fund. If a legal expense fund accepts legal expense donations as described in subsection (a) of this section, that legal expense fund shall report the elected officer's own legal expense donations and those of those family members along with the other legal expense donations in accordance with G.S. 163–278.310.

(e) No more than one legal expense fund shall be created by or for an elected officer for the same legal action. Legal actions arising out of the same set of transactions and occurrences are deemed the same legal action for purposes of this subsection. A legal expense fund created for one legal action or potential legal action may be kept open by or on behalf of the elected officer for subsequent legal actions or potential legal actions.

(f) Contractual arrangements, including liability insurance, or commercial relationships or arrangements made in the normal course of business if not made for the purpose of lobbying, are not ''legal expense donations'' for purposes of this Article. Use of such contractual arrangements to fund legal actions does not by itself require the elected officer to create a legal expense fund. If a legal expense fund has been created pursuant to subsection (a) of this section, such contractual arrangements shall be reported as expenditures.

(g) A violation of this Article shall be punishable as a Class 1 misdemeanor.

Added by S.L. 2007–349, § 1, eff. Jan. 1, 2008. Amended by S.L. 2009–534, § 2(b), eff. Dec. 1, 2009.

Historical and Statutory Notes

2007 Legislation

Subsections (d1), (e) and (f) were redesignated as (e), (f) and (g), respectively, pursuant to the direction of the Revisor of Statutes.

2009 Legislation

S.L. 2009–534, § 2(b), in the introductory paragraph of subsec. (a), substituted ''legal expense donation'' for ''contribution''; in subsec. (b), substituted ''payment'' for ''contribution''; in subsec. (d), substituted ''legal expense donations or those'' for ''contributions or the contributions'' once, and substituted ''legal expense donations'' for ''contributions'' in three places; and in subsec. (f), substituted '' 'legal expense donations' '' for '' 'contributions' ''.

§§ 163–278.302 to 163–278.305. Reserved

§ 163–278.306. Treasurer

(a) Each legal expense fund shall appoint a treasurer and, under verification, report the name and address of the treasurer to the Board.

(b) A legal expense fund may remove its treasurer. In case of the death, resignation, or removal of its treasurer, the legal expense fund shall appoint a successor within 10 calendar days of the vacancy and certify the name and address of the successor in the same manner provided in the case of an original appointment.

(c) Every treasurer of a legal expense fund shall receive training from the Board as to the duties of the office within three months of appointment and at least once every four years thereafter.

Added by S.L. 2007–349, § 1, eff. Jan. 1, 2008.

§ 163–278.307. Detailed accounts to be kept by treasurer

(a) The treasurer of each legal expense fund shall keep detailed accounts, current within seven calendar days after the date of receiving a legal expense donation or making an expenditure, of all legal expense donations received and all expenditures made by or on behalf of the legal expense fund.

(b) Accounts kept by the treasurer of a legal expense fund or the accounts of a treasurer or legal expense fund at any bank or other depository may be inspected by a member, designee, agent, attorney, or employee of the Board who is making an investigation pursuant to G.S. 163–278.22.

(c) For purposes of this section, ''detailed accounts'' shall mean at least all information required to be included in the quarterly report required under this Article.

(d) When a treasurer shows that best efforts have been used to obtain, maintain, and submit the information required by this Article, any report of the legal expense shall be considered in compliance with this Article and shall not be the basis for criminal prosecution or the imposition of civil penalties. The State Board of Elections shall adopt rules to implement this subsection.

Added by S.L. 2007–349, § 1, eff. Jan. 1, 2008. Amended by S.L. 2009–534, § 2(c), eff. Dec. 1, 2009.

Historical and Statutory Notes

2009 Legislation

S.L. 2009–534, § 2(c), in subsec. (a), substituted ''legal expense donation'' for ''contribution'', and substituted ''legal expense donations'' for ''contributions''.

§ 163–278.308. Reports filed with Board

(a) The treasurer of each legal expense fund shall file with the Board the following reports:

(1) Organizational report.—The report required under G.S. 163–278.309.

(2) Quarterly report.—The report required under G.S. 163–278.310.

(b) Any report or attachment required by this Article must be filed under certification of the treasurer as true and correct to the best of the knowledge of that officer.

(c) The organizational report shall be filed within 10 calendar days of the creation of the legal expense fund. All quarterly reports shall be filed with the Board no later than 10 business days after the end of each calendar quarter.

(d) Treasurers shall electronically file each report required by this section that shows a cumulative total for the quarter in excess of five thousand dollars ($5,000) in legal expense donations or expenditures, according to rules adopted by the Board. The Board shall provide the software necessary to the treasurer to file the required electronic report at no cost to the legal expense fund.

(e) Any statement required to be filed under this Article shall be signed and certified as true and correct by the treasurer and shall be certified as true and correct to the best of the treasurer's knowledge. The elected officer creating the legal expense fund, or the other individual or group of individuals creating the legal expense fund on the elected officer's behalf, shall certify as true and correct to the best of their knowledge the organizational report and appointment of the treasurer. A certification under this Article shall be treated as under oath, and any individual making a certification under this Article knowing the information to be untrue is guilty of a Class I felony.

Added by S.L. 2007–349, § 1, eff. Jan. 1, 2008. Amended by S.L. 2009–534, § 2(d), eff. Dec. 1, 2009.

Historical and Statutory Notes

2009 Legislation

S.L. 2009–534, § 2(d), in subsec. (d), substituted ''legal expense donations'' for ''contributions''.

§ 163–278.309. Organizational report

(a) Each appointed treasurer shall file with the Board a statement of organization that includes all of the following:

(1) The name, address, and purpose of the legal expense fund.

(2) The names, addresses, and relationships of affiliated or connected elected officers, candidates, political committees, referendum committees, political parties, or similar organizations.

(3) The name, address, and position with the legal expense fund of the custodian of books and accounts.

(4) A listing of all banks, safety deposit boxes, or other depositories used, including the names and numbers of all accounts maintained and the numbers of all such safety deposit boxes used. The Board shall keep any account number required by this Article confidential except as necessary to conduct an audit or investigation, except as required by a court of competent jurisdiction, or except as confidentiality is waived by the treasurer. Disclosure of an account number in violation of this subdivision shall not give rise to a civil cause of action. This limitation of liability does not apply to the disclosure of account numbers in violation of this subdivision as a result of gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable.

(5) The name or names and address or addresses of any assistant treasurers appointed by the treasurer. Such assistant treasurers shall be authorized to act in the name of the treasurer, who shall be fully responsible for any act or acts committed by an assistant treasurer, and the treasurer shall be fully liable for any violation of this Article committed by any assistant treasurer.

(6) Any other information which might be requested by the Board that deals with the legal expense fund organization.

(b) Any change in information previously submitted in a statement of organization shall be reported to the Board within 10 calendar days following the change.

Added by S.L. 2007–349, § 1, eff. Jan. 1, 2008.

§ 163–278.310. Quarterly report

The treasurer of each legal expense fund shall be required to file a quarterly report with the Board containing all of the following:

(1) Legal expense donations.—The name and complete mailing address of each donor, the amount of the legal expense donation, the principal occupation of the donor, and the date the legal expense donation was received. The total sum of all legal expense donations to date shall also be plainly exhibited. The treasurer is not required to report the name of any donor making a total legal expense donation of fifty dollars ($50.00) or less in a calendar quarter, but shall instead report the fact that the treasurer has received a total legal expense donation of fifty dollars ($50.00) or less, the amount of the legal expense donation, and the date of receipt.

(2) Expenditures.—A list of all expenditures made by or on behalf of the legal expense fund. The report shall list the name and complete mailing address of each payee, the amount paid, the purpose, and the date such payment was

made. The total sum of all expenditures to date shall also be plainly exhibited. The payee shall be the entity to whom the legal expense fund is obligated to make the expenditure. If the expenditure is to a financial institution for revolving credit or a reimbursement for a payment to a financial institution for revolving credit, the statement shall also include a specific itemization of the goods and services purchased with the revolving credit. If the obligation is for more than one good or service, the statement shall include a specific itemization of the obligation so as to provide a reasonable understanding of the obligation.

(3) Loans.—All proceeds from loans shall be recorded separately with a detailed analysis reflecting the amount of the loan, the source, the period, the rate of interest, and the security pledged, if any, and all makers and endorsers.

Added by S.L. 2007–349, § 1, eff. Jan. 1, 2008. Amended by S.L. 2009–534, § 2(e), eff. Dec. 1, 2009.

Historical and Statutory Notes

2009 Legislation

S.L. 2009–534, § 2(e), rewrote subd. (1), which prior thereto read:

"(1) Contributions.—The name and complete mailing address of each contributor, the amount of the contribution, the principal occupation of the contributor, and the date the contribution was received. The total sum of all contributions to date shall also be plainly exhibited. The treasurer is not required to report the name of any contributor making a total contribution of fifty dollars ($50.00) or less in a calendar quarter, but shall instead report the fact that the treasurer has received a total contribution of fifty dollars ($50.00) or less, the amount of the contribution, and the date of receipt."

§§ 163–278.311 to 163–278.315. Reserved

§ 163–278.316. Limitations on legal expense donations

(a) No entity shall make, and no treasurer shall accept, any monetary legal expense donation in excess of fifty dollars ($50.00) unless such legal expense donation is in the form of a check, draft, money order, credit card charge, debit, or other noncash method that can be subject to written verification. No legal expense donation in the form of check, draft, money order, credit card charge, debit, or other noncash method may be made or accepted unless it contains a specific designation of the intended donee chosen by the donor.

(b) The State Board of Elections may adopt rules as to the reporting and verification of any method of legal expense donation payment allowed under this Article. For legal expense donations by money order, the State Board shall adopt rules to ensure an audit trail for every legal expense donation so that the identity of the donor can be determined.

(c) For any legal expense donation made by credit card, the credit card account number of a donor is not a public record.

(d) No legal expense fund shall accept legal expense donations from a corporation, labor union, insurance company, professional association, or business entity in excess of four thousand dollars ($4,000) per calendar year. No legal expense fund shall accept legal expense donations from a corporation which when totaled with legal expense donations to the same legal expense fund for the same calendar year from any affiliated corporation exceed the per calendar year legal expense donation limits for that legal expense fund. No legal expense fund shall accept legal expense donations from a labor union which when totaled with legal expense donations to the same legal expense fund for the same calendar year from any affiliated labor union exceed the per calendar year legal expense donation limits for that legal expense fund. No legal expense fund shall accept legal expense donations from an insurance company which when totaled with legal expense donations to the same legal expense fund for the same calendar year from any affiliated insurance company exceed the per calendar year legal expense donation limits for that legal expense fund. No legal expense fund shall accept legal expense donations from a professional association which when totaled with legal expense donations to the same legal expense fund for the same calendar year from any affiliated professional association exceed the per calendar year legal expense donation limits for that legal expense fund. No legal expense fund shall accept legal expense donations from a business entity which when totaled with legal expense donations to the same legal expense fund for the same calendar year from any affiliated business entity exceed the per calendar year legal expense donation limits for that legal expense fund. The definitions of corporation, labor union, insurance company, professional association, and business entity are the same as those in G.S. 163–278.6. This subsection does not apply to political committees created pursuant to G.S. 163–278.19(b), except that no legal expense fund shall accept a legal expense donation which would be a violation of G.S. 163–278.13B if accepted by a candidate or political committee. This subsection does not apply to corporations permitted to make contributions in G.S. 163–278.19(f).

(e) No entity shall make a legal expense donation to a legal expense fund that the legal expense fund could not accept under subsection (d) of this section.

Added by S.L. 2007–349, § 1, eff. Jan. 1, 2008. Amended by S.L. 2009–534, § 2(f), eff. Dec. 1, 2009.

Historical and Statutory Notes

2009 Legislation

S.L. 2009–534, § 2(f), throughout the section, substituted ''legal expense donation'' for ''contribution'', substituted ''donor'' for ''contributor'', and substitute ''legal expense donations'' for ''contributions''; and in subsec. (a), substituted ''donee'' for ''contributee''.

§§ 163–278.317 to 163–278.319. Reserved

§ 163–278.320. Permitted uses of legal expense funds

(a) A legal expense fund may be used for reasonable expenses actually incurred by the elected officer in relation to a legal action or potential legal action brought by or against the elected officer in that elected officer's official capacity. The elected officer's campaign itself shall not be funded from a legal expense fund.

(b) Upon closing a legal expense account, the treasurer shall distribute the remaining monies in the legal expense fund to any of the following:

(1) The Indigent Persons' Attorney Fee Fund under Article 36 of Chapter 7A of the General Statutes.

(2) The North Carolina State Bar for the provision of civil legal services for indigents.

(3) Payments to an organization described in section 170(c) of the Internal Revenue Code of 1986 (26 U.S.C. § 170(c)), provided that the candidate or the candidate's spouse, children, parents, brothers, or sisters are not employed by the organization.

(4) To return all or a portion of a legal expense donation to the donor.

(5) Payment to the Escheat Fund established by Chapter 116B of the General Statutes.

Added by S.L. 2007–349, § 1, eff. Jan. 1, 2008. Amended by S.L. 2009–534, § 2(g), eff. Dec. 1, 2009.

Historical and Statutory Notes

2009 Legislation

S.L. 2009–534, § 2(g), in subd. (b)(3), substituted ''Payments'' for ''Contributions''; and in subd. (b)(4), substituted ''legal expense donation to the donor'' for ''contribution to the contributor''.

§§ 163–278.321 to 163–278.329. Reserved

SUBCHAPTER IX. MUNICIPAL ELECTIONS

Article 23

Municipal Election Procedure

Section

163–279. Time of municipal primaries and elections.
163–280. Municipal boards of elections.
163–280.1. Municipal boards of elections abolished.
163–281. Municipal precinct election officials.
163–282. Residency defined for voting in municipal elections.
163–283. Right to participate or vote in party primary.
163–283.1. Voting in nonpartisan primary.
163–284. Mandatory administration by county boards of elections.
163–284.1. Special district elections conducted by county.
163–285. Administration by county board of elections; optional by Morganton, Granite Falls, Old Fort, and Rhodhiss.
163–286. Conduct of municipal and special district elections; application of Chapter 163.
163–287. Special elections; procedure for calling.
163–288. Registration for city elections; county and municipal boards of elections.
163–288.1. Activating voters for newly annexed or incorporated areas.
163–288.1A. Activating voters when charter revised.
163–288.2. Registration in area proposed for incorporation or annexed.
163–288.3. Payment of cost of elections on question of formation of a new municipality or special district.
163–289. Right to challenge; challenge procedure.
163–290. Alternative methods of determining the results of municipal elections.

Cross References

Election and terms of office of sanitary district boards, see § 130A–50.
Metropolitan water districts; procedure for inclusion of additional political subdivision or unincorporated area; notice and hearing; elections; actions questioning validity of elections, see § 162A–35.
Sanitary district board special election if election not held in November of 1981, see § 130A–52.
Soil and water conservation district board of supervisors; elective members; certain duties, see § 139–6.

§ 163–279. Time of municipal primaries and elections

(a) Primaries and elections for offices filled by election of the people in cities, towns, incorporated villages, and special districts shall be held in 1973 and every two or four years thereafter as provided by municipal charter on the following days:

(1) If the election is nonpartisan and decided by simple plurality, the election shall be held on Tuesday after the first Monday in November.

(2) If the election is partisan, the election shall be held on Tuesday after the first Monday in November, the first

primary shall be held on the second Tuesday after Labor Day, and the second primary, if required, shall be held on the fourth Tuesday before the election.

(3) If the election is nonpartisan and the nonpartisan primary method of election is used, the election shall be held on Tuesday after the first Monday in November and the nonpartisan primary shall be held on the fourth Tuesday before the election.

(4) If the election is nonpartisan and the election and runoff election method of election is used, the election shall be held on the fourth Tuesday before the Tuesday after the first Monday in November, and the runoff election, if required, shall be held on Tuesday after the first Monday in November.

(b) Notwithstanding the provisions of subsection (a), the next regular municipal primary and election in Winston-Salem shall be held at the time of the primary and election for county officers in 1974, officers elected at that time shall serve terms of office expiring on the first Monday in December, 1977. Beginning in 1977, municipal primaries and elections in Winston-Salem shall be held at the time provided in this section.

(c) Officers of sanitary districts elected in 1970 shall hold office until the first Monday in December, 1973, notwithstanding G.S. 130-126. Beginning in 1973, sanitary district elections shall be held at the times provided in this section or in G.S. 130A-50(b1).

Added by Laws 1971, c. 835, § 1. Amended by Laws 1973, c. 1115; Laws 1985, c. 768, §§ 24 to 26; Laws 1987, c. 22, § 2; S.L. 2006–192, § 3, eff. Jan. 1, 2007.

Historical and Statutory Notes

2006 Legislation

S.L. 2006–192, § 3, eff. Jan. 1, 2007, amended subd. (a)(2) by substituting ''second'' for ''sixth'', ''after Labor Day'' for ''before the election'', and ''fourth'' for ''third''.

S.L. 2006–192, § 19, provides:

''Sections 2 through 5 of this act are effective January 1, 2007, and apply to all primaries and elections conducted on or after that date. Sections 8 and 9 of this act are effective when this act becomes law and apply to vacancies occurring on or after that date. Section 17 of this act and the portion of Section 15 of this act that affects G.S. 163–278.13(e3) become effective January 1, 2007, and apply to contributions made or accepted on or after that date. Section 18 of this act becomes effective for taxable years beginning on or after January 1, 2006. The remainder of this act is effective when it becomes law.''

Local Modifications

Rockingham County: Laws 1993, c. 15, § 2; S.L. 2005–307, § 5.

City of Albemarle: Laws 1987 (Reg. Sess., 1996), c. 881, § 3.

Town of Walkertown: Laws 1983 (Reg. Sess., 1984), c. 936.

Charlotte–Meckleburg Board of Education: Laws 1993, c. 167, § 1.

Cross References

Election and terms of office of sanitary district boards, see § 130A–50.
Merger of two contiguous sanitary districts, see § 130A–83.

Notes of Decisions

Injunctive relief 1

1. Injunctive relief

Temporary denial by county board of elections of annexed subdivision residents' right to vote in city election and right to file for public office was justified since there existed a dispute between the United States Justice Department and the city concerning annexation of those subdivisions, and thus injunctive relief would not be granted under statute prohibiting the deprivation of civil rights by state action. McDowell v. Edmisten, 1981, 523 F.Supp. 416. Civil Rights ⚷ 1456

Annexed subdivision residents failed to demonstrate a likelihood of immediate, irreparable harm flowing from temporary denial of the right to vote in city election and file for public office due to dispute existing between the United States Justice Department and city concerning annexation of those subdivisions such as would entitle them to relief under statute prohibiting the deprivation of civil rights by state action. McDowell v. Edmisten, 1981, 523 F.Supp. 416. Civil Rights ⚷ 1419

§ 163–280. Municipal boards of elections

(a) In each city that is authorized and elects to conduct its own elections in the manner provided by G.S. 163-285, there shall be a municipal board of elections consisting of three persons of good moral character who are registered voters of the city. Members of the municipal board of elections shall be appointed by the city council at its regularly scheduled meeting held next before June 1 in each year preceding each regular municipal primary or election, and their terms of office shall be for two years beginning June 1 and until their successors are appointed and qualify. In municipalities where there are registered voters of more than one party, not more than two members of the municipal board of elections shall belong to the same political party, if the municipal officers are elected on a nonpartisan or partisan basis.

No person shall serve as a member of a municipal board of elections who holds any elective office, who is a candidate for any elective public office, who is a member of a county board of elections, or who is serving as campaign manager for any candidate in any election.

(b) On the Monday before the filing period opens for elections in that municipality, the newly appointed members of the municipal board of elections shall meet at the city hall or some other place specified by the city council and shall take the following oath of office:

> "I . . . . . ., do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain, and defend the Constitution of said State, not inconsistent with the Constitution of the United States; and that I will well and truly execute the duties of the office of member

of the ..... municipal board of elections to the best of my knowledge and ability, according to law. So help me, God.''

After each member has taken the oath, the board shall organize by electing one of its members chairman and another member secretary of the board.

(c) On the Monday following the seventh Saturday before each regular municipal primary or election, the municipal board of elections shall meet and appoint precinct chief judges and judges of elections. The municipal board of elections may then or at any time thereafter appoint a supervisor of elections, who shall have all of the powers and duties of a director of elections to a county board of elections. The board may hold other meetings at such times and places as the chairman of the board, or any two members thereof, may direct, for the performance of duties prescribed by law. A majority of the members shall constitute a quorum for the transaction of business.

(d) The municipal board of elections shall keep minutes recording all proceedings and findings at each of its meetings. The minutes shall be recorded in a book which shall be kept in the board office if there be one, otherwise, the minute book shall remain in the custody of the secretary of the board.

(e) The compensation of members of the municipal board of elections shall be fixed by the city council.

(f) Municipal boards of elections shall have, with respect to municipal elections, all of the powers conferred on county boards of elections by G.S. 163-33 and G.S. 163-34 with respect to national, State, district, and county elections.

(g) No municipal, county, State or national chairman of any political party shall have the right to recommend to the city council the names of any person for appointment to membership on a municipal board of elections.

(h) Whenever a vacancy occurs in the membership of any municipal board of elections for any cause, the appointing city council shall fill the vacancy within 30 days of when it occurs.

(i) The city council with power to appoint a member of a municipal board of elections or the State Board of Elections may remove a member of a municipal board of elections for incompetency, neglect or failure to perform duties, fraud, or any other satisfactory cause. Before exercising this removal power, the city council or the State Board of Elections shall notify the municipal board member affected and give him an opportunity to be heard.

Added by Laws 1971, c. 835, § 1. Amended by Laws 1973, c. 793, §§ 75 to 79; Laws 1973, c. 1223, § 8; Laws 1975, c. 19, § 70; Laws 1977, c. 626, § 1; Laws 1983, c. 644, § 3; Laws 1985, c. 599, § 4; Laws 1985, c. 768, § 27; Laws 1993 (Reg. Sess., 1994), c. 762, §§ 5, 59, eff. Jan. 1, 1995; Laws 1995, c. 243, § 1, eff. Jan. 1, 1996.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

''Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.'' [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

Laws 1995, c. 243, § 1, provides:

''Wherever the term 'supervisor' appears in the General Statutes of North Carolina or in any local act in reference to the county supervisor of elections as provided in G.S. 163–35, the term is changed to read 'director.' ''

§ 163–280.1. Municipal boards of elections abolished

Municipal boards of elections in all municipalities other than the City of Morganton, the Town of Granite Falls, the Town of Old Fort, and the Town of Rhodhiss, whether created by general statute or by local act, are abolished. The terms of all members of all such municipal boards of elections which are abolished by this section, and all precinct officials appointed by such municipal boards of elections, if those terms have not expired prior to January 1, 2002, expire January 1, 2002.

Added by S.L. 2001–374, § 1, eff. Jan. 1, 2002.

Historical and Statutory Notes

2001 Legislation

S.L. 2001–374, §§ 4 to 6, provide:

''Section 4. The State Board of Elections shall inspect the operations of the municipal boards of elections in the City of Morganton, the Town of Granite Falls, the Town of Old Fort, and the Town of Rhodhiss during September, October, or November of 2001. The State Board shall make subsequent inspections as needed. Those municipalities shall cooperate with the State Board fully. If an inspection generates findings that election laws or regulations have been violated, the State Board shall take appropriate action under G.S. 163–304 or other applicable law.

''Section 5. This act prevails over local acts.

''Section 6. Sections 1 and 2 of this act become effective January 1, 2002, and apply to all primaries and elections held on and after that date. Section 3 of this act becomes effective when this act becomes law with respect to the City of Morganton, the Town of Granite Falls, the Town of Old Fort, and the Town of Rhodhiss. Section 3 of this act becomes effective January 1, 2002, with respect to all other municipalities. Section 4 of this act is effective when this act becomes law. The remainder of this act is effective when it becomes law.''

§ 163–281. Municipal precinct election officials

(a) Chief Judges and Judges.—At the meeting required by G.S. 163–280(c), the municipal board of elections shall appoint one person to act as chief judge and two other persons to act as judges of election for each precinct in the city. Not more than one judge in each precinct where there are registered voters of more than one political party shall belong to the same political party as the chief judge, if the municipal elections are on a nonpartisan or

partisan basis. If the city and county precincts are identical and the board so chooses, it may decline to exercise its power to appoint precinct chief judge and judges, in which event the persons appointed by the county board of elections as precinct chief judge and judges in each precinct within the city shall serve as such for municipal elections under authority and subject to the supervision and control of the municipal board of elections. Nothing herein shall prohibit a municipal board of elections from using the chief judge and judges of election appointed by the county board of elections in those precincts which are not identical provided the county board of elections agrees, in writing, to such arrangement. Chief judges and judges shall be appointed for terms of two years. Except as modified by this Article, municipal precinct chief judge and judges shall meet all of the qualifications, perform all the duties, and have all of the powers imposed and conferred on county precinct chief judge and judges by G.S. 163–41(a), 163–47, and 163–48. Municipal precinct chief judge and judges shall not have the powers and duties with respect to registration of voters prescribed by G.S. 163–47(b). Immediately after appointing chief judge and judges as herein provided, the municipal board of elections shall publish the names of the persons appointed in some newspaper having a general circulation in the city, or in lieu thereof, by posting at the city hall or some other prominent place within the city, and shall notify each person appointed of his appointment. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice.

(b) Assistants at Polls.—Municipal boards of elections shall have the same authority to appoint assistants to aid the chief judge and judges as is conferred on county boards of elections by G.S. 163–42.

(c) Ballot Counters.—Municipal boards of elections shall have the same authority to appoint ballot counters as is conferred on county boards of elections by G.S. 163–43.

(d) Markers.—Municipal boards of elections shall not appoint markers, and markers shall not be used in municipal elections.

(e) Observers.—In cities holding partisan municipal elections, the chairman of each political party in the county shall have the same authority to appoint observers for municipal elections as he has for county elections under G.S. 163–45.

(f) Compensation.—Precinct officials and assistants appointed under this section shall be paid such sums as the city council may fix. County precinct officials and assistants serving in municipal elections in default of appointment of precinct officials by the municipal board of elections shall be compensated by the city in the sums specified in G.S. 163–46.

(g) Party Chairman Not to Recommend Persons for Appointment.—No municipal, county, State or national chairman of any political party shall have the right to recommend to the municipal board of elections the name of any person for appointment as a precinct chief judge, judge of elections, assistant or ballot counter.

(h) Designation of Precincts in Which Officials to Serve.—The municipal board of elections may designate the precinct in which each chief judge, judge, assistant, ballot counter, or observer or other officers of elections shall serve; and, after notice and hearing, may remove any chief judge, judge, assistant, ballot counter, observer, supervisor of elections or other officers of elections appointed by it for incompetency, failure to discharge the duties of office, failure to qualify within the time prescribed by law, fraud, or for any other satisfactory cause.

(i) Powers and Duties.—Except as otherwise provided in this Chapter, precinct assistants, ballot counters, observers, and supervisors of elections and other officers of elections appointed by the municipal board of elections shall have the same powers and duties with respect to municipal elections as precinct assistants, ballot counters, observers, and supervisors of elections and other officers of elections appointed by county boards of elections.

Added by Laws 1971, c. 835, § 1. Amended by Laws 1973, c. 793, §§ 80 to 83; Laws 1973, c. 793, § 94; Laws 1973, c. 1223, § 9; Laws 1977, c. 626, § 1; Laws 1985, c. 768, § 28; Laws 1989, c. 93, § 8; Laws 1993 (Reg. Sess., 1994), c. 762, § 60, §§ 5, 60, eff. Jan. 1, 1995.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

"Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences." [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

Notes of Decisions

Construction and application 1

1. Construction and application

Even if a statute required the registrar in town elections to be a freeholder, that a registrar was not a freeholder would be a mere irregularity, which would not affect the result of the election, if not in fact prejudicial. Town of Hendersonville v. Jordan, 1908, 63 S.E. 167, 150 N.C. 35. Elections ⟹ 55

§ 163–282. Residency defined for voting in municipal elections

The rules for determining residency within a municipality shall be the same as prescribed in G.S. 163-57 for determining county

residency. No person shall be entitled to reside in more than one city or town at the same time.

Added by Laws 1971, c. 835, § 1.

§ 163–283. Right to participate or vote in party primary

No person shall be entitled to vote or otherwise participate in the primary election of any political party unless that person complies with all of the following:

(1) Is a registered voter.

(2) Has declared and has had recorded on the registration book or record the fact that the voter affiliates with the political party in whose primary the voter proposes to vote or participate.

(3) Is in good faith a member of that party.

Notwithstanding the previous paragraph, any unaffiliated voter who is authorized under G.S. 163–119 may also vote in the primary if the voter is otherwise eligible to vote in that primary except for subdivisions (2) and (3) of the previous paragraph.

Any person who will become qualified by age to register and vote in the general election for which the primary is held, even though not so qualified by the date of the primary election, shall be entitled to register while the registration books are open during the regular registration period prior to the primary and then to vote in the primary after being registered, provided however, under full-time and permanent registration, such an individual may register not earlier than 60 days nor later than the last day for making application to register under G.S. 163–82.6(c) prior to the primary. In addition, persons who will become qualified by age to register and vote in the general election for which the primary is held, who do not register during the special period may register to vote after such period as if they were qualified on the basis of age, but until they are qualified by age to vote, they may vote only in primary elections. Such a person also may register and vote in the primary and general election pursuant to G.S. 163–82.6A(f).

Added by Laws 1971, c. 835, § 1. Amended by Laws 1983, c. 331, § 5; Laws 1987, c. 408, § 5; Laws 1987, c. 457, § 2; Laws 1991 (Reg. Sess., 1992), c. 1032, § 8; Laws 1993 (Reg. Sess., 1994), c. 762, § 62, eff. Jan. 1, 1995; S.L. 2008–150, § 5(c), eff. Aug. 2, 2008; S.L. 2009–541, § 24, eff. Aug. 28, 2009.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

"Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecu-

tions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.'' [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

2008 Legislation

S.L. 2008–150, § 5(c), in the third paragraph, substituted ''163–119'' for ''163–116''; in the last paragraph, in the first sentence, following ''qualified by age'', deleted ''or residence''.

2009 Legislation

S.L. 2009–541, § 24, in the first undesignated paragraph, in the first sentence, substituted ''that person complies with all of the following'' for ''he'', and in subds. (1) and (2), made nonsubstantive changes; and, in the third undesignated paragraph, added the third sentence.

§ 163–283.1. Voting in nonpartisan primary

Any person who will become qualified by age to register and vote in the general election for which a nonpartisan primary is held, even though not so qualified by the date of the primary, shall be entitled to register for the primary and general election prior to the primary and then to vote in the primary after being registered. Such a person may register not earlier than 60 days nor later than the last day for making application to register under G.S. 163–82.6(c) prior to the primary. Such a person also may register and vote in the primary and general election pursuant to G.S. 163–82.6A(f).

Added by S.L. 2009–541, § 25, eff. Aug. 28, 2009.

§ 163–284. Mandatory administration by county boards of elections

(a) No later than 30 days after January 1, 1973, every municipality which conducts its elections on a partisan basis, and every special district shall deliver its registration books to the county board of elections which shall, forthwith, assume the responsibility for administration of the registration and election process in such municipalities and special districts. The county boards of elections shall have authority to compare the registration books of such municipalities and special districts with the county registration books. Any person found to be registered for municipal or special district elections but not registered on the county registration records shall be required to register with the county board of elections in order to maintain his municipal or special district registration. The county board of elections shall forthwith notify any such person by mail to the address appearing on the municipal or special district registration records that he must reregister. The county board of elections shall have authority to require maps or definitive outlines of the boundaries constituting such municipality or special district and shall be immediately advised of any change or relocation of such boundaries.

(b) The registration of voters and the conduct of all elections in municipalities and special districts covered under this section shall be under the authority of the county board of elections. Any

contested election or allegations of irregularities shall be made to the county board of elections and appeals from such rulings may be made to the State Board of Elections under existing statutory provisions and rules or regulations adopted by the State Board of Elections.

Each municipality and special district shall reimburse the county board of elections for the actual cost involved in the administration required under (a) and (b) of this section.

Added by Laws 1971, c. 835, § 1. Amended by Laws 1973, c. 793, § 84; Laws 1985, c. 768, § 29.

§ 163–284.1. Special district elections conducted by county

All elections held in and for a sanitary district, fire district or other special district, including school administrative units, shall be conducted by the county board of elections notwithstanding the fact that the taxes of the special district may be levied by a city.

Added by Laws 1971, c. 835, § 1.

§ 163–285. Administration by county board of elections; optional by Morganton, Granite Falls, Old Fort, and Rhodhiss

(a) The City of Morganton, the Town of Old Fort, the Town of Granite Falls, and the Town of Rhodhiss may conduct their own elections, or they may request the county board of elections of the county in which they are located to conduct their elections. A county board of elections shall conduct the elections of each municipality so requesting and the municipality shall pay the cost thereof according to a formula mutually agreed upon by the county board of elections and the municipal council. The elections for any other municipality shall be conducted by the county board of elections, and the municipality shall pay the cost thereof according to a formula mutually agreed upon by the county board of elections and the municipal council. If a mutual agreement cannot be reached, then the State Board of Elections shall prescribe the agreement, to which both parties are bound.

(1) The elections of municipalities which lie in more than one county shall be conducted either (i) by the county in which the greater number of the municipality's citizens reside, according to the most recent federal census of population, or (ii) jointly by the boards of elections of each county in which such municipality is located, as may be mutually agreed upon by the county boards of elections so affected, or (iii) in the case of the City of Morganton or the Towns of Old Fort, Granite Falls, or Rhodhiss, by a municipal board of elections appointed by the governing body of the municipality. The State Board of Elections shall have authority to promulgate regulations for more detailed administration and conduct of municipal elections by county

or municipal boards of elections for municipalities situated in more than one county.

(2) Any municipality electing to have its elections conducted by the county board of elections as provided by this section, shall do so no later than January 1, 1973 provided, however, the county board of elections shall be entitled to 90 days' notice prior to the effective date decided upon by the municipality. For efficient administration the State Board of Elections shall have the authority to delay the effective date of all such agreements under this section and shall set a date certain on which such agreements shall commence. The State Board of Elections shall also have the authority to permit any municipality to exercise the options under this Article subsequent to the deadline stated in this section.

(3) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 762, s. 63.

(b) The county board of elections shall have authority to require maps or definitive outlines of the boundaries constituting any municipality or special district whose elections that county board administers and shall be immediately advised of any change or relocation of such boundaries.

(c) The term ''special district'' includes a sanitary district, fire district, or school administrative unit, notwithstanding the fact that the taxes of the special district may be levied by a municipality.

(d) All election results of elections held under this Article shall be reported to the State Board within 30 days of the certification of the election.

Added by Laws 1971, c. 835, § 1. Amended by Laws 1973, c. 171; Laws 1985, c. 768, § 30; Laws 1993 (Reg. Sess., 1994), c. 762, §§ 5, 63, eff. Jan. 1, 1995; S.L. 2001–374, § 2, eff. Jan. 1, 2002; S.L. 2007–391, § 38, eff. Aug. 19, 2007.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

''Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.'' [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

2001 Legislation

S.L. 2001–374, § 2, eff. Jan. 1, 2002, rewrote the section, which prior thereto read:

''§ 163–285. Administration by county board of elections; optional by municipality

''Any city, town or incorporated village which conducts its elections on a nonpartisan basis may conduct its own elections, or it may request the county

board of elections of the county in which it is located to conduct its elections. A county board of elections shall conduct the elections of each city, town or incorporated village so requesting and the city, town or incorporated village shall pay the cost thereof according to a formula mutually agreed upon by the county board of elections and the city council. If a mutual agreement cannot be reached, then the State Board of Elections shall prescribe the agreement, to which both parties are bound, or, in its discretion, the State Board of Elections shall have authority to instruct the county board of elections to decline the administration of the elections for such city, town or incorporated village.

''(1) The elections of cities, towns or incorporated villages which lie in more than one county shall be conducted either (i) by the county in which the greater number of the city's citizens reside, according to the most recent federal census of population, or (ii) jointly by the boards of elections of each county in which such city, town or incorporated village is located, as may be mutually agreed upon by the county boards of elections so affected, or (iii) by a municipal board of elections appointed by the governing body of the municipality. The State Board of Elections shall have authority to promulgate regulations for more detailed administration and conduct of municipal elections by county or municipal boards of elections for cities situated in more than one county.

''(2) Any city, town or incorporated village electing to have its elections conducted by the county board of elections as provided by this section, shall do so no later than January 1, 1973 provided, however, the county board of elections shall be entitled to 90 days' notice prior to the effective date decided upon by the municipality. For efficient administration the State Board of Elections shall have the authority to delay the effective date of all such agreements under this section and shall set a date certain on which such agreements shall commence. The State Board of Elections shall also have the authority to permit any city, town or incorporated village to exercise the options under this Article subsequent to the deadline stated in this section.

''(3) Repealed by Laws 1993, c. 762, § 63, eff. Jan. 1, 1995.''

S.L. 2001–374, §§ 4 to 6, provide:

''Section 4. The State Board of Elections shall inspect the operations of the municipal boards of elections in the City of Morganton, the Town of Granite Falls, the Town of Old Fort, and the Town of Rhodhiss during September, October, or November of 2001. The State Board shall make subsequent inspections as needed. Those municipalities shall cooperate with the State Board fully. If an inspection generates findings that election laws or regulations have been violated, the State Board shall take appropriate action under G.S. 163–304 or other applicable law.

''Section 5. This act prevails over local acts.

''Section 6. Sections 1 and 2 of this act become effective January 1, 2002, and apply to all primaries and elections held on and after that date. Section 3 of this act becomes effective when this act becomes law with respect to the City of Morganton, the Town of Granite Falls, the Town of Old Fort, and the Town of Rhodhiss. Section 3 of this act becomes effective January 1, 2002, with respect to all other municipalities. Section 4 of this act is effective when this act becomes law. The remainder of this act is effective when it becomes law.''

2007 Legislation

S.L. 2007–391, § 38, added subsec. (d).

Local Modifications

Edgecombe County: Laws 1985 (Reg. Sess., 1986), c. 988.

Nash County: Laws 1985 (Reg. Sess., 1986), c. 988.

Wilson County: Laws 1985 (Reg. Sess., 1986), c. 988.

§ 163–286. Conduct of municipal and special district elections; application of Chapter 163

(a) To the extent that the laws, rules and procedures applicable to the conduct of primary, general and special elections by county boards of elections under Articles 3, 4, 5, 6, 7A, 8, 9, 10, 11, 12, 13, 14, 15, 19 and 22 of this Chapter are not inconsistent with

provisions of this Article, those laws, rules and procedures shall apply to municipal and special district elections and their conduct by the board of elections conducting those elections. The State Board of Elections shall have the same authority over all such elections as it has over county and State elections under those Articles.

(b) Any city, town or incorporated village which elects to conduct its own elections, under the provisions of G.S. 163–285, shall comply with the requirements contained in G.S. 163–280 and G.S. 163–281.

Added by Laws 1971, c. 835, § 1. Amended by Laws 1973, c. 793, § 85; Laws 1985, c. 768, § 31; Laws 1993 (Reg. Sess., 1994), c. 762, § 64, eff. Jan. 1, 1995.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

"Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences." [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

§ 163–287. Special elections; procedure for calling

Any city, whether its elections are conducted by the county board of elections or the municipal board of elections, or any special district shall have authority to call special elections as permitted by law. Prior to calling a special election, the city council or the governing body of the special district shall adopt a resolution specifying the details of the election, and forthwith deliver the resolution to the appropriate board of elections. The resolution shall call on the board of elections to conduct the election described in the resolution and shall state the date on which the special election is to be conducted. The special election may be held at the same time as any other State, county or municipal primary, election or special election or referendum, but may not otherwise be held within the period of time beginning 30 days before and ending 30 days after the date of any other primary, election, special election or referendum held for that city or special district.

Legal notice of the special election shall be published no less than 45 days prior to the special election. The appropriate board of elections shall be responsible for publishing the legal notice. The notice shall state the date and time of the special election, the issue to be submitted to the voters, and the precincts in which the

election will be held. This paragraph shall not apply to bond elections.

Added by Laws 1971, c. 835, § 1. Amended by Laws 1973, c. 793, § 86; Laws 1985, c. 768, § 32; Laws 1993 (Reg. Sess., 1994), c. 762, § 65, eff. Jan. 1, 1995.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

''Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.'' [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

Cross References

911 charges, adoption of fees, see § 62A–4.
Applicability of unified government, see § 153A–473.
Cities and towns; form of government; amendment by ordinance, see § 160A–102.
Cities and towns; form of government; initiative petitions for charter amendments, see § 160A–104.
Cities and towns; property taxes, see § 160A–209.
County adoption of tax, local sales taxes, see § 163–518.
County land transfer tax, levy, see § 105–601.
One-quarter cent county sales and use tax, levy, see § 105–537.
Swain county settlement trust fund, see § 147–69.6.

§ 163–288. Registration for city elections; county and municipal boards of elections

Regardless of whether the municipal election is conducted by the county board of elections or by a municipal board of elections, the registration record of the county board of elections shall be the official registration record for voters to vote in all elections, city, district, county, State or national.

Added by Laws 1971, c. 835, § 1. Amended by Laws 1973, c. 793, § 87; Laws 1981, c. 33, § 5; Laws 1985, c. 768, § 33; Laws 1991 (Reg. Sess., 1992), c. 1032, § 7; Laws 1993 (Reg. Sess., 1994), c. 762, § 66, eff. Jan. 1, 1995.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

''Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.'' [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

§ 163–288.1. Activating voters for newly annexed or incorporated areas

(a) Whenever any new city or special district is incorporated or whenever an existing city or district annexes any territory, the city or special district shall cause a map of the corporate or district limits to be prepared from the boundary descriptions in the act, charter or other document creating the city or district or authorizing or implementing the annexation. The map shall be delivered to the county or municipal board of elections conducting the elections for the city or special district. The board of elections shall then activate for city or district elections each voter eligible to vote in the city or district who is registered to vote in the county to the extent that residence addresses shown on the county registration certificates can be identified as within the limits of the city or special district. Each voter whose registration is thus activated for city or special district elections shall be so notified by mail. The cost of preparing the map of the newly incorporated city or special district or of the newly annexed area, and of activating voters eligible to vote therein, shall be paid by the city or special district. In lieu of the procedures set forth in this section, the county board of elections may use either of the methods of registration of voters set out in G.S. 163-288.2 when activating voters pursuant to the incorporation of a new city or election of city officials or both under authority of an act of the General Assembly or when activating voters after an annexation of new territory by a city or special district under Chapter 160A, Article 4A, or other general or local law.

(b) Each voter whose registration is changed by the county or municipal board of elections in any manner pursuant to any annexation or expunction under this subsection shall be so notified by mail.

(c) The State Board of Elections shall have authority to adopt regulations for the more detailed administration of this section.

Added by Laws 1973, c. 793, § 88. Amended by Laws 1977, c. 752, § 1; Laws 1985, c. 768, § 34.

§ 163–288.1A. Activating voters when charter revised

Whenever a city has not held the most recent two elections required by its charter or this Chapter, and the General Assembly amends the charter of that city and provides that the county board of elections shall conduct the elections of that city, voters shall be activated for the elections of that city in accordance with G.S. 163-288.1 or G.S. 163-288.2. In such a case, the county shall prepare the map required by G.S. 163-288.1(a).

Added by Laws 1985, c. 350, § 1.

§ 163–288.2. Registration in area proposed for incorporation or annexed

(a) Whenever the General Assembly incorporates a new city and provides in the act of incorporation for a referendum on the question of incorporation or for a special election for town officials or for both, or whenever an existing city or special district annexes new territory under the provisions of Chapter 160A, Article 4A, or other general or local law, the board of elections of the county in which the proposed city is located or in which the newly annexed territory is located shall determine those individuals eligible to vote in the referendum or special election or in the city or special district elections. In determining the eligible voters the board may, in its discretion, use either of the following methods:

METHOD A.—The board of elections shall prepare a list of those registered voters residing within the proposed city or newly annexed territory. The board shall make this list available for public inspection in its office for a two-week period ending on the twenty-fifth day before the day of the referendum or special election, or the next scheduled city or special district election. During this period, any voter resident within the proposed city or newly annexed territory and not included on the list may cause his name to be added to the list. At least one week and no more than two weeks before the day the period of public inspection is to begin, the board shall cause notice of the list's availability to be posted in at least two prominent places within the proposed city or newly annexed territory and may cause the notice to be published in a newspaper of general circulation within the county. The notice shall state that the list has been prepared, that only those persons listed may vote in the referendum or special election, that the list will be available for public inspection in the board's office, that any qualified voter not included on the list may cause his name to be added to the list during the two-week period of public inspection, and that persons in newly annexed territory should present themselves so their registration records may be activated for voting in city or special district elections in the newly annexed territory. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice.

METHOD B.—The board of elections shall conduct a special registration of eligible persons desiring to vote in the referendum or special election or in the newly annexed territory. The registration records shall be open for a two-week period (except Sundays) ending on the twenty-fifth day before the day of the referendum or special election or the next scheduled city or special district election. On the two Saturdays during that two-week period, the records shall be located at the voting place for the referendum or special election or the next scheduled city or special district

election; on the other days it may, in the discretion of the board, be kept at the voting place, at the office of the board, or at the place of business of a person designated by the board to conduct the special registration. At least one week and no more than two weeks before the day the period of special registration is to begin, the board shall cause notice of the registration to be posted in at least two prominent places within the proposed city or newly annexed territory and may cause the notice to be published in a newspaper of general circulation within the county. The notice shall state the purpose and times of the special registration, the location of the registration records, that only those persons registered in the special registration may vote in the referendum or special election, and that persons in newly annexed territory should present themselves so their registration records may be activated for voting in city or special district elections in the newly annexed territory. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice.

(b) Only those persons registered pursuant to this section may vote in the referendum or special election, provided, however, that in cases where voters are activated under either Method A or B to vote in a city or special district that annexes territory, the city or special district shall permit them to vote in the city or special district's election and shall, as well, permit other voters to vote in such elections who did not register under the provisions of this section if they are otherwise registered, qualified and eligible to vote in the same.

Added by Laws 1973, c. 551. Amended by Laws 1977, c. 752, § 2; Laws 1981, c. 33, § 6; Laws 1989, c. 93, § 9; Laws 1991 (Reg. Sess., 1992), c. 1032, § 9; Laws 1993 (Reg. Sess., 1994), c. 762, § 67, eff. Jan. 1, 1995.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:

"Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences." [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

Cross References

Extensions of sanitary districts, see § 130A–69.

Incorporation of municipality and simultaneous dissolution of sanitary district, with transfer of assets and liabilities from the district to the municipality, see § 130A–81.

Rules governing elections, school tax supplements, see § 115C–507.

§ 163–288.3. Payment of cost of elections on question of formation of a new municipality or special district

Whenever a referendum or election is held on the question of incorporation of a new municipality or the formation of a special district, the cost of the election shall be paid by the new municipality or special district in the event the voters approve of incorporation or creation and the new municipality or special district is established. If the voters disapprove and the new municipality or special district is not established, the cost of the election shall be paid by the county. The cost of the election shall be advanced by the county, which shall be reimbursed within 18 months of the date of election, by the municipality or special district if it is established.

Added by Laws 1981, c. 786, § 1.

§ 163–289. Right to challenge; challenge procedure

(a) The rules governing challenges in municipal elections shall be the same as are now applicable to challenges made in a county election, provided however, any voter who challenges another voter's right to vote in any municipal or special district election must reside in such municipality or special district.

(b) Whenever a challenge is made pursuant to this section, the appropriate board of elections shall process such challenge in accordance with the provisions of Article 8 of Chapter 163 of the General Statutes as such Article is applicable.

(c) If a municipal board of elections sustains a challenge on the grounds that a voter registered to vote in the municipality is not a resident of the municipality, it shall forthwith certify its decision to the county board of elections of the county or counties in which the municipality lies, and the voter's registration for municipal elections shall be expunged from the county registration records.

Added by Laws 1971, c. 835, § 1. Amended by Laws 1973, c. 793, § 89; Laws 1985, c. 768, § 35.

§ 163–290. Alternative methods of determining the results of municipal elections

(a) Each city, town, village, and special district in this State shall operate under one of the following alternative methods of nominating candidates for and determining the results of its elections:

(1) The partisan primary and election method set out in G.S. 163-291.

(2) The nonpartisan primary and election method set out in G.S. 163-294.

(3) The nonpartisan plurality method set out in G.S. 163-292.

(4) The nonpartisan election and runoff election method set out in G.S. 163-293.

(b) Each city whose charter provides for partisan municipal elections as of January 1, 1972, shall operate under the partisan primary and election method until such time as its charter is amended to provide for nonpartisan elections. Each city, town, village, and special district whose elections are by charter or general law nonpartisan may select the nonpartisan primary and election method, the nonpartisan plurality method, or the nonpartisan election and runoff election method by resolution of the municipal governing board adopted and filed with the State Board of Elections not later than 5:00 P.M. Monday, January 31, 1972, except that a city whose charter provides for a nonpartisan primary as of January 1, 1972, may not select the plurality method unless its charter is so amended. If the municipal governing board does not exercise its option to select another choice before that time, the municipality shall operate under the method specified in the following table:

Cities, towns and villages of less than 5,000	Plurality
Cities, towns and villages of 5,000 or more	Election and Runoff Election
Special districts	Plurality

After January 31, 1972, each city, town and village may change its method of election from one to another of the methods set out in subsection (a) by act of the General Assembly or in the manner provided by law for amendment of its charter.

Added by Laws 1971, c. 835, § 1.

Notes of Decisions

Injunctive relief 1

1. Injunctive relief

Temporary denial by county board of elections of annexed subdivision residents' right to vote in city election and right to file for public office was justified since there existed a dispute between the United States Justice Department and the city concerning annexation of those subdivisions, and thus injunctive relief would not be granted under statute prohibiting the deprivation of civil rights by state action. McDowell v. Edmisten, 1981, 523 F.Supp. 416. Civil Rights ⚷ 1456

Annexed subdivision residents failed to demonstrate a likelihood of immediate, irreparable harm flowing from temporary denial of the right to vote in city election and file for public office due to dispute existing between the United States Justice Department and city concerning annexation of those subdivisions such as would entitle them to relief under statute prohibiting the deprivation of civil rights by state action. McDowell v. Edmisten, 1981, 523 F.Supp. 416. Civil Rights ⚷ 1419

Article 24

Conduct of Municipal Elections

Section

163–291. Partisan primaries and elections.
163–292. Determination of election results in cities using the plurality method.
163–293. Determination of election results in cities using the election and runoff election method.
163–294. Determination of election results in cities using nonpartisan primaries.
163–294.1. Death of candidates or elected officers.
163–294.2. Notice of candidacy and filing fee in nonpartisan municipal elections.
163–294.3. Sole candidates to be voted upon in nonpartisan municipal elections.
163–294.4. Failure of candidates to file; death of a candidate before election.
163–295. Municipal and special district elections; application of Chapter 163.
163–296. Nomination by petition.
163–297. Structure at voting place; marking off limits of voting place.
163–298. Municipal primaries and elections.
163–299. Ballots; municipal primaries and elections.
163–300. Disposition of duplicate abstracts in municipal elections.
163–301. Chairman of election board to furnish certificate of elections.
163–302. Absentee voting.
163–303. Repealed.
163–304. State Board of Elections to have jurisdiction over municipal elections and election officials, and to advise; emergency and ongoing administration by county board.
163–305. Validation of elections.
163–306. Assumption of office by mayors and councilmen.
163–307 to 163–320. Reserved.

Cross References

Election and terms of office of sanitary district boards, see § 130A–50.
Metropolitan water districts; procedure for inclusion of additional political subdivision or unincorporated area; notice and hearing; elections; actions questioning validity of elections, see § 162A–35.
Sanitary district board special election if election not held in November of 1981, see § 130A–52.
Soil and water conservation district board of supervisors; elective members; certain duties, see § 139–6.

§ 163–291. Partisan primaries and elections

The nomination of candidates for office in cities, towns, villages, and special districts whose elections are conducted on a partisan basis shall be governed by the provisions of this Chapter applicable to the nomination of county officers, and the terms ''county board of elections,'' ''chairman of the county board of elections,'' ''county officers,'' and similar terms shall be construed with respect to municipal elections to mean the appropriate municipal officers and candidates, except that:

(1) The dates of primary and election shall be as provided in G.S. 163–279.

(2) A candidate seeking party nomination for municipal or district office shall file notice of candidacy with the board of elections no earlier than 12:00 noon on the first Friday in July and no later than 12:00 noon on the third Friday in July preceding the election, except:

a. In the year following a federal decennial census, a candidate seeking party nomination for municipal or district office in any city which elects members of its governing board on a district basis, or requires that candidates reside in a district in order to run, shall file his notice of candidacy with the board of elections no earlier than 12:00 noon on the fourth Monday in July and no later than 12:00 noon on the second Friday in August preceding the election; and

b. In the second year following a federal decennial census, if the election is held then under G.S. 160A–23.1, a candidate seeking party nomination for municipal or district office shall file his notice of candidacy with the board of elections at the same time as notices of candidacy for county officers are required to be filed under G.S. 163–106.

No person may file a notice of candidacy for more than one municipal office at the same election. If a person has filed a notice of candidacy for one office with the county board of elections under this section, then a notice of candidacy may not later be filed for any other municipal office for that election unless the notice of candidacy for the first office is withdrawn first.

(3) The filing fee for municipal and district primaries shall be fixed by the governing board not later than the day before candidates are permitted to begin filing notices of candidacy. There shall be a minimum filing fee of five dollars ($5.00). The governing board shall have the authority to set the filing fee at not less than five dollars ($5.00) nor more than one percent (1%) of the annual salary of the office sought unless one percent (1%) of the annual salary of the office sought is less than five dollars ($5.00), in which case the minimum filing fee of five dollars ($5.00) will be charged. The fee shall be paid to the board of elections at the time notice of candidacy is filed.

(4) The municipal ballot may not be combined with any other ballot.

(5) The canvass of the primary and second primary shall be held on the seventh day following the primary or second primary. In accepting the filing of complaints concerning

the conduct of an election, a board of elections shall be subject to the rules concerning Sundays and holidays set forth in G.S. 103–5.

(6) Candidates having the right to demand a second primary shall do so not later than 12:00 noon on the Thursday following the canvass of the first primary.

Added by Laws 1971, c. 835, § 1. Amended by Laws 1973, c. 870, § 1; Laws 1975, c. 370, § 2; Laws 1983, c. 330, § 2; Laws 1985, c. 599, §§ 2, 3; Laws 1985, c. 768, § 36; Laws 1989 (Reg. Sess., 1990), c. 1012, § 3; Laws 1995 (Reg. Sess., 1996), c. 553, § 2, eff. June 6, 1996; S.L. 1999–227, § 5, eff. June 25, 1999; S.L. 2003–278, §§ 10(e), 10(f), eff. Jan. 1, 2004; S.L. 2006–192, § 4, eff. Jan. 1, 2007; S.L. 2009–414, § 2, eff. Aug. 5, 2009.

Historical and Statutory Notes

2003 Legislation

S.L. 2003–278, § 10(e), eff. Jan. 1, 2004, rewrote subd. (5), which prior thereto read:

''(5) The canvass of the primary and second primary shall be held on the third day (Sunday excepted) following the primary or second primary. In accepting the filing of complaints concerning the conduct of an election, a board of elections shall be subject to the rules concerning Sundays and holidays set forth in G.S. 103-5.''

S.L. 2003–278, § 10(f), eff. Jan. 1, 2004, rewrote subd. (6), which prior thereto read:

''(6) Candidates having the right to demand a second primary shall do so not later than 12:00 noon on the Monday following the canvass of the first primary.''

2006 Legislation

S.L. 2006–192, § 4, eff. Jan. 1, 2007, amended subd. (2) by deleting ''his'' before ''notice of candidacy'' and substituted ''third'' for ''first'' and ''July'' for ''August''.

S.L. 2006–192, § 19, provides:

''Sections 2 through 5 of this act are effective January 1, 2007, and apply to all primaries and elections conducted on or after that date. Sections 8 and 9 of this act are effective when this act becomes law and apply to vacancies occurring on or after that date. Section 17 of this act and the portion of Section 15 of this act that affects G.S. 163–278.13(e3) become effective January 1, 2007, and apply to contributions made or accepted on or after that date. Section 18 of this act becomes effective for taxable years beginning on or after January 1, 2006. The remainder of this act is effective when it becomes law.''

2009 Legislation

S.L. 2009–414, § 2, in sub-subd. (2)a., substituted ''the year following a federal decennial census,'' for ''2001''; and in sub-subd. (2)b., substituted ''the second year following a federal decennial census,'' for ''2002''.

Local Modifications

City of Albemarle: Laws 1987 (Reg. Sess., 1988), c. 881, § 4.

Town of Walkertown: Laws 1983 (Reg. Sess., 1984), c. 936.

Charlotte—Mecklenburg Board of Education Laws 1993, c. 167, § 1.

Vance County Board of Education: Laws 1987 (Reg. Sess., 1988), c. 974, §§ 3, 4.

Cross References

Cities and towns; optional forms of government, see § 160A–101.
Corporate limits of cities and towns; special rules for redistricting after 2000 census, see § 160A–23.1.
County Board of Elections littering notification, see § 163–33.3.
Notices of candidacy, generally, see § 163–106.
State Board of Elections littering notification, see § 163–22.3.

§ 163–292. Determination of election results in cities using the plurality method

In conducting nonpartisan elections and using the plurality method, elections shall be determined in accordance with the following rules:

(1) When more than one person is seeking election to a single office, the candidate who receives the highest number of votes shall be declared elected.

(2) When more persons are seeking election to two or more offices (constituting a group) than there are offices to be filled, those candidates receiving the highest number of votes, equal in number to the number of offices to be filled, shall be declared elected.

(3) If two or more candidates receiving the highest number of votes each receive the same number of votes, the board of elections shall determine the winner by lot.

Added by Laws 1971, c. 835, § 1.

Cross References

Election and terms of office of sanitary district boards, see § 130A–50.
Optional forms of government for cities and towns, see § 160A–101.
Special rules for redistricting city and town corporate limits after 2000 census, see § 160A–23.1.

§ 163–293. Determination of election results in cities using the election and runoff election method

(a) Except as otherwise provided in this section, nonpartisan municipal elections in cities using the election and runoff election method shall be determined by a majority of the votes cast. A majority within the meaning of this section shall be determined as follows:

(1) When more than one person is seeking election to a single office, the majority shall be ascertained by dividing the total vote cast for all candidates by two. Any excess of the sum so ascertained shall be a majority, and the candidate who obtains a majority shall be declared elected.

(2) When more persons are seeking election to two or more offices (constituting a group) than there are offices to be filled, the majority shall be ascertained by dividing the total vote cast for all candidates by the number of offices to be filled, and by dividing the result by two. Any excess of the sum so ascertained shall be a majority, and the candidates who obtain a majority shall be declared elected. If more candidates obtain a majority than there are offices to be filled, those having the highest vote (equal to the number of offices to be filled) shall be declared elected.

(b) If no candidate for a single office receives a majority of the votes cast, or if an insufficient number of candidates receives a majority of the votes cast for a group of offices, a runoff election shall be held as herein provided:

(1) If no candidate for a single office receives a majority of the votes cast, the candidate receiving the highest number of votes shall be declared elected unless the candidate receiving the second highest number of votes requests a runoff election in accordance with subsection (c) of this section. In the runoff election only the names of the two candidates who received the highest and next highest number of votes shall be printed on the ballot.

(2) If candidates for two or more offices (constituting a group) are to be selected and aspirants for some or all of the positions within the group do not receive a majority of the votes, those candidates equal in number to the positions remaining to be filled and having the highest number of votes shall be declared elected unless some one or all of the candidates equal in number to the positions remaining to be filled and having the second highest number of votes shall request a runoff election in accordance with subsection (c) of this section. In the runoff election to elect candidates for the positions in the group remaining to be filled, the names of all those candidates receiving the highest number of votes and demanding a runoff election shall be printed on the ballot.

(c) The canvass of the first election shall be held on the seventh day after the election. A candidate entitled to a runoff election may do so by filing a written request for a runoff election with the board of elections no later than 12:00 noon on the Thursday after the result of the first election has been officially declared. In accepting the filing of complaints concerning the conduct of an election, a board of elections shall be subject to the rules concerning Sundays and holidays set forth in G.S. 103–5.

(d) Tie votes; how determined:

(1) If there is a tie for the highest number of votes in a first election, the board of elections shall conduct a recount and declare the results. If the recount shows a tie vote, a runoff election between the two shall be held unless one of the candidates, within three days after the result of the recount has been officially declared, files a written notice of withdrawal with the board of elections. Should that be done, the remaining candidate shall be declared elected.

(2) If one candidate receives the highest number of votes cast in a first election, but short of a majority, and there is a tie between two or more of the other candidates receiving the second highest number of votes, the board of elections

shall declare the candidate having the highest number of votes to be elected, unless all but one of the tied candidates give written notice of withdrawal to the board of elections within three days after the result of the first election has been officially declared. If all but one of the tied candidates withdraw within the prescribed three-day period, and the remaining candidate demands a runoff election in accordance with subsection (c) of this section, a runoff election shall be held between the candidate who received the highest vote and the remaining candidate who received the second highest vote.

(e) Runoff elections shall be held on the date fixed in G.S. 163–279(a)(4). Persons whose registrations become valid between the date of the first election and the runoff election shall be entitled to vote in the runoff election, but in all other respects the runoff election shall be held under the laws, rules, and regulations provided for the first election.

(f) A second runoff election shall not be held. The candidates receiving the highest number of votes in a runoff election shall be elected. If in a runoff election there is a tie for the highest number of votes between two candidates, the board of elections shall determine the winner by lot.

Added by Laws 1971, c. 835, § 1. Amended by Laws 1973, c. 793, § 90; Laws 1995 (Reg. Sess., 1996), c. 553, § 3, eff. June 6, 1996; S.L. 2003–278, § 10(g), eff. Jan. 1, 2004.

Historical and Statutory Notes

2003 Legislation

S.L. 2003–278, § 10(g), eff. Jan. 1, 2004, rewrote subsec. (c), which prior thereto read:

''(c) The canvass of the first election shall be held on the third day (Sunday excepted) after the election. A candidate entitled to a runoff election may do so by filing a written request for a runoff election with the board of elections no later than 12:00 noon on the Monday after the result of the first election has been officially declared. In accepting the filing of complaints concerning the conduct of an election, a board of elections shall be subject to the rules concerning Sundays and holidays set forth in G.S. 103–5.''

Local Modifications

Jackson County: Laws 1991, c. 170, § 1.

Madison County: Laws 1991, c. 249, § 4.

City of Reidsville: Laws 1993, c. 306, § 2

McDowell County Board of Education: Laws 1987, c. 322.

Yancy County Board of Education: Laws 1985, c. 135.

Cross References

Cities and towns; optional forms of government, see § 160A–101.

Special rules for redistricting city and town corporate limits after 1990 census, see § 160A–23.1.

§ 163–294. Determination of election results in cities using nonpartisan primaries

(a) In cities whose elections are nonpartisan and who use the nonpartisan primary and election method, there shall be a primary

to narrow the field of candidates to two candidates for each position to be filled if, when the filing period closes, there are more than two candidates for a single office or the number of candidates for a group of offices exceeds twice the number of positions to be filled. If only one or two candidates file for a single office, no primary shall be held for that office and the candidates shall be declared nominated. If the number of candidates for a group of offices does not exceed twice the number of positions to be filled, no primary shall be held for those offices and the candidates shall be declared nominated.

(b) In the primary, the two candidates for a single office receiving the highest number of votes, and those candidates for a group of offices receiving the highest number of votes, equal to twice the number of positions to be filled, shall be declared nominated. In both the primary and election, a voter should not mark more names for any office than there are positions to be filled by election. If two or more candidates receiving the highest number of votes each received the same number of votes, the board of elections shall determine their relative ranking by lot, and shall declare the nominees accordingly. The canvass of the primary shall be held on the seventh day following the primary. In accepting the filing of complaints concerning the conduct of an election, a board of elections shall be subject to the rules concerning Sundays and holidays set forth in G.S. 103–5.

(c) In the election, the names of those candidates declared nominated without a primary and those candidates nominated in the primary shall be placed on the ballot. The candidate for a single office receiving the highest number of votes shall be elected. Those candidates for a group of offices receiving the highest number of votes, equal in number to the number of positions to be filled, shall be elected. If two candidates receiving the highest number of votes each received the same number of votes, the board of elections shall determine the winner by lot.

Added by Laws 1971, c. 835, § 1. Amended by Laws 1991, c. 341, § 1; Laws 1995 (Reg. Sess., 1996), c. 553, § 4, eff. June 6, 1996; S.L. 2001–460, § 6, eff. Jan. 1, 2002; S.L. 2003–278, § 10(h), eff. Jan. 1, 2004.

Historical and Statutory Notes

2001 Legislation

S.L. 2001–460, § 6, eff. Jan. 1, 2002, in the second sentence of subsec. (b), deleted ", as provided in G.S. 163–135(e) and G.S. 163–151(2)" following "filled by election".

2003 Legislation

S.L. 2003–278, § 10(h), eff. Jan. 1, 2004, rewrote subsec. (b), which prior thereto read:

"(b) In the primary, the two candidates for a single office receiving the highest number of votes, and those candidates for a group of offices receiving the highest number of votes, equal to twice the number of positions to be filled, shall be declared nominated. In both the primary and election, a voter should not mark more names for any office than there are positions to be filled by election. If two or more candidates receiving the highest number of votes each received the same number of votes, the board of elections shall deter-

mine their relative ranking by lot, and shall declare the nominees accordingly. The canvass of the primary shall be held on the third day (Sunday excepted) following the primary. In accepting the filing of complaints concerning the conduct of an election, a board of elections shall be subject to the rules concerning Sundays and holidays set forth in G. S. 103–5.''

Cross References

Cities and towns; optional forms of government, see § 160A–101.
Special rules for redistricting city and town corporate limits after 2000 census, see § 160A–23.1.

§ 163–294.1. Death of candidates or elected officers

(a) This section shall apply only to municipal and special district elections.

(b) If a candidate for political party nomination for office dies, becomes disqualified, or withdraws before the primary but after the ballots have been printed, the provisions of G.S. 163-112 shall govern.

If a candidate for nomination in a nonpartisan municipal primary dies, becomes disqualified, or withdraws before the primary but after the ballots have been printed, the board of elections shall determine whether or not there is time to reprint the ballots. If the board determines that there is not enough time to reprint the ballots, the deceased or disqualified candidate's name shall remain on the ballots. If he receives enough votes for nomination, such votes shall be disregarded and the candidate receiving the next highest number of votes below the number necessary for nomination shall be declared nominated. If the death or disqualification of the candidate leaves only two candidates for each office to be filled, the nonpartisan primary shall not be held and all candidates shall be declared nominees.

If a nominee for political party nomination dies, becomes disqualified, or withdraws after the primary and before election day, the provisions of G.S. 163-114 shall govern.

If a candidate in a nonpartisan election dies, becomes disqualified, or withdraws before election day and after the ballots have been printed, the board of elections shall determine whether there is enough time to reprint the ballots. If there is not enough time to reprint the ballots, and should the deceased or disqualified candidate receive enough votes to be elected, the board of elections shall declare the office vacant, and it shall be filled as provided by law.

(c) If a person elected to any city office dies, becomes disqualified, or resigns on or after election day and before he has qualified by taking the oath of office, the office shall be deemed vacant, and shall be filled as provided by law.

(d) A vacancy that occurs in a municipal or special district elective office shall be filled by the governing body as provided in

G.S. 160A-63. In the case of a special district, the words ''city council'' as used in G.S. 160A-63, shall mean the governing body of the special district.

Added by Laws 1985, c. 619, § 1.

Notes of Decisions

Construction and application 1

1. Construction and application

A candidate in a nonpartisan municipal election may withdraw his candidacy after the filing deadline and have his name removed from the ballot. 53 Op. Atty.Gen. 27, Currin, Oct. 19, 1983.

§ 163–294.2. Notice of candidacy and filing fee in nonpartisan municipal elections

(a) Each person offering himself as a candidate for election to any municipal office in municipalities whose elections are nonpartisan shall do so by filing a notice of candidacy with the board of elections in the following form, inserting the words in parentheses when appropriate:

''Date ___;

I hereby file notice that I am a candidate for election to the office of _____ (at large) (for the ___ Ward) in the regular municipal election to be held in _____ (municipality) on ___, _____

Signed _____
(Name of Candidate)

Witness: _____
For the Board of Elections''

The notice of candidacy shall be either signed in the presence of the chairman or secretary of the board of elections or the director of elections of that county, or signed and acknowledged before an officer authorized to take acknowledgments who shall certify the notice under seal. An acknowledged and certified notice may be mailed to the board of elections. The candidate shall sign the notice of candidacy with his legal name and, in his discretion, any nickname by which he is commonly known, in the form that he wishes it to appear upon the ballot but substantially as follows: ''Richard D. (Dick) Roc.'' A candidate may also, in lieu of his legal first name and legal middle initial or middle name (if any) sign his nickname, provided that he appends to the notice of candidacy an affidavit that he has been commonly known by that nickname for at least five years prior to the date of making the affidavit, and notwithstanding the previous sentence, if the candidate has used his nickname in lieu of first and middle names as permitted by this sentence, unless another candidate for the same office who files a notice of candidacy has the same last name, the

nickname shall be printed on the ballot immediately before the candidate's surname but shall not be enclosed by parentheses. If another candidate for the same office who filed a notice of candidacy has the same last name, then the candidate's name shall be printed on the ballot in accordance with the next sentence of this subsection. The candidate shall also include with the affidavit the way his name (as permitted by law) should be listed on the ballot if another candidate with the same last name files a notice of candidacy for that office.

(b) Only persons who are registered to vote in the municipality shall be permitted to file notice of candidacy for election to municipal office. The board of elections shall inspect the voter registration lists immediately upon receipt of the notice of candidacy and shall cancel the notice of candidacy of any candidate who is not eligible to vote in the election. The board shall give notice of cancellation to any candidate whose notice of candidacy has been cancelled under this subsection by mail or by having the notice served on him by the county sheriff.

(c) Candidates seeking municipal office shall file their notices of candidacy with the board of elections no earlier than 12:00 noon on the first Friday in July and no later than 12:00 noon on the third Friday in July preceding the election, except:

(1) In the year following a federal decennial census, candidates seeking municipal office in any city which elects members of its governing board on a district basis, or requires that candidates reside in a district in order to run, shall file their notices of candidacy with the board of elections no earlier than 12:00 noon on the fourth Monday in July and no later than 12:00 noon on the second Friday in August preceding the election; and

(2) In the second year following a federal decennial census, if the election is held then under G.S. 160A–23.1, candidates seeking municipal office shall file their notices of candidacy with the board of elections at the same time as notices of candidacy for county officers are required to be filed under G.S. 163–106.

Notices of candidacy which are mailed must be received by the board of elections before the filing deadline regardless of the time they were deposited in the mails.

(d) Any person may withdraw his notice of candidacy at any time prior to the filing deadline prescribed in subsection (c), and shall be entitled to a refund of his filing fee if he does so.

(e) The filing fee for the primary or election shall be fixed by the governing board not later than the day before candidates are permitted to begin filing notices of candidacy. There shall be a minimum filing fee of five dollars ($5.00). The governing board

shall have the authority to set the filing fee at not less than five dollars ($5.00) nor more than one percent (1%) of the annual salary of the office sought unless one percent (1%) of the annual salary of the office sought is less than five dollars ($5.00), in which case the minimum filing fee of five dollars ($5.00) will be charged. The fee shall be paid to the board of elections at the time notice of candidacy is filed.

(f) No person may file a notice of candidacy for more than one municipal office at the same election. If a person has filed a notice of candidacy for one office with the board of elections under this section, then a notice of candidacy may not later be filed for any other municipal office for the election unless the notice of candidacy for the first office is withdrawn first.

Added by Laws 1973, c. 870, § 2. Amended by Laws 1975, c. 370, § 2; Laws 1977, c. 265, § 18; Laws 1981, c. 32, § 3; Laws 1983, c. 330, § 3; Laws 1983, c. 644, §§ 1, 2; Laws 1985, c. 472, § 5; Laws 1985, c. 558, § 3; Laws 1985, c. 599, § 1; Laws 1985, c. 768, § 37; Laws 1989 (Reg. Sess., 1990), c. 1012, § 4; Laws 1995, c. 243, § 1, eff. Jan. 1, 1996; S.L. 1999–227, § 6, eff. June 25, 1999; S.L. 1999–456, § 59, eff. Jan. 1, 2000; S.L. 2006–192, § 5, eff. Jan. 1, 2007; S.L. 2009–414, § 3, eff. Aug. 5, 2009.

Historical and Statutory Notes

S.L.1999–456, § 59, provides for deletion of year prefix ''19'' in the date segment of the form.

Laws 1995, c. 243, § 1, provides:

''Wherever the term 'supervisor' appears in the General Statutes of North Carolina or in any local act in reference to the county supervisor of elections as provided in G.S. 163–35, the term is changed to read 'director.' ''

2006 Legislation

S.L. 2006–192, § 5, eff. Jan. 1, 2007, amended subd. (2) by deleting ''his'' before ''notice of candidacy'' and substituted ''third'' for ''first'' and ''July'' for ''August''.

S.L. 2006–192, § 19, provides:

''Sections 2 through 5 of this act are effective January 1, 2007, and apply to all primaries and elections conducted on or after that date. Sections 8 and 9 of this act are effective when this act becomes law and apply to vacancies occurring on or after that date. Section 17 of this act and the portion of Section 15 of this act that affects G.S. 163–278.13(e3) become effective January 1, 2007, and apply to contributions made or accepted on or after that date. Section 18 of this act becomes effective for taxable years beginning on or after January 1, 2006. The remainder of this act is effective when it becomes law.''

2009 Legislation

S.L. 2009–414, § 3, in subd. (c)(1), substituted ''the year following a federal decennial census,'' for ''2001''; and in subd. (c)(2), substituted ''the second year following a federal decennial census,'' for ''2002''.

Local Modifications

Bethel County: S.L. 1997–414.

Greenville County: S.L. 1997–414.

Farmville County: S.L. 1997–414.

Newport County: S.L. 1997–414.

Polk County: Laws 1983, c. 744, § 1.1.

City of Roanoke Rapids: S.L. 1997–101.

City of Trinity: S.L. 1997–44, § 5.

Town of Calabash: Laws 1989, c. 593, § 6.

Town of Mills River: S.L. 2003–242, § 3.

Town of Rimertown: S.L. 1999–284, § 5.1(b).

Grandfather Village: Laws 1987, c. 419, § 4.

Lee County Municipalities: S.L. 1997–449, § 1.

Cross References

Confidentiality of date of birth, see § 163–82.10B.
County Board of Elections littering notification, see § 163–33.3.
State Board of Elections littering notification, see § 163–22.3.

Notes of Decisions

Construction and application 1
Domicile requirements 2

1. Construction and application

In order to be qualified as candidate for election to municipal office, person must be registered to vote in municipality. Farnsworth v. Jones, 1994, 114 N.C.App. 182, 441 S.E.2d 597. Municipal Corporations ⚷ 138

A candidate in a nonpartisan municipal election may withdraw his candidacy after the filing deadline and have his name removed from the ballot. 53 Op. Atty.Gen. 27, Currin, Oct. 19, 1983.

2. Domicile requirements

There was no substantial evidence to support finding of county board of elections that municipal election candidate for city council seat met residency requirement by establishing his domicile in ward 30 days prior to city council election, even though candidate acquired new residence in ward and expressed his intention to remain there permanently; candidate maintained his previous residence and spent approximately 50% of his time there, candidate did not change his address to that of new residence for any purpose, and candidate executed month-to-month lease for new residence because he wanted to see what would happen in election. Farnsworth v. Jones, 1994, 114 N.C.App. 182, 441 S.E.2d 597. Municipal Corporations ⚷ 138

Thirty-day domicile requirement for candidate eligibility in municipal elections was designed to deter abuses of election process, such as precinct shopping, and to ensure that elected officials sincerely represent residents of particular district. Farnsworth v. Jones, 1994, 114 N.C.App. 182, 441 S.E.2d 597. Municipal Corporations ⚷ 138

Since opposing candidate in municipal election for city council seat failed to receive majority of votes, he could not automatically be installed in position after Court of Appeals found that candidate who received majority of votes failed to meet residency requirement; therefore, county board of elections was required to hold new election. Farnsworth v. Jones, 1994, 114 N.C.App. 182, 441 S.E.2d 597. Municipal Corporations ⚷ 136

§ 163–294.3. Sole candidates to be voted upon in nonpartisan municipal elections

Each candidate for municipal office in nonpartisan municipal elections shall be voted upon, even though only one candidate has filed or has been nominated for a given office, in order that the voters may have the opportunity to cast write-in votes under the general election laws.

Added by Laws 1971, c. 835, s. 1.

§ 163–294.4. Failure of candidates to file; death of a candidate before election

(a) If in a nonpartisan municipal election, when the filing period expires, candidates have not filed for all offices to be filled, the board of elections may extend the filing period for five days.

(b) If at the time the filing period closes only two persons have filed notice of candidacy for election to a single office or only as many persons have filed notices of candidacy for group offices as

there are offices to be filled, and thereafter one of the candidates dies before the election and before the ballots are printed, the board of elections shall, upon notification of the death, immediately reopen the filing period for an additional five days during which time additional candidates shall be permitted to file for election. If the ballots have been printed at the time the board of elections receives notice of the candidate's death, the board shall determine whether there will be sufficient time to reprint them before the election if the filing period is reopened for three days. If the board determines that there will be sufficient time to reprint the ballots, it shall reopen the filing period for three days to allow other candidates to file for election.

(c) If the ballots have been printed at the time the board of elections receives notice of a candidate's death, and if the board determines that there is not enough time to reprint the ballots before the election if the filing period is reopened for three days, then, regardless of the number of candidates remaining for the office, the ballots shall not be reprinted and the name of the deceased candidate shall remain on the ballots. If a deceased candidate should poll the highest number of votes in the election, even though short of a majority the board of elections shall declare the office vacant and it shall be filled in the manner provided by law. If no candidate in an election receives a majority of the votes cast and the second highest vote is cast for a deceased candidate, no runoff election shall be held, but the board of elections shall declare the candidate receiving the highest vote to be elected.

Added by Laws 1971, c. 835, s. 1.

§ 163–295. Municipal and special district elections; application of Chapter 163

To the extent that the laws, rules and procedures applicable to the conduct of primary, general or special elections by county boards of elections under Articles 3, 4, 5, 6, 7A, 8, 9, 10, 11, 11B, 12, 13, 14, 15, 19 and 22 of this Chapter are not inconsistent with the provisions of this Article, those laws, rules and procedures shall apply to municipal and special district elections and their conduct by the board of elections conducting those elections. The State Board of Elections shall have the same authority over all such elections as it has over county and State elections under those Articles.

Added by Laws 1971, c. 835, § 1. Amended by Laws 1973, c. 793, § 91; Laws 1993 (Reg. Sess., 1994), c. 762, § 68, eff. Jan. 1, 1995; S.L. 2006–155, § 5, eff. Jan. 1, 2007.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides: "Sections 1 through 68 of this act become effective January 1, 1995, and

apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.'' [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

2006 Legislation

S.L. 2006–155, § 5, eff. Jan. 1, 2007, amended section by inserting ''11B''.

S.L. 2006–155, §§ 7 and 8, provide:

''Section. 7. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

''Section 8. This act becomes effective January 1, 2007, and applies to actions filed on or after that date.''

§ 163–296. Nomination by petition

In cities conducting partisan elections, any qualified voter who seeks to have his name printed on the regular municipal election ballot as an unaffiliated candidate may do so in the manner provided in G.S. 163–122, except that the petitions and affidavits shall be filed not later than 12:00 noon on the Friday preceding the seventh Saturday before the election, and the petitions shall be signed by a number of qualified voters of the municipality equal to at least four percent (4%) of the whole number of voters qualified to vote in the municipal election according to the voter registration records of the State Board of Elections as of January 1 of the year in which the general municipal election is held. A person whose name appeared on the ballot in a primary election is not eligible to have his name placed on the regular municipal election ballot as an unaffiliated candidate for the same office in that year. The Board of Elections shall examine and verify the signatures on the petition, and shall certify only the names of signers who are found to be qualified registered voters in the municipality. Provided that in the case where a qualified voter seeks to have his name printed on the regular municipal election ballot as an unaffiliated candidate for election from an election district within the municipality, the petition shall be signed by four percent (4%) of the voters qualified to vote for that office.

Added by Laws 1971, c. 835, § 1. Amended by Laws 1979, c. 23, § 2; Laws 1979, c. 23, § 4, 5; Laws 1979, c. 534, § 3; Laws 1979, c. 534, § 4; Laws 1985, c. 768, § 38; Laws 1989, c. 402; Laws 1991, c. 297, § 2; S.L. 2004–127, § 8(b), eff. July 26, 2004; S.L. 2006–264, § 21, eff. Aug. 27, 2006.

Historical and Statutory Notes

2004 Legislation

S.L. 2004–127, § 8(b), eff. July 26, 2004, in the first sentence, substituted ''voter registration records of the State Board of as of January 1 of the year in which the general election is held'' for ''most recent figures certified by the State Board of Elections''.

2006 Legislation

S.L. 2006–264, § 21, eff. Aug. 27, 2006, amended section by inserting ''Elections'' after ''State Board of''.

Cross References

Nomination by petition, unaffiliated candidates, see § 163–122.

§ 163–297. Structure at voting place; marking off limits of voting place

Precincts in which municipal primaries and elections are conducted shall conform, in all regards, to the requirements stipulated in G.S. 163-129 and all other provisions contained in Chapter 163 relating to county and State elections.

Added by Laws 1971, c. 835, § 1.

§ 163–298. Municipal primaries and elections

The phrases ''county board of elections,'' and ''chairman of the board of elections'' as used in this Article, with respect to all municipal primaries and elections, shall mean the municipal board of elections and its chairman in those cities and towns which conduct their own elections, and the county board of elections and its chairman in those cities and towns whose elections are conducted by the county board of elections. The words ''general election,'' as used in this Article, shall include regular municipal elections, runoff elections, and nonpartisan primaries, except where specific provision is made for municipal elections and nonpartisan primaries.

Added by Laws 1971, c. 835, § 1.

§ 163–299. Ballots; municipal primaries and elections

(a) The ballots printed for use in general and special elections under the provisions of this Article shall contain:

(1) The names of all candidates who have been put in nomination in accordance with the provisions of this Chapter by any political party recognized in this State, or, in nonpartisan municipal elections, the names of all candidates who have filed notices of candidacy or who have been nominated in a nonpartisan primary.

(2) The names of all persons who have qualified as unaffiliated candidates under the provisions of G.S. 163-296.

(3) All questions, issues and propositions to be voted on by the people.

(b) The form of municipal ballots to be used in partisan municipal elections shall be the same as the form prescribed in this Chapter for the county ballot.

(c) The names of candidates for nomination or election in municipal primaries or elections shall be placed on the ballot in strict alphabetical order, unless the municipal governing body has adopted a resolution no later than 60 days prior to a primary or election requesting that candidates' names be rotated on ballots. In the event such a resolution has been adopted, then the board of elections responsible for printing the ballots shall have them printed so that the name of each candidate shall, as far as practicable, occupy alternate positions on the ballot; to that end the name of each candidate shall occupy with reference to the name of every other candidate for the same office, first position, second position and every other position, if any, upon an equal number of ballots, and the ballots shall be distributed among the precinct voting places impartially and without discrimination.

(d) The provisions of Articles 14A and 15A of this Chapter shall apply to ballots used in municipal primaries and elections in the same manner as it is applied to county ballots.

(e) The rules contained in G.S. 163–182.1 and G.S. 163–182.2 for counting primary ballots shall be followed in counting ballots in municipal primaries and nonpartisan primaries.

(f) The requirements contained in G.S. 163–182.2(b) shall apply to all municipal elections.

(g) The county or municipal board of elections shall, in addition to the requirements contained in G.S. 163–182.5 canvass the results in a nonpartisan municipal primary, election or runoff election, and in a special district election, the number of legal votes cast in each precinct for each candidate, the name of each person voted for, and the total number of votes cast in the municipality or special district for each person for each different office.

Added by Laws 1971, c. 835, § 1. Amended by Laws 1979, c. 534, § 4; Laws 1979, c. 806; Laws 1985, c. 768, § 40, 41; S.L. 2001–398, §§ 10 to 12, eff. Jan. 1, 2002; S.L. 2001–460, §§ 7, 8, eff. Jan. 1, 2002; S.L. 2004–127, § 5, eff. July 26, 2004.

Historical and Statutory Notes

2001 Legislation

S.L. 2001–398, § 10, eff. Jan. 1, 2002, in subsec. (e), substituted '163–182.1 and G.S. 163–182.2'' for ''163–169''.

S.L. 2001–398, § 11, eff. Jan. 1, 2002, in subsec. (f), substituted ''163–182.2(b)'' for ''163–171''.

S.L. 2001–398, § 12, eff. Jan. 1, 2002, in subsec. (g), substituted ''163–182.5'' for ''163–175''.

S.L. 2001–460, § 7, eff. Jan. 1, 2002, rewrote subsec. (b), which prior thereto read:

''(b) The form of municipal ballots to be used in partisan municipal elections shall be the same as the form prescribed in this Chapter for the county ballot. A nonpartisan municipal ballot shall be divided into sections according to the offices to be filled. Within each section the names of the candidates for that office shall be printed. At the left of each name shall be printed a voting square, and all voting squares on the ballot shall be arranged in a perpendicular line. On the face of the ballot, above the list of candidates and below

the title of the ballot shall be printed in heavy black type the following instructions: 'If you tear or deface or wrongly mark this ballot, return it and get another.' "

S.L. 2001–460, § 8, eff. Jan. 1, 2002, in subsec. (d), substituted "Articles 13A and 15A of this Chapter" for "G.S. 163–151(1), (2), and (3)" and deleted "provided, however, the exceptions contained in G.S. 163–151 shall be adhered to if applicable" following "to county ballots".

2004 Legislation

S.L. 2004–127, § 5, eff. July 26, 2004, in subsec. (d), substituted "14A" for "13A".

§ 163–300. Disposition of duplicate abstracts in municipal elections

Within nine days after a primary or election is held in any municipality, the chairman of the county or municipal board of elections shall mail to the chairman of the State Board of Elections, the duplicate abstract prepared in accordance with G.S. 163–182.6. One copy shall be retained by the county or municipal board of elections as a permanent record and one copy shall be filed with the city clerk.

Added by Laws 1971, c. 835, § 1. Amended by S.L. 2001–398, § 13, eff. Jan. 1, 2002; S.L. 2003–278, § 10(i), eff. Jan. 1, 2004.

Historical and Statutory Notes

2001 Legislation

S.L. 2001–398, § 13, eff. Jan. 1, 2002, in the first sentence, substituted "163–182.6" for "163–176".

2003 Legislation

S.L. 2003–278, § 10(i), eff. Jan. 1, 2004, in the first sentence, substituted "nine" for "five".

§ 163–301. Chairman of election board to furnish certificate of elections

Not earlier than five days nor later than 10 days after the results of any municipal election have been officially determined and published in accordance with G.S. 163–182.5, the chairman of the county or municipal board of elections shall issue certificates of election, under the hand and seal of the chairman, to all municipal and special district officers. In issuing such certificates of election the chairman shall be restricted by the provisions of G.S. 163–182.14.

Added by Laws 1971, c. 835, § 1. Amended by Laws 1985, c. 768, § 42; S.L. 2001–398, § 14, eff. Jan. 1, 2002.

Historical and Statutory Notes

2001 Legislation

S.L. 2001–398, § 14, eff. Jan. 1, 2002, rewrote the section, which prior thereto read:

"Not earlier than five days nor later than 10 days after the results of any municipal election have been officially determined and published in accordance with G.S. 163–175 and G.S. 163–179, the chairman of the county or municipal board of elections shall issue certificates of election, under his hand and seal, to all municipal and special district officers. In issuing such certificates of election the chairman shall be restricted by the provisions of G.S. 163–181."

§ 163–302. Absentee voting

(a) In any municipal election, including a primary or general election or referendum, conducted by the county board of elections, absentee voting may, upon resolution of the municipal governing body, be permitted. Such resolution must be adopted no later than 60 days prior to an election in order to be effective for that election. Any such resolution shall remain effective for all future elections unless repealed no later than 60 days before an election. A copy of all resolutions adopted under this section shall be filed with the State Board of Elections and the county board of elections conducting the election within 10 days of passage in order to be effective. Absentee voting shall not be permitted in any municipal election unless such election is conducted by the county board of elections. In addition, absentee voting shall be allowed in any referendum on incorporation of a municipality.

(b) The provisions of Articles 20 and 21 of this Chapter shall apply to absentee voting in municipal elections, special district elections, and other elections for an area less than an entire county other than elections for the General Assembly, except that the earliest date by which absentee ballots shall be required to be available for absentee voting in such elections shall be 30 days prior to the primary or election or as quickly following the filing deadline specified in G.S. 163-291(2) or G.S. 163-294.2(c) as the county board of elections is able to secure the official ballots. In elections on incorporation of a municipality not held at the same time as another election in the same area, the county board of elections shall adopt a special schedule of meetings of the county board of elections to approve absentee ballot applications so as to reduce the cost of the process, and to further implement the last paragraph of G.S. 163-230(2)a. If no application has been received since the last meeting, no meeting shall be held of the county board of elections under such schedule unless the meeting is scheduled for another purpose. If another election is being held in the same area on the same day, or elsewhere in the county, the cost of per diem for meetings of the county board of elections to approve absentee ballots shall not be considered a cost of the election to be billed to the municipality being created.

Added by Laws 1971, c. 835, § 1. Amended by Laws 1975, c. 370, § 1; Laws 1975, c. 836; Laws 1977, c. 475, § 1; Laws 1983, c. 324, § 6; Laws 1985, c. 768, § 43; Laws 1991 (Reg. Sess., 1992), c. 933, § 1.

Historical and Statutory Notes

Local Modifications

City of Cherryville: Laws 1983 (Reg. Sess., 1984), c. 935.

Town of Hazelwood: Laws 1987, c. 338, § 8.

Town of Mooresville: Laws 1987, c. 359.

Town of Old Fort: Laws 1993, c. 35, § 1.

Town of Waynesville: Laws 1987, c. 338, § 8.

Alamance County Board of Elections: S.L. 1998–151, § 9.6.

Union County Board of Elections: S.L. 1998–151, § 9.6.

Cross References

Absentee voting in municipal elections, see § 163–226.2.

§ 163–303. Repealed by Laws 1977, c. 265, § 19

Historical and Statutory Notes

The repealed section pertained to regulation of campaign expenses not being applicable in nonpartisan elections.

§ 163–304. State Board of Elections to have jurisdiction over municipal elections and election officials, and to advise; emergency and ongoing administration by county board

(a) Authority and Duty of State Board. – The State Board of Elections shall have the same authority over municipal elections and election officials as it has over county and State elections and election officials. The State Board of Elections shall advise and assist cities, towns, incorporated villages and special districts, municipal boards of elections, their members and legal officers on the conduct and administration of their elections and registration procedure.

The municipal council shall provide written notification to the State Board of Elections of the appointment of each member of its municipal board of elections within five days after the appointment. The municipal board of elections and the municipal council shall provide such other information about the municipal board of elections as the State Board may require. Members of the municipal board of elections and municipal elections officials shall participate in training provided by the State Board pursuant to G.S. 163–82.24. The State Board shall provide the same training, materials, and assistance to municipal boards of elections that it provides to county boards of elections.

The county and municipal boards of elections shall be governed by the same rules for settling controversies with respect to counting ballots or certification of the returns of the vote in any municipal or special district election as are in effect for settling such controversies in county and State elections.

(b) Emergency Administration if Municipal Board Is Not Appointed. – If a municipal council in a municipality that has elected pursuant to G.S. 163–285 to conduct its own elections has not appointed a municipal board of elections and reported the appointments to the Executive Director by June 1 in the year in which the municipal election is to occur, the Executive Director shall notify the municipal council that, unless a municipal board of elections is appointed and the Executive Director notified of its

appointment by June 15 of that year, the county board of elections shall be ordered to conduct that municipality's elections that year on an emergency basis. If the municipal council does not so appoint and so notify by June 15, the Executive Director shall order the county board of elections to conduct the municipality's elections that year on an emergency basis.

(c) Emergency Administration Due to Serious Violations. – If a municipal council or municipal board of elections has committed violations of the applicable portions of this Chapter prior to a municipal election and those violations are of such magnitude as to give rise to reasonable doubt as to the ability of the municipal board of elections to conduct that election with competence and fairness, the Executive Director of the State Board, with the approval of at least four members of the State Board, may order the county board of elections to conduct the remainder of that election on an emergency basis. Before an order is made under this subsection, the municipal council and municipal board of elections shall be given an opportunity to be heard by the State Board.

(d) Permanent County Administration. – The State Board of Elections may designate the county board of elections as the permanent agency to conduct a municipality's elections if all the following conditions are met:

(1) In more than one election conducted by that municipality either (i) the municipality's elections have been administered on an emergency basis pursuant to subsection (b) or (c) of this section or (ii) a new election has been ordered because of irregularities in the municipality's administration of the election.

(2) The State Board finds that the interest of the residents of the municipality in fair and competent administration of elections requires that the municipality not conduct its own elections.

(3) The municipal council and municipal board of elections are given an opportunity to be heard before the State Board.

(4) The State Board by a vote of at least four of its members designates the county board of elections as the permanent agency to conduct that municipality's elections.

The municipal council may not elect to conduct its own elections under G.S. 163–285 if the State Board has designated the county board of elections under this subsection as the permanent agency to conduct the municipality's elections.

(e) Reimbursement. – If the county board of elections administers a municipality's elections pursuant to subsection (b), (c), or (d)

of this section, the municipality shall reimburse the county board of elections in the manner set forth in G.S. 163–285.

Added by Laws 1971, c. 835, § 1. Amended by Laws 1973, c. 793, § 92; Laws 1985, c. 768, § 44; S.L. 1999–426, § 6(a); S.L. 2001–319, § 11, eff. July 28, 2001; S.L. 2001–374, § 3.

Historical and Statutory Notes

S.L. 1999–426, § 6.(b) provides:

''This section becomes effective January 1, 2000, except that every city council shall provide to the State Board of Elections by August 1, 1999, a list of the members and supervisor of the municipal board of elections in its municipality. That list shall indicate who is the chair and shall provide addresses and telephone numbers for the members and supervisors.''

2001 Legislation

S.L. 2001–319, § 11, eff. July 28, 2001, substituted ''Executive Director'' for ''Executive Secretary-Director'' and ''State Executive Secretary-Director'' throughout this section.

S.L. 2001–374, § 3, rewrote the section, which prior thereto read:

''(a) Authority and Duty of State Board. --The State Board of Elections shall have the same authority over municipal elections and election officials as it has over county and State elections and election officials. The State Board of Elections shall advise and assist cities, towns, incorporated villages and special districts, municipal boards of elections, their members and legal officers on the conduct and administration of their elections and registration procedure.

''The city council shall provide written notification to the State Board of Elections of the appointment of each member of its municipal board of elections within five days after the appointment. The municipal board of elections and the city council shall provide such other information about the municipal board of elections as the State Board may require. Members of the municipal board of elections and municipal elections officials shall participate in training provided by the State Board pursuant to G.S. 163–82.24. The State Board shall provide the same training, materials, and assistance to municipal boards of elections that it provides to county boards of elections.

''The county and municipal boards of elections shall be governed by the same rules for settling controversies with respect to counting ballots or certification of the returns of the vote in any municipal or special district election as are in effect for settling such controversies in county and State elections.

''(b) Emergency Administration if Municipal Board Is Not Appointed. --If a city council in a city that has elected pursuant to G.S. 163–285 to conduct its own elections has not appointed a municipal board of elections and reported the appointments to the Executive Director by March 1 in the year in which the city election is to occur, the Executive Director shall notify the city council that, unless a municipal board of elections is appointed and the Executive Director notified of its appointment by April 1 of that year, the county board of elections shall be ordered to conduct that city's elections that year on an emergency basis. If the city council does not so appoint and so notify by April 1, the Executive Director shall order the county board of elections to conduct the city's elections that year on an emergency basis.

''(c) Emergency Administration Due to Serious Violations. --If a city council or municipal board of elections has committed violations of the applicable portions of this Chapter prior to a city election and those violations are of such magnitude as to give rise to reasonable doubt as to the ability of the municipal board of elections to conduct that election with competence and fairness, the Executive Director of the State Board, with the approval of at least four members of the State Board, may order the county board of elections to conduct the remainder of that election on an emergency basis. Before an order is made under this subsection, the city council and municipal board of elections shall be given an opportunity to be heard by the State Board.

''(d) Ongoing County Administration. --The State Board of Elections may designate the county board of elections as the ongoing agency to conduct a city's elections if all the following conditions are met:

''(1) In more than one election conducted by that city either (i) the city's elections have been administered on an emergency basis pursuant to subsection (b) or (c) of this section or (ii) a new election has been ordered because of irregularities in the city's administration of the election.

''(2) The State Board finds that the interest of the residents of the city in fair and competent administration of elections requires that the city not conduct its own elections.

''(3) The city council and municipal board of elections are given an opportunity to be heard before the State Board.

''(4) The State Board by a vote of at least four of its members designates the county board of elections as the ongoing agency to conduct that city's elections.

''The city council may not elect to conduct its own elections under G.S. 163–285 until every member of the city council has been elected in a election conducted by the county board of elections after the State Board's designation.

''(e) Reimbursement. --If the county board of elections administers a city's elections pursuant to subsection (b), (c), or (d) of this section, the city shall reimburse the county board of elections in the manner set forth in G.S. 163–285.''

S.L. 2001–374, §§ 4 to 6, provide:

''Section 4. The State Board of Elections shall inspect the operations of the municipal boards of elections in the City of Morganton, the Town of Granite Falls, the Town of Old Fort, and the Town of Rhodhiss during September, October, or November of 2001. The State Board shall make subsequent inspections as needed. Those municipalities shall cooperate with the State Board fully. If an inspection generates findings that election laws or regulations have been violated, the State Board shall take appropriate action under G.S. 163–304 or other applicable law.

''Section 5. This act prevails over local acts.

''Section 6. Sections 1 and 2 of this act become effective January 1, 2002, and apply to all primaries and elections held on and after that date. Section 3 of this act becomes effective when this act becomes law with respect to the City of Morganton, the Town of Granite Falls, the Town of Old Fort, and the Town of Rhodhiss. Section 3 of this act becomes effective January 1, 2002, with respect to all other municipalities. Section 4 of this act is effective when this act becomes law. The remainder of this act is effective when it becomes law.''

S.L. 2001–319, § 11, eff. July 28, 2001, substituted ''Executive Director'' for ''Executive Secretary-Director'' and ''State Executive Secretary-Director'' throughout this section.

Notes of Decisions

Construction and application 1

1. Construction and application

Authority of State Board of Elections to conduct investigation and to order a new election of town commissioners was not dependent upon filing of timely protest. Sharpley v. State Bd. of Elections, 1974, 209 S.E.2d 513, 23 N.C.App. 650. Elections ⚷ 271

§ 163–305. Validation of elections

All elections, and the results thereof, previously held in and for any municipality, special district, or school administrative unit pursuant to Subchapter IX, Chapter 163, are hereby validated.

Added by Laws 1973, c. 492, § 1.

§ 163–306. Assumption of office by mayors and councilmen

Newly elected mayors and councilmen (members of the governing body) shall take office as prescribed by G.S. 160A-68.

Added by Laws 1973, c. 866.

§§ 163–307 to 163–320. Reserved

SUBCHAPTER X. ELECTION OF APPELLATE, SUPERIOR, AND DISTRICT COURT JUDGES

Historical and Statutory Notes

2002 Legislation

S.L. 2002–158, § 16, provides:

''Section 1 of this act is effective when it becomes law, provided that distributions from the Fund shall begin in the 2004 election year. Section 2 becomes effective January 1, 2003. Section 3 becomes effective July 1, 2003. Sections 4 and 6(a) become effective for taxable years beginning on or after January 1, 2003. Section 5 becomes effective January 1, 2003. Sections 7 through 13 become effective with respect to primaries and elections held on or after January 1, 2004. Except as otherwise provided in this act, this act is effective when it becomes law.''

Article 25

Nomination and Election of Appellate, Superior, and District Court Judges

Section

163–321. Applicability.
163–322. Nonpartisan primary election method.
163–323. Notice of candidacy.
163–324. Filing fees required of candidates; refunds.
163–325. Petition in lieu of payment of filing fee.
163–326. Certification of notices of candidacy.
163–327. Repealed.
163–327.1. Rules when vacancies for superior court judge are to be voted on.
163–328. Failure of candidates to file; death or other disqualification of a candidate; no withdrawal from candidacy.
163–329. Elections to fill vacancy in office created after primary filing period opens.
163–330. Voting in primary.
163–331. Date of primary.
163–332. Ballots.
163–333. Repealed.
163–334. Counting of ballots.
163–335. Other rules.

Historical and Statutory Notes

2002 Legislation

S.L. 2002–158, § 16, provides:

''Section 1 of this act is effective when it becomes law, provided that distributions from the Fund shall begin in the 2004 election year. Section 2 becomes effective January 1, 2003. Section 3 becomes effective July 1, 2003. Sections 4 and 6(a) become effective for taxable years beginning on or after January 1, 2003. Section 5 becomes effective January 1, 2003. Sections 7 through 13 become effective with respect to primaries and elections held on or after January 1, 2004. Except as otherwise provided in this act, this act is effective when it becomes law.''

§ 163–321. Applicability

The nomination and election of justices of the Supreme Court, judges of the Court of Appeals, and superior and district court

judges of the General Court of Justice shall be as provided by this Article.

Added by Laws 1996 (2nd Ex. Sess.), c. 9, § 7. Amended by S.L. 2001–403, § 1, eff. Jan. 1, 2002; S.L. 2002–158, § 7, eff. Jan. 1, 2004.

Historical and Statutory Notes

Laws 1996, 2 Ex. Sess., c. 9, § 24, provides, in part, that part 2 of this act "becomes effective with respect to elections conducted in 1998 and thereafter".

2001 Legislation

S.L. 2001–403, § 1, eff. Jan. 1, 2002, following "of superior", inserted "and district".

2002 Legislation

S.L. 2002–158, § 7, eff. Jan. 1, 2004, added "justices of the Supreme Court, judges of the Court of Appeals, and" after "election of".

S.L. 2002–158, § 16, provides:

"Section 1 of this act is effective when it becomes law, provided that distributions from the Fund shall begin in the 2004 election year. Section 2 becomes effective January 1, 2003. Section 3 becomes effective July 1, 2003. Sections 4 and 6(a) become effective for taxable years beginning on or after January 1, 2003. Section 5 becomes effective January 1, 2003. Sections 7 through 13 become effective with respect to primaries and elections held on or after January 1, 2004. Except as otherwise provided in this act, this act is effective when it becomes law."

Notes of Decisions

Construction and application 1

1. Construction and application

General Assembly is free to divide judicial districts whenever need exists. State ex rel. Martin v. Preston, 1989, 385 S.E.2d 473, 325 N.C. 438. Constitutional Law ⚷ 2355

Precandidacy residency requirement for judicial court judges is not unconstitutional. State ex rel. Martin v. Preston, 1989, 385 S.E.2d 473, 325 N.C. 438. Judges ⚷ 5

§ 163–322. Nonpartisan primary election method

(a) General. – Except as provided in G.S. 163–329, there shall be a primary to narrow the field of candidates to two candidates for each position to be filled if, when the filing period closes, there are more than two candidates for a single office or the number of candidates for a group of offices exceeds twice the number of positions to be filled. If only one or two candidates file for a single office, no primary shall be held for that office and the candidates shall be declared nominated. If the number of candidates for a group of offices does not exceed twice the number of positions to be filled, no primary shall be held for those offices and the candidates shall be declared nominated.

(b) Determination of Nominees. —In the primary, the two candidates for a single office receiving the highest number of votes, and those candidates for a group of offices receiving the highest number of votes, equal to twice the number of positions to be filled, shall be declared nominated. If two or more candidates receiving the highest number of votes each receive the same number of votes, the State Board of Elections shall determine their relative ranking by lot, and shall declare the nominees accordingly. The canvass of the primary shall be held on the same date as

the primary canvass fixed under G.S. 163–182.5. The canvass shall be conducted in accordance with Article 15A of this Chapter.

(c) Determination of Election Winners. – In the election, the names of those candidates declared nominated without a primary and those candidates nominated in the primary shall be placed on the ballot. The candidate for a single office receiving the highest number of votes shall be elected. Those candidates for a group of offices receiving the highest number of votes, equal in number to the number of positions to be filled, shall be elected. If two candidates receiving the highest number of votes each received the same number of votes, the State Board of Elections shall determine the winner by lot.

Added by Laws 1996 (2nd Ex. Sess.), c. 9, § 7. Amended by S.L. 2001–403, § 1, eff. Jan. 1, 2002; S.L. 2002–158, § 7, eff. Jan. 1, 2004; S.L. 2003–278, § 10(j), eff. Jan. 1, 2004.

Historical and Statutory Notes

Laws 1996, 2 Ex. Sess., c. 9, § 24, provides, in part, that part 2 of this act ''becomes effective with respect to elections conducted in 1998 and thereafter''.

2001 Legislation

S.L. 2001–403, § 1, eff. Jan. 1, 2002, amended this section with no apparent changes.

2002 Legislation

S.L. 2002–158, § 7, eff. Jan. 1, 2004, amended this section with no apparent changes.

S.L. 2002–158, § 16, provides:

''Section 1 of this act is effective when it becomes law, provided that distributions from the Fund shall begin in the 2004 election year. Section 2 becomes effective January 1, 2003. Section 3 becomes effective July 1, 2003. Sections 4 and 6(a) become effective for taxable years beginning on or after January 1, 2003. Section 5 becomes effective January 1, 2003. Sections 7 through 13 become effective with respect to primaries and elections held on or after January 1, 2004. Except as otherwise provided in this act, this act is effective when it becomes law.''

2003 Legislation

S.L. 2003–278, § 10(j), eff. Jan. 1, 2004, in subsec. (b), substituted ''163–182.5'' for ''163–188'' and ''15A'' for ''16''.

§ 163–323. Notice of candidacy

(a) Form of Notice. – Each person offering to be a candidate for election shall do so by filing a notice of candidacy with the State Board of Elections in the following form, inserting the words in parentheses when appropriate:

Date: _____

I hereby file notice that I am a candidate for election to the office of _____ in the regular election to be held _____, _____.

Signed: _____
(Name of Candidate)

Witness: _____

The notice of candidacy shall be either signed in the presence of the chairman or secretary of the State Board of Elections, or signed and acknowledged before an officer authorized to take

acknowledgments who shall certify the notice under seal. An acknowledged and certified notice may be mailed to the State Board of Elections. In signing a notice of candidacy, the candidate shall use only the candidate's legal name and, in his discretion, any nickname by which commonly known. A candidate may also, in lieu of that candidate's first name and legal middle initial or middle name, if any, sign that candidate's nickname, provided the candidate appends to the notice of candidacy an affidavit that the candidate has been commonly known by that nickname for at least five years prior to the date of making the affidavit. The candidate shall also include with the affidavit the way the candidate's name (as permitted by law) should be listed on the ballot if another candidate with the same last name files a notice of candidacy for that office.

A notice of candidacy signed by an agent or any person other than the candidate himself shall be invalid.

(b) Time for Filing Notice of Candidacy. – Candidates seeking election to the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the second Monday in February and no later than 12:00 noon on the last business day in February preceding the election:

Justices of the Supreme Court.

Judges of the Court of Appeals.

Judges of the superior courts.

Judges of the district courts.

(c) Withdrawal of Notice of Candidacy. – Any person who has filed a notice of candidacy for an office shall have the right to withdraw it at any time prior to the date on which the right to file for that office expires under the terms of subsection (b) of this section.

(d) Certificate That Candidate Is Registered Voter. – Candidates shall file along with their notice a certificate signed by the chairman of the board of elections or the director of elections of the county in which they are registered to vote, stating that the person is registered to vote in that county, and if the candidacy is for superior court judge and the county contains more than one superior court district, stating the superior court district of which the person is a resident. In issuing such certificate, the chairman or director shall check the registration records of the county to verify such information. During the period commencing 36 hours immediately preceding the filing deadline, the State Board of Elections shall accept, on a conditional basis, the notice of candidacy of a candidate who has failed to secure the verification ordered herein subject to receipt of verification no later than three days following the filing deadline. The State Board of Elections shall prescribe the form for such certificate, and distribute it to

each county board of elections no later than the last Monday in December of each odd-numbered year.

(e) Candidacy for More Than One Office Prohibited. – No person may file a notice of candidacy for more than one office or group of offices described in subsection (b) of this section, or for an office or group of offices described in subsection (b) of this section and an office described in G.S. 163–106(c), for any one election. If a person has filed a notice of candidacy with a board of elections under this section or under G.S. 163–106(c) for one office or group of offices, then a notice of candidacy may not later be filed for any other office or group of offices under this section when the election is on the same date unless the notice of candidacy for the first office is withdrawn under subsection (c) of this section.

(f) Notice of Candidacy for Certain Offices to Indicate Vacancy. – In any election in which there are two or more vacancies for the office of justice of the Supreme Court, judge of the Court of Appeals, or district court judge to be filled by nominations, each candidate shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the vacancy to which the candidate seeks election. Votes cast for a candidate shall be effective only for election to the vacancy for which the candidate has given notice of candidacy as provided in this subsection.

A person seeking election for a specialized district judgeship established under G.S. 7A–147 shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the specialized judgeship to which the person seeks nomination.

(g) No person may file a notice of candidacy for superior court judge unless that person is at the time of filing the notice of candidacy a resident of the judicial district as it will exist at the time the person would take office if elected. No person may be nominated as a superior court judge under G.S. 163–114 unless that person is at the time of nomination a resident of the judicial district as it will exist at the time the person would take office if elected. This subsection implements Article IV, Section 9(1) of the North Carolina Constitution which requires regular Superior Court Judges to reside in the district for which elected.

Added by Laws 1996 (2nd Ex. Sess.), c. 9, § 7. Amended by S.L. 1998–217, § 36(a), eff. Feb. 1, 1999; S.L. 2001–403, § 1, eff. Jan. 1, 2002; S.L. 2001–466, § 5.1(b), eff. Jan. 1, 2003; S.L. 2002–158, § 7, eff. Jan. 1, 2004; S.L. 2002–159, § 21(g), eff. Oct. 11, 2002.

Historical and Statutory Notes

Laws 1996, 2 Ex. Sess., c. 9, § 24, provides, in part, that part 2 of this act "becomes effective with respect to elec-

tions conducted in 1998 and thereafter''.

2001 Legislation

S.L. 2001–403, § 1, eff. Jan. 1, 2002, in subsec. (b), added ''Judges of the district courts.'' at the end; in subsec. (d), in the first sentence, inserted ''candidacy is for superior court judge and the''; and added subsecs. (f) and (g).

S.L. 2001–466, § 5.1(b), eff. Jan. 1, 2003, rewrote subsec. (b), which prior thereto read:

''(b) Time for Filing Notice of Candidacy. --Candidates seeking election to the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the first Monday in January and no later than 12:00 noon on the first Monday in February preceding the election:

''Judges of the superior courts.''.

2002 Legislation

S.L. 2002–158, § 7, eff. Jan. 1, 2004, in subsec. (b), added the second and third paragraphs and rewrote the first paragraph of subsec. (f), which prior thereto read:

''(f) Notice of Candidacy for Certain Offices to Indicate Vacancy. – In any election in which there are two or more vacancies for the office of district court judge to be filled by nominations, each candidate shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the vacancy to which he seeks election. Votes cast for a candidate shall be effective only for his election to the vacancy for which the candidate has given notice of candidacy as provided in this subsection.''

S.L. 2002–158, § 16, provides:

''Section 1 of this act is effective when it becomes law, provided that distributions from the Fund shall begin in the 2004 election year. Section 2 becomes effective January 1, 2003. Section 3 becomes effective July 1, 2003. Sections 4 and 6(a) become effective for taxable years beginning on or after January 1, 2003. Section 5 becomes effective January 1, 2003. Sections 7 through 13 become effective with respect to primaries and elections held on or after January 1, 2004. Except as otherwise provided in this act, this act is effective when it becomes law.''

Cross References

Confidentiality of date of birth, see § 163–82.10B.
Contents of official ballots, see § 163–165.5.
County Board of Elections littering notification, see § 163–33.3.
State Board of Elections littering notification, see § 163–22.3.

Notes of Decisions

Remedies 2
Validity 1

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1. Validity

Voter's appeal from trial court order upholding constitutionality of statutes that allowed defendant judges to simultaneously run for superior court judgeship and district court judgeship was not moot, even though relevant statutes had been amended to disallow superior court candidates from running for other offices during same election; if statutes were unconstitutional, defendant judges were holding office unlawfully, in which case there would have been no eradication of effects of alleged violation. Comer v. Ammons, 1999, 135 N.C.App. 531, 522 S.E.2d 77. Appeal And Error ⚷ 781(1)

Statutes that allowed defendant judges to simultaneously run for superior court judgeship and district court judgeship did not violate equal protection, despite claim that because only lawyers were allowed to take advantage of such ''loophole'' and run for more than one office, lawyers were granted benefit unavailable to others; State Constitution required that superior court judges be authorized to practice law, and nonlawyers were permitted to run for more than one of several offices so long as filing periods were not same. Comer v. Ammons, 1999, 135 N.C.App. 531, 522 S.E.2d 77. Constitutional Law ⚷ 3594; Judges ⚷ 3

Provision of State Constitution that prohibits person from holding more than one office does not prohibit person from seeking election to more than one office. Comer v. Ammons, 1999, 135 N.C.App. 531, 522 S.E.2d 77. Officers And Public Employees ⚷ 30.1

2. Remedies

Relief requested by voter who challenged constitutionality of statutes that allowed defendant judges to simultaneously run for superior court judgeship and district court judgeship did not match harm he asserted; while he claimed that power to choose officials was taken out of voters' hands when governor appointed judge to fill district court seat that was left vacant when candidate who was elected to both district court and superior court judgeships chose latter, voter requested only that election for superior court seat be voided, and voter did not challenge appointed judge. Comer v. Ammons, 1999, 135 N.C.App. 531, 522 S.E.2d 77. Judges ⚷ 3

§ 163–324. Filing fees required of candidates; refunds

(a) Fee Schedule. – At the time of filing a notice of candidacy under this Article, each candidate shall pay to the State Board of Elections a filing fee for the office he seeks in the amount of one percent (1%) of the annual salary of the office sought.

(b) Refund of Fees. – If any person who has filed a notice of candidacy and paid the filing fee prescribed in subsection (a) of this section withdraws his notice of candidacy within the period prescribed in G.S. 163–323(c), he shall be entitled to have the fee he paid refunded. The chairman of the State Board of Elections shall cause a warrant to be drawn on the State Treasurer for the refund payment.

If any person who has filed a notice of candidacy and paid the filing fee prescribed in subsection (a) of this section dies prior to the date of the election, the personal representative of the estate shall be entitled to have the fee refunded if application is made to the board of elections to which the fee was paid no later than one year after the date of death, and refund shall be made in the same manner as in withdrawal of notice of candidacy.

Added by Laws 1996 (2nd Ex. Sess.), c. 9, § 7. Amended by S.L. 2001–403, § 1, eff. Jan. 1, 2002; S.L. 2002–158, § 7, eff. Jan. 1, 2004.

Historical and Statutory Notes

Laws 1996, 2 Ex. Sess., c. 9, § 24, provides, in part, that part 2 of this act "becomes effective with respect to elections conducted in 1998 and thereafter".

2001 Legislation

S.L. 2001–403, § 1, eff. Jan. 1, 2002, amended this section with no apparent changes.

2002 Legislation

S.L. 2002–158, § 7, eff. Jan. 1, 2004, amended this section with no apparent changes.

S.L. 2002–158, § 16, provides:

"Section 1 of this act is effective when it becomes law, provided that distributions from the Fund shall begin in the 2004 election year. Section 2 becomes effective January 1, 2003. Section 3 becomes effective July 1, 2003. Sections 4 and 6(a) become effective for taxable years beginning on or after January 1, 2003. Section 5 becomes effective January 1, 2003. Sections 7 through 13 become effective with respect to primaries and elections held on or after January 1, 2004. Except as otherwise provided in this act, this act is effective when it becomes law."

§ 163–325. Petition in lieu of payment of filing fee

(a) General. – Any qualified voter who seeks election under this Article may, in lieu of payment of any filing fee required for the

office he seeks, file a written petition requesting him to be a candidate for a specified office with the State Board of Elections.

(b) Requirements of Petition; Deadline for Filing. – If the candidate is seeking the office of justice of the Supreme Court, judge of the Court of Appeals, or superior or district court judge, that individual shall file a written petition with the State Board of Elections no later than 12:00 noon on Monday preceding the filing deadline before the primary. If the office is justice of the Supreme Court or judge of the Court of Appeals, the petition shall be signed by 10,000 registered voters in the State. If the office is superior court or district court judge, the petition shall be signed by ten percent (10%) of the registered voters of the election area in which the office will be voted for. The board of elections shall verify the names on the petition, and if the petition and notice of candidacy are found to be sufficient, the candidate's name shall be printed on the appropriate ballot. Petitions must be presented to the county board of elections for verification at least 15 days before the petition is due to be filed with the State Board of Elections. The State Board of Elections may adopt rules to implement this section and to provide standard petition forms.

Added by Laws 1996 (2nd Ex. Sess.), c. 9, § 7. Amended by S.L. 2001–403, § 1, eff. Jan. 1, 2002; S.L. 2002–158, § 7, eff. Jan. 1, 2004.

Historical and Statutory Notes

Laws 1996, 2 Ex. Sess., c. 9, § 24, provides, in part, that part 2 of this act "becomes effective with respect to elections conducted in 1998 and thereafter".

2001 Legislation

S.L. 2001–403, § 1, eff. Jan. 1, 2002, in the first sentence of subsec. (b), inserted "or district".

2002 Legislation

S.L. 2002–158, § 7, eff. Jan. 1, 2004, rewrote subsec. (b), which prior thereto read:

"(b) Requirements of Petition; Deadline for Filing. – If the candidate is seeking the office of superior or district court judge, that individual shall file a written petition with the State Board of Elections no later than 12:00 noon on Monday preceding the filing deadline before the primary. The petition shall be signed by ten percent (10%) of the registered voters of the election area in which the office will be voted for. The board of elections shall verify the names on the petition, and if the petition and notice of candidacy are found to be sufficient, the candidate's name shall be printed on the appropriate ballot. Petitions must be presented to the county board of elections for verification at least 15 days before the petition is due to be filed with the State Board of Elections. The State Board of Elections may adopt rules to implement this section and to provide standard petition forms."

S.L. 2002–158, § 16, provides:

"Section 1 of this act is effective when it becomes law, provided that distributions from the Fund shall begin in the 2004 election year. Section 2 becomes effective January 1, 2003. Section 3 becomes effective July 1, 2003. Sections 4 and 6(a) become effective for taxable years beginning on or after January 1, 2003. Section 5 becomes effective January 1, 2003. Sections 7 through 13 become effective with respect to primaries and elections held on or after January 1, 2004. Except as otherwise provided in this act, this act is effective when it becomes law."

§ 163–326. Certification of notices of candidacy

(a) Names of Candidates Sent to Secretary of State. – Within three days after the time for filing notices of candidacy with the

State Board of Elections under the provisions of G.S. 163–323(b) has expired, the chairman or secretary of that Board shall certify to the Secretary of State the name and address of each person who has filed with the State Board of Elections, indicating in each instance the office sought.

(b) Notification of Local Boards. – No later than 10 days after the time for filing notices of candidacy under the provisions of G.S. 163–323(b) has expired, the chairman of the State Board of Elections shall certify to the chairman of the county board of elections in each county in the appropriate district the names of candidates for nomination to the offices of justice of the Supreme Court, judge of the Court of Appeals, and superior and district court judge who have filed the required notice and paid the required filing fee or presented the required petition to the State Board of Elections, so that their names may be printed on the official judicial ballot for justice of the Supreme Court, judge of the Court of Appeals, and superior and district court.

(c) Receipt of Notification by County Board. – Within two days after receipt of each of the letters of certification from the chairman of the State Board of Elections required by subsection (b) of this section, each county elections board chairman shall acknowledge receipt by letter addressed to the chairman of the State Board of Elections.

Added by Laws 1996 (2nd Ex. Sess.), c. 9, § 7. Amended by S.L. 2001–403, § 1, eff. Jan. 1, 2002; S.L. 2002–158, § 7, eff. Jan. 1, 2004.

Historical and Statutory Notes

Laws 1996, 2 Ex. Sess., c. 9, § 24, provides, in part, that part 2 of this act ''becomes effective with respect to elections conducted in 1998 and thereafter''.

2001 Legislation

S.L. 2001–403, § 1, eff. Jan. 1, 2002, in subsec. (b), inserted ''and district'' in two places.

2002 Legislation

S.L. 2002–158, § 7, eff. Jan. 1, 2004, in subsec. (b), inserted ''justice of the Supreme Court, judge of the Court of Appeals, and'' in two places.

S.L. 2002–158, § 16, provides:

''Section 1 of this act is effective when it becomes law, provided that distributions from the Fund shall begin in the 2004 election year. Section 2 becomes effective January 1, 2003. Section 3 becomes effective July 1, 2003. Sections 4 and 6(a) become effective for taxable years beginning on or after January 1, 2003. Section 5 becomes effective January 1, 2003. Sections 7 through 13 become effective with respect to primaries and elections held on or after January 1, 2004. Except as otherwise provided in this act, this act is effective when it becomes law.''

§ 163–327. Repealed by S.L. 2006–192, § 9(a), eff. Aug. 3, 2006

Historical and Statutory Notes

The repealed section, which related to vacancies of candidates or elected officers, was derived from:

Laws 1996 (2nd Ex. Sess.), c. 9, § 7.

S.L. 1999–424, § 4(a), eff. Aug. 5, 1999.
S.L. 2001–403, § 1, eff. Jan. 1, 2002.
S.L. 2002–158, § 7, eff. Jan. 1, 2004.
See, now, § 163–328.

§ 163–327.1. Rules when vacancies for superior court judge are to be voted on

If a vacancy occurs in a judicial district for any offices of superior court judge, and on account of the occurrence of such vacancy, there is to be an election for one or more terms in that district to fill the vacancy or vacancies, at that same election in accordance with G.S. 163–9 and Article IV, Section 19 of the North Carolina Constitution, the nomination and election shall be determined by the following special rules in addition to any other provisions of law:

(1) If the vacancy occurs prior to the opening of the filing period under G.S. 163–323(b), nominations shall be made by primary election as provided by this Article, without designation as to the vacancy.

(2) If the vacancy occurs beginning on opening of the filing period under G.S. 163–323(b), and ending on the sixtieth day before the general election, candidate filing shall be as provided by G.S. 163–329 without designation as to the vacancy.

(3) The general election ballot shall contain, without designation as to vacancy, spaces for the election to fill the vacancy where nominations were made or candidates filed under subdivision (1) or (2) of this section. Except as provided in G.S. 163–329, the persons receiving the highest numbers of votes equal to the term or terms to be filled shall be elected to the term or terms.

Added by S.L. 2001–460, § 10, eff. Jan. 1, 2002. Amended by S.L. 2006–192, § 8(b), eff. Aug. 3, 2006.

Historical and Statutory Notes

2006 Legislation

S.L. 2006–192, § 8(b), eff. Aug. 3, 2006, amended subd. (3) by substituting ''Except as provided in G.S. 163–329, the'' for ''The''.

S.L. 2006–192, § 19, provides:

''Sections 2 through 5 of this act are effective January 1, 2007, and apply to all primaries and elections conducted on or after that date. Sections 8 and 9 of this act are effective when this act becomes law and apply to vacancies occurring on or after that date. Section 17 of this act and the portion of Section 15 of this act that affects G.S. 163–278.13(e3) become effective January 1, 2007, and apply to contributions made or accepted on or after that date. Section 18 of this act becomes effective for taxable years beginning on or after January 1, 2006. The remainder of this act is effective when it becomes law.''

§ 163–328. Failure of candidates to file; death or other disqualification of a candidate; no withdrawal from candidacy

(a) Insufficient Number of Candidates. — If when the filing period expires, candidates have not filed for an office to be filled

under this Article, the State Board of Elections shall extend the filing period for five days for any such offices.

(a1) Death or Disqualification of Candidate Before Primary. — If a candidate for nomination in a primary dies or becomes disqualified before the primary but after the ballots have been printed, the State Board of Elections shall determine whether or not there is time to reprint the ballots. If the Board determines that there is not enough time to reprint the ballots, the deceased or disqualified candidate's name shall remain on the ballots. If that candidate receives enough votes for nomination, such votes shall be disregarded and the candidate receiving the next highest number of votes below the number necessary for nomination shall be declared nominated. If the death or disqualification of the candidate leaves only two candidates for each office to be filled, the nonpartisan primary shall not be held and all candidates shall be declared nominees.

(b) Earlier Non–Primary Vacancies; Reopening Filing. — If there is no primary because only one or two candidates have filed for a single office, or the number of candidates filed for a group of offices does not exceed twice the number of positions to be filled, or if a primary has occurred and eliminated candidates, and thereafter a remaining candidate dies or otherwise becomes disqualified before the election and before the ballots are printed, the State Board of Elections shall, upon notification of the death or other disqualification, immediately reopen the filing period for an additional five days during which time additional candidates shall be permitted to file for election. If the ballots have been printed at the time the State Board of Elections receives notice of the candidate's death or other disqualification, the Board shall determine whether there will be sufficient time to reprint them before the election if the filing period is reopened for three days. If the Board determines that there will be sufficient time to reprint the ballots, it shall reopen the filing period for three days to allow other candidates to file for election, and that election shall be conducted as provided in G.S. 163–329(b1).

(c) Later Vacancies; Ballots Not Reprinted. — If the ballots have been printed at the time the State Board of Elections receives notice of a candidate's death or other disqualification, and if the Board determines that there is not enough time to reprint the ballots before the election if the filing period is reopened for three days, then regardless of the number of candidates remaining for the office or group of offices, the ballots shall not be reprinted and the name of the vacated candidate shall remain on the ballots. If a vacated candidate should poll the highest number of votes in the election for a single office or enough votes to be elected to one of a group of offices, the State Board of Elections shall declare the office vacant and it shall be filled in the manner provided by law.

(d) No Withdrawal Permitted of Living, Qualified Candidate After Close of Filing. — After the close of the candidate filing period, a candidate who has filed a notice of candidacy for the office, who has not withdrawn notice before the close of filing as permitted by G.S. 163–323(b), who remains alive, and has not become disqualified for the office may not withdraw his or her candidacy. That candidate's name shall remain on the ballot, any votes cast for the candidacy shall be counted in primary or election, and if the candidate wins, the candidate may fail to qualify by refusing to take the oath of office.

(e) Death, Disqualification, or Failure to Qualify After Election. — If a person elected to the office of justice of the Supreme Court, judge of the Court of Appeals, or superior or district court judge dies or becomes disqualified on or after election day and before he has qualified by taking the oath of office, or fails to qualify by refusing to take the oath of office, the office shall be deemed vacant and shall be filled as provided by law.

Added by Laws 1996 (2nd Ex. Sess.), c. 9, § 7. Amended by S.L. 1999–424, § 4(b), eff. Aug. 5, 1999; S.L. 2001–403, § 1, eff. Jan. 1, 2002; S.L. 2002–158, § 7, eff. Jan. 1, 2004; S.L. 2006–192, § 9(b), eff. Aug. 3, 2006.

Historical and Statutory Notes

Laws 1996, 2 Ex. Sess., c. 9, § 24, provides, in part, that part 2 of this act ''becomes effective with respect to elections conducted in 1998 and thereafter''.

2001 Legislation

S.L. 2001–403, § 1, eff. Jan. 1, 2002, amended this section with no apparent changes.

2002 Legislation

S.L. 2002–158, § 7, eff. Jan. 1, 2004, amended this section with no apparent changes.

S.L. 2002–158, § 16, provides:

''Section 1 of this act is effective when it becomes law, provided that distributions from the Fund shall begin in the 2004 election year. Section 2 becomes effective January 1, 2003. Section 3 becomes effective July 1, 2003. Sections 4 and 6(a) become effective for taxable years beginning on or after January 1, 2003. Section 5 becomes effective January 1, 2003. Sections 7 through 13 become effective with respect to primaries and elections held on or after January 1, 2004. Except as otherwise provided in this act, this act is effective when it becomes law.''

2006 Legislation

S.L. 2006–192, § 9(b), eff. Aug. 3, 2006, rewrote the catchline and the section, which prior thereto read:

''§ 163–328. Failure of candidates to file; death or other disqualification of a candidate before election

''(a) Insufficient Number of Candidates. – If when the filing period expires, candidates have not filed for an office to be filled under this Article, the State Board of Elections shall extend the filing period for five days for any such offices.

''(b) Death or Other Disqualification of Candidate; Reopening Filing. – If there is no primary because only one or two candidates have filed for a single office, or the number of candidates filed for a group of offices does not exceed twice the number of positions to be filled, and thereafter a candidate dies or otherwise becomes disqualified before the election and before the ballots are printed, the State Board of Elections shall, upon notification of the death or other disqualification, immediately reopen the filing period for an additional five days during which time additional candidates shall be permitted to file for election. If the ballots have been printed at the time the State Board of Elections receives notice of the candidate's

death or other disqualification, the Board shall determine whether there will be sufficient time to reprint them before the election if the filing period is reopened for three days. If the Board determines that there will be sufficient time to reprint the ballots, it shall reopen the filing period for three days to allow other candidates to file for election, and such election shall be conducted on the plurality basis.

''(c) Vacancy Caused by Nominated Candidate; Ballots Not Reprinted. – If the ballots have been printed at the time the State Board of Elections receives notice of a candidate's death, other disqualification, or resignation, and if the Board determines that there is not enough time to reprint the ballots before the election if the filing period is reopened for three days, then regardless of the number of candidates remaining for the office or group of offices, the ballots shall not be reprinted and the name of the vacated candidate shall remain on the ballots. If a vacated candidate should poll the highest number of votes in the election for a single office or enough votes to be elected to one of a group of offices, the State Board of Elections shall declare the office vacant and it shall be filled in the manner provided by law.''

S.L. 2006–192, § 19, provides:

''Sections 2 through 5 of this act are effective January 1, 2007, and apply to all primaries and elections conducted on or after that date. Sections 8 and 9 of this act are effective when this act becomes law and apply to vacancies occurring on or after that date. Section 17 of this act and the portion of Section 15 of this act that affects G.S. 163–278.13(e3) become effective January 1, 2007, and apply to contributions made or accepted on or after that date. Section 18 of this act becomes effective for taxable years beginning on or after January 1, 2006. The remainder of this act is effective when it becomes law.''

§ 163–329. Elections to fill vacancy in office created after primary filing period opens

(a) General. — If a vacancy is created in the office of justice of the Supreme Court, judge of the Court of Appeals, or judge of superior court after the filing period for the primary opens but more than 60 days before the general election, and under the Constitution of North Carolina an election is to be held for that position, such that the office shall be filled in the general election as provided in G.S. 163–9, the election to fill the office for the remainder of the term shall be conducted without a primary using the method provided in subsection (b1) of this section. If a vacancy is created in the office of justice of the Supreme Court, judge of the Court of Appeals, or judge of superior court before the filing period for the primary opens, and under the Constitution of North Carolina an election is to be held for that position, such that the office shall be filled in the general election as provided in G.S. 163–9, the election to fill the office for the remainder of the term shall be conducted in accordance with G.S. 163–322.

(b) Repealed by S.L. 2006–192, § 8(a), eff. Aug. 3, 2006.

(b1) Method for Vacancy Election. — If a vacancy for the office of justice of the Supreme Court, judge of the Court of Appeals, or judge of the superior court occurs more than 60 days before the general election and after the opening of the filing period for the primary, then the State Board of Elections shall designate a special filing period of one week for candidates for the office. If more than two candidates file and qualify for the office in accor-

dance with G.S. 163–323, then the Board shall conduct the election for the office as follows:

(1) When the vacancy described in this section occurs more than 63 days before the date of the second primary for members of the General Assembly, a special primary shall be held on the same day as the second primary. The two candidates with the most votes in the special primary shall have their names placed on the ballot for the general election held on the same day as the general election for members of the General Assembly.

(2) When the vacancy described in this section occurs less than 64 days before the date of the second primary, a general election for all the candidates shall be held on the same day as the general election for members of the General Assembly and the ''instant runoff voting'' method shall be used to determine the winner. Under ''instant runoff voting,'' voters rank up to three of the candidates by order of preference, first, second, or third. If the candidate with the greatest number of first-choice votes receives more than fifty percent (50%) of the first-choice votes, that candidate wins. If no candidate receives that minimum number, the two candidates with the greatest number of first-choice votes advance to a second round of counting. In this round, each ballot counts as a vote for whichever of the two final candidates is ranked highest by the voter. The candidate with the most votes in the second round wins the election. If more than one seat is to be filled in the same race, the voter votes the same way as if one seat were to be filled. The counting is the same as when one seat is to be filled, with one or two rounds as needed, except that counting is done separately for each seat to be filled. The first count results in the first winner. Then the second count proceeds without the name of the first winner. This process results in the second winner. For each additional seat to be filled, an additional count is done without the names of the candidates who have already won. In multi-seat contests, the State Board of Elections may give the voter more than three choices.

(3) If two or more candidates receiving the highest number of votes each receive the same number of votes, the board of elections shall resolve the tie in accordance with G.S. 163–182.8.

(c) Applicable Provisions. — Except as provided in this section, the provisions of this Article apply to elections conducted under this section.

(d) Rules. — The State Board of Elections shall adopt rules for the implementation of this section. The rules are not subject to

Article 2A of Chapter 150B of the General Statutes. The rules shall include the following:

(1) If after the first-choice candidate is eliminated, a ballot does not indicate one of the uneliminated candidates as an alternative choice, the ballot is exhausted and shall not be counted after the initial round.

(2) The fact that the voter does not designate a second or third choice does not invalidate the voter's higher choice or choices.

(3) The fact that the voter gives more than one ranking to the same candidate shall not invalidate the vote. The highest ranking given a particular candidate shall count as long as the candidate is not eliminated.

(4) In case of a tie between candidates such that two or more candidates have an equal number of first choices and more than two candidates qualify for the second round, instant runoff voting shall be used to determine which two candidates shall advance to the second round.

Added by Laws 1996 (2nd Ex. Sess.), c. 9, § 7. Amended by S.L. 2001–403, §§ 1, 12.1, eff. Jan. 1, 2002; S.L. 2002–158, § 7, eff. Jan. 1, 2004; S.L. 2006–192, § 8(a), eff. Aug. 3, 2006.

Historical and Statutory Notes

Laws 1996, 2 Ex. Sess., c. 9, § 24, provides, in part, that part 2 of this act "becomes effective with respect to elections conducted in 1998 and thereafter".

2001 Legislation

S.L. 2001–403, § 1, eff. Jan. 1, 2002, amended this section with no apparent changes.

S.L. 2001–403, § 12.1, eff. Jan. 1, 2002, in subd. (4) of subsec. (b), substituted "resolve the tie in accordance with G.S. 163–182.8" for "determine the winner by lot".

2002 Legislation

S.L. 2002–158, § 7, eff. Jan. 1, 2004, inserted "justice of the Supreme Court, judge of the Court of Appeals, or" in three places.

S.L. 2002–158, § 16, provides:

"Section 1 of this act is effective when it becomes law, provided that distributions from the Fund shall begin in the 2004 election year. Section 2 becomes effective January 1, 2003. Section 3 becomes effective July 1, 2003. Sections 4 and 6(a) become effective for taxable years beginning on or after January 1, 2003. Section 5 becomes effective January 1, 2003. Sections 7 through 13 become effective with respect to primaries and elections held on or after January 1, 2004. Except as otherwise provided in this act, this act is effective when it becomes law."

2006 Legislation

S.L. 2006–192, § 8(a), eff. Aug. 3, 2006, rewrote the catchline and section, which prior thereto read:

"§ 163–329. Elections to fill vacancy created after primary filing period to use plurality method

"(a) General. – If a vacancy is created in the office of justice of the Supreme Court, judge of the Court of Appeals, or judge of superior court after the filing period for the primary opens but more than 60 days before the general election, and under the Constitution of North Carolina an election is to be held for that position, such that the office shall be filled in the general election as provided in G.S. 163–9, the election to fill the office for the remainder of the term shall be conducted without a primary using the plurality method as provided in subsection (b) of this section. If a vacancy is created in the office of justice of the Supreme Court, judge of the Court of Appeals, or judge of superior court before the filing peri-

od for the primary opens, and under the Constitution of North Carolina an election is to be held for that position, such that the office shall be filled in the general election as provided in G.S. 163–9, the election to fill the office for the remainder of the term shall be conducted in accordance with G.S. 163–322.

''(b) Plurality Election Rules. – Elections under this section shall be conducted using the following rules:

''(1) The filing period shall be prescribed by the State Board of Elections, but in no event may it be less than five working days. If a vacancy occurs in a second office in the same superior court district after the first filing period established under the section has closed, the State Board of Elections shall reopen filing for a period of not less than five working days for the office of justice of the Supreme Court, judge of the Court of Appeals, or superior court judge. All persons filing in either filing period shall run as a group and the election results shall be determined by subdivision (3) of this subsection.

''(2) When more than one person is seeking election to a single office, the candidate who receives the highest number of votes shall be declared elected.

''(3) When more persons are seeking election to two or more offices (constituting a group) than there are offices to be filled, those candidates receiving the highest number of votes, equal in number to the number of offices to be filled, shall be declared elected.

''(4) If two or more candidates receiving the highest number of votes each receive the same number of votes, the board of elections shall resolve the tie in accordance with G.S. 163–182.8.

''(5) Except as provided in this section, the provisions of this Article apply to elections conducted under this section.''

S.L. 2006–192, § 19, provides:

''Sections 2 through 5 of this act are effective January 1, 2007, and apply to all primaries and elections conducted on or after that date. Sections 8 and 9 of this act are effective when this act becomes law and apply to vacancies occurring on or after that date. Section 17 of this act and the portion of Section 15 of this act that affects G.S. 163–278.13(e3) become effective January 1, 2007, and apply to contributions made or accepted on or after that date. Section 18 of this act becomes effective for taxable years beginning on or after January 1, 2006. The remainder of this act is effective when it becomes law.''

§ 163–330. Voting in primary

Any person who will become qualified by age to register and vote in the general election for which the primary is held, even though not so qualified by the date of the primary, shall be entitled to register for the primary and general election prior to the primary and then to vote in the primary after being registered. Such person may register not earlier than 60 days nor later than the last day for making application to register under G.S. 163–82.6(c) prior to the primary. Such a person also may register and vote in the primary and general election pursuant to G.S. 163–82.6A(f).

Added by Laws 1996 (2nd Ex. Sess.), c. 9, § 7. Amended by S.L. 2001–403, § 1, eff. Jan. 1, 2002; S.L. 2002–158, § 7, eff. Jan. 1, 2004; S.L. 2009–541, § 26, eff. Aug. 28, 2009.

Historical and Statutory Notes

Laws 1996, 2 Ex. Sess., c. 9, § 24, provides, in part, that part 2 of this act ''becomes effective with respect to elections conducted in 1998 and thereafter''.

2001 Legislation

S.L. 2001–403, § 1, eff. Jan. 1, 2002, amended this section with no apparent changes.

2002 Legislation

S.L. 2002–158, § 7, eff. Jan. 1, 2004, amended this section with no apparent changes.

S.L. 2002–158, § 16, provides:

''Section 1 of this act is effective when it becomes law, provided that distributions from the Fund shall begin in the 2004 election year. Section 2 becomes effective January 1, 2003. Section 3 becomes effective July 1, 2003. Sections 4 and 6(a) become effective for taxable years beginning on or after January 1, 2003. Section 5 becomes effective January 1, 2003. Sections 7 through 13 become effective with respect to primaries and elections held on or after January 1, 2004. Except as otherwise provided in this act, this act is effective when it becomes law.''

2009 Legislation

S.L. 2009–541, § 26, in the first sentence, deleted ''or residence'' after ''qualified by age''; and added the third sentence.

§ 163–331. Date of primary

The primary shall be held on the same date as established for primary elections under G.S. 163–1(b).

Added by Laws 1996 (2nd Ex. Sess.), c. 9, § 7. Amended by S.L. 2001–403, § 1, eff. Jan. 1, 2002; S.L. 2002–158, § 7, eff. Jan. 1, 2004.

Historical and Statutory Notes

Laws 1996, 2 Ex. Sess., c. 9, § 24, provides, in part, that part 2 of this act ''becomes effective with respect to elections conducted in 1998 and thereafter''.

2001 Legislation

S.L. 2001–403, § 1, eff. Jan. 1, 2002, amended this section with no apparent changes.

2002 Legislation

S.L. 2002–158, § 7, eff. Jan. 1, 2004, amended this section with no apparent changes.

S.L. 2002–158, § 16, provides:

''Section 1 of this act is effective when it becomes law, provided that distributions from the Fund shall begin in the 2004 election year. Section 2 becomes effective January 1, 2003. Section 3 becomes effective July 1, 2003. Sections 4 and 6(a) become effective for taxable years beginning on or after January 1, 2003. Section 5 becomes effective January 1, 2003. Sections 7 through 13 become effective with respect to primaries and elections held on or after January 1, 2004. Except as otherwise provided in this act, this act is effective when it becomes law.''

§ 163–332. Ballots

(a) General. – In elections there shall be official ballots. The ballots shall be printed to conform to the requirement of G.S. 163–165.6(c) and to show the name of each person who has filed notice of candidacy, and the office for which each aspirant is a candidate.

Only those who have filed the required notice of candidacy with the proper board of elections, and who have paid the required filing fee or qualified by petition, shall have their names printed on the official primary ballots. Only those candidates properly nominated shall have their names appear on the official general election ballots.

(b) Ballots to Be Furnished by County Board of Elections. – It shall be the duty of the county board of elections to print official ballots for the following offices to be voted for in the primary:

Justice of the Supreme Court.

Judge of the Court of Appeals.

Superior court judge.

District court judge.

In printing ballots, the county board of elections shall be governed by instructions of the State Board of Elections with regard to width, color, kind of paper, form, and size of type.

Three days before the election, the chairman of the county board of elections shall distribute official ballots to the chief judge of each precinct in his county, and the chief judge shall give a receipt for the ballots received. On the day of the primary, it shall be the chief judge's duty to have all the ballots so delivered available for use at the precinct voting place.

Added by Laws 1996 (2nd Ex. Sess.), c. 9, § 7. Amended by S.L. 2001–403, § 1, eff. Jan. 1, 2002; S.L. 2001–460, § 9, eff. Jan. 1, 2002; S.L. 2002–158, § 7, eff. Jan. 1, 2004.

Historical and Statutory Notes

Laws 1996, 2 Ex. Sess., c. 9, § 24, provides, in part, that part 2 of this act ''becomes effective with respect to elections conducted in 1998 and thereafter''.

2001 Legislation

S.L. 2001–403, § 1, eff. Jan. 1, 2002, in the first paragraph of subsec. (b), substituted ''Be'' for ''be'' and inserted ''District court judge.''.

S.L. 2001–460, § 9, eff. Jan. 1, 2002, in the first paragraph of subsec. (a), in the second sentence, substituted ''G.S. 163–165.6(c)'' for ''G.S. 163–140(c)''.

2002 Legislation

S.L. 2002–158, § 7, eff. Jan. 1, 2004, in subsec. (b), added the second and third paragraphs.

S.L. 2002–158, § 16, provides:

''Section 1 of this act is effective when it becomes law, provided that distributions from the Fund shall begin in the 2004 election year. Section 2 becomes effective January 1, 2003. Section 3 becomes effective July 1, 2003. Sections 4 and 6(a) become effective for taxable years beginning on or after January 1, 2003. Section 5 becomes effective January 1, 2003. Sections 7 through 13 become effective with respect to primaries and elections held on or after January 1, 2004. Except as otherwise provided in this act, this act is effective when it becomes law.''

§ 163–333. Repealed by S.L. 2001–398, § 15, eff. Jan. 1, 2002

Historical and Statutory Notes

The repealed section, which related to canvass, was derived from Laws 1996 (2nd Ex. Sess.), c. 9, § 7.

S.L. 2001–403, § 1, eff. Jan. 1, 2002, purported to amend this section with no apparent changes to the text and without reference to the repeal of this section by S.L. 2001–398, § 15. No effect was given to the purported amendment by S.L. 2001–403, § 1.

§ 163–334. Counting of ballots

Counting of ballots in primaries and elections held under this Article shall be under the same rules as for counting of ballots in nonpartisan municipal elections under Article 24 of this Chapter.

Added by Laws 1996 (2nd Ex. Sess.), c. 9, § 7. Amended by S.L. 2001–403, § 1, eff. Jan. 1, 2002; S.L. 2002–158, § 7, eff. Jan. 1, 2004.

Historical and Statutory Notes

Laws 1996, 2 Ex. Sess., c. 9, § 24, provides, in part, that part 2 of this act ''becomes effective with respect to elections conducted in 1998 and thereafter''.

2001 Legislation

S.L. 2001–403, § 1, eff. Jan. 1, 2002, amended this section with no apparent changes.

2002 Legislation

S.L. 2002–158, § 7, eff. Jan. 1, 2004, amended this section with no apparent changes.

S.L. 2002–158, § 16, provides:

''Section 1 of this act is effective when it becomes law, provided that distributions from the Fund shall begin in the 2004 election year. Section 2 becomes effective January 1, 2003. Section 3 becomes effective July 1, 2003. Sections 4 and 6(a) become effective for taxable years beginning on or after January 1, 2003. Section 5 becomes effective January 1, 2003. Sections 7 through 13 become effective with respect to primaries and elections held on or after January 1, 2004. Except as otherwise provided in this act, this act is effective when it becomes law.''

§ 163–335. Other rules

Except as provided by this Article, the conduct of elections shall be governed by Subchapter VI of this Chapter.

Added by Laws 1996 (2nd Ex. Sess.), c. 9, § 7. Amended by S.L. 2001–403, § 1, eff. Jan. 1, 2002; S.L. 2002–158, § 7, eff. Jan. 1, 2004.

Historical and Statutory Notes

Laws 1996, 2 Ex. Sess., c. 9, § 24, provides, in part, that part 2 of this act ''becomes effective with respect to elections conducted in 1998 and thereafter''.

2001 Legislation

S.L. 2001–403, § 1, eff. Jan. 1, 2002, amended this section with no apparent changes.

2002 Legislation

S.L. 2002–158, § 16, provides:

''Section 1 of this act is effective when it becomes law, provided that distributions from the Fund shall begin in the 2004 election year. Section 2 becomes effective January 1, 2003. Section 3 becomes effective July 1, 2003. Sections 4 and 6(a) become effective for taxable years beginning on or after January 1, 2003. Section 5 becomes effective January 1, 2003. Sections 7 through 13 become effective with respect to primaries and elections held on or after January 1, 2004. Except as otherwise provided in this act, this act is effective when it becomes law.''

RELATED LAWS

Chapter 7A

Judicial Department

SUBCHAPTER IV. DISTRICT COURT DIVISION
OF THE GENERAL COURT OF JUSTICE

Article	Section
14. District Judges.	**7A–140**

SUBCHAPTER IV. DISTRICT COURT DIVISION OF THE GENERAL COURT OF JUSTICE

Article 14

District Judges

Section
7A–140. Number; election; term; qualification; oath.
7A–141. Designation of chief judge; assignment of judge to another district for temporary or specialized duty.
7A–142. Vacancies in office.

§ 7A–140. Number; election; term; qualification; oath

There shall be at least one district judge for each district. Each district judge shall be elected by the qualified voters of the district court district in which he or she is to serve at the time of the election for members of the General Assembly. The number of judges for each district shall be determined by the General Assembly. Each judge shall be a resident of the district for which elected, and shall serve a term of four years, beginning on the first day in January next after election.

Each district judge shall devote his or her full time to the duties of the office. He or she shall not practice law during the term, nor shall he or she during such term be the partner or associate of any person engaged in the practice of law.

Before entering upon his or her duties, each district judge, in addition to other oaths prescribed by law, shall take the oath of office prescribed for a judge of the General Court of Justice.

Added by Laws 1965, c. 310, § 1. Amended by Laws 1969, c. 1190, § 11; Laws 1981, c. 504, § 6; S.L. 2005–425, § 3.1, eff. Sept. 22, 2005.

Historical and Statutory Notes

2005 Legislation

S.L. 2005–425, § 4, provides:

"Sections 1.1 and 1.2 of this act become effective January 1, 2006, and ap-

ply to fees assessed or collected on or after that date. Section 2 becomes effective January 1, 2006, and applies to cases filed on or after that date. Sections 3.1 and 3.2 of this act are effective when they become law. Judges elected in 2006 and thereafter take office accordingly, and as provided by Section 10 of Article VI of the North Carolina Constitution and G.S. 128–7, those in office on the first Monday in December of 2006 or 2008 shall continue until their successors' terms begin and are duly qualified.''

Notes of Decisions

Elections 1
Judicial notice 2

1. Elections

Method of electing state trial court judges in North Carolina did not require political party's judicial candidates to choose between accepting public employment and taking action contrary to their chosen political affiliation, even though method of electing judges allegedly prevented political party's judicial candidates from being elected; although political party affiliation may be appropriate consideration if government, as hiring authority, requires affiliation with particular political party as qualification for performance of position, state trial court judges were elected public officials, rather than employees hired by government. Republican Party of North Carolina v. Martin, 1992, 980 F.2d 943, rehearing denied 991 F.2d 1202, certiorari denied 114 S.Ct. 93, 510 U.S. 828, 126 L.Ed.2d 60, on remand 841 F.Supp. 722. Judges ⚷ 3

Political party sufficiently alleged actual discriminatory effect of North Carolina's method of electing state trial court judges where political party's complaint set forth data revealing that, in 1984 and 1986 general elections, of 40 judgeships up for election, only four were contested by political party's candidates and that, since 1968, of approximately 220 judgeships up for election, political party offered candidate in only ten, and complaint asserted that method of electing state trial court judges diminished campaign contributions for those elections because potential contributors were unwilling to donate money or other resources to candidate who was perceived to be almost certain loser. Republican Party of North Carolina v. Martin, 1992, 980 F.2d 943, rehearing denied 991 F.2d 1202, certiorari denied 114 S.Ct. 93, 510 U.S. 828, 126 L.Ed.2d 60, on remand 841 F.Supp. 722. Civil Rights ⚷ 1395(1)

Political party stated prima facie case of vote dilution brought about by political gerrymandering with respect to North Carolina's method of electing state trial court judges in state-wide, rather than judicial district-wide, elections where political party's complaint alleged that repeated efforts to change from state-wide to district-wide elections were rejected by opposition-controlled state general assembly, that only one candidate for state trial court judge running on political party's ticket had been elected since turn of century, that state trial court judges rarely, if ever, performed judicial duties outside the respective districts, and that majority of voters voted for judicial candidates from other parts of state without knowing anything about candidates other than party affiliation as indicated on ballot. Republican Party of North Carolina v. Martin, 1992, 980 F.2d 943, rehearing denied 991 F.2d 1202, certiorari denied 114 S.Ct. 93, 510 U.S. 828, 126 L.Ed.2d 60, on remand 841 F.Supp. 722. Constitutional Law ⚷ 3658(5)

Political party could bring action challenging North Carolina's method of electing state trial court judges under equal protection clause of Fourteenth Amendment, even though judges were not representatives in sense that they represented interests of their constituents; political party raised vote dilution, rather than one-person, one-vote, issue, electorate undoubtedly considered broad philosophical views of judicial candidates when voting, and very real possibility existed that party affiliation reflected judicial philosophy and ultimately outcome of judicial decisions. Republican Party of North Carolina v. Martin, 1992, 980 F.2d 943, rehearing denied 991 F.2d 1202, certiorari denied 114 S.Ct. 93, 510 U.S. 828, 126 L.Ed.2d 60, on remand 841 F.Supp. 722. Constitutional Law ⚷ 923

For purposes of action challenging method of electing North Carolina state trial court judges as political gerrymandering in violation of equal protection clause of Fourteenth Amendment, political party constituted ''identifiable polit-

ical group,'' even though political party included some members of opposing party as plaintiffs, where complaint stated that those plaintiffs had and would continue to vote for political party's candidates for state trial court judgeships. Republican Party of North Carolina v. Martin, 1992, 980 F.2d 943, rehearing denied 991 F.2d 1202, certiorari denied 114 S.Ct. 93, 510 U.S. 828, 126 L.Ed.2d 60, on remand 841 F.Supp. 722. Constitutional Law ⚷ 923

Political party raised justiciable question as to whether North Carolina's method of electing state trial court judges was political gerrymandering under equal protection clause of Fourteenth Amendment; controversy did not present issue that, if addressed by courts, would cause foreign or domestic disturbance, would express lack of respect due to coordinate branch of government, or would present potential for embarrassment from multifarious pronouncements by various departments, and standards governing other types of vote dilution claims provided judicially discernible and manageable standards for resolution of controversy. Republican Party of North Carolina v. Martin, 1992, 980 F.2d 943, rehearing denied 991 F.2d 1202, certiorari denied 114 S.Ct. 93, 510 U.S. 828, 126 L.Ed.2d 60, on remand 841 F.Supp. 722. Federal Courts ⚷ 13; Constitutional Law ⚷ 979

Political party could not bring action challenging North Carolina's method of electing state trial court judges under First Amendment's free speech provisions where there was no indication that North Carolina laws subjected party members to threat of civil or criminal penalties for engaging in political expression. Republican Party of North Carolina v. Martin, 1992, 980 F.2d 943, rehearing denied 991 F.2d 1202, certiorari denied 114 S.Ct. 93, 510 U.S. 828, 126 L.Ed.2d 60, on remand 841 F.Supp. 722. Constitutional Law ⚷ 863; Constitutional Law ⚷ 859

2. Judicial notice

The Court of Appeals took judicial notice that judge had been duly elected and had qualified as a judge of district court and further that he had been properly designated by Chief Justice of the Supreme Court as Chief District Judge. Boston v. Freeman, 1969, 171 S.E.2d 206, 6 N.C.App. 736. Evidence ⚷ 44

§ 7A–141. Designation of chief judge; assignment of judge to another district for temporary or specialized duty

When more than one judge is authorized in a district, the Chief Justice of the Supreme Court shall designate one of the judges as chief district judge to serve in such capacity at the pleasure of the Chief Justice. In a single judge district, the judge is the chief district judge.

The Chief Justice may transfer a district judge from one district to another for temporary or specialized duty.

Added by Laws 1965, c. 310, § 1.

§ 7A–142. Vacancies in office

A vacancy in the office of district judge shall be filled for the unexpired term by appointment of the Governor from nominations submitted by the bar of the judicial district as defined in G.S. 84–19, except that in judicial District 9, when vacancies occur in District Court District 9 or 9B, only those members who reside in the district court district shall participate in the selection of the nominees. If the district court district is comprised of counties in more than one judicial district, the nominees shall be submitted jointly by the bars of those judicial districts, but only those members who reside in the district court district shall participate in the

selection of the nominees. If the district court judge was elected as the nominee of a political party, then the district bar shall submit to the Governor the names of three persons who are residents of the district court district who are duly authorized to practice law in the district and who are members of the same political party as the vacating judge; provided that if there are not three persons who are available, the bar shall submit the names of two persons who meet the qualifications of this sentence. If the district court judge was not elected as the nominee of a political party, then the district bar shall submit to the Governor the names of three persons who are residents of the district court district and who are duly authorized to practice law in the district; provided that if there are not three persons who are available, the bar shall submit the names of two persons who meet the qualifications of this sentence. Within 60 days after the district bar submits nominations for a vacancy, the Governor shall appoint to fill the vacancy. If the Governor fails to appoint a district bar nominee within 60 days, then the district bar nominee who received the highest number of votes from the district bar shall fill the vacancy. If the district bar fails to submit nominations within 30 days from the date the vacancy occurs, the Governor may appoint to fill the vacancy without waiting for nominations.

Added by Laws 1965, c. 310, § 1. Amended by Laws 1975, c. 441; Laws 1981, c. 763, § 1, 2; Laws 1985(Reg.Sess. 1986), c. 1006, § 1; Laws 1987 (Reg. Sess., 1988), c. 1037, § 16; Laws 1987(Reg.Sess. 1988), c. 1056, § 7; Laws 1987(Reg.Sess. 1988), c. 1086, § 112(b); Laws 1991, c. 742, § 16; S.L. 1999–237, § 17.10, eff. July 1, 1999; S.L. 2001–403, § 2(a), eff. Jan. 1, 2002; S.L. 2001–403, § 2(b), eff. Dec. 2, 2002; S.L. 2002–159, § 58, eff. Oct. 11, 2002.

Historical and Statutory Notes

S.L. 1999–237, § 17.10, eff. July 1, 1999, in the first sentence, inserted ", except that in judicial District 9, when vacancies occur in District Court District 9 or 9B, only those members who reside in the district court district shall participate in the selection of the nominees".

S.L. 2002–159, § 58, eff. Oct. 11, 2002, repealed S.L. 2001–403, § 2(b).

Cross References

Filling vacancies in state and district judicial offices, see § 163–9.

Notes of Decisions

Actions and proceedings 2
Nominations 3
Term of office for appointee 4
Validity 1

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1. Validity

North Carolina statute requiring vacancy in office of district judge to be filled for unexpired term by appointment of member of same political party as vacating judge, if vacating judge was elected as nominee of political party, did not violate equal protection clause or First Amendment right to freedom of association. Davis v. Martin, 1992, 807 F.Supp. 385. Constitutional Law ⚷ 1477; Constitutional Law ⚷ 3594; Judges ⚷ 8

Eleventh Amendment barred consideration of challenge on state constitutional grounds to North Carolina statute

requiring vacancy in office of district judge to be filled for unexpired term by member of same political member as vacating judge, if vacating judge was elected as nominee of political party. Davis v. Martin, 1992, 807 F.Supp. 385. Federal Courts ⚷ 265

Constitutional article providing that every qualified voter in state who is 21 years of age, except as disqualified in Constitution, shall be eligible for election by the people to office does not apply to appointed positions; therefore, statute requiring that candidates to fill unexpired term of district court judges be members of same political party as vacating judge does not violate Constitution. Baker v. Martin, 1991, 410 S.E.2d 887, 330 N.C. 331. Judges ⚷ 4; Officers And Public Employees ⚷ 19

Fact that member of Republican Party was not considered for nomination to fill unexpired term of district court judge because of his political affiliation was showing of sufficient injury so that he had standing to bring action challenging constitutionality of statute which requires that candidates to fill unexpired terms of district court judges be members of same political party as vacating judge. Baker v. Martin, 1991, 410 S.E.2d 887, 330 N.C. 331. Constitutional Law ⚷ 709

2. Actions and proceedings

Application for temporary restraining order concerning judicial nomination was moot, since application was filed subsequent to nominating meeting, and consequent lack of jurisdiction precluded challenge to constitutionality of statute setting out nomination procedure. Pearson v. Martin, 1987, 355 S.E.2d 496, 319 N.C. 449, rehearing denied 356 S.E.2d 789, 319 N.C. 678. Injunction ⚷ 22

3. Nominations

Vacancy in office of district court judge created by death of elected candidate prior to qualifying by taking the oath of office occurs when the election is certified, and District Court Bar may submit nominations to Governor to fill the vacancy at any time between the date of certification and 30 days thereafter. Op.Atty.Gen., Browning, November 18, 2004.

4. Term of office for appointee

Successor appointed to fill vacancy in the office of district court caused by death of elected candidate prior to taking oath shall hold office for the entire unexpired term. Op.Atty.Gen., Browning, November 18, 2004.

Chapter 13

Citizenship Restored

Section

13–1. Restoration of citizenship.
13–2. Issuance and filing of certificate or order of restoration.
13–3. Issuance, service and filing of warrant of unconditional pardon.
13–4. Endorsement of warrant, service and filing of conditional pardon.
13–5 to 13–10. Repealed.

Cross References

Director of elections to county board of elections; duties; see § 163–35.
Loss of citizenship by convicted felons, see Const. Art. 2, § 24; Const. Art. 6, § 8.
Voter registration upon restoration of citizenship, see § 163–82.20A.

§ 13–1. Restoration of citizenship

Any person convicted of a crime, whereby the rights of citizenship are forfeited, shall have such rights automatically restored upon the occurrence of any one of the following conditions:

(1) The unconditional discharge of an inmate by the State Department of Correction or the North Carolina Department of Correction, of a probationer by the State Department of Correction, or of a parolee by the Department of Correction; or of a defendant under a suspended sentence by the court.

(2) The unconditional pardon of the offender.

(3) The satisfaction by the offender of all conditions of a conditional pardon.

(4) With regard to any person convicted of a crime against the United States, the unconditional discharge of such person by the agency of the United States having jurisdiction of such person, the unconditional pardon of such person or the satisfaction by such person of a conditional pardon.

(5) With regard to any person convicted of a crime in another state, the unconditional discharge of such person by the agency of that state having jurisdiction of such person, the unconditional pardon of such person or the satisfaction by such person of a conditional pardon.

Added by Laws 1971, c. 902. Amended by Laws 1973, c. 251, § 1; Laws 1973, c. 1262, § 10; Laws 1977, c. 813, § 1; Laws 1991, c. 274, § 1.

Historical and Statutory Notes

Laws 1973, c. 251, § 1, eff. April 20, 1973, rewrote the section, which prior thereto read:

"Any person convicted of a crime, whereby the rights of citizenship are forfeited, shall have such rights restored

upon compliance with any one of the following conditions:

''(a) the Department of Correction at the time of release recommends restoration of citizenship;

''(b) two years have elapsed since release by the Department of Correction, including probation or parole, during which time the individual has not been convicted of a criminal offense of any state or of the Federal Government;

''(c) or upon receiving an unconditional pardon.''

Laws 1973, c. 1262, § 10, eff. July 1, 1974, in subd. (2), substituted ''Department of Correction'' for ''Board of Paroles''.

Laws 1977, c. 813, § 1, eff. June 29, 1977, added subd. (4).

Laws 1991, c. 274, § 1, eff. June 12, 1991, in the introductory paragraph, inserted ''automatically'' and added subd. (5).

Notes of Decisions

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1. Restoration of rights—In general

U.S. v. King, 1997, 119 F.3d 290, [main volume] appeal from denial of post-conviction relief dismissed 213 F.3d 633, certiorari denied 121 S.Ct. 1193, 531 U.S. 1193, 149 L.Ed.2d 108, appeal from denial of post-conviction relief dismissed 30 Fed.Appx. 135, 2002 WL 312875.

Whether defendant's civil rights have been restored in manner precluding conviction for being felon in possession of firearm or ammunition is legal question, which Court of Appeals reviews de novo. U.S. v. King, 1997, 119 F.3d 290, appeal from denial of post-conviction relief dismissed 213 F.3d 633, certiorari denied 121 S.Ct. 1193, 531 U.S. 1193, 149 L.Ed.2d 108, appeal from denial of post-conviction relief dismissed 30 Fed.Appx. 135, 2002 WL 312875. Criminal Law ⚷ 1139

Incarceration after revocation of probation, in view of state statute providing that individual whose judgment of incarceration has been suspended may petition immediately for restoration of his civil rights, amounted to sufficient ''adverse collateral legal consequence'' sufficient to preclude issue of whether petitioners had been unconstitutionally denied counsel at probation revocation hearing from becoming moot upon their release from prison after having served their full sentences. Hewett v. State of N. C., 1969, 415 F.2d 1316. Habeas Corpus ⚷ 826(4)

Where statute under which defendant was convicted of felonious possession of a firearm on the basis of a prior felony conviction was not applicable to any person whose citizenship had been restored, and where statute providing for automatic restoration of citizenship on unconditional discharge by the Department of Corrections was enacted after defendant's weapons conviction but while his appeal from that conviction was pending, defendant, whose citizenship had not been restored, following prior conviction, at time of his weapons conviction, was entitled to benefit of statute providing for automatic restoration. State v. Cobb, 1974, 201 S.E.2d 878, 284 N.C. 573. Convicts ⚷ 1; Criminal Law ⚷ 1181(2)

2. —— Retroactivity, restoration of rights

1973 amendment providing for restoration of convict's rights of citizenship upon unconditional discharge from parole was applicable to defendant charged with violating Felony Firearms Act for possession of pistol after being released from parole on armed robbery conviction even though the amendment was enacted after defendant was indicted for the firearms violation. State v. Williams, 1974, 202 S.E.2d 284, 20 N.C.App. 639. Weapons ⚷ 17(.5)

Where statute under which defendant was convicted of felonious possession of a firearm on the basis of a prior felony conviction was not applicable to any person whose citizenship had been restored, and where statute providing for automatic restoration of citizenship on unconditional discharge by the Department of Corrections was enacted after defendant's weapons conviction but

while his appeal from that conviction was pending, defendant, whose citizenship had not been restored, following prior conviction, at time of his weapons conviction, was entitled to benefit of statute providing for automatic restoration. State v. Cobb, 1974, 201 S.E.2d 878, 284 N.C. 573. Convicts ⚷ 1; Criminal Law ⚷ 1181(2)

Statute, which went into effect on April 20, 1973 and which provided that person convicted of a crime, whereby rights of citizenship are forfeited, shall have such rights restored on unconditional discharge, had retroactive effect, in that such was required if statute was to be constitutionally valid; thus, February 23, 1973 conviction of defendant, whose appeal from such conviction was pending on April 20, and whose period of probation for prior offense was not shown to have other than unconditionally terminated in September 1971, of possession of firearm by convicted felon was void. State v. Currie, 1973, 198 S.E.2d 491, 19 N.C.App. 241, affirmed 202 S.E.2d 153, 284 N.C. 562. Weapons ⚷ 17(.5)

3. Firearm possession—In general

For purposes of showing that defendant had not had civil rights restored and could be convicted of being felon in possession of weapon, civil right to possess handgun could not have been restored under North Carolina Felony Firearms Act until five years after his conviction or his unconditional discharge from probation or parole, whichever was later. U.S. v. Thomas, 1995, 52 F.3d 82, certiorari denied 116 S.Ct. 226, 516 U.S. 885, 133 L.Ed.2d 155. Weapons ⚷ 4

Where government established that defendant had been convicted in North Carolina of firearms violation less than five years before federal trial for being felon in possession of weapon, government established that civil right to possess handgun had not been restored at time of firearm possession, even if government never directly addressed that issue. U.S. v. Thomas, 1995, 52 F.3d 82, certiorari denied 116 S.Ct. 226, 516 U.S. 885, 133 L.Ed.2d 155. Weapons ⚷ 17(4)

Possession of firearm by ex-felon beyond five-year postrelease period is simply not crime in North Carolina; ex-felons regain right to possess gun in North Carolina by mere passage of time. U.S. v. Essick, 1991, 935 F.2d 28. Weapons ⚷ 4

In prosecution under federal statute making it crime for ex-felon to possess firearm, Government is required to prove that prior felony conviction was one for which civil right to possess firearm under North Carolina law had not been restored as element of violation, and restoration of firearm and other civil rights was not matter of defense. U.S. v. Essick, 1991, 935 F.2d 28. Weapons ⚷ 4

Proof of prior conviction element of charge of possession of firearm by ex-felon requires Government to go beyond mere introduction of commitment order if such predicate conviction occurred in North Carolina state courts; Government is required to establish that the defendant possessed firearm within five years of release from supervision resulting from prior North Carolina felony. U.S. v. Essick, 1991, 935 F.2d 28. Weapons ⚷ 4; Weapons ⚷ 17(4)

A convicted felon may not possess a firearm under North Carolina law outside of his home or business as soon as he is unconditionally released from the Department of Correction's custody and supervision and a Pardon of Forgiveness would have no effect on a convicted felon''s right to possess a firearm under State and Federal law. 50 Op. Atty.Gen. 119, White, April 24, 1981.

4. —— Unconditional discharge, firearm possession

The whole of North Carolina law, rather than certificate of unconditional discharge restoring citizenship rights of former felon, was to be considered in determining whether former felon's alleged possession of handgun violated federal, statutory prohibition against former felon's possession of firearm. U.S. v. McLean, 1990, 904 F.2d 216, certiorari denied 111 S.Ct. 203, 498 U.S. 875, 112 L.Ed.2d 164. Weapons ⚷ 4

Former felon's alleged possession of handgun within five years of release from prison and restoration of citizenship rights would violate North Carolina Felony Firearms Act and, therefore, violated federal, statutory prohibition against former felon's possession of firearm, even if certificate of unconditional discharge was construed merely as warning that firearm possession could constitute violation of federal law; Felony Firearms Act expressly provided that felon could not possess handgun. U.S. v. McLean, 1990, 904 F.2d 216, certiorari

denied 111 S.Ct. 203, 498 U.S. 875, 112 L.Ed.2d 164. Weapons ⚷ 4

Defendant charged with felonious possession of a firearm at a time when he was no longer on probation was entitled to benefit of 1973 statute which provides for automatic restoration of citizenship upon unconditional discharge of a probationer and which was enacted after defendant's trial but while his appeal was pending. State v. Currie, 1974, 202 S.E.2d 153, 284 N.C. 562. Weapons ⚷ 17(.5)

5. —— Unconditional pardon, firearm possession

Even if defendant's restoration to citizenship under North Carolina statute was equivalent to a pardon, since he had not been expressly authorized to possess firearms he did not fall within exception to statute making it an offense for a convicted felon to receive, etc., a firearm where one has been pardoned and expressly authorized by pardoning authority to receive, possess or transport a firearm in commerce. U.S. v. Hardin, 1982, 696 F.2d 1078. Weapons ⚷ 4

6. Review

Act or conduct, which is made criminal at time of its commission but which is not criminal at time of appeal of conviction due to repeal or amendment of statute, is an act or conduct which will not support an appellate court's affirmance of lower court conviction. State v. Currie, 1973, 198 S.E.2d 491, 19 N.C.App. 241, affirmed 202 S.E.2d 153, 284 N.C. 562. Criminal Law ⚷ 1181(2)

When class of persons subject to specific criminal sanction is reduced, person who is thereby removed from that class after his conviction but before final judgment on appeal is entitled to have conviction vacated and judgment arrested. State v. Currie, 1973, 198 S.E.2d 491, 19 N.C.App. 241, affirmed 202 S.E.2d 153, 284 N.C. 562. Criminal Law ⚷ 1181(2)

§ 13–2. Issuance and filing of certificate or order of restoration

(a) The agency, department, or court having jurisdiction over the inmate, probationer, parolee or defendant at the time his rights of citizenship are restored under the provisions of G.S. 13-1(1) shall immediately issue a certificate or order in duplicate evidencing the offender's unconditional discharge and specifying the restoration of his rights of citizenship.

The original of such certificate or order shall be promptly transmitted to the clerk of the General Court of Justice in the county where the official record of the case from which the conviction arose is filed. The clerk shall then file the certificate or order without charge with the official record of the case.

(b) In the case of a person convicted of a crime against another state or the United States, whose rights to citizenship have been restored according to G.S. 13-1, the following provisions shall apply:

(1) It shall be the duty of the clerk of the court in the county where such person resides, upon a showing by such person or his representative that the conditions of G.S. 13-1 have been met, to issue the certificate evidencing the offender's unconditional discharge and specifying the restoration of his rights of citizenship. For purposes of this subsection, the fulfillment of the conditions of G.S. 13-1 shall be considered met upon the presentation to the clerk of any paper writing from the agency of any other state or

of the United States which had jurisdiction over such person, which shows that the conditions of G.S. 13-1 have been met.

(2) The certificate described in subdivision (b)(1) shall be filed by the clerk of the General Court of Justice in the county in which such person resides.

The provisions of this subsection apply equally to conditional and unconditional pardons by the governor of any other state or by the President of the United States, as well as unconditional discharges by the agency of another state or of the United States having jurisdiction over said person.

Added by Laws 1971, c. 902. Amended by Laws 1973, c. 251, § 1; Laws 1977, c. 813, § 2; Laws 1991, c. 274, § 2.

Historical and Statutory Notes

Laws 1973, c. 251, § 1, eff. April 20, 1973, rewrote the section, which prior thereto read:

''§ 13–2. Procedure for restoration

''The restoration procedure shall consist of the taking of an oath by such person before any judge of the General Court of Justice in Wake County or in the county where he resides or in which he was last convicted, to the effect that said person has complied with the provisions of G.S. 13–1, and that he will support and abide by the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith.''

Laws 1977, c. 813, § 2, eff. June 29, 1977, added the third paragraph.

Laws 1991, c. 274, § 2, eff. June 12, 1991, rewrote the section, which prior thereto read:

''The agency, department, or court having jurisdiction over the inmate, probationer, parolee or defendant at the time his rights of citizenship are restored under the provisions of G.S. 13–1(1) shall immediately issue a certificate or order in duplicate evidencing the offender's unconditional discharge and specifying the restoration of his rights of citizenship.

''The original of such certificate or order shall be promptly transmitted to the clerk of the General Court of Justice in the county where the official record of the case from which the conviction arose is filed. The clerk shall then file the certificate or order without charge with the official record of the case.

''In the case of a person convicted of a crime against the United States, whose rights to citizenship have been restored according to G.S. 13–1, the following provisions shall apply:

''(1) It shall be the duty of the clerk of the court in the county where such person resides, upon a showing by such person or his representative that the conditions of G.S. 13–1 have been met, to issue the certificate described in this section. For purposes of this section, the fulfillment of the conditions of G.S. 13–1 shall be considered met upon the presentation to the clerk of any paper writing from the agency of the United States government which had jurisdiction over such person, which shows that the conditions of G.S. 13–1 have been met.

''(2) The certificate described in this section shall be filed by the clerk of the General Court of Justice in the county in which such person resides as though it were a civil action bearing such person's name.

''(3) The provisions of this section apply equally to conditional and unconditional pardons by the President of the United States, as well as unconditional discharges by the agency of the United States having jurisdiction over said person.''

§ 13–3. Issuance, service and filing of warrant of unconditional pardon

In the event the rights of citizenship are restored by an unconditional pardon as specified in G.S. 13-1(2), the Governor, under the

provisions of G.S. 147-23, shall issue his warrant therefor specifying the restoration of rights of citizenship to the offender; and the officer to whom the Governor issues his warrant to effect the release of the offender shall deliver a copy of the warrant to the offender under the provisions of G.S. 147-25. The original warrant bearing the officer's return as specified in G.S. 147-25 shall be filed by the clerk of the General Court of Justice without charge in the county where the official record of the case from which the conviction arose is filed.

Added by Laws 1971, c. 902. Amended by Laws 1973, c. 251, § 1.

Historical and Statutory Notes

Laws 1973, c. 251, § 1, eff. April 20, 1973, rewrote the section, which prior thereto read:

"§ 13–3. Assistance by Appropriate State Personnel

"The Department of Correction, the Department of Juvenile Correction, the Probation Commission, the Board of Paroles and other appropriate State and county officials shall cooperate with and assist such person in securing any information required by any judge prior to administering the oath required by this section."

§ 13–4. Endorsement of warrant, service and filing of conditional pardon

When the offender has satisfied all of the conditions of a conditional pardon, and his rights of citizenship have been restored under the provisions of G.S. 13-1(3), the Governor shall issue an endorsement to the original warrant which specified the conditions of the pardon. Such endorsement shall acknowledge that the offender has satisfied all of the conditions of the pardon.

The Governor shall then deliver the endorsement to the officer specified in G.S. 147-25 for service and delivery to the clerk. Service and delivery to the clerk and filing by the clerk shall be done in accordance with the provisions of G.S. 13-3 so that the endorsement reflecting satisfaction of all conditions of the pardon will be served and recorded as if it were a warrant of unconditional pardon.

Added by Laws 1973, c. 251, § 1.

§§ 13–5 to 13–10. Repealed by Laws 1971, c. 902

Historical and Statutory Notes

The repealed sections pertained to procedures for restoration of citizenship. Prior to repeal § 13–7 was amended by Laws 1969, c. 837, § 4.

Chapter 18B

Regulation of Alcoholic Beverages

Article	Section
6. Elections.	18B–600

Article 6

Elections

Section
18B–600. Places eligible to hold alcoholic beverage elections.
18B–601. Election procedure.
18B–602. Form of ballots.
18B–603. Effect of alcoholic beverage elections on issuance of permits.
18B–604. Timing and effect of subsequent elections.
18B–605. Local act elections.
18B–606 to 18B–699. Reserved.

§ 18B–600. Places eligible to hold alcoholic beverage elections

(a) Kinds of Elections.—The following kinds of alcoholic beverage elections shall be permitted:

(1) Malt beverage;

(2) Unfortified wine;

(3) ABC store; and

(4) Mixed beverage.

(b) County Elections.—Any county may hold a malt beverage, unfortified wine, or ABC store election. A county may hold a mixed beverage election only if the county already operates at least one county ABC store or a county election on ABC stores is to be held at the same time as the mixed beverage election.

(c) City Malt Beverage and Unfortified Wine Elections.—A city may hold a malt beverage or unfortified wine election only if the county in which the city is located has already held such an election, the vote in the last county election was against the sale of that kind of alcoholic beverage, and:

(1) The city has a population of 500 or more; or

(2) The city operates an ABC store.

(d) City ABC Store Elections.—A city may hold an ABC store election only if:

(1) The city has at least 500 registered voters; and

(2) The county in which the city is located does not operate ABC stores.

(e) City Mixed Beverage Elections.—A city may hold a mixed beverage election only if:

(1) The city has at least 500 registered voters; and

(2) Either:

a. The city already operates a city ABC store; or

b. A city ABC store election is to be held at the same time as the mixed beverage election; or

c. The city does not operate a city ABC store but:

1. The county operates an ABC store;

2. The county has already held a mixed beverage election; and

3. The vote in the last county election was against the sale of mixed beverages.

(e1) Small City Mixed Beverage Elections.—A city may also hold a mixed beverage election if the city has at least 300 registered voters and is located in a county with at least one other city that has approved the sale of mixed beverages. Provided, that if a city that qualifies for an election under this subsection approves the sale of mixed beverages, mixed beverages permittees in the smaller city may purchase liquor from the ABC store designated by any local ABC board in any other city that has approved the sale of mixed beverages.

This subsection shall not apply to Alamance, Avery, Burke, Caldwell, Carteret, Cleveland, Henderson, Onslow, Polk, Robeson, Rowan, Rutherford, and Wilkes Counties.

(e2) Ski Resorts ABC Elections.—Notwithstanding any other provisions of this section, any city that provides governmental services to as many as 1,000 snow skiers weekly during the normal ski season from December 1 through March 15, may hold an election authorized by subdivision (a)(1), (2), or (4) of this section. If the sale of mixed beverages is approved, purchase-transportation permits shall be issued and the sales of liquor shall be made by any local board designated by the State ABC Commission.

(e3) Small Town Mixed Beverage Elections.—A town may hold a mixed beverage election if the town has at least 200 registered voters and is located in a county bordering the Neuse River and Pamlico Sound that has not approved the sale of mixed beverages and that county has only one city that has approved the sale of mixed beverages. Provided, that if a town that qualifies for an election under this subsection approves the sale of mixed beverages, mixed beverages permittees in the town may purchase liquor from the ABC store designated by any local ABC board in any other city that has approved the sale of mixed beverages.

(e4) Multicounty/City ABC Elections.—If a city is located in two or more counties, the following provisions shall apply:

(1) The city may hold a malt beverage or unfortified wine election if any county in which a portion of the city is located has already held such an election, the vote in the last election of the particular type was against the sale of that type of alcoholic beverage, and the city has a population of 500 or more.

(2) The city may hold a mixed beverage election if the city has at least 500 registered voters and a county in which a portion of the city is located operates ABC stores, or a municipality in either county in which the city is located operates an ABC store.

(3) If an election is held by a city under this subsection, all of the city voters may vote in the election. If the vote is for approval, alcoholic beverages may be sold on the basis of that approval and under the provisions of this Chapter. If the sale of mixed beverages is approved, the mixed beverage permittees shall purchase their liquor from one or more ABC stores located within the city that have been designated by the local boards for those purchases. The remaining gross receipts shall be distributed in accordance with existing law applicable to those ABC stores, except that after the applicable distributions have been made pursuant to G.S. 18B–805(b), (c), and (d), the local share of the mixed beverages surcharge and the guest room cabinet surcharge required by G.S. 18B–804(b)(8) and (9) shall be distributed one-half to the general fund of the city where the mixed beverage permittees are located and one-half to the local ABC boards from whose stores liquor is purchased.

(e5) Small Resort Town ABC Elections.—A town may hold a mixed beverage election if it:

(1) Was incorporated after 1990 and prior to the effective date of this subsection;

(2) Has at least 100 residents;

(3) Is located in a county that borders another state and that has two other municipalities which have ABC stores; and

(4) At the time of the election, has corporate boundaries that border or include land in three counties.

Provided, that if a town that qualifies for an election under this subsection approves the sale of mixed beverages, mixed beverages permittees in the town may purchase liquor from the ABC store designated by any local ABC board in any other city that has approved the sale of mixed beverages.

(f) Township Elections. — An election may be called on any of the propositions listed in G.S. 18B–602 in any township located within:

(1) A county where ABC stores have heretofore been established by petition pursuant to law.

(2) A county where ABC stores have been established pursuant to law, in which county according to data from the North Carolina Department of Commerce: (i) one-third or more of the employment is travel related, (ii) spending on travel exceeds four hundred million dollars ($400,000,000) per year, and where the entirety of two townships consists of one island (and several smaller islands not making up more than one percent (1%) of the total land area of the two townships) where that island:

a. Has a population of 4,000 or over according to the most recent decennial federal census;

b. Is located with one side facing the ocean and another side facing a coastal sound.

(3) Repealed by S.L. 2004–203, § 24, eff. Aug. 17, 2004.

An election may be called on any of the propositions listed in G.S. 18B–602(a), (d), and (h) in any township located within a county where the population of all cities in the county that have previously approved the sale of any kind of alcoholic beverages comprises more than twenty percent (20%) of the total county population as of the most recent federal census. In the case of subdivision (2) of this section, an election may be called in the two townships voting together on the proposition contained in G.S. 18B–602(h).

The election shall be held by the county board of elections upon request of the county board of commissioners or upon petition of twenty-five percent (25%) of the registered voters of the township, or in the case of subdivision (2) of this section, of the two townships taken together. The election shall be conducted and the results determined in the same manner as county elections held under this Article. For purposes of this Article, townships holding any election under this subsection shall be treated on the same basis as counties, and municipalities located within those townships shall be treated on the same basis as cities. In the case of an election under subdivision (2) of this subsection, the votes of the two townships counted together shall determine the result of the election.

For purposes of this subsection, the name and boundary of a township is as it is shown on the Redistricting Census 2000 TIGER Files with modifications made by the Legislative Services Office on its computer database as of May 1, 2001.

In any township election held under this subsection, the area within any incorporated municipality is excluded, and no permits may be issued under this subsection in any excluded area.

In order for an establishment to qualify for a permit under this subsection, the establishment's gross receipts from food and nonal-

coholic beverages shall be greater than its gross receipts from alcoholic beverages.

(g) Beautification District Elections.—In a county where ABC stores have been approved by an election and a beautification district has been created after May, 1984, and prior to June 30, 1990, an election authorized by subsection (a) of this section may be called in the beautification district. The election shall be called in accordance with G.S. 18B-601(b), conducted, and the results determined in the same manner as county elections held under this Article. For purposes of this Article, beautification districts holding any election shall be treated on the same basis as counties, and municipalities located within those beautification districts shall be treated on the same basis as cities.

(h) Railroad Passenger Terminus Location Elections. — Notwithstanding any other provision of this section, any city or town that is the passenger terminus of a rail line that carries at least 60,000 passengers annually may hold an election authorized by subdivisions (a)(1) and (a)(2) of this section. Any election held under this subsection shall be for the on-premises sale of malt beverages and the on-premises sale of unfortified wine pursuant to G.S. 18B–602(a)(2) and G.S. 18B–602(d)(2).

Added by Laws 1981, c. 412, § 2. Amended by Laws 1981, c. 747, § 49; Laws 1983, c. 113, § 1; Laws 1983, c. 457, § 2; Laws 1985 (Reg. Sess., 1986), c. 919; Laws 1987, c. 766; Laws 1989, c. 77, § 1; Laws 1989, c. 400, § 6; Laws 1991 (Reg. Sess., 1992), c. 976, § 1; Laws 1993, c. 193, § 1, eff. June 22, 1993; Laws 1995, c. 148, § 1, eff. June 1, 1995; S.L. 2001–515, § 4, eff. Jan. 4, 2002; S.L. 2003–218, § 1, eff. June 19, 2003; S.L. 2004–203, § 24, eff. Aug. 17, 2004; S.L. 2005–336, § 1, eff. Aug. 26, 2005; S.L. 2007–386, § 1, eff. July 1, 2007.

Historical and Statutory Notes

S.L. 2001–515, § 4, eff. Jan. 4, 2002, rewrote subsec. (f), which prior thereto read:

''(f) Township Elections. An election may be called on any of the propositions listed in G.S. 18B-602 in any township located within:

''(1) A county where ABC stores have heretofore been established by petition pursuant to law.

''(2) A county where ABC stores have been established pursuant to law, in which county according to data from the North Carolina Department of Commerce: (i) one-third or more of the employment is travel related, (ii) spending on travel exceeds four hundred million dollars ($400,000,000) per year, and where the entirety of two townships consists of one island (and several smaller islands not making up more than one percent (1%) of the total land area of the two townships) where that island:

''a. Has a population of 4,000 or over according to the most recent decennial federal census;

''b. Is located with one side facing the ocean and another side facing a coastal sound.

''In the case of subdivision (2) of this section, an election may be called in the two townships voting together on the proposition contained in G.S. 18B–602(h).

''The election shall be held by the county board of elections upon request of the county board of commissioners or upon petition of twenty-five percent (25%) of the registered voters of the township, or in the case of subdivision (2) of this section, of the two townships taken together. The election shall be conducted and the results determined in

the same manner as county elections held under this Article. For purposes of this Article, townships holding any election under this subsection shall be treated on the same basis as counties, and municipalities located within those townships shall be treated on the same basis as cities. In the case of an election under subdivision (2) of this subsection, the votes of the two townships counted together shall determine the result of the election.

''In order for an establishment to qualify for a permit under this subsection, the establishment's gross receipts from food and nonalcoholic beverages shall be greater than its gross receipts from alcoholic beverages.''

S.L. 2003–218, § 1, eff. June 19, 2003, rewrote subsec. (f), which prior thereto read:

''(f) Township Elections.--In a county where ABC stores have heretofore been established by petition pursuant to law, an election may be called in any township on any of the propositions listed in G.S. 18B-602. The election shall be held by the county board of elections upon request of the county board of commissioners or upon petition of twenty-five percent (25%) of the registered voters of the township. The election shall be conducted and the results determined in the same manner as county elections held under this Article. For purposes of this Article, townships holding any election under this subsection shall be treated on the same basis as counties, and municipalities located within those townships shall be treated on the same basis as cities.

''In order for an establishment to qualify for a permit under this subsection, the establishment's gross receipts from food and nonalcoholic beverages shall be greater than its gross receipts from alcoholic beverages.''.

Local Modification (Article 6)

Avery County: Laws 1985, c. 390.

Watauga County: Laws 1985, c. 390.

Town of Beech Mountain: Laws 1983, c. 285; Laws 1985, c. 390.

Town of Seven Devils: Laws 1985, c. 671, § 1.

Town of Seven Springs: Laws 1981, c. 1142.

Cross References

Kinds of ABC permits; places eligible, see § 18B–1001.
Local ABC officers, see § 18B–501.
Miscellaneous provisions on permits, see § 18B–1006.

§ 18B–601. Election procedure

(a) Generally.—Except as otherwise provided in this section, an alcoholic beverage election shall be conducted in the same manner and under the same rules as a referendum under Chapter 163.

(b) How County Election Called.—A county alcoholic beverage election shall be conducted by the county board of elections. When a county is eligible to hold an election under G.S. 18B-600, the county board of elections shall hold the election upon receiving either:

(1) A written request for an election from the governing body of the county; or

(2) A petition requesting an election signed by at least thirty-five percent (35%) of the voters registered in the county at the time the petition was initiated.

(c) How City Election Called.—A city alcoholic beverage election shall be conducted by the county board of elections or, in the case of a city authorized under Chapter 163 to conduct its own elections, by the city board of elections. When a city is eligible to

hold an election under G.S. 18B-600, the board of elections shall hold the election upon receiving either:

(1) A written request for an election from the city governing body; or

(2) A petition requesting an election signed by at least thirty-five percent (35%) of the voters registered in the city at the time the petition was initiated.

(d) Form of Request.—A request or petition for a malt beverage election shall state which of the four propositions in G.S. 18B-602(a) are to be voted upon. A request or petition for an unfortified wine election shall state which of the three propositions in G.S. 18B-602(d) are to be voted upon. More than one kind of alcoholic beverage election may be included in a single request or petition.

(e) Petitions.—A petition for an election shall be on a form provided by the appropriate local board of elections and shall contain the signature, name, address and precinct of each voter who signs. A petition shall be considered initiated at the time the form is delivered by the board of elections to the person who requests it. Within 72 hours after the petition is initiated, the board of elections shall certify the number of registered voters in the city or county at the time it was initiated. The petition shall be returned to the board of elections within 90 days of the time it is initiated. Failure to return the petition within that time shall render it void. The board of elections shall determine the sufficiency of the petition within 30 days after it is returned.

(f) Election Date.—The board of elections shall set the date for the alcoholic beverage election, which may not be sooner than 60 days nor later than 120 days from the date the request was received from the governing body or the petition was verified by the board. No alcoholic beverage election may be held on the Tuesday next after the first Monday in November of an even-numbered year.

(g) Registration.—No separate registration shall be required to vote in an alcoholic beverage election. Registration shall be closed for an alcoholic beverage election in the same manner and under the same schedule as for any other election.

(h) Notice.—The board of elections shall give notice of an alcoholic beverage election and notice of the close of registration in the same manner and under the same schedule as for any other election.

(i) Observers.—The proponents and opponents for an alcoholic beverage election, as determined by the local board of elections, shall have the right to appoint two observers to attend each voting place. The persons authorized to appoint observers shall, three days before the election, submit in writing to the chief judge of

each precinct a signed list of the observers appointed for that precinct. The persons appointed as observers shall be registered voters of the precinct for which appointed. The chief judge and judges for the precinct may for good cause reject any appointee and require that another be appointed. Observers shall do no electioneering at the voting place nor in any manner impede the voting process, interfere or communicate with or observe any voter in casting his ballot. Observers shall be permitted in the voting place to make such observation and to take such notes as they may desire.

Added by Laws 1981, c. 412, § 2. Amended by Laws 1985, c. 705, § 1; Laws 1985, c. 705, § 2.1; Laws 1987, c. 14; Laws 1993 (Reg. Sess., 1994),c. 762, § 8, eff. Jan. 1, 1995.

Historical and Statutory Notes

Local Modification

Laws 1993, c. 762, § 73, provides:

"Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences." [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

Laws 1993, c. 762, was ratified July 16, 1994.

Laws 1995, c. 608, was ratified June 21, 1996.

Town of Chadbourn: Laws 1989, c. 895, § 5.

Notes of Decisions

In general 1
Notice 3
Purpose 2

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1. In general

Failure of election officials to administer oath to many persons who registered for election, conduct of an election judge in marking ballots of voters without being requested to do so and registration of voters by persons other than registrar constituted irregularities insufficient to upset result of special election held on question of sale of beer or wine in municipality, in absence of showing that result of election was affected thereby. Overton v. Mayor and City Com'rs of City of Hendersonville, 1960, 116 S.E.2d 808, 253 N.C. 306. Intoxicating Liquors ⚷ 34(1); Intoxicating Liquors ⚷ 34(4)

Prior to adoption of statute in 1953 expressly providing for holding of municipal nominating primaries in City of Concord, mayor and governing body of city had no constitutional or statutory authority to hold municipal primary to nominate candidates for offices of mayor and aldermen, and hence the holding of such primary in 1949 without legal authority did not invalidate result of county local option election held within 60 days preceding such primary. Tucker v. State Bd. of Alcoholic Control, 1954, 81 S.E.2d 399, 240 N.C. 177. Elections ⚷ 126(1); Intoxicating Liquors ⚷ 34(3)

Questions raised by plaintiffs' appeal from order denying their motion for order restraining election on question of legalizing sale of beer and wine in certain county were not rendered academic by holding of election at which vote was against such sale, where plaintiffs also alleged that election would be illegal and void as violating statutory restrictions and that property rights of plaintiffs and others would be materially affected and county would suffer serious impairment of revenue if vote went against legal sale of beer and wine. Ferguson v. Riddle, 1950, 62 S.E.2d

525, 233 N.C. 54. Appeal And Error ⚷ 781(4)

Assignment of error to holding that petition and election on question of sale of beer and wine in county were valid, and that a person only had to be a registered voter of county to be a valid petitioner, was limited to point that trial court erred in respect of ruling as to who was a valid petitioner. Weaver v. Morgan, 1950, 61 S.E.2d 916, 232 N.C. 642. Appeal And Error ⚷ 750(7)

2. Purpose

Requirement, that election be called within 30 days after return of petitions, was inserted in law for benefit of proponents of election; and good cause (pendency of another election) for delay having existed, and no one having been prejudiced thereby, failure to call beer and wine election within prescribed time would not invalidate election. Green v. Briggs, 1956, 92 S.E.2d 149, 243 N.C. 745. Intoxicating Liquors ⚷ 34(3)

Requirement, that election be called within 30 days after return of petitions, was inserted in law for benefit of proponents of election; and good cause (pendency of another election) for delay having existed, and no one having been prejudiced thereby, failure to call beer and wine election within prescribed time would not invalidate election. Green v. Briggs, 1956, 92 S.E.2d 149, 243 N.C. 745. Intoxicating Liquors ⚷ 34(3)

3. Notice

Election was not invalid for failure to give public notice in form of legal advertisement, where Board of Elections gave notice (of fact that petitions for beer and wine election were being circulated) through stories in news columns of public press, and wide publicity was given to delivery of petition forms in all of newspapers, radio and other public media, in county. Green v. Briggs, 1956, 92 S.E.2d 149, 243 N.C. 745. Intoxicating Liquors ⚷ 33(3)

§ 18B–602. Form of ballots

(a) Malt Beverage Elections.—Any one or more of the propositions listed below may be placed on the ballot for a malt beverage election. Each voter may vote on each proposition on the ballot. The propositions to be used shall be chosen by the governing body or petitioner requesting the election. The propositions shall read as follows:

(1) To permit the ''on-premises'' and ''off-premises'' sale of malt beverages.

☐ FOR

☐ AGAINST

(2) To permit the ''on-premises'' sale only of malt beverages.

☐ FOR

☐ AGAINST

(3) To permit the ''off-premises'' sale only of malt beverages.

☐ FOR

☐ AGAINST

(4) To permit the ''on-premises'' sale of malt beverages by Class A hotels, motels, and restaurants only; and to permit ''off-premises'' sales by other permittees.

☐ FOR

☐ AGAINST

(b) Determining Results of Malt Beverage Election.—The kind of malt beverage sales described in each proposition that receives a majority of votes ''FOR'' shall be allowed. If propositions (2) and

(4) are both on the ballot and (2) receives a majority of votes ''FOR'', then sales shall be permitted according to that proposition regardless of the vote on (4). If one of the propositions receiving a majority of votes ''FOR'' is proposition (1), then the kind of sales described in that proposition shall be allowed regardless of the vote on any other proposition at that election.

(c) Subsequent Malt Beverage Elections.—A subsequent election in which a majority votes ''AGAINST'' malt beverage proposition (1) shall not affect the legality of sales that have previously been approved under proposition (2), (3), or (4). A subsequent election in which a majority votes ''AGAINST'' malt beverage proposition (2) or (3) shall not affect the legality of sales that have previously been approved under proposition (4).

(d) Unfortified Wine Elections.—Any one or more of the propositions listed below may be placed on the ballot for an unfortified wine election. Each voter may vote on each proposition on the ballot. The propositions to be used shall be chosen by the governing body or petitioner requesting the election. The propositions shall read as follows:

(1) To permit the ''on-premises'' and ''off-premises'' sale of unfortified wine.

☐ FOR

☐ AGAINST

(2) To permit the ''on-premises'' sale only of unfortified wine.

☐ FOR

☐ AGAINST

(3) To permit the ''off-premises'' sale only of unfortified wine.

☐ FOR

☐ AGAINST

(e) Determining Results of Unfortified Wine Election.—The kind of unfortified wine sales described in each proposition that receives a majority of votes ''FOR'' shall be allowed. If one of the propositions receiving a majority of votes ''FOR'' is proposition (1), then the kind of sales described in that proposition shall be allowed, regardless of the vote on any other proposition at that election.

(f) Subsequent Unfortified Wine Election.—A subsequent election in which a majority votes ''AGAINST'' unfortified wine proposition (1) shall not affect the legality of sales previously approved under proposition (2) or (3).

(g) ABC Store Elections.—The ballot for an ABC store election shall state the proposition as follows:

To permit the operation of ABC stores.

☐ FOR

☐ AGAINST

(h) Mixed Beverage Elections.—The ballot for a mixed beverage election shall state the proposition as follows:

To permit the sale of mixed beverages in hotels, restaurants, private clubs, community theatres, and convention centers.

☐ FOR

☐ AGAINST

Added by Laws 1981, c. 412, § 2. Amended by Laws 1981 (Reg. Sess., 1982),c. 1262, § 9; Laws 1983, c. 583, § 6.

Administrative Code References

Special permits, application procedures, see 4 NCAC 2S.0101.

§ 18B–603. Effect of alcoholic beverage elections on issuance of permits

(a) Malt Beverage Elections.—If a malt beverage election is held under G.S. 18B–602(a) and the sale of malt beverages is approved, the Commission may issue permits to qualified persons and establishments in the jurisdiction that held the election as follows:

(1) If on-premises sales are approved, the Commission may issue on-premises malt beverage permits.

(2) If off-premises sales are approved, the Commission may issue off-premises malt beverage permits.

(3) If both on-premises and off-premises sales are approved, the Commission may issue both on-premises and off-premises malt beverage permits.

(4) If the kinds of sales described in G.S. 18B–602(a)(4) are approved, the Commission may issue on-premises malt beverage permits to restaurants and hotels only and off-premises malt beverage permits to other permittees.

(b) Unfortified Wine Elections.—If an unfortified wine election is held under G.S. 18B–602(d) and the sale of unfortified wine is approved, the Commission may issue permits to qualified persons and establishments in the jurisdiction that held the election as follows:

(1) If on-premises sales are approved, the Commission may issue on-premises unfortified wine permits.

(2) If off-premises sales are approved, the Commission may issue off-premises unfortified wine permits.

(3) If both on-premises and off-premises sales are approved, the Commission may issue both on-premises and off-premises unfortified wine permits.

(c) ABC Store Elections.—If an ABC store election is held under G.S. 18B–602(g) and the establishment of ABC stores is approved, each of the following shall be authorized in the jurisdiction that held the election:

(1) The jurisdiction that held the election may establish and operate ABC stores in the manner described in Articles 7 and 8.

(2) The Commission may issue on-premises and off-premises fortified wine and unfortified wine permits to qualified persons and establishments in that jurisdiction, regardless of any unfortified wine election or any local act, except that neither on-premises nor off-premises unfortified wine permits may be issued in a jurisdiction if:

a. The jurisdiction approved ABC stores before January 1, 1982;

b. The jurisdiction held an unfortified wine election before January 1, 1982; and

c. In that unfortified wine election, the jurisdiction did not approve either on-premises or off-premises sales of unfortified wine.

(3) The Commission may issue brown-bagging permits to restaurants, hotels, and community theatres in the county in which the election was held, whether the election was held by the county or by a city or other jurisdiction within the county. Brown-bagging permits may not be issued, however, for restaurants, hotels, or community theatres in any jurisdiction in which the sale of mixed beverages has been approved.

(d) Mixed Beverage Elections. —If a mixed beverage election is held under G.S. 18B–602(h) and the sale of mixed beverages is approved, the Commission may issue permits to qualified persons and establishments in the jurisdiction that held the election as follows:

(1) The Commission may issue mixed beverage permits.

(2) The Commission may issue on-premises malt beverage, unfortified wine, and fortified wine permits for establishments with mixed beverage permits, regardless of any other election or any local act concerning sales of those kinds of alcoholic beverages.

(3) The Commission may issue off-premises malt beverage permits to any establishment that meets the requirements under G.S. 18B–1001(2) in any township or incorporated municipality which has voted to permit the sale of mixed beverages, regardless of any other local act concerning sales of those kinds of alcoholic beverages. The Commission may also issue off-premises unfortified wine permits to any establishment that meets the requirements under G.S. 18B–1001(4) in any township or incorporated municipality which has voted to permit the sale of mixed beverages, regardless of any other local act concerning sales of those kinds of alcoholic beverages.

(4) The Commission may issue brown-bagging permits for private clubs and congressionally chartered veterans organizations but may no longer issue and may not renew brown-bagging permits for restaurants, hotels, and community theatres. A restaurant, hotel, or community theatre may not be issued a mixed beverage permit under subdivision (1) until it surrenders its brown-bagging permit.

(5) The Commission may continue to issue culinary permits for establishments that do not have mixed beverage permits. An establishment may not be issued a mixed beverage permit under subdivision (1) until it surrenders its culinary permit.

(d1) In any county in which the sale of mixed beverages has been approved in elections in at least three cities that, combined, contain more than two-thirds the total county population as of the most recent federal census, the county board of commissioners may by resolution approve the sale of mixed beverages throughout the county, and the Commission may issue permits as if mixed beverages had been approved in a county election.

(d2) If a county or city holds a mixed beverage election and an ABC store election at the same time and the voters do not approve the establishment of an ABC store, the Commission may issue mixed beverages permits in that county or city. The mixed beverages purchase-transportation permit authorized by G.S. 18B–404(b) shall be issued by a local board operating a store located in the county.

(e) Mixed Beverages at Airports.—When the sale of mixed beverages has been approved in a city election, the Commission may also issue permits under subsection (d) for qualified establishments outside the city but within the same county, if:

(1) The establishment is on the property of an airport;

(2) The airport is operated by the city or by an airport authority in which the city participates; and

(3) The airport services planes which board at least 150,000 passengers annually.

(f) Permits Not Dependent on Elections. —The Commission may issue the following kinds of permits without approval at an election:

(1) Special occasion permits;

(2) Limited special occasion permits;

(3) Brown-bagging permits for private clubs and congressionally chartered veterans organizations;

(4) Culinary permits, except as restricted by subdivision (d)(5);

(5) Special one-time permits issued under G.S. 18B–1002;

(6) All permits listed in G.S. 18B–1100;

(7) The permits authorized by G.S. 18B–1001(1), (3), (5), and (10) for tourism ABC establishments;

(8) The permits authorized by G.S. 18B–1001(1), (3), (5), and (10) for tourism resorts;.

(9) The permits authorized by G.S. 18B–1001(1), (3), (5), and (10) for historic ABC establishments.

(f1) Reserved.

(f2) Permits for Special ABC Areas.—The Commission may issue the permits provided for in G.S. 18B–1001(1), G.S. 18B–1001(2), G.S. 18B–1001(3), G.S. 18B–1001(4), G.S. 18B–1001(5), G.S. 18B–1001(6), and G.S. 18B–1001(10) to qualified persons and establishments located within a Special ABC area as defined in G.S. 18B–101, provided that: (i) if such area is a municipal corporation, the area shall conduct an election authorized by subdivision (a)(4) of G.S. 18B–600, which election may be held regardless of the number of registered voters located within the municipal corporation; or (ii) if such area is unincorporated but has within such area a private association or club, the board of such private association or club shall call and conduct a special meeting at which meeting a majority of private association members, club members, lot and home owners, votes and approves the sale of mixed beverages, and the board certifies the results of such meeting to the Alcoholic Beverage Control Commission. The mixed beverages purchase-transportation permit authorized by G.S. 18B–404(b) shall be issued by a local board operating a store located in the same county as the Special ABC area.

(g) Miscellaneous.—The definitions in G.S. 18B–1000 shall apply to this section.

(h) Permits Based on Existing Permits. —In any county which borders on the Atlantic Ocean and where (i) the sale of malt beverage on and off premises, the sale of unfortified wine on and off premises, the sale of mixed beverages, and the operation of an ABC system has been allowed in at least six cities in the county, or in any county adjacent to that county in which an ABC system has been allowed, or (ii) the sale of malt beverage on and off premises, the sale of unfortified wine on and off premises, the sale of mixed beverages, and the operation of an ABC system has been allowed in at least eight cities in the county, the Commission may issue permits to sports clubs as defined in G.S. 18B–1000(8) throughout the county.

The Commission may issue the following permits:

(1) On and Off Premises Malt Beverage;

(2) On and Off Premises Unfortified Wine;

(3) On and Off Premises Fortified Wine; or

(4) Mixed Beverages.

The Commission may also issue on-premises malt beverage, unfortified wine, fortified wine and mixed beverages permits to a sports club located in a county adjacent to any county that has approved the sale of mixed beverages pursuant to G.S. 18B–603(d1), if the county in which the sports club is located borders another state and has at least one city that has approved the sale of mixed beverages. Sports clubs holding mixed beverages permits shall purchase their spirituous liquor at the nearest ABC system store that is located in the county.

The Commission may further issue on-premises malt beverage and on-premises unfortified wine permits to a sports club located in a county bordering on another state that is adjacent to any county in which permits were issued pursuant to this subsection prior to August 1, 1993. The sports clubs must be located in the unincorporated areas of a county, in which the sale of malt beverages and unfortified wine is not permitted, and where there are six or more municipalities in that county where the sale of malt beverages and unfortified wine is permitted.

Added by Laws 1981, c. 412, § 2. Amended by Laws 1981, c. 589; Laws 1982, c. 1240; Laws 1983, c. 113, § 2; Laws 1985, c. 689, § 7; Laws 1987, c. 136, §§ 5, 6; Laws 1987, c. 307, § 2; Laws 1987, c. 443, § 2; Laws 1989, c. 629, § 2; Laws 1991 (Reg. Sess., 1992), c. 920, §§ 11, 13; Laws 1993, c. 415, §§ 7 to 9,eff. July 20, 1993; Laws 1995, c. 466, § 5, eff. Oct. 1, 1995; S.L. 1999–456, § 10, eff. Aug. 13, 1999; S.L. 1999–461, § 2, eff. Aug. 13, 1999; S.L. 1999–462, §§ 3, 6, 7, 9, eff. Aug. 13, 1999; S.L. 2000–140, § 2, eff. July 21, 2000; S.L. 2004–199, § 9, eff. Aug. 17, 2004; S.L. 2007–402, § 1, eff. Aug. 21, 2007.

Historical and Statutory Notes

Local Modification

Village of Bald Head Island: Laws 1985, c. 156.

Cross References

Additional provisions for purchase and transportation by mixed beverage permittees, see § 18B–404.

Distribution of revenue, see § 18B–805.

Administrative Code References

Mixed beverages catering permits in ''dry areas'', see 4 NCAC 2S.0529.

§ 18B–604. Timing and effect of subsequent elections

(a) Time Limits. —No county alcoholic beverage election may be held within three years of the certification of the results of a previous election on the same kind of alcoholic beverages in that county. No city alcoholic beverage election may be held within three years of the certification of the results of a previous election on the same kind of alcoholic beverage in that city. Otherwise,

alcoholic beverage elections may be held at any time, subject to the applicable provisions of this Chapter and Chapter 163.

(b) Effect of Favorable County Vote on City or Township. —If a majority of voters vote in favor of certain alcoholic beverage sales in a county election, sale of that kind of alcoholic beverage shall be lawful throughout the county, regardless of the vote in any city or township at that or any previous or subsequent election, and regardless of any local act making sales unlawful in that city or township, unless the local act was ratified before the effective date of Article II, Section 24(1)(j) of the Constitution of North Carolina. A county malt beverage or unfortified [wine] election in favor of a particular ballot proposition which is more restrictive than the form of sale already allowed in a city or township within that county shall not affect the legality of those previously authorized sales in the city or township.

(c) Effect of Negative County Vote on City or Township. —If a majority of voters vote against certain alcoholic beverage sales in a county election, sale of that kind of alcoholic beverage shall be unlawful throughout the county, except that sale of that alcoholic beverage shall remain lawful in any city or township in which sale is lawful because of a city or township election or a local act.

(d) Effect of City or Township Election on County. —A city or township alcoholic beverage election shall not affect the lawfulness of sale in any part of the county outside that city or township.

(e) Repealed by S.L. 2003–218, § 2, eff. June 19, 2003.

(f) When Sales Stop. —When the sale of any alcoholic beverage that was previously lawful becomes unlawful because of an election, the sale of that alcoholic beverage shall cease 90 days after certification of the results of the election.

Added by Laws 1981, c. 412, § 2. Amended by Laws 1993, c. 415, § 29, eff. July 20, 1993; S.L. 2003–218, § 2, eff. June 19, 2003.

Historical and Statutory Notes

S.L. 2003–218, § 2, eff. June 19, 2003, rewrote the section, which prior thereto read:

''(a) Time Limits.--No county alcoholic beverage election may be held within three years of the certification of the results of a previous election on the same kind of alcoholic beverages in that county. No city alcoholic beverage election may be held within three years of the certification of the results of a previous election on the same kind of alcoholic beverage in that city. Otherwise, alcoholic beverage elections may be held at any time, subject to the applicable provisions of this Chapter and Chapter 163.

''(b) Effect of Favorable County Vote on City.--If a majority of voters vote in favor of certain alcoholic beverage sales in a county election, sale of that kind of alcoholic beverage shall be lawful throughout the county, regardless of the vote in any city at that or any previous or subsequent election, and regardless of any local act making sales unlawful in that city, unless the local act was ratified before the effective date of Article II, Section 24(1)(j) of the Constitution of North Carolina. A county malt beverage or unfortified [wine] election in favor of a particular ballot proposition which is more restrictive than the form of sale already allowed in a city within that county shall not affect the

legality of those previously authorized sales in the city.

''(c) Effect of Negative County Vote on City.--If a majority of voters vote against certain alcoholic beverage sales in a county election, sale of that kind of alcoholic beverage shall be unlawful throughout the county, except that sale of that alcoholic beverage shall remain lawful in any city in which sale is lawful because of a city election or a local act.

''(d) Effect of City Election on County.--A city alcoholic beverage election shall not affect the lawfulness of sale in any part of the county outside that city.

''(e) ABC Store Required for Mixed Beverages.--The sale of mixed beverages may not continue in a city or county at any time after the ABC stores which are requisite to mixed beverage sales have closed.

''(f) When Sales Stop.--When the sale of any alcoholic beverage that was previously lawful becomes unlawful because of an election, the sale of that alcoholic beverage shall cease 90 days after certification of the results of the election.''.

§ 18B–605. Local act elections

If a jurisdiction has lawfully voted in favor of ABC stores or in favor of the sale of some kind of alcoholic beverage, and the jurisdiction would not be eligible to hold another election under the conditions set by G.S. 18B-600, then that jurisdiction may continue to hold elections as though qualified under G.S. 18B-600. Except for the authority to hold the election, however, the procedures of this Chapter shall apply to any subsequent election.

Added by Laws 1981, c. 412, § 2. Amended by Laws 1983, c. 457, § 4.

Notes of Decisions

In general 1

1. In general

The clear intent of the General Assembly is that no new elections need be held to authorize the establishment of ABC stores or the sales of alcoholic beverages. The consequences of those elections, however, are to be determined by reference to new Chapter 18B, as of its effective date, regardless of when the election was held. 51 Op. Atty.Gen. 97, Fulton, April 9, 1982.

§§ 18B–606 to 18B–699. Reserved

Chapter 105

Taxation

SUBCHAPTER VIII. LOCAL GOVERNMENT SALES AND USE TAX

Article **Section**
46. One–Quarter Cent (¼¢) County Sales and Use Tax. **105–535**

SUBCHAPTER X. LOCAL OPTION COUNTY TAXES

60. Land Transfer Tax. **105–600**

SUBCHAPTER VIII. LOCAL GOVERNMENT SALES AND USE TAX

S.L. 2001–424, § 34.14(a), eff. Sept. 26, 2001, added Article 44.

Article 46

One–Quarter Cent (¼¢) County Sales and Use Tax

Section
105–535. Short title.
105–536. Limitations.
105–537. Levy.
105–538. Administration of taxes.

S.L. 2007–323, § 31.17(b), eff. July 1, 2007, added Article 46.

§ 105–535. Short title

This Article is the One–Quarter Cent (¼¢) County Sales and Use Tax Act.

Added by S.L. 2007–323, § 31.17(b), eff. July 1, 2007.

§ 105–536. Limitations

This Article applies only to counties that levy the first one-cent (1¢) sales and use tax under Article 39 of this Chapter or under Chapter 1096 of the 1967 Session Laws, the first one-half cent (½ ¢) local sales and use tax under Article 40 of this Chapter, and the second one-half cent (½¢) local sales and use tax under Article 42 of this Chapter.

Added by S.L. 2007–323, § 31.17(b), eff. July 1, 2007.

§ 105–537. Levy

(a) Authority.—If the majority of those voting in a referendum held pursuant to this Article vote for the levy of the tax, the board

of county commissioners may, by resolution and after 10 days' public notice, levy a local sales and use tax at a rate of one-quarter percent (0.25%).

(b) Vote.—The board of county commissioners may direct the county board of elections to conduct an advisory referendum on the question of whether to levy a local sales and use tax in the county as provided in this Article. The election shall be held on a date jointly agreed upon by the board of county commissioners and the board of elections and shall be held in accordance with the procedures of G.S. 163–287.

(c) Ballot Question.—The form of the question to be presented on a ballot for a special election concerning the levy of the tax authorized by this Article shall be:

''[ ] FOR [ ] AGAINST

Local sales and use tax at the rate of one-quarter percent (0.25%) in addition to all other State and local sales and use taxes.''

(d) Limitation.—A tax levied under this Article may not be in effect in a county at the same time as a tax levied under Article 60 of this Chapter.

Added by S.L. 2007–323, § 31.17(b), eff. July 1, 2007.

§ 105–538. Administration of taxes

Except as provided in this Article, the adoption, levy, collection, administration, and repeal of these additional taxes must be in accordance with Article 39 of this Chapter. G.S. 105–468.1 is an administrative provision that applies to this Article. A tax levied under this Article does not apply to the sales price of food that is exempt from tax pursuant to G.S. 105–164.13B or to the sales price of a bundled transaction taxable pursuant to G.S. 105–467(a)(5a). The Secretary shall not divide the amount allocated to a county between the county and the municipalities within the county.

Added by S.L. 2007–323, § 31.17(b), eff. July 1, 2007. Amended by S.L. 2007–345, § 14.5(a), eff. Aug. 6, 2007; S.L. 2008–134, § 75, eff. July 28, 2008; S.L. 2009–445, § 18, eff. Aug. 7, 2009.

Historical and Statutory Notes

2007 Legislation

S.L. 2007–345, § 14.5(a), inserted the second sentence relating to the application of G.S. 105–468.1 to this Article.

2008 Legislation

S.L. 2008–134, § 75, in the fourth sentence, substituted ''105–466(c)'' for ''105–467(e)''.

2009 Legislation

S.L. 2009–445, § 18, in the second sentence, added ''or to the sales price of a bundled transaction taxable pursuant to G.S. 105–467(a)(5a).''; and deleted the fourth sentence, which prior thereto read: ''Notwithstanding the provisions of G.S. 105–466(c), during the 2008 calendar year a tax levied under this Arti-

cle may become effective on the first day of any calendar quarter so long as the county gives the Secretary at least 60 days' advance notice of the new tax levy.''

SUBCHAPTER X. LOCAL OPTION COUNTY TAXES

Article 60

Land Transfer Tax

Section

105–600. Short title.
105–601. Levy.
105–602. Scope of tax.
105–603. Administration and use.
105–604. Repeal or reduction.

S.L. 2007–323, § 31.17(a), eff. July 1, 2007, added Article 60.

§ 105–600. Short title

This Article is the County Land Transfer Tax Act.

Added by S.L. 2007–323, § 31.17(a), eff. July 1, 2007.

§ 105–601. Levy

(a) Authority.—If the majority of those voting in a referendum held pursuant to this Article vote for the levy of the tax, the board of county commissioners may, by resolution and after 10 days' public notice, levy a local land transfer tax on instruments conveying interests in real property located in the county, up to a rate of four-tenths percent (0.4%), in increments of one-tenth percent (0.1%).

(b) Vote.—The board of county commissioners may direct the county board of elections to conduct an advisory referendum on the question of whether to levy a local land transfer tax in the county as provided in this Article. The election shall be held on a date jointly agreed upon by the board of county commissioners and the board of elections and shall be held in accordance with the procedures of G.S. 163–287.

(c) Ballot Question.—The form of the question to be presented on a ballot for a special election concerning the levy of the tax authorized by this Article shall be:

''[ ] FOR [ ] AGAINST

Real property transfer tax at the rate of up to [X] percent [X%] of value or consideration.' '

(d) Resolution.—The board of county commissioners must, upon adoption of a resolution levying a tax under this Article, immedi-

ately deliver a certified copy of the resolution to the register of deeds of the county, accompanied by a certified statement from the county board of elections setting forth the results of the special election approving the tax in the county. Upon receipt of these documents, the register of deeds shall administer the tax in the county as provided in this Article.

(e) Limitation.—A tax levied under this Article may not be in effect in a county at the same time as a tax levied under Article 46 of this Chapter.

Added by S.L. 2007–323, § 31.17(a), eff. July 1, 2007.

§ 105–602. Scope of tax

(a) Scope. — A tax levied under this Article does not apply to transfers exempt pursuant to G.S. 105–228.28 or G.S. 105–228.29 from the tax levied by Article 8E of this Chapter. The tax is in addition to the tax levied by Article 8E of this Chapter. A tax levied under this Article applies to transfers of interests in real property located within the county. If the property is located in two or more counties, a transfer of an interest in the property is taxable only by the county in which the greater part of the property, with respect to value, lies.

(b) Basis and Effective Date.—A tax levied under this Article applies to the consideration or value, whichever is greater, of the interest conveyed, including the value of any lien or encumbrance remaining on the property at the time of conveyance. The levy of the tax may become effective only on the first day of a calendar month set in the resolution levying the tax, which may not be earlier than the first day of the second succeeding calendar month after the date the resolution is adopted.

Added by S.L. 2007–323, § 31.17(a), eff. July 1, 2007.

§ 105–603. Administration and use

(a) Administration.—A tax levied under this Article is payable by the transferor of the interest. Except as otherwise provided in this Article, the provisions of G.S. 105–228.32 through G.S. 105–228.37 apply to a tax levied under this Article. The county must provide metering or similar equipment for the collection of the tax in lieu of the use of tax stamps.

(b) Use.—The proceeds of a tax levied under this Article may be used for any lawful purpose.

Added by S.L. 2007–323, § 31.17(a), eff. July 1, 2007.

§ 105–604. Repeal or reduction

A county may, by resolution, repeal or reduce the rate of a tax levied under this Article. Repeal or reduction of the tax must

become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal or reduction resolution was adopted. Repeal of a land transfer tax, or reduction of its rate, under this Article does not affect a liability for a tax that attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction.

Added by S.L. 2007–323, § 31.17(a), eff. July 1, 2007.

Chapter 115C

Elementary and Secondary Education

SUBCHAPTER II. ADMINISTRATIVE ORGANIZATION
OF STATE AND LOCAL EDUCATION AGENCIES

Article	Section
5. Local Boards of Education.	115C–35

SUBCHAPTER II. ADMINISTRATIVE ORGANIZATION OF STATE AND LOCAL EDUCATION AGENCIES

Article 5

Local Boards of Education

Section
115C–35. How constituted.
115C–36. Designation of board.
115C–37. Election of board members.
115C–37.1. Vacancies in offices of county boards elected on partisan basis in certain counties.

§ 115C–35. How constituted

(a) The county board of education in each county shall consist of five members elected by the voters of the county at large for terms of four years: Provided, that where there are multiple local school administrative units located within the county, and unless the county board is responsible for appointing members of the board of education of a city administrative unit located within the county, only those voters who reside within the county school administrative unit boundary lines shall be eligible to vote for members of the county board of education. Where the county board is responsible for appointing members of the board of education of a city administrative unit located within the county, the voters residing within that city school administrative unit shall be eligible to vote for members of the county board of education.

The terms of office of the members of boards of education of all school administrative units in this State, who serve on June 25, 1975, shall continue until members are elected and qualified as provided in this section unless modified by local legislation.

(b) No person residing in a local school administrative unit shall be eligible for election to the board of education of that local school administrative unit unless such person resides within the boundary lines of that local school administrative unit.

Added by Laws 1981, c. 423, § 1.

Cross References

Merger of units in same county, see § 115C–67.

Notes of Decisions

In general 1

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1. In general

City voters' interest in functions performed by county school board for joint benefit of itself and city school boards, including student transportation, an educational resource center and projects for special students, individually, or collectively, did not amount to compelling state interest which justified city voters' participation in election of certain of county school board members. Laws N.C.1907, c. 343; Laws N.C.1969, c. 770 as amended; Priv.Laws N.C.1913, c. 34; G.S.N.C. §§ 115–4, 115–18, 115–27, 115–31, 115–35 to 115–53, 115–68, 115–86, 115–180, 115–181, 115–188. Locklear v. North Carolina State Bd. of Elections, 1975, 514 F.2d 1152. Schools ⚷ 48(1)

As matter of law, superintendent of schools does not vote on appropriations. Moore v. Wykle, 1992, 419 S.E.2d 164, 107 N.C.App. 120, review denied 424 S.E.2d 405, 332 N.C. 666. Schools ⚷ 93

§ 115C–36. Designation of board

All powers and duties conferred and imposed by law respecting public schools, which are not expressly conferred and imposed upon some other official, are conferred and imposed upon local boards of education. Said boards of education shall have general control and supervision of all matters pertaining to the public schools in their respective administrative units and they shall enforce the school law in their respective units.

Added by Laws 1981, c. 423, § 1.

Notes of Decisions

In general 1

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1. In general

School board's adoption of a mandatory uniform policy did not contravene North Carolina statute authorizing State Board of Education to implement a pilot program. Hicks ex rel. Hicks v. Halifax County Bd. of Educ., 1999, 93 F.Supp.2d 649. Schools ⚷ 172

Under plain language of relevant statutes, county board of education may assign students to year-round schools without parental consent. Wake Cares, Inc. v. Wake County Bd. of Educ., 2009, 363 N.C. 165, 675 S.E.2d 345. Schools ⚷ 154(1)

General Assembly may delegate to local administrative units the power to make such rules and regulations as may be deemed necessary or expedient, and when so delegated it is peculiarly within the province of the administrative officers of the local unit to determine what things are detrimental to the successful management, good order, and discipline of the schools in their charge and the rules required to produce those conditions. Wake Cares, Inc. v. Wake County Bd. of Educ., 2008, 190 N.C.App. 1, 660 S.E.2d 217, temporary stay allowed 362 N.C. 373, 662 S.E.2d 667, appeal dismissed, review allowed 362 N.C. 481, 667 S.E.2d 461, affirmed 363 N.C. 165, 675 S.E.2d 345. Constitutional Law ⚷ 2439; Schools ⚷ 171

Board of education's discretion with reference to determining whether new school buildings are needed and where they should be located cannot be restrained by courts absent a manifest abuse of discretion or disregard of the law. Painter v. Wake County Bd. of Ed., 1975, 217 S.E.2d 650, 288 N.C. 165. Injunction ⚷ 78

Board of education determines whether new school buildings are needed and, if so, where they should be located, and such decisions are vested in the sound discretion of board. Painter v. Wake County Bd. of Ed., 1975, 217

S.E.2d 650, 288 N.C. 165. Schools ⚷ 67; Schools ⚷ 68

If a local board of education properly determines that a member is not impartial, the board does have authority to disqualify the board member from participating in the hearing. 54 Op.Atty. Gen. 86, Beale, June 6, 1985.

§ 115C–37. Election of board members

(a) Method of Election.—The county boards of education shall be elected on a nonpartisan basis at the time of the primary election in 1970 and biennially thereafter. The names of the candidates shall be printed on the ballots without reference to any party affiliation and any qualified voter residing in the county shall be entitled to vote such ballots. Except as otherwise provided herein, the election shall be conducted according to the provisions of Chapter 163 of the General Statutes then governing primary elections.

The terms of office of the members shall be staggered so as nearly equal to one half as possible shall expire every two years.

(b) County Board of Elections to Provide for Elections.—The county board of elections under the direction of the State Board of Elections, shall make all necessary provisions for elections of county boards of education as are herein provided for. The county board of elections of each county shall file with the State Board of Elections a statement specifying the size and method of election of members of its county board of education.

(c) City Board of Education.—The board of education for any city administrative unit shall be appointed or elected as now provided by law. If no provision is now made by the law for the filling of vacancies in the membership of any city board of education, such vacancy may be filled by the governing body of the city or town embraced by said administrative unit. In the event that any such vacancy is not filled in this manner within 30 days, the State Board of Education may fill such vacancy.

(d) Members to Qualify.—Each county board of education shall hold a meeting in December following the election. At that meeting, newly elected members of the board of education shall qualify by taking the oath of office prescribed in Article VI, Sec. 7 of the Constitution.

This subsection shall not have the effect of repealing any local or special acts relating to boards of education of any particular counties whose membership to said boards is chosen by a vote of the people.

(e) Vacancies in Nominations for Membership on County Boards.—If any candidate nominated on a partisan basis shall die, resign, or for any reason become ineligible or disqualified between the date of his nomination and the time for the election, such vacancy caused thereby may be filled by the actions of the county executive committee of the political party of such candidate.

(f) Vacancies in Office.—All vacancies in the membership of the boards of education whose members are elected pursuant to the provisions of subsection (a) of this section by death, resignation, or other causes shall be filled by appointment by the remaining members of the board, of a person to serve until the next election of members of such board, at which time the remaining unexpired term of the office in which the vacancy occurs shall be filled by election.

(g) Eligibility for Board Membership; Holding Other Offices.—Any person possessing the qualifications for election to public office set forth in Article VI, Sec. 6 of the Constitution of North Carolina shall be eligible to serve as a member of a local board of education: Provided, however, that any person elected or appointed to a local board of education, and also employed by that board of education, shall resign his employment before taking office as a member of that board of education.

Membership on a board of education is hereby declared to be an office that, with the exceptions provided above, may be held concurrently with any appointive office, pursuant to Article VI, Sec. 9 of the Constitution, but any person holding an elective office shall not be eligible to serve as a member of a local board of education.

(h) Death or Disqualification of Candidate in Nonpartisan Election.—If a candidate dies or becomes disqualified after the filing period has closed and before the election, and the ballots have not been printed, the county board of elections shall immediately reopen the filing period for five days so that additional candidates may file for election. If the ballots have been printed at the time the board of elections receives notice of the death or disqualification, the board shall reopen the filing period for three days if the board determines it will have time to reprint the ballots before the election.

In the event the board of elections determines that there is not time enough to reopen the filing period for three days and to reprint the ballots, then the ballots shall not be reprinted and the name of the deceased or disqualified candidate shall remain on the ballot. Votes cast for such candidate shall not be considered and the candidates receiving the highest number of votes equal to the number of positions to be filled shall be elected.

(i) The local board of education shall revise electoral district boundaries from time to time as provided by this subsection. If district boundaries are set by local act or court order and the act or order does not provide a method for revising them, the local board of education shall revise them only for the purpose of (i) accounting for territory annexed to or excluded from the school administrative unit, and (ii) correcting population imbalances among the districts shown by a new federal census or caused by

exclusions or annexations. After the General Assembly has ratified an act establishing district boundaries, the local board of education shall not revise them again until a new federal census of population is taken or territory is annexed to or excluded from the school administrative unit, whichever event first occurs. After the local board of education has revised district boundaries in conformity with this act, the local board of education shall not revise them again until a new federal census of population is taken or territory is annexed to or excluded from the school administrative unit, whichever event occurs first, except that the board may make an earlier revision of district boundaries it has drawn if it must do so to comply with a court order or to gain approval of a district-revision plan by the U.S. Justice Department under Section 5 of the Voting Rights Act. In establishing district boundaries, the local board of education shall use data derived from the most recent federal census.

Added by Laws Laws 1981, c. 423, § 1. Amended by Laws 1985, c. 404, § 1; Laws 1985, c. 405, §§ 1, 2; Laws 1985 (Reg. Sess., 1986), c. 975, § 10; Laws 1991, c. 400, § 1.

Historical and Statutory Notes

Local Modifications

Davidson County: Laws 1995, c. 300,§ 1.

Hyde County: S.L. 2007–272, § 2.

Northhampton County: Laws 1993, c. 110, § 1.

Orange County: Laws 1981, c. 911.

Pender County: Laws 1989 (Reg. Sess., 1990), c. 1008, § 1.

Alexander County Board of Education: Laws 1991, c. 253; Laws 1991, c. 695, § 1.

Ashe County Board of Education: Laws 1995, c. 128, § 1; S.L. 2000–6, § 1.

Carteret County Board of Education: Laws 1991 (Reg. Sess., 1992), c. 774.

Caswell County Board of Education: Laws 1987 (Reg. Sess., 1988), c. 1016, § 15.

Chatham County Board of Education: Laws 1995, c. 80, § 3(f).

Clay County Board of Education: Laws 1991, c. 254, § 1.

Edgecombe County Board of Education: Laws 1999, c. 12.

Halifax County Board of Education: Laws 1991, c. 97.

Jackson County Board of Education: Laws 1991, c. 170, § 1.

Madison County Board of Education: Laws 1991, c. 249, § 4.

Martin County Board of Education: Laws 1995, c. 77, § 1.

McDowell County Board of Education: Laws 1987, c. 322; Laws 1995, c. 107, § 1.

Pamlico County Board of Education: Laws 1987 (Reg. Sess., 1988), c. 939, § 11.

Perquimans County Board of Education: Laws 1993 (Reg. Sess., 1994), c. 626, § 1.

Richmond County Board of Education: Laws 1995 (Reg. Sess., 1996), c. 598, § 1.

Rockingham County Board of Education: Laws 1989, c. 685, § 1.

Stokes County Board of Education: Laws 1995, c. 66, § 1.

Surry County Board of Education: Laws 1991, c. 308.

Cross References

Merger of units in same county, see § 115C–67.

Notes of Decisions

In general 1
Vacancies 2

1. In general

Where members of Democratic Executive Committee of county could have appointed successors to fill vacancies in offices of members of County Board of Education at the time when vacancies occurred, but, because of ignorance of the law, they did not make appointments until time when power of appointment was in the State Board of Education, appointments made by members of the committee would not be adjudged valid because they acted with dispatch after acquiring knowledge of existence of vacancies. State ex rel. Atkins v. Fortner, 1952, 72 S.E.2d 594, 236 N.C. 264. Schools ⚷ 48(3)

A majority of the whole membership of the county board of education is necessary to constitute a quorum so as to transact business, in absence of statute specifying a different number, and such board becomes incapable of performing its corporate functions whenever vacancies reduce its membership below number required to constitute a quorum. Edwards v. Board of Educ. of Yancey County, 1952, 70 S.E.2d 170, 235 N.C. 345. Schools ⚷ 48(6)

Failure of members of board of education, constituting body corporate, to take oath, creating vacancy under statute, did not impair corporate existence (C.S.Supp.1924, §§ 5410, 5414, 5419; Pub.Laws 1929, c. 180). Crabtree v. Board of Educ. of Durham County, 1930, 155 S.E. 550, 199 N.C. 645. Schools ⚷ 48(2)

Acts of board of education, de jure or de facto, who failed to take oath, could not be annulled in taxpayers' action to restrain school construction (C.S.Supp. 1924, §§ 5410, 5414, 5419; Pub.Laws 1929, c. 180). Crabtree v. Board of Educ. of Durham County, 1930, 155 S.E. 550, 199 N.C. 645. Schools ⚷ 111

A member of the county board of education is a public officer. Barnhill v. Thompson, 1898, 29 S.E. 720, 122 N.C. 493. Schools ⚷ 48(6)

More specific Nash-Rocky Mount Local Act (1991 N.C. Sess. Laws c.391, sec.11(a)) providing that newly elected members to the Nash-Rocky Mount Board of Education shall take office on the second Monday in December following their election is controlling over general N.C.G.S. 115C-37 which provides that newly elected members to county board shall qualify for office at meeting held in December. Op.Atty. Gen., Kelley and Ziko, December 2, 2004.

There being no conflict between Nash-Rocky Mount Local Act and N.C.G.S. 115C-37 requiring any person elected to local Board of Education who is also employed by the Board of Education to resign such employment, elected candidate to the Nash-Rocky Mount Board of Education must resign his employment with the Board before taking office. Op.Atty.Gen., Kelley and Ziko, December 2, 2004.

2. Vacancies

Persons appointed to vacancies on local boards of education are to serve until the next election of members of such board, at which time the remaining unexpired term of the office in which the vacancy occurred is to be filled by election, absent controlling local acts. Op.Atty.Gen., Kelley and Ziko, April 13, 2004.

A vacancy is created on the Nash-Rocky Mount Board of Education when a candidate elected to the board fails to resign his employment with the board by the date specified in the Nash-Rocky Mount Local Act for taking the oath of office, and such vacancy is created as of that date. Op.Atty.Gen., Kelley and Ziko, December 2, 2004.

Following a vacancy created by virtue of elected candidate's failure to resign his employment with the board of education prior to the time specified in Nash-Rocky Mount Local Act for taking the oath of office, elected candidate may thereafter become qualified for appointment to the board by retiring or resigning his employment with the board, but will not qualify to hold that office by virtue of his election. Op.Atty.Gen., Kelley and Ziko, December 2, 2004.

§ 115C–37.1. Vacancies in offices of county boards elected on partisan basis in certain counties

(a) All vacancies in the membership of county boards of education which are elected by public or local act on a partisan basis

shall be filled by appointment of the person, board, or commission specified in the act, except that if the act specifies that appointment shall be made by a party executive committee, then the appointment shall be made instead by the remaining members of the board.

(b) If the vacating member was elected as the nominee of a political party, then the person, board, or commission required to fill the vacancy shall consult with the county executive committee of that party and appoint the person recommended by that party executive committee, if the party executive committee makes a recommendation within 30 days of the occurrence of the vacancy.

(c) Whenever only the qualified voters of less than the entire county were eligible to vote for the member whose seat is vacant (either because the county administrative unit was less than countywide or only residents of certain areas of the administrative unit could vote in the general election for a district seat), the appointing authority must accept the recommendation only if the county executive committee restricted voting to committee members who represent precincts all or part of which were within the territory of the vacating school board member.

Text of subsec. (d) eff. until Dec. 1, 2010.

(d) This section shall apply only in the following counties: Alleghany, Brunswick, Forsyth, Graham, New Hanover, Vance, and Washington.

Text of subsec. (d) eff. Dec. 1, 2010.

(d) This section shall apply only in the following counties: Alleghany, Brunswick, Graham, New Hanover, Vance, and Washington.

Added by Laws 1981, c. 763, §§ 4, 14. Amended by Laws 1981, c. 830; Laws 1983, c. 493, § 1; Laws 1987 (Reg. Sess., 1988), c. 974, § 5; Laws 1989, c. 497, § 3; S.L. 2009–277, § 1, eff. July 10, 2009; S.L. 2009–277, § 2, eff. Dec. 1, 2010.

Notes of Decisions

Construction and application 1

1. Construction and application

Persons appointed to vacancies on local boards of education are to serve until the next election of members of such board, at which time the remaining unexpired term of the office in which the vacancy occurred is to be filled by election, absent controlling local acts. Op.Atty.Gen., Kelley and Ziko, April 13, 2004.

Chapter 120

General Assembly

Article		Section
3.	Contests.	120–10
6A.	Submission of Acts.	120–30.1

Article 3

Contests

Section	
120–10.	Repealed.
120–10.1.	Contesting a seat.
120–10.2.	Definitions.
120–10.3.	Initiating a contest.
120–10.4.	Answering a notice of intent.
120–10.5.	Filings and service.
120–10.6.	Discovery.
120–10.7.	Petitions.
120–10.8.	Referral to committee.
120–10.9.	Basis for decision.
120–10.10.	Jurisdiction.
120–10.11.	Judicial proceedings abated.
120–10.12.	Determination of house not reviewable.
120–10.13.	Bad faith costs assessed.
120–10.14.	Applicability.
120–11.	Repealed.

§ 120–10. Repealed by S.L. 2005–3, § 1, eff. March 10, 2005

Historical and Statutory Notes

The repealed section, related to notice of contest.

See generally, § 120–10.1 et seq.

§ 120–10.1. Contesting a seat

Except as otherwise provided by rules of the house, a contest of the qualifications as a candidate or election of a member of the House of Representatives or the Senate under Article II, Section 20 of the Constitution shall be conducted in accordance with the provisions of this Article.

Added by S.L. 2005–3, § 2, eff. March 10, 2005.

§ 120–10.2. Definitions

As used in this Article, the following terms mean:

(1) Clerk. — The Principal Clerk of the house in which the election of the seat is being contested.

(2) Committee. — The Committee on Rules of the appropriate house unless, by rule, the house has designated another committee to hear contests.

(3) Contest. — A challenge to the apparent election of a member of the General Assembly or a request to determine an undecided election to a seat of the General Assembly in accordance with the provisions of this Article.

(4) Contestant. — An unsuccessful candidate in an election to which this Article applies who initiates a contest.

(5) Contestee. — A candidate in an election to which this Article applies who is not a contestant.

(6) Notice of intent. — The notice required to initiate a contest in accordance with the provisions of this Article.

(7) Unsuccessful candidate. — A candidate for an elective office to which this Article applies who has not been issued a certificate of election.

Added by S.L. 2005–3, § 2, eff. March 10, 2005.

§ 120–10.3. Initiating a contest

(a) Who May Initiate. — A contest may be initiated only by a contestant by the filing of a written notice of the intent to petition for a contest in accordance with this section.

(b) When May Initiate. — The notice of intent may be filed no earlier than the date provided in G.S. 163–182.5 for the canvass by the board of elections with jurisdiction for the office under G.S. 163–182.4. The notice of intent must be filed no later than the latter of: (i) 10 days after a certificate of election has been issued, or (ii) 10 days after the conclusion of the election protest procedure under Article 15A of Chapter 163 of the General Statutes, but in no event may a contestant initiate a contest later than 30 days after the convening of a regular or special session of the General Assembly next after the election.

(c) Content of Notice. — A notice of intent shall state the grounds for the contest. The grounds shall be either or both of the following:

(1) Objections to the eligibility or qualifications of the contestee as a candidate in the election based on specific allegations.

(2) Objections to the conduct or results of the election accompanied by specific allegations that if proven true would have a probable impact on the outcome of the election.

The notice of intent shall also state that a contestee shall file an answer to the notice of intent in accordance with G.S. 120–10.4. The notice of intent shall be signed by the contestant and shall be

verified in accordance with Rule 11(b) of the Rules of Civil Procedure.

Added by S.L. 2005–3, § 2, eff. March 10, 2005.

Historical and Statutory Notes

2005 Legislation

S.L. 2005–3, § 3(b), provides:

''Section 3.(b) For any election in 2004, notice of the intent to contest the election shall be filed within 10 days of this act becoming law, notwithstanding the deadlines established under subsection (a) of this section. Any notice, pleadings, or other papers, submitted by a person who could be eligible to be a contestant or contestee under this act, received by the House or Senate Principal Clerk prior to this act becoming law, shall be deemed to be a notice of intent under G.S. 120–10.3 or G.S. 163–182.13A, as applicable, and may be refiled within 10 days of this act becoming law, in the form and manner specified in G.S. 120–10.3 or G.S. 163–182.13A, as applicable, in order to comply with the provisions of this act.''

Cross References

Appeal of a final decision to superior court; appeal to the General Assembly or a house thereof, see § 163–182.14.

§ 120–10.4. Answering a notice of intent

Within 10 days after service of the notice of intent on a contestee, a contestee shall file a written answer with the clerk. The contestee's answer shall admit or deny the allegations on which the contestant relies, or state that the contestee has no knowledge or information concerning an allegation which shall be deemed denial, and state any other defenses, in law or fact, on which the contestee relies and any different or additional issues the contestee wants considered. The answer shall be signed by the contestee and shall be verified in accordance with Rule 11(b) of the Rules of Civil Procedure. The failure to file an answer shall be deemed to be a general denial of the allegations.

Added by S.L. 2005–3, § 2, eff. March 10, 2005.

§ 120–10.5. Filings and service

The notice of intent to contest shall be filed by the contestant with the clerk and copies thereof served by the contestant on the contestee as provided under Rule 4(j)(1) of the Rules of Civil Procedure. Proof of service shall be filed with the clerk in accordance with G.S. 1–75.10. The answer, petition, and any reply and copies thereof shall be filed with the clerk, and copies shall be served on the opposing party or the opposing party's counsel, if any, in the manner prescribed by Rule 5 of the Rules of Civil Procedure.

Added by S.L. 2005–3, § 2, eff. March 10, 2005.

§ 120–10.6. Discovery

(a) Depositions. — After service of the notice of intent, any party, after five days notice to the other party or parties may take

depositions to sustain or invalidate the election. The contestant shall complete the taking of depositions to submit with the contestant's petition at any time within 20 days following the date of service of the notice of intent, and a contestee shall complete the taking of the contestee's depositions within 30 days following the date of service of the notice of intent on the contestee. By written stipulation of the parties, the testimony of any witness may be filed in the form of an affidavit by the witness within the same time limitations prescribed for the taking of depositions. Every deposition shall be taken before a person authorized by law to administer oaths, who shall certify and seal the deposition in the same manner as in judicial civil proceedings and file the same with the clerk.

(b) Witnesses. — Subpoenas for witnesses in a contest shall be issued upon the application of either party or upon motion of the committee under the same procedures as under Article 5A of this Chapter and shall be enforced as provided under G.S. 120–19.4. Witnesses shall be entitled to the same allowances and privileges, and be subject to the same penalties, as witnesses summoned to attend the courts.

Added by S.L. 2005–3, § 2, eff. March 10, 2005.

§ 120–10.7. Petitions

(a) Filing. — A written petition shall be filed by the contestant with the clerk within 40 days following the date of service of the notice of intent. The petition shall set forth the facts and arguments supporting the case of the contestant. A contestee may file a written reply to the petition within five days following its service on the contestee.

(b) Affidavits. — No affidavit may be made a part of, or filed in support of, a petition or reply thereto unless the affidavit has previously been filed with the clerk, pursuant to the written stipulation of the parties or their counsel, on or before the date established by G.S. 120–10.6 for the completion of the taking of depositions by the proponent of the affidavit.

Added by S.L. 2005–3, § 2, eff. March 10, 2005.

§ 120–10.8. Referral to committee

(a) Referral. — The clerk shall refer the notice, answer, petition, reply, depositions, and affidavits to the committee, which documents shall constitute part of the record in the contest. The committee shall hear the contest and conduct such investigation as has been directed by resolution of its house.

(b) Procedure. — The committee shall set a schedule for taking depositions and receiving affidavits. The committee may consider the contestant's and contestee's recommendations for the proce-

dural schedule. The committee may hold hearings and may compel the attendance of witnesses and the production of documents in its inquiry in accordance with Article 5A of this Chapter. The committee may accept the filing of briefs. The committee may order the recount of the ballots in the election and may seek and obtain the assistance of the State Board of Elections in the interpretation and counting of ballots.

(c) Compel Discovery. — No witness in a contest shall be excused from discovering whether the witness voted in the election that is the subject of the contest or the witness's qualification to vote, except as to the witness's conviction for any offense which would disqualify the witness from voting. If the witness was not a qualified voter, the witness shall be compelled to discover for whom the witness voted; but any witness making such discovery shall not be subject to criminal or penal prosecution for having voted in the election.

(d) Report. — The committee shall report its findings as to the law and the facts and make recommendations to the house for its action.

Added by S.L. 2005–3, § 2, eff. March 10, 2005.

§ 120–10.9. Basis for decision

(a) Eligibility and Qualification. — If the contest is as to the eligibility or qualifications of the contestee, the house shall determine if the contestee is eligible and qualified. If it determines that the contestee is not eligible or not qualified, it shall order a new election.

(b) Conduct or Results of Election. — If the contest is as to the conduct or results of the election, the house shall determine which candidate received the highest number of votes. If it can determine which candidate received the highest number of votes, it shall seat that person as a member of the house. If it cannot determine which candidate received the highest number of votes, it may order a new election, or may order such other relief, as may be necessary and proper. If it determines that two or more candidates shall be equal and highest in votes, the provisions of G.S. 163–182.8 shall apply.

Added by S.L. 2005–3, § 2, eff. March 10, 2005.

Cross References

Certificate of nomination or election, or certificate of the results of a referendum, see § 163–182.15.

§ 120–10.10. Jurisdiction

A contest of any election held at the same time and place as members of the General Assembly are elected shall be considered

by the newly elected house. Any other contest shall be heard by the house sitting at the time of the election.

Added by S.L. 2005–3, § 2, eff. March 10, 2005.

§ 120–10.11. Judicial proceedings abated

Notwithstanding any other provision of law, upon the initiation of a contest under this Article, any judicial proceedings involving either the contestant or the contestee encompassing the issues set forth in the notice of intent or an answer thereto concerning the election that is the subject of the contest shall abate. The clerk shall file a copy of the notice of intent and final determination with the court in any judicial proceeding pending prior to the filing of the notice of intent.

Added by S.L. 2005–3, § 2, eff. March 10, 2005.

Cross References

Appeal of a final decision to superior court; appeal to the General Assembly or a house thereof, see § 163–182.14.

§ 120–10.12. Determination of house not reviewable

The decision of one of the houses of the General Assembly in determining a contest pursuant to this Article may not be reviewed by the General Court of Justice.

Added by S.L. 2005–3, § 2, eff. March 10, 2005.

Historical and Statutory Notes

2005 Legislation

Pursuant to the direction of the Revisor of Statutes, ''of'' was inserted in the section name line between ''Determination'' and ''house''.

Cross References

Appeal of a final decision to superior court; appeal to the General Assembly or a house thereof, see § 163–182.14.

Certificate of nomination or election, or certificate of the results of a referendum, see § 163–182.15.

§ 120–10.13. Bad faith costs assessed

The prevailing party in any contest may recover that party's costs incurred in conjunction with the contest in a civil action, upon a showing that the other party filed, pursued, maintained, or defended the contest in bad faith and without substantial justification.

Added by S.L. 2005–3, § 2, eff. March 10, 2005.

§ 120–10.14. Applicability

This Article applies only to a general or special election and does not apply to a primary or any other part of the nominating process.

Added by S.L. 2005–3, § 2, eff. March 10, 2005.

§ 120–11. Repealed by S.L. 2005–3, § 1, eff. March 10, 2005

Historical and Statutory Notes

The repealed section, which related to taking of depositions, penalties for failure of witnesses to appear and privilege of witnesses, was derived from Laws 1973, c. 108, § 68.

See now, § 120–10.6.

Article 6A

Submission of Acts

Section

120–30.1 to 120–30.9. Repealed.
120–30.9A. Purpose.
120–30.9B. Statewide statutes; State Board of Elections.
120–30.9C. The judicial system; Administrative Office of the Courts.
120–30.9D. Constitutional amendments; Secretary of State.
120–30.9E. Counties; County Attorney.
120–30.9F. Municipalities; municipal attorney.
120–30.9G. School Administrative Units; State Board of Education; Local Boards of Education Attorney.
120–30.9H. Decision letters of U.S. Attorney General published in North Carolina Register.
120–30.9I. Alternate submission authority.

§§ 120–30.1 to 120–30.9. Repealed by Laws 1965, c. 1142

Historical and Statutory Notes

The repealed sections, providing for the legislative council, were enacted by Laws 1963, c. 721.

§ 120–30.9A. Purpose

The purpose of this Article is to ensure compliance with Section 5 of the Voting Rights Act of 1965 by designating certain officials who shall submit to the Attorney General of the United States any statute enacted by the General Assembly or action taken by any local government which affects any voting qualification, prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, in any jurisdiction covered by Section 5 of the Voting Rights Act of 1965.

Added by Laws 1985, c. 579, § 1.

§ 120–30.9B. Statewide statutes; State Board of Elections

(a) The Executive Director of the State Board of Elections shall seek approval as required by 42 U.S.C. § 1973c for all of the following:

(1) Within 30 days of the time they become laws all acts of the General Assembly that amend, delete, add to, modify or

repeal any provision of Chapter 163 of the General Statutes or any other statewide legislation, except relating to Chapter 7A of the General Statutes or as provided in subsection (b) of this section, which constitutes a ''change affecting voting'' under Section 5 of the Voting Rights Act of 1965; and

(2) Within 30 days all alterations of precinct boundaries under G.S. 163–132.2(c) in counties covered by Section 5 of the Voting Rights Act of 1965.

(b) With respect to acts of the General Assembly that amend, delete, add to, modify, or repeal any provision relating to apportioning or redistricting of State legislative or congressional districts, the Attorney General of North Carolina shall seek approval of the plan as required by 42 U.S.C. § 1973c.

Added by Laws 1985, c. 579, § 1. Amended by Laws 1989, c. 440, § 4; Laws 1995, c. 20, § 4; S.L. 2001–319, § 11, eff. July 28, 2001; S.L. 2003–434 (Ex. Sess.), § 12, eff. Nov. 25, 2003.

Historical and Statutory Notes

Laws 1995, c. 20, § 17, provides:

''Sections 1 through 16 of this act shall become effective only if the constitutional amendments proposed by Sections 1 and 2 of Chapter 5 of the Session Laws of 1995 are approved as provided by Sections 3 and 4 of Chapter 5 of the Session Laws of 1995, and if so approved, Sections 1 through 16 of this act shall become effective with respect to bills and joint resolutions passed in either house of the General Assembly on or after January 1, 1997.''

Laws 1995, c. 20, was ratified April 3, 1995.

The constitutional amendments proposed by Laws 1995, c. 5, §§ 1 and 2, were approved at the 1996 general election, and were certified Nov. 26, 1996.

2003 Legislation

S.L. 2003–434 (Ex. Sess.), § 16, provides:

''Sections 1, 2, 3, 4, and 5 of this act are effective when it becomes law. The remainder of this act is effective when it becomes law and applies to any case pending on or filed after that date, to any case regardless of when the case was filed, and to any action of a court affecting the validity of an act apportioning or redistricting State legislative or congressional districts.''

§ 120–30.9C. The judicial system; Administrative Office of the Courts

The Administrative Officer of the Courts shall submit to the Attorney General of the United States within 30 days of the time they become laws all acts of the General Assembly that amend, delete, add to, modify or repeal any provision of Chapter 7A of the General Statutes of North Carolina which constitutes a ''change affecting voting'' under Section 5 of the Voting Rights Act of 1965.

Added by Laws 1985, c. 579, § 1. Amended by Laws 1995, c. 20, § 5.

Historical and Statutory Notes

Laws 1995, c. 20, § 17, provides:

''Sections 1 through 16 of this act shall become effective only if the constitutional amendments proposed by Sections 1 and 2 of Chapter 5 of the Session Laws of 1995 are approved as provided by Sections 3 and 4 of Chapter 5 of the Session Laws of 1995, and

if so approved, Sections 1 through 16 of this act shall become effective with respect to bills and joint resolutions passed in either house of the General Assembly on or after January 1, 1997.''

Laws 1995, c. 20, was ratified April 3, 1995.

The constitutional amendments proposed by Laws 1995, c. 5, §§ 1 and 2, were approved at the 1996 general election, and were certified Nov. 26, 1996.

§ 120–30.9D. Constitutional amendments; Secretary of State

The Secretary of State shall submit to the Attorney General of the United States within 30 days of ratification all acts of the General Assembly that amend the North Carolina Constitution and which constitute a ''change affecting voting'' under Section 5 of the Voting Rights Act of 1965.

Added by Laws 1985, c. 579, § 1.

§ 120–30.9E. Counties; County Attorney

The County Attorney of any county covered by the Voting Rights Act of 1965 shall submit to the Attorney General of the United States within 30 days:

(1) Of the time they become laws, any local acts of the General Assembly; and

(2) Of adoption actions of the county board of commissioners, or the county board of elections or any other county agency which constitutes a ''change affecting voting'' under Section 5 of the Voting Rights Act of 1965 in that county.

Added by Laws 1985, c. 579, § 1. Amended by Laws 1995, c. 20, § 6.

Historical and Statutory Notes

Laws 1995, c. 20, § 17, provides:

''Sections 1 through 16 of this act shall become effective only if the constitutional amendments proposed by Sections 1 and 2 of Chapter 5 of the Session Laws of 1995 are approved as provided by Sections 3 and 4 of Chapter 5 of the Session Laws of 1995, and if so approved, Sections 1 through 16 of this act shall become effective with respect to bills and joint resolutions passed in either house of the General Assembly on or after January 1, 1997.''

Laws 1995, c. 20, was ratified April 3, 1995.

The constitutional amendments proposed by Laws 1995, c. 5, §§ 1 and 2, were approved at the 1996 general election, and were certified Nov. 26, 1996.

Cross References

County government; alteration by voter initiative, see § 153A–60.1.

§ 120–30.9F. Municipalities; municipal attorney

The municipal attorney of any municipality covered by the Voting Rights Act of 1965 shall submit to the Attorney General of the United States within 30 days:

(1) Of the time they become laws, any local acts of the General Assembly; and

(2) Of adoption actions of the municipal governing body or municipal board of elections or any other municipal agency which constitutes a ''change affecting voting'' under Section 5 of the Voting Rights Act of 1965 in that municipality; provided that, if required or allowed by regulations or practices of the United States Department of Justice, a municipal attorney may delay submission of any annexation ordinance or group of ordinances until all previously submitted annexation ordinances have been precleared or otherwise received final disposition.

Added by Laws 1985, c. 579, § 1. Amended by Laws 1989, c. 598, § 4; Laws 1995, c. 20, § 7.

Historical and Statutory Notes

Laws 1995, c. 20, § 17, provides:

''Sections 1 through 16 of this act shall become effective only if the constitutional amendments proposed by Sections 1 and 2 of Chapter 5 of the Session Laws of 1995 are approved as provided by Sections 3 and 4 of Chapter 5 of the Session Laws of 1995, and if so approved, Sections 1 through 16 of this act shall become effective with respect to bills and joint resolutions passed in either house of the General Assembly on or after January 1, 1997.''

Laws 1995, c. 20, was ratified April 3, 1995.

The constitutional amendments proposed by Laws 1995, c. 5, §§ 1 and 2, were approved at the 1996 general election, and were certified Nov. 26, 1996.

§ 120–30.9G. School Administrative Units; State Board of Education; Local Boards of Education Attorney

(a) The State Board of Education shall submit to the Attorney General of the United States within 30 days any rules, policies, procedures, or actions taken pursuant to G.S. 115C-64.4 which could result in the appointment of a caretaker administrator or board to perform any of the powers and duties of a local board of education where that school administrative unit is covered by the Voting Rights Act of 1965.

(b) The attorney for any local board of education where that school administrative unit is covered by the Voting Rights Act of 1965 shall submit to the Attorney General of the United States within 30 days:

(1) Of the time they become laws, any local acts of the General Assembly; and

(2) Of adoption actions of the local boards of education which constitutes a ''change affecting voting'' under Section 5 of the Voting Rights Act of 1965 in that school administrative unit. If the change affecting voting is a merger of two or more school administrative units, the change shall be submitted jointly by the attorneys of the school administrative units involved, or by one of them by agreement of the attorneys involved.

Added by Laws 1985, c. 579, § 1. Amended by Laws 1991, c. 529, § 2; Laws 1995, c. 20, § 8.

Historical and Statutory Notes

Laws 1995, c. 20, § 17, provides:

''Sections 1 through 16 of this act shall become effective only if the constitutional amendments proposed by Sections 1 and 2 of Chapter 5 of the Session Laws of 1995 are approved as provided by Sections 3 and 4 of Chapter 5 of the Session Laws of 1995, and if so approved, Sections 1 through 16 of this act shall become effective with respect to bills and joint resolutions passed in either house of the General Assembly on or after January 1, 1997.''

Laws 1995, c. 20, was ratified April 3, 1995.

The constitutional amendments proposed by Laws 1995, c. 5, §§ 1 and 2, were approved at the 1996 general election, and were certified Nov. 26, 1996.

Cross References

State board of education, see § 115C–12.

§ 120–30.9H. Decision letters of U.S. Attorney General published in North Carolina Register

All letters and other documents received by the authorities required by this Article to submit any ''changes affecting voting'' from the Attorney General of the United States in which a final decision is made concerning a submitted ''change affecting voting'' shall be filed with the Director of the Office of Administrative Hearings. The Director shall publish the letters and other documents in the North Carolina Register.

Added by Laws 1985 (Reg. Sess., 1986), c. 1032, § 11.

Cross References

North Carolina register, see § 150B–21.17.

§ 120–30.9I. Alternate submission authority

Notwithstanding any other provision of this Article, in the event that the person or party responsible under G.S. 120-30.9E, 120-30.9F, or 120-30.9G for submitting any local act of the General Assembly shall delay, obstruct, or refuse to make a submittal to the Attorney General of the United States, the Attorney General of North Carolina may submit that local act. Any person or party responsible under this Article for making such a submission shall promptly provide any information and materials the Attorney General of North Carolina might request to facilitate making the submission and making any supplements to the submission.

Added by Laws 1991, c. 761, § 21.1.

Chapter 128

Offices and Public Officers

Article **Section**
1. General Provisions. **128–1**

Article 1

General Provisions

Section
128–1. No person shall hold more than one office; exception.
128–1.1. Dual-office holding allowed.
128–1.2. Ex officio service by county and city representatives and officials.
128–2. Holding office contrary to the Constitution; penalty.
128–3. Bargains for office void.
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128–5. Oath required before acting; penalty.
128–6. Persons admitted to office deemed to hold lawfully.
128–7. Officer to hold until successor qualified.
128–7.1. Failure to qualify creates vacancy.
128–7.2. Qualifications for appointment to fill vacancy in elective office.

Cross References

Regional solid waste management authorities; membership; board; delegates, see § 153A–423.

§ 128–1. No person shall hold more than one office; exception

No person who shall hold any office or place of trust or profit under the United States, or any department thereof or under this State, or under any other state or government, shall hold or exercise any other office or place of trust or profit under the authority of this State, or be eligible to a seat in either house of the General Assembly except as provided in G.S. 128-1.1, or by other General Statute.

Amended by Laws 1967, c. 24, § 24; Laws 1969, c. 1070; Laws 1971, c. 697, § 1; Laws 1983, c. 609, § 9.

Cross References

Constitutional prohibition against dual public officeholding, see Const. Art. 6, § 9.

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1. Jury trial right

The requirement, in the fourteenth amendment, of equal protection of the laws, does not secure a right of jury trial in quo warranto proceedings in a state court to suspend or remove a state officer. Wilson v. State, 1898, 18 S.Ct. 435, 169 U.S. 586, 42 L.Ed. 865. Constitutional Law ⚷ 3830

The requirement in the fourteenth amendment of due process of law does not secure a right of jury trial in quo warranto proceedings in a state court to suspend or remove a state officer. Wilson v. State, 1898, 18 S.Ct. 435, 169 U.S. 586, 42 L.Ed. 865. Constitutional Law ⚷ 4172(6)

2. Construction with other laws

A public local act providing that chairmen of board of education and board of health and superintendent of schools should constitute a jury commission and tax commission for Madison county, requiring them to take oath of office but not to resign from their previous offices, was unconstitutional as providing for two offices for the same person. Pub.Loc.Laws 1931, c. 177; Code 1935, § 3200 et seq.; Const. art. 14, § 7. Brigman v. Baley, 1938, 195 S.E. 617, 213 N.C. 119. Officers And Public Employees ⚷ 19

Where statute providing that designated county officers should serve as jury commission and tax commission was unconstitutional because requiring same person to fill two offices, appointment of tax lister by commission formed under such statute was invalid and appointee could not maintain quo warranto for the office and emoluments thereof. Pub.Loc.Laws 1931, c. 177; Code 1935, § 3200 et seq.; Const. art. 14, § 7. Brigman v. Baley, 1938, 195 S.E. 617, 213 N.C. 119. Officers And Public Employees ⚷ 30.5; Quo Warranto ⚷ 10

3. Authority of legislature—Creation and abolition of offices

Acts 1895, c. 75, establishes a criminal court in certain counties, the court so created to comprise one circuit, with a clerk for each county, elected by the people. Acts 1897, c. 6, adds another county to the circuit, gives the court civil jurisdiction, and names it the "circuit court." Act Feb. 27, 1899, provides that the court created by the prior acts shall be abolished, and the business pending therein transferred to the superior courts of the respective counties. Act March 3, 1899, passed at the same legislative session, establishes a criminal district court for certain counties, among which are all the counties in which such a court was established by the two first-named acts, and provides that the criminal cases pending in the

circuit courts in such counties, or in the superior courts of the counties in which there was no circuit court, shall be transferred to the criminal district court created by it, and provides for a clerk for each county, to be appointed by the judge. It fixes the salary of the judge and solicitor, but as to the fees of the clerk, jurors, and witnesses provides that they shall be as "now fixed by law"; the act of 1895 being the only one fixing such fees. Act March 6, 1899, provides that the criminal courts of the counties named in the Acts of 1895 and 1897 shall be abolished. Held, that the Acts of 1899 merely amend the Acts of 1895 and 1897, and do not abolish the criminal courts created by them, and hence a person elected to the office of clerk of such court for one of the counties is the clerk of the criminal district court for such county created by the new act; it being beyond the power of the legislature to deprive an officer of his office, where the office itself continues to exist. Wilson v. Jordan, 1899, 33 S.E. 139, 124 N.C. 683. Clerks Of Courts ⚷ 2

The office of the superintendent of the state's prison is created by the general assembly, and not by the constitution, in view of Const. art. 11, § 3, directing the general assembly to provide for the erection and conduct of the prison. Hence the legislature may abolish it. State's Prison of North Carolina v. Day, 1899, 32 S.E. 748, 124 N.C. 362. Constitutional Law ⚷ 4171

Act 1899, purporting to abolish the office of superintendent of the state's prison, did not abolish it, since it also required a performance of all the duties previously performed by the superintendent, though it required the duties to be performed by three persons, and incorporated the prison, and increased the number of directors, and gave them power to sell or lease lands of the prison; a public office being an agency from the state to perform certain duties. State's Prison of North Carolina v. Day, 1899, 32 S.E. 748, 124 N.C. 362. Prisons ⚷ 7

Act April 6, 1871, giving to the president of the senate and the speaker of the house of representatives power to appoint "all proxies and directors in all corporations in which the state has an interest," creates a public office. Clark v. Stanley, 1872, 66 N.C. 59, 8 Am.Rep. 488. Officers And Public Employees ⚷ 3

4. —— Obligation of contracts, authority of legislature

An officer appointed for a definite time to a public office has not a contract right thereto of which the Legislature cannot deprive him. Mial v. Ellington, 1903, 46 S.E. 961, 134 N.C. 131. Constitutional Law ⚷ 2724

The legislature, while it continues an office, cannot oust an incumbent during the term for which he is chosen. Cotten v. Ellis, 1860, 52 N.C. 545. Constitutional Law ⚷ 2724

5. —— Appointment of officers, authority of legislature

Act April 1, 1871, for the better government of the penitentiary, providing for a board of directors for said penitentiary, and appointing certain persons as such, is void, as in conflict with Const. art. 3, § 10, which reposes in the governor the power to nominate, and by and with the advice and consent of a majority of the senators elect, appoint, all officers established by the constitution or created by law. Welker v. Bledsoe, 1873, 68 N.C. 457; Rogers v. McGowan, 1873, 68 N.C. 520.

The legislative as well as the other departments of the state government acts under a grant of powers which it cannot exceed, and therefore, since there is no grant of power to it to make appointments to office, but an express prohibition in Const.art. 3, § 10, it cannot exercise such functions. Nichols v. McKee, 1873, 68 N.C. 429; Rogers v. McGowan, 1873, 68 N.C. 520.

A statute authorizing the presiding officers of the two branches of the legislature to appoint proxies to vote the stock of the state, and for an election of directors in a certain railroad corporation, and appointing the state directors thereof, is invalid for repugnancy to Const. art. 3, § 10, reposing in the executive power the authority to appoint all officers. Howerton v. Tate, 1873, 68 N.C. 546. Railroads ⚷ 16; States ⚷ 84; Constitutional Law ⚷ 2391

Under Const. art. 3, § 10, providing that the governor shall nominate all officers whose appointments are not otherwise provided for, and no such officer shall be elected by the general assembly, the clause, "whose appointments are not otherwise provided for," means provided for by the constitution, and the words, "no such officer shall be elected by the general assembly," are added as an express veto on the power of the assembly, whether such office was es-

tablished by the constitution or created by the general assembly. Clark v. Stanley, 1872, 66 N.C. 59, 8 Am.Rep. 488. Constitutional Law ⚷ 2391

Const. art. 3, § 10, providing that the governor shall appoint, with the consent of the senate, all officers "whose appointments are not otherwise provided for," means provided for by the constitution; and the words, "no such officer shall be appointed or elected by the general assembly," are superadded as a restriction upon the assembly, which prevents it from appointing any officers. Clark v. Stanley, 1872, 66 N.C. 59, 8 Am.Rep. 488. Officers And Public Employees ⚷ 9

6. —— Concurrent action of different officers or bodies, authority of legislature

The fact that the legislature assumed to take from the governor the appointment of directors in a certain company held to relieve him from the necessity of sending nominations to those offices to the senate for its "advice and consent." Howerton v. Tate, 1873, 68 N.C. 546. Officers And Public Employees ⚷ 15

7. —— Change of duties and pay, authority of legislature

Although an office is a constitutional one, the Legislature may, within reasonable limits, change the statutory duties and diminish the emoluments of such office, if the public welfare requires it. Fortune v. Buncombe County Com'rs, 1905, 52 S.E. 950, 140 N.C. 322. Officers And Public Employees ⚷ 100(2)

A public office is a subject of property, but in a limited sense. The legislature may increase the duties and responsibilities of the public officer, or diminish his emoluments, unless the constitution has defined his duties and fixed his compensation. Cotten v. Ellis, 1860, 52 N.C. 545. Constitutional Law ⚷ 2723

8. —— Compensation and fees, authority of legislature

The Legislature may, within reasonable limits, diminish the emoluments of the office of sheriff as ex officio tax collector of the county during his term, though such office is a constitutional and not a statutory office. State v. Stedman, 1906, 54 S.E. 269, 141 N.C. 448. Officers And Public Employees ⚷ 100(2)

The legislature may reduce or increase the salaries of such officers as are not protected by the constitution during their term of office, but cannot deprive them of the whole. Cotten v. Ellis, 1860, 52 N.C. 545. Officers And Public Employees ⚷ 100(1)

9. Public officers—In general

Under Const. art. 14, § 7, providing that no person who shall hold any office or place of trust or profit under the United States or any department thereof or under the state, etc., shall hold or exercise any other office or place of trust or profit under the authority of the state, provided, etc., an office or place of trust is a public position, involving a delegation to the individual of some part of the sovereign functions of the government to be exercised for the public benefit. Wootton v. Smith, 1907, 59 S.E. 649, 145 N.C. 476. Officers And Public Employees ⚷ 1

A member of the county board of education is a public officer. Barnhill v. Thompson, 1898, 29 S.E. 720, 122 N.C. 493. Schools ⚷ 48(6)

Under Acts 1869–70, c. 43, abolishing the office of state printer, and Acts 1871–72, c. 180, providing for the letting of the state printing by contract, the position of state printer is not a public office. Brown v. Turner, 1874, 70 N.C. 93. Officers And Public Employees ⚷ 1

The trustees of the university, and the directors of the penitentiary, of the lunatic asylum, and of the institution for the deaf, dumb, and blind, are public officers. Welker v. Bledsoe, 1873, 68 N.C. 457. Officers And Public Employees ⚷ 1

The trustees of the university, and the directors of the penitentiary, of the lunatic asylum, and of the institution for the deaf, dumb, and blind, are public officers. Nichols v. McKee, 1873, 68 N.C. 429. Officers And Public Employees ⚷ 1

If a person is authorized to appoint to an office, this duty of itself constitutes him a public officer. Clark v. Stanley, 1872, 66 N.C. 59, 8 Am.Rep. 488. Officers And Public Employees ⚷ 1

It is not necessary, to constitute one a public officer, that he should be required to take an oath or be allowed a salary or fees. Clark v. Stanley, 1872, 66 N.C. 59, 8 Am.Rep. 488. Officers And Public Employees ⚷ 1

10. —— Vested rights, public officers

An officer appointed for a definite time to a public office has not a vested property interest therein, of which the Legislature cannot deprive him. Mial v. Ellington, 1903, 46 S.E. 961, 134 N.C. 131. Constitutional Law ⚷ 2644

The provision of Laws 1891, c. 320, § 1, for the suspension of the railroad commissioner by the governor in certain cases, being a part of the act originally creating the office, it interferes with no vested right of the incumbent of the office, but prescribes a rule of property to which the incumbent assented by taking the office under the act. Caldwell v. Wilson, 1897, 28 S.E. 554, 121 N.C. 425, 121 N.C. 480, 61 Am.St.Rep. 672. Constitutional Law ⚷ 2644

11. —— Post office employees, public officers

A night watchman of a federal post office building, appointed by the treasury department, does not "hold an office of trust or profit under the United States," within Const. art. 14, § 7, so as to render him ineligible to hold the office of city alderman. Doyle v. Aldermen of Raleigh, 1883, 89 N.C. 133, 45 Am.Rep. 677. Municipal Corporations ⚷ 124(3)

12. —— Appointment and filling of vacancies, public officers

Laws 1911, c. 62, § 9, construed, and held to entitle the secretary of the state board of health to appoint a county superintendent in certain circumstances. McCullers v. Board of Com'rs of Wake County, 1912, 73 S.E. 816, 158 N.C. 75, Am.Ann.Cas. 1913D,507. Health ⚷ 364

An appointment by the governor of a state's prison superintendent to fill a vacancy caused by a resignation need not be confirmed by the senate. State's Prison of North Carolina v. Day, 1899, 32 S.E. 748, 124 N.C. 362. Prisons ⚷ 7

Where officers have to be appointed to fill a regular term, the Governor nominates to the Senate, unless it be an officer who is elected by the people, and then he fills the vacancy or term until the people can elect his successor. People ex rel. Battle v. McIver, 1873, 68 N.C. 467. Officers And Public Employees ⚷ 6

Const. art. 3, § 10, providing that the governor shall nominate, and by and with the advice and consent of a majority of the senators appoint, all officers whose offices are established by the constitution or created by law, and whose appointments are not otherwise provided for, and no such officer shall be appointed or elected by the general assembly, empowers the governor, exercising the appointing power, to fill vacancies not otherwise provided for, without reference to whether the legislature is in session or not. Nichols v. McKee, 1873, 68 N.C. 429. Officers And Public Employees ⚷ 56

13. —— Suspension or removal, public officers

The power to create vacancies in a public office, incumbents of which are charged with continuing duties and responsibilities, rests in the absence of provisions to the contrary, in the body possessing the original power of appointment. Greene v. Owen, 1899, 34 S.E. 424, 125 N.C. 212. Officers And Public Employees ⚷ 7

14. —— Term of office, vacancies, and holding over, public officers

Under the express provisions of Revisal 1905, § 21, a public administrator after the expiration of his term or upon resignation may continue the several estates committed to him until they are fully administered. Wootton v. Smith, 1907, 59 S.E. 649, 145 N.C. 476. Executors And Administrators ⚷ 31

While the office of county board of education, created by Pub.Laws 1897, c. 108, is not abolished by Laws 1899, c. 374, which attempts it as regards the right of an incumbent to hold office for the term of his election, Laws 1899, c. 732, ratified three days after chapter 374, creating the county board of school directors, for the same general purposes, and charged with the same general duties, having to be construed with chapter 374, and the two in effect continuing the old board under a new name, yet, on a vacancy occurring in the board after passage of chapter 732, it is filled eo instante by one of the appointees provided by chapter 732 for the board of school directors. Greene v. Owen, 1899, 34 S.E. 424, 125 N.C. 212. Schools ⚷ 48(3)

Where an act creating an office provides that the incumbent shall be appointed biennially, his term of office is two years. Bryan v. Patrick, 1899, 33 S.E. 151, 124 N.C. 651. Officers And Public Employees ⚷ 50

15. —— Time to sue, limitations, and laches, public officers

Revisal 1905, § 834, providing that action against one who has usurped or intruded into office shall be brought within 90 days after the induction does not apply where the alleged intruder has occupied the office more than 90 days before the plaintiff's cause of action accrued. Rhodes v. Love, 1910, 69 S.E. 436, 153 N.C. 468. Quo Warranto ⚷ 29

16. —— Quo warranto, public officers

An action in the nature of quo warranto under Rev. 1905, § 827, providing that an action may be brought by the Attorney General in the name of the state on complaint of any private party when any person shall usurp or unlawfully hold public office, is the remedy to try title to a public office. Rhodes v. Love, 1910, 69 S.E. 436, 153 N.C. 468. Quo Warranto ⚷ 11

The position of public administrator being an administrative agency, and not a public office, quo warranto will not lie either to remove the incumbent or to inquire by what authority he performs the duties or receives the emoluments of the position. Wootton v. Smith, 1907, 59 S.E. 649, 145 N.C. 476. Quo Warranto ⚷ 11

The office of chief engineer of the Western North Carolina Railroad is not such a public one as that an information in the nature of a quo warranto will lie to recover it. Eliason v. Coleman, 1882, 86 N.C. 235. Quo Warranto ⚷ 10

Code, § 366, giving an action in the name of the state to try title to office, is confined to actions against persons claiming public offices; and an information in the nature of quo warranto is the only remedy to try title to office in a railroad corporation. Eliason v. Coleman, 1882, 86 N.C. 235. Quo Warranto ⚷ 3

17. —— Mandamus, public officers

Mandamus, and not quo warranto, held the proper remedy to compel county commissioners to admit plaintiff to the office of county superintendent of health. McCullers v. Board of Com'rs of Wake County, 1912, 73 S.E. 816, 158 N.C. 75, Am.Ann.Cas. 1913D,507. Mandamus ⚷ 3(10)

Mandamus is not the proper method by which to try the title to an office. Rhodes v. Love, 1910, 69 S.E. 436, 153 N.C. 468. Mandamus ⚷ 77(1)

Mandamus will not lie to try the title to the position of public printer; Acts 1869, c. 43, having repealed the act establishing the "office." Brown v. Turner, 1874, 70 N.C. 93. Mandamus ⚷ 77(1)

18. Holding other office or employment

United States naval officer appointed to membership in zoning commission was incapable of performing the duties of a public officer in the state by constitutional prohibition and was neither a de facto nor de jure officer of the zoning commission, notwithstanding that fact creating the zoning commission declared that members of the commission should be considered as holding office as commissioners for a special purpose within exception to the constitutional prohibition. Vance S. Harrington & Co. v. Renner, 1952, 72 S.E.2d 838, 236 N.C. 321. Officers And Public Employees ⚷ 30.4

Laws 1911, c. 62, § 9, relating to boards of health, held not to violate Const. art. 14, § 7, forbidding the holding of two offices by one person. McCullers v. Board of Com'rs of Wake County, 1912, 73 S.E. 816, 158 N.C. 75, Am.Ann.Cas. 1913D,507. Officers And Public Employees ⚷ 30.5

Under Const. art. 14, § 7, excepting a justice of the peace from the inhibition against one holding two offices of trust or profit, one may be both a justice of the peace and the recorder of a city recorder's court. State v. Lord, 1907, 59 S.E. 656, 145 N.C. 479. Officers And Public Employees ⚷ 30.2

The position of public administrator is a mere administrative agency, and not an office or place of trust, within Const. art. 14, § 7, prohibiting a person from filling two or more offices or places of trust under the federal, state, or county government at the same time. Wootton v. Smith, 1907, 59 S.E. 649, 145 N.C. 476. Officers And Public Employees ⚷ 30.5

At common law there was no limit on the right of a citizen to hold two or more offices unless their duties were incompatible, but Const. art. 14, § 7, prohibits the holding of two or more offices or places of trust under the government of the United States, the state, county, etc., without reference to their incompatibility. Wootton v. Smith,

1907, 59 S.E. 649, 145 N.C. 476. Officers And Public Employees ⚷ 30.5

Under Const. art. 14, § 7, providing that no person holding an office or place of trust shall hold or exercise any other, one cannot hold the office of county commissioner, and also be a member of the county board of education. Barnhill v. Thompson, 1898, 29 S.E. 720, 122 N.C. 493. Officers And Public Employees ⚷ 30.1

18.5. Tribal Chairman

The position of Tribal Chairman is neither an elective nor an appointive office subject to the dual office holding prohibitions of the North Carolina Constitution and N.C.G.S. §§ 128–1, 128–1.1 and 128–1.2 as the position of Tribal Chairman exercises no sovereign powers of either the State of North Carolina or of the United States. Op.Atty. Gen., Reed, Nov. 17, 2000.

19. Consolidation of offices

Offices whose duties are congruous may be consolidated; but it is just, in cases of consolidation of offices, to postpone the operation of the law until a vacancy appears in the office whose duties are to be transferred. Troy v. Wooten, 1849, 32 N.C. 377. Officers And Public Employees ⚷ 4

20. Exercise of duties of more than one office

It being declared by the charter of a city, creating a recorder's court therefor and provided for election of a recorder, that he shall be an ex officio justice of the peace, and shall take the usual oath required to be taken by justices of the peace, besides one to honestly and faithfully perform the duties of his office, a justice of the peace issuing a warrant for arrest may make it returnable before the recorder as before any other justice of the peace. State v. Lord, 1907, 59 S.E. 656, 145 N.C. 479. Criminal Law ⚷ 218(2)

Laws 1905, p. 856, c. 703, fixing salaries for the officers of a certain county and creating the office of auditor of that county, provides, in section 12 (page 859), that the auditor shall perform the duties required of the register of deeds by Laws 1905, p. 688, c. 590, § 74. The section referred to requires the register of deeds to make out tax lists and to perform certain duties in relation thereto. Fortune v. Buncombe County Com'rs, 1905, 52 S.E. 950, 140 N.C. 322. Statutes ⚷ 250

The chairman of the county social services board, who is also a county commissioner, may participate in discussions and vote at county commission meetings in matters pertaining to personnel and the operation of the county department of social services. 60 Op. Atty.Gen. 50, Cornelius, Nov. 8, 1990.

A county commissioner who is also chairman of the county social services board may present the department of social services budget to the county commissioners and thereafter participate and vote as a member of the county commissioners regarding the approval or disapproval of that budget. 60 Op. Atty.Gen. 50, Cornelius, Nov. 8, 1990.

21. Holding over after expiration of term

An officer elected by the people, holding over his regular term on failure of his successor to qualify, holds over until the place is filled at the next general election, under Const. art. 3, §§ 1, 13. People ex rel. Battle v. McIver, 1873, 68 N.C. 467. Officers And Public Employees ⚷ 54

22. Acceptance of other office

Under Const. art. 14, § 7, prohibiting any person from holding two offices at the same time, the acceptance by a town commissioner of the office of county superintendent of public instruction operated ipso facto to vacate the office of commissioner, and he was not thereafter a de jure or de facto officer. Whitehead v. Pittman, 1914, 80 S.E. 976, 165 N.C. 89. Officers And Public Employees ⚷ 55(2)

The acceptance of a second office by one already holding a public office forfeits his right to the first. Barnhill v. Thompson, 1898, 29 S.E. 720, 122 N.C. 493. Officers And Public Employees ⚷ 55(2)

23. Compensation and expenses—In general

Title to the office of county superintendent of health under appointment under Laws 1911, c. 62, § 9, held not affected by failure to fix his fees. McCullers v. Board of Com'rs of Wake County, 1912, 73 S.E. 816, 158 N.C. 75, Am.Ann.Cas. 1913D,507. Health ⚷ 364

Acts 1905, p. 695, c. 590, § 91, declares that the sheriff and tax collector shall receive 5 per cent. on all taxes collected up to the sum of $50,000 and on all sums in excess thereof 2½ per

cent. commissions. Section 92 (page 696) declares that the auditor, in making the settlement of the amount due from the sheriff or tax collector aforesaid, shall deduct from the list returned 5 per cent. on "the amount collected." Held, that section 92 simply directs the duty of the auditor and prescribes the deduction he shall make, but does not increase the commissions to which the sheriff is entitled on taxes collected beyond those fixed by section 91. State v. Stedman, 1906, 54 S.E. 269, 141 N.C. 448. Taxation ⚷ 2806

Such part of section 92 (Laws 1905, p. 696, c. 590) as directed the deduction of 5 per cent. commissions on the amount collected was a mere inadvertence, and did not operate, as a repeal of the express provision for commissions in section 91 (page 695). State v. Stedman, 1906, 54 S.E. 269, 141 N.C. 448. Taxation ⚷ 2806

24. —— Addition of duties, compensation and expenses

Where the recorder of a city recorder's court, who under the city charter was ex officio a justice of the peace, heard a warrant, made returnable before him by another justice, who issued it, and bound the accused over to the superior court, it will be presumed that he acted in his capacity of justice of the peace, and so was entitled to the fees of a justice of the peace therefor. State v. Lord, 1907, 59 S.E. 656, 145 N.C. 479. Justices Of The Peace ⚷ 15

Acts 1895, c. 449, and Acts 1897, c. 93, imposed the duty of road supervisor in Warren county on the county surveyor. Acts 1899, c. 581, established a new system of road supervision, general in its character, embracing many counties, among them Warren county, and created for each county a new office of superintendent of roads. Held, the duties of road supervision were simply duties temporarily annexed to the office of county surveyor, which the legislature could take away at will, and hence the county surveyor of Warren county, as such, was not entitled to emoluments of the office of superintendent of roads, created by Acts 1899. Dowtin v. Beardsley, 1900, 35 S.E. 241, 126 N.C. 119. Highways ⚷ 94

§ 128–1.1. Dual-office holding allowed

(a) Any person who holds an appointive office, place of trust or profit in State or local government is hereby authorized by the General Assembly, pursuant to Article VI, Sec. 9 of the North Carolina Constitution, to hold concurrently one other appointive office, place of trust or profit, or an elective office in either State or local government.

(b) Any person who holds an elective office in State or local government is hereby authorized by the General Assembly, pursuant to Article VI, Sec. 9 of the North Carolina Constitution to hold concurrently one other appointive office, place of trust or profit, in either State or local government.

(c) Any person who holds an office or position in the federal postal system or is commissioned as a special officer or deputy special officer of the United States Bureau of Indian Affairs is hereby authorized to hold concurrently therewith one position in State or local government.

(c1) Where authorized by federal law, any State or local law enforcement agency may authorize its law enforcement officers to also perform the functions of an officer under 8 U.S.C. § 1357(g) if the agency has a Memorandum of Agreement or Memorandum of Understanding for that purpose with a federal agency. State and local law enforcement officers authorized under this provision are

authorized to hold any office or position with the applicable federal agency required to perform the described functions.

(d) The term ''elective office,'' as used herein, shall mean any office filled by election by the people when the election is conducted by a county or municipal board of elections under the supervision of the State Board of Elections.

Added by Laws 1971, c. 697, § 2. Amended by Laws 1975, c. 174; Laws 1987, c. 427, § 10; S.L. 2006–259, § 24(a), eff. Jan. 1, 2006.

Historical and Statutory Notes

2006 Legislation

S.L. 2006–259, § 24(b), provides:

''This section becomes effective January 1, 2006, and any actions taken between that date and the date this section becomes law that would have been proper if this section had been then in effect are in all respects validated and confirmed, and no office shall be considered to have been vacated.''

Cross References

Coastal resources advisory council, see § 113A–105.
Coastal resources commission, see § 113A–104.
Creation of northeastern North Carolina regional economic development commission, see § 158–8.2.
Investments authorized for special funds held by State Treasurer, see § 147–69.2.
Joint municipal assistance agencies; reports, liability, and personnel, see § 159B–46.
Joint Municipal Electric Power and Energy Act; creation of a joint agency; board of commissioners, see § 159B–9.
Joint Municipal Electric Power and Energy Act; executive committee, composition; powers and duties; terms, see § 159B–10.
Local administration of community colleges; elective officials serving as trustees, see § 115D–16.
Local government commission established, see § 159–3.
Membership to the board of trustees of the regional public transportation authority; officers; compensation, see § 160A–605.
Mountain Area Resources Technical Advisory Council; multiple offices of members, see § 153B–4.
North Carolina office of local government advocacy created; membership; terms; meetings; compensation; powers and duties; staff; cooperation by departments, see § 143–506.14.
Nursing home advisory committees, see § 131E–128.
Regional natural gas district; board of trustees membership; officers; compensation, see § 160A–664.
Regional public transportation authority; special tax board, see § 160A–607.1.
Regional transportation authority; board of trustees membership; officers; compensation, see § 160A–635.
Special airport district board; composition, appointment, terms and oaths; organization; meetings; quorum, see § 63–81.

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1. In general

Statutes dealing with same subject matter must be construed in pari materia and harmonized, if possible, to give effect to each. Board of Adjustment of Town of Swansboro v. Town of Swans-

boro, 1993, 334 N.C. 421, 432 S.E.2d 310, rehearing denied 335 N.C. 182, 436 S.E.2d 369. Statutes ⚷ 223.2(.5)

The position of Tribal Chairman is neither an elective nor an appointive office subject to the dual office holding prohibitions of the North Carolina Constitution and N.C.G.S. §§ 128–1, 128–1.1 and 128–1.2 as the position of Tribal Chairman exercises no sovereign powers of either the State of North Carolina or of the United States. Op.Atty. Gen., Reed, Nov. 17, 2000.

2. Validity of local law

Chairman of county board of commissioners who had served as chief administrative officer of county with commensurate duties, responsibilities, and salary until enactment of state law barring him as chairman from seeking position which carried duties, responsibilities, and salary to which he was previously entitled alleged personal stake in outcome of controversy, so as to confer standing on him to challenge constitutionality of statute. Ratcliff v. Buncombe County, N.C., 1987, 663 F.Supp. 1003. Constitutional Law ⚷ 709

Statute prohibiting dual office holding in county was local act within meaning of Constitution and laws of state of North Carolina, and thus statute violated North Carolina Constitution requiring that subject of dual office holding in North Carolina could only be validly treated by general laws uniformly applicable throughout state, and thus statute was invalid. Ratcliff v. Buncombe County, N.C., 1987, 663 F.Supp. 1003. Landlord And Tenant ⚷ 9; Statutes ⚷ 125(1)

Legislation establishing governmental form of North Carolina county was not separable from dual office holding provision of legislation determined to be invalid as matter of state constitutional law, and thus entire legislation establishing governmental form of county was void, where statute contained no savings clause, and there was no indication that legislature intended one part of statute to impose partial form of government on county independent of other parts. N.C.Laws 1983, c. 129, § 2. Ratcliff v. Buncombe County, N.C., 1987, 663 F.Supp. 1003. Statutes ⚷ 64(4)

Town ordinance provision prohibiting concurrent service as elected town official and as member of board of adjustment, an appointed position, conflicted with state statute providing that any person who holds elective office in state or local government is authorized to hold concurrently one other appointive office in either state or local government, and thus, that portion of ordinance was invalid; however, that provision was separable from remaining provisions of ordinance, which was thus in all other respects enforceable. Board of Adjustment of Town of Swansboro v. Town of Swansboro, 1992, 423 S.E.2d 498, 108 N.C.App. 198, affirmed 432 S.E.2d 310, 334 N.C. 421, rehearing denied 436 S.E.2d 369, 335 N.C. 182. Municipal Corporations ⚷ 67(1); Municipal Corporations ⚷ 111(4)

3. Dual-office holding—In general

The chairman of the county social services board, who is also a county commissioner, may participate in discussions and vote at county commission meetings in matters pertaining to personnel and the operation of the county department of social services. 60 Op. Atty.Gen. 50, Cornelius, Nov. 8, 1990.

A county commissioner who is also chairman of the county social services board may present the department of social services budget to the county commissioners and thereafter participate and vote as a member of the county commissioners regarding the approval or disapproval of that budget. 60 Op. Atty.Gen. 50, Cornelius, Nov. 8, 1990.

4. —— Elective and appointive office

There is no impediment to an appointed member of the Parks and Recreation Authority, who concurrently holds an appointment as a trustee of a community college, holding a third, elective office in the local government. The result would be different is all the positions were appointive. Op. Atty. Gen., Gulick and Miller, August 19, 2003.

A person holding an appointive office as a police officer can concurrently hold a position as an elected officer in either State or local government, including as a school board member. 55 Op.Atty. Gen. 34, Kilgore, Sept. 17, 1985.

5. —— Conflict of interest

Serving as President of the Board of Directors of a Telephone membership corporation and on the Board of the Rural Electrification Authority does not constitute prohibited dual office holding, nor would a conflict of interest

under N.C.G.S. § 14–234 arise from the President of the Board of Directors of a telephone membership corporation serving on the Board of the Rural Electrification Authority. 52 Op.Atty. Gen. 107, Hatchcock, May 20, 1983.

Appointment as Director of the Division of Aging of the N.C. Department of Health and Human Services and concurrent membership on the N.C. Parks and Recreation Authority are not incompatible offices; however, one acting in the capacity as an Authority member, should seek recusal from participating in any specific matter which directly or indirectly impacts the current employer. Op.Atty.Gen., Gottovi, Nov. 14, 1997.

§ 128–1.2. Ex officio service by county and city representatives and officials

Except when the resolution of appointment provides otherwise, whenever the governing body of a county or city appoints one of its own members or officials to another board or commission, the individual so appointed is considered to be serving on the other board or commission as a part of the individual's duties of office and shall not be considered to be serving in a separate office.

As used in this section, the term ''official'' means (i) in the case of a county, the county manager, acting county manager, interim county manager, county attorney, finance officer, or clerk to the board and (ii) in the case of a city, the city manager, acting city manager, interim city manager, city attorney, finance officer, city clerk, or deputy clerk. As used in this section, the term ''city'' has the meaning provided in G.S. 160A-1.

Added by Laws 1983, c. 651, § 1. Amended by Laws 1991, c. 508, § 5.

Cross References

Creation of global transpark authority and board, see § 63A–3.

Notes of Decisions

In general 1

1. In general

The position of Tribal Chairman is neither an elective nor an appointive office subject to the dual office holding prohibitions of the North Carolina Constitution and N.C.G.S. §§ 128–1, 128–1.1 and 128–1.2 as the position of Tribal Chairman exercises no sovereign powers of either the State of North Carolina or of the United States. Op.Atty. Gen., Reed, Nov. 17, 2000.

The chairman of the county social services board, who is also a county commissioner, may participate in discussions and vote at county commission meetings in matters pertaining to personnel and the operation of the county department of social services. 60 Op. Atty.Gen. 50, Cornelius, Nov. 8, 1990.

A county commissioner who is also chairman of the county social services board may present the department of social services budget to the county commissioners and thereafter participate and vote as a member of the county commissioners regarding the approval or disapproval of that budget. 60 Op. Atty.Gen. 50, Cornelius, Nov. 8, 1990.

§ 128–2. Holding office contrary to the Constitution; penalty

If any person presumes to hold any office, or place of trust or profit, or is elected to a seat in either house of the General Assembly, contrary to Article VI, Sec. 9 of the North Carolina

Constitution, he shall forfeit all rights and emoluments incident thereto.

Amended by Laws 1971, c. 697, § 3.

§ 128–3. Bargains for office void

All bargains, bonds and assurances made or given for the purchase or sale of any office whatsoever, the sale of which is contrary to law, shall be void.

Notes of Decisions

In general 1

1. In general

A mortgage given to secure the payment of compensation for procuring the appointment or resignation of a public officer is void, as against public policy. Basket v. Moss, 1894, 20 S.E. 733, 115 N.C. 448, 44 Am.St.Rep. 463. Contracts ⚷ 124

Though a mortgage given for procuring the appointment of a public officer is void, its existence is a cloud on the mortgagor's title, which equity will remove by cancellation. Basket v. Moss, 1894, 20 S.E. 733, 115 N.C. 448, 44 Am.St.Rep. 463. Quieting Title ⚷ 7(3)

§ 128–4. Receiving compensation of subordinates for appointment or retention; removal

Any official or employee of this State or any political subdivision thereof, in whose office or under whose supervision are employed one or more subordinate officials or employees who shall, directly or indirectly, receive or demand, for himself or another, any part of the compensation of any such subordinate, as the price of appointment or retention of such subordinate, shall be guilty of a Class 1 misdemeanor: Provided, that this section shall not apply in cases in which an official or employee is given an allowance for the conduct of his office from which he is to compensate himself and his subordinates in such manner as he sees fit. Any person convicted of violating this section, in addition to the criminal penalties, shall be subject to removal from office. The procedure for removal shall be the same as that provided for removal of certain local officials from office by G.S. 128–16 to 128–20, inclusive.

Amended by Laws 1993, c. 539, § 942, eff. Oct. 1, 1994; Laws 1994 (1st Ex. Sess.), c. 24, § 14(c), eff. March 26, 1994.

Historical and Statutory Notes

Laws 1993, c. 539, § 1359, provides:

Laws 1993, c. 539, § 1359, provides:

"This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions." [Amended by Laws 1994, Ex. Sess., c. 24, § 14(c), eff. March 26, 1994.]

Laws 1993, c. 539, was ratified July 24, 1993.

Cross References

Misdemeanor sentencing and punishment, see § 15A–1340.13 et seq.

§ 128–5. Oath required before acting; penalty

Every officer and other person required to take an oath of office, or an oath for the faithful discharge of any duty imposed on him, and also the oath appointed for such as hold any office of trust or profit in the State, shall take all said oaths before entering on the duties of the office, or the duties imposed on such person, on pain of forfeiting five hundred dollars ($500.00) to the use of the poor of the county in or for which the office is to be used, and of being ejected from his office or place by proper proceedings for that purpose.

Notes of Decisions

Necessity for oath 1

1. Necessity for oath

Failure to take an oath of office, while it might subject one exercising the duties of the office to a penalty, would not deprive his acts of the validity given those of de facto officers performing the duties of a de jure office. Vance S. Harrington & Co. v. Renner, 1952, 72 S.E.2d 838, 236 N.C. 321. Officers And Public Employees ⚷ 104

The fact that a person never took the required oath of office is no defense to an indictment for misconduct in the exercise of the office. State v. Cansler, 1876, 75 N.C. 442. Officers And Public Employees ⚷ 122

It is not necessary, to constitute one a public officer, that he should be required to take an oath or be allowed a salary or fees. Clark v. Stanley, 1872, 66 N.C. 59, 8 Am.Rep. 488. Officers And Public Employees ⚷ 1

§ 128–6. Persons admitted to office deemed to hold lawfully

Any person who shall, by the proper authority, be admitted and sworn into any office, shall be held, deemed, and taken, by force of such admission, to be rightfully in such office until, by judicial sentence, upon a proper proceeding, he shall be ousted therefrom, or his admission thereto be, in due course of law, declared void.

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1. Authority and powers of officers—In general

The general rule is now settled that there is no difference between the acts of de facto and de jure officers, so far as the public and third persons are concerned. Thus, an appointment of a clerk of court, by a judge de facto in office, is good as against an appointment by the judge de jure, even after the de facto judge has been ousted, and the de jure judge installed, under a judicial decision. People ex rel. Norfleet v. Staton, 1875, 73 N.C. 546, 21 Am.Rep. 479. Clerks Of Courts ⚷ 3

The acts of one purporting to be an officer are evidence of his authority; and such acts, as to third persons, are to be taken as valid while the incumbent is thus acting. Swindell v. Warden, 1860, 52 N.C. 575. Officers And Public Employees ⚷ 104

The official acts of persons entering into office under color of an irregular election are of full force until such officers are removed by a proper proceeding. Commissioners of Trenton v. McDaniel, 1859, 52 N.C. 107. Officers And Public Employees ⚷ 104

The acts of persons who have been regarded as public officers for the greater part of the time during which the office existed, and whose acts are recognized by other public functionaries, will be regarded as valid, unless declared otherwise by some competent tribunal in a proceeding directly against them. Burton v. Patton, 1854, 47 N.C. 124, 62 Am.Dec. 194. Officers And Public Employees ⚷ 104

The acts of an officer de facto are valid, so far as the public and third persons are concerned. Burke v. Elliott, 1844, 26 N.C. 355, 42 Am.Dec. 142. Officers And Public Employees ⚷ 104

2. —— Quo warranto, authority and powers of officers

An information in the nature of a quo warranto may be filed against public officers after the expiration of their office, where their conviction is necessary to invalidate their acts, if said acts are of public concern, and intended to confer rights on others. Burton v. Patton, 1854, 47 N.C. 124, 62 Am.Dec. 194. Quo Warranto ⚷ 29

3. De facto officers and employees—In general

Statute providing that any person who shall, by proper authority, be admitted and sworn into office shall be held, deemed, and taken by force of such admission to be rightfully in such office until, by judicial sentence, upon a proper proceeding, he shall be ousted therefrom or his admission thereto be, in the course of law, declared void constitutes an express approval of the judicial doctrine of de facto office. People ex rel. Duncan v. Beach, 1978, 242 S.E.2d 796, 294 N.C. 713. Officers And Public Employees ⚷ 39

Acts of a de facto officer are valid as to the public and third persons. People ex rel. Duncan v. Beach, 1978, 242 S.E.2d 796, 294 N.C. 713. Officers And Public Employees ⚷ 104

Under statute, mayor had no right to deny councilman's right to vote on ordinance since upon his election, and after having been sworn in as a member of council, councilman was a de facto councilman until he was removed from such office in a quo warranto proceeding or otherwise removed therefrom as provided by law. Armstrong v. McInnis, 1965, 142 S.E.2d 670, 264 N.C. 616. Municipal Corporations ⚷ 94

The de facto doctrine has been expressly approved by statute in the case of persons actually inducted into office in the manner prescribed by law. In re Wingler, 1950, 58 S.E.2d 372, 231 N.C. 560. Officers And Public Employees ⚷ 41

In an action in which the issue was whether plaintiff's mortgage was legally probated before a person who acted as a notary public, it appeared that it was nearly two years after his commission expired, and that the clerk decided when the mortgage was presented for registry that "the certificate is correct and sufficient." There was no proof that such person attempted any act as a notary public after his commission expired until the probate of such mort-

gage. Held, that he was not a notary de facto. Hughes v. Long, 1896, 25 S.E. 743, 119 N.C. 52. Acknowledgment ⚷ 15

Where the clerk of the registrar of an election precinct fraudulently obtains possession of the books under a promise to return them, which he refuses to do, and assumes to act as registrar, he is a mere intruder, and not a de facto officer, and an election held by him as registrar, and his appointees as judges, is void. Van Amringe v. Taylor, 1891, 12 S.E. 1005, 108 N.C. 196. Elections ⚷ 227(1)

4. —— Color of title or authority, de facto officers and employees

Persons entering into office under color of an election, although irregular, are thereby constituted officers de facto. Commissioners of Trenton v. McDaniel, 1859, 52 N.C. 107. Officers And Public Employees ⚷ 42

Persons who have been regarded as public officers for the greater part of the time during which the office existed, and whose acts are recognized by other public functionaries, must be taken to be officers de facto. Burton v. Patton, 1854, 47 N.C. 124, 62 Am.Dec. 194. Officers And Public Employees ⚷ 41

5. —— De facto judges, de facto officers and employees

A ''judge de facto'' is defined as one who occupies a judicial office under some color of right and for the time being performs its duties with public acquiescence though having no right in fact. People ex rel. Duncan v. Beach, 1978, 242 S.E.2d 796, 294 N.C. 713. Judges ⚷ 6

Defendant satisfied requirements of a ''judge de facto'' by obtaining a majority of votes, approximately 29,701 votes as opposed to approximate 26,157 votes for plaintiff, in general election for office of district court judge and, hence, his judicial acts while in office were valid despite fact that he had attained age of 70 years and, under statute, was not eligible at time of election to hold office. People ex rel. Duncan v. Beach, 1978, 242 S.E.2d 796, 294 N.C. 713. Judges ⚷ 6; Judges ⚷ 26

So far as the public and third persons are concerned, a judge de facto is competent to do whatever may be done by a judge de jure. People ex rel. Duncan v. Beach, 1978, 242 S.E.2d 796, 294 N.C. 713. Judges ⚷ 26

Acts done by a judge de facto in the discharge of the duties of his judicial office are as effectual so far as the rights of third persons or the public are concerned as if he were a judge de jure. People ex rel. Duncan v. Beach, 1978, 242 S.E.2d 796, 294 N.C. 713. Judges ⚷ 26

Where town commissioners of North Wilkesboro failed to appoint a judge of special court of that town, and duly elected and qualified mayor of town continued to act as judge of such court after date specified by statute for appointment of a judge in lieu of mayor, mayor was at least a ''judge de facto'' of special court and his title to judicial office was not subject to collateral attack in habeas corpus proceeding by one convicted of a misdemeanor in special court and committed to jail pending appeal. In re Wingler, 1950, 58 S.E.2d 372, 231 N.C. 560. Judges ⚷ 12

Act March 11, 1901, increased the number of judicial districts to 16, and prescribed the counties comprised in each, and provided that the act should take effect from June 30, 1901, except as to the Fifteenth district, in which it should take effect from March 25, 1901, and that after that date court should be held in that district by the judge of the Sixteenth district, who should be appointed by the governor on or prior to April 25, 1901. On April 15, 1901, the governor issued a commission to J. as judge of the Sixteenth judicial district, and he opened court in B. county, as part of the Fifteenth judicial district, on April 25, 1901. Held, that such judge was not a de facto judge prior to June 30, 1901, since there was no judicial Sixteenth district prior to that date, and there can be no de facto officer for an office which does not exist. State v. Shuford, 1901, 38 S.E. 808, 128 N.C. 588. Judges ⚷ 6

A judge of one district who assumes the function of judge of another court by virtue of a commission from the governor to hold specified terms of the court in lieu of the regular judge thereof, who has died, is a judge de facto, so long as he exercises those functions, even though the commission was invalid, and his acts as such are conclusive as against a defendant put on trial before him who pleads not guilty, and is tried without raising any objections, and a motion in arrest of judgment after verdict on the ground that the case is coram non judice should be overruled.

State v. Lewis, 1890, 12 S.E. 457, 107 N.C. 967. Judges ⚷ 6

In the absence of objection before trial, the acts of a de facto judge are valid and binding. State v. Lewis, 1890, 12 S.E. 457, 107 N.C. 967. Judges ⚷ 26

6. Title to and possession of office—In general

A ''judge de jure'' exercises the office of judge as a matter of right. People ex rel. Duncan v. Beach, 1978, 242 S.E.2d 796, 294 N.C. 713. Judges ⚷ 12

In order to become a judge de jure, one must satisfy three requirements, he must possess the legal qualifications for the judicial office in question, he must be lawfully chosen to such office, and he must have qualified himself to perform the duties of such office according to the mode prescribed by law. People ex rel. Duncan v. Beach, 1978, 242 S.E.2d 796, 294 N.C. 713. Judges ⚷ 12

Plaintiff, having suffered defeat in general election for office of district court judge and having vacated and surrendered office to defendant as candidate receiving majority of votes without contesting defendant's right to office, had no rights under statute or under case law to reassume office. People ex rel. Duncan v. Beach, 1978, 242 S.E.2d 796, 294 N.C. 713. Judges ⚷ 12

Where mayor of town of North Wilkesboro had been admitted and sworn into dual office as mayor and judge of special court of that town by proper authority, his act in trying one accused of misdemeanor and committing her to jail was immune to collateral attack on ground that he had no title to office of judge, since under statute he must be deemed to have been rightfully in such office. In re Wingler, 1950, 58 S.E.2d 372, 231 N.C. 560. Judges ⚷ 12

7. —— Injunction to restrain occupancy, title to and possession of office

An action to enjoin newly-elected county commissioners, who had not yet qualified, from declaring a public office vacant, and electing a successor, is properly dismissed as premature. Cozart v. Fleming, 1898, 31 S.E. 822, 123 N.C. 547. Officers And Public Employees ⚷ 82

Injunction does not lie to restrain county commissioners from declaring a public office vacant because of an apparent tie vote, where it is an attempt, in effect, to try the title to the office by injunction, which is not permissible. Cozart v. Fleming, 1898, 31 S.E. 822, 123 N.C. 547. Officers And Public Employees ⚷ 82

The erroneous action of the county commissioners in declaring an office vacant because of an apparent tie vote, and ordering a new election, does not warrant the granting of an injunction to one of the candidates, since the title to the office can be inquired into by quo warranto even after such a new election. Cozart v. Fleming, 1898, 31 S.E. 822, 123 N.C. 547. Officers And Public Employees ⚷ 82

Injunction will not lie at the suit of the incumbent of a public office to restrain a claimant of the office from claiming and exercising its powers and duties. Jones v. Granville Com'rs, 1877, 77 N.C. 280. Officers And Public Employees ⚷ 82

Code, § 189, permits the granting of a temporary injunction when, pending a litigation, it appears that defendant is doing some act which is in violation of plaintiff's rights and tending to render a judgment in his favor ineffectual. Held, that the section does not apply to cases of usurpation of public offices, and hence an injunction will not be granted to prevent the exercise of an office by an alleged usurper pending determination of the right thereto. Patterson v. Hubbs, 1871, 65 N.C. 119. Officers And Public Employees ⚷ 82

8. —— Usurpation and intrusion, title to and possession of office

A usurper in office is distinguished from a de facto officer in that a usurper takes possession of office and undertakes to act officially without any authority either actual or apparent. People ex rel. Duncan v. Beach, 1978, 242 S.E.2d 796, 294 N.C. 713. Officers And Public Employees ⚷ 87

Since a usurper in office is not an officer at all or for any purpose, his acts are absolutely void, and they can be impeached at any time in any proceeding. People ex rel. Duncan v. Beach, 1978, 242 S.E.2d 796, 294 N.C. 713. Officers And Public Employees ⚷ 103

If an action be brought for the usurpation of a public office, a judge of the supreme court may, upon proof that the defendant has received fees or emoluments belonging to the office he is charged with usurping, issue an order for defendant's arrest. Patterson v. Hubbs, 1871, 65 N.C. 119. Arrest ⚷ 4

9. —— Mandamus, title to and possession of office

Mandamus will not lie to try the title to the position of public printer; Acts 1869, c. 43, having repealed the act establishing the "office." Brown v. Turner, 1874, 70 N.C. 93. Mandamus ⚷ 77(1)

10. Actions and other proceedings for recovery of office or position—In general

The only question presented by a proceeding in quo warranto by a director of a state hospital was whether he or his reputed successor was entitled to the office. Salisbury v. Board of Directors of State Hospital at Raleigh, 1914, 83 S.E. 354, 167 N.C. 223. Quo Warranto ⚷ 57

Notwithstanding the maxim "De minimis non curat lex," a suit will be entertained to determine rights to an office paying only eight dollars a month in addition to board. Greene v. Owen, 1899, 34 S.E. 424, 125 N.C. 212. Action ⚷ 8

No demand is necessary before suing to try the right to an office. Shannonhouse v. Withers, 1897, 28 S.E. 522, 121 N.C. 376. Officers And Public Employees ⚷ 83

Title to a public office cannot be tried by motion, but must be determined by a proceeding in the nature of quo warranto. Sneed v. Bullock, 1877, 77 N.C. 282. Officers And Public Employees ⚷ 83

11. —— Parties, actions and other proceedings for recovery of office or position

County commissioners cannot bring an action, as such, to try the title of persons appointed under Acts 1895, c. 135, as additional commissioners, but must do so as taxpayers. Houghtalling v. Taylor, 1898, 29 S.E. 101, 122 N.C. 141. Officers And Public Employees ⚷ 83

An action to try the right of an incumbent to a public office may be brought upon the complaint of a private party or by the attorney general upon his own information. People ex rel. Hargrove v. Hilliard, 1875, 72 N.C. 169. Quo Warranto ⚷ 31

12. —— Consent of state officers, actions and other proceedings for recovery of office or position

Quo warranto to try title to office cannot be maintained in the name of the state on the relation of a private citizen not claiming the office unless he first obtains, as required by Revisal 1905, § 828, the permission of the Attorney General. Midgett v. Gray, 1912, 74 S.E. 1050, 159 N.C. 443. Quo Warranto ⚷ 44

The attorney general cannot refuse to consent that relator may bring an action in the name of the state to try his title to an office, where sufficient security had been given to indemnify the state against all costs and expenses. Shannonhouse v. Withers, 1897, 28 S.E. 522, 121 N.C. 376. Quo Warranto ⚷ 44

Where a relator brings an action in the name of the state to try his right to an office, it is sufficient if he obtains the attorney general's consent any time before trial. Shannonhouse v. Withers, 1897, 28 S.E. 522, 121 N.C. 376. Quo Warranto ⚷ 44

13. —— Elections and election officers, actions and other proceedings for recovery of office or position

Code, § 1872, provides that all officers shall continue in their respective offices until their successors have been duly elected and qualified. An election for sheriff resulted in a tie vote between defendant and relator, who was a candidate for re-election. The relator sued to restrain the clerk of the superior court from ordering a new election, and asked for a recount. Both candidates claim the incorrectness of the count, illegal votes, intimidation, etc., but defendant asked for a new election. Held, that the ordering of a new election was properly enjoined until the correct result of the election already had could be determined according to the issue raised by the pleadings, notwithstanding neither of the candidates is in possession of the office by virtue of the election, which was a necessary averment in quo warranto, which has been abolished (Code, § 603), but is not expressly required in the substituted action to try title to an office. Cozart v. Fleming, 1898, 31 S.E. 822, 123 N.C. 547. Injunction ⚷ 80

Laws 1895, c. 159, § 7, as amended by Laws 1897, c. 185, provides that any judge of the superior or supreme court may issue a rule on any election officer

to show cause why he has not performed or shall not perform any specified act or duty required by the election law, or why he shall not perform or execute this act in any specified way, so as to best give effect to the intent and purposes of the election law. Held, that the result of an election as declared by the clerk of the superior court, where made in the manner pointed out by statute, is prima facie correct, and can be questioned only by quo warranto; and hence the clerk, who is functus officio after the declaration of the result, cannot be ordered by a mandamus to recount the vote, where it was a tie between two candidates. Cozart v. Fleming, 1898, 31 S.E. 822, 123 N.C. 547. Mandamus ⚷ 3(10)

14. Acceptance of other office

Under Const. art. 14, § 7, prohibiting any person from holding two offices at the same time, the acceptance by a town commissioner of the office of county superintendent of public instruction operated ipso facto to vacate the office of commissioner, and he was not thereafter a de jure or de facto officer. Whitehead v. Pittman, 1914, 80 S.E. 976, 165 N.C. 89. Officers And Public Employees ⚷ 55(2)

A person who held himself out and who acted as an officer is estopped to deny his qualification when the acceptance of such office is relied on to vacate a prior office filled by him, and that he was not sworn on the Bible when he qualified for the second office is not available. Midgett v. Gray, 1912, 74 S.E. 1050, 159 N.C. 443. Officers And Public Employees ⚷ 55(2)

A person who held himself out and who acted as an officer and who signed his name as such, and who in writing resigned the office, is estopped from denying that he accepted the office, and he vacated a prior office filled by him. Midgett v. Gray, 1912, 74 S.E. 1050, 159 N.C. 443. Officers And Public Employees ⚷ 55(2)

The acceptance of a second office by one already holding a public office forfeits his right to the first. Midgett v. Gray, 1912, 74 S.E. 1050, 159 N.C. 443. Officers And Public Employees ⚷ 55(2)

15. Vacancy in office

Resignation of defendant from office of district court judge, after which there was no one legally entitled to hold office by virtue of election nor an incumbent with legal right to continue in office until a successor was elected or appointed, operated to create a legal as well as an actual vacancy in office which the governor had the right and the duty to fill. People ex rel. Duncan v. Beach, 1978, 242 S.E.2d 796, 294 N.C. 713. Judges ⚷ 8

16. Term of person appointed to fill vacancy

Under Revisal 1905, § 4547, construed in connection with Const. art. 3, § 10, and Revisal 1905, § 5328, subsec. 3, a director of the state hospital, appointed by the Governor while the senate was not in session, to fill a vacancy, held office only until his successor was appointed by the concurrent action of the Governor and the Senate. Salisbury v. Board of Directors of State Hospital at Raleigh, 1914, 167 N.C. 223, 83 S.E. 354. Health ⚷ 266

Const. art. 4, § 31, provides that all vacancies occurring in certain offices shall be filled by appointment by the governor; such appointees to hold their offices "until the next regular election." Held to mean until the next regular election for the office in which the vacancy occurred. Cloud v. Wilson, 1875, 72 N.C. 155. Officers And Public Employees ⚷ 59

17. Council meetings

The fact that the mayor and aldermen of the city of Charlotte met to elect a cotton weigher on the day appointed by Priv.Laws 1885, c. 30, which was not a day on which the board regularly met, did not affect the regularity of the election. Shannonhouse v. Withers, 1897, 28 S.E. 522, 121 N.C. 376. Municipal Corporations ⚷ 86

A valid election of a cotton weigher may be had, under a law providing for such elections by the mayor, the board of 12 aldermen, and the board of county commissioners, though the commissioners refused to be present at the time and place appointed. Shannonhouse v. Withers, 1897, 28 S.E. 522, 121 N.C. 376. Municipal Corporations ⚷ 90

Under the law providing for the election of a cotton weigher by the mayor and aldermen of a city, and the county commissioners, a valid election may be had, though one alderman was absent. Shannonhouse v. Withers, 1897, 28 S.E. 522, 121 N.C. 376. Municipal Corporations ⚷ 90

18. Authority to suspend or remove officers

The power to create vacancies in a public office, incumbents of which are charged with continuing duties and responsibilities, rests in the absence of provisions to the contrary, in the body possessing the original power of appointment. Greene v. Owen, 1899, 34 S.E. 424, 125 N.C. 212. Officers And Public Employees ⚷ 7

19. Term of office, vacancies, and holding over

While the office of county board of education, created by Pub.Laws 1897, c. 108, is not abolished by Laws 1899, c. 374, which attempts it as regards the right of an incumbent to hold office for the term of his election, Laws 1899, c. 732, ratified three days after chapter 374, creating the county board of school directors, for the same general purposes, and charged with the same general duties, having to be construed with chapter 374, and the two in effect continuing the old board under a new name, yet, on a vacancy occurring in the board after passage of chapter 732, it is filled eo instante by one of the appointees provided by chapter 732 for the board of school directors. Greene v. Owen, 1899, 34 S.E. 424, 125 N.C. 212. Schools ⚷ 48(3)

20. Substitute or special judges

Const. art. 4, § 11, provides that the judges of the superior court shall preside in the courts of the different districts successively, but no judge shall hold the courts in the same district oftener than once in 4 years, but in case a protracted illness of the judge assigned to preside or any other unavoidable accident to him by reason of which he shall be unable to preside, the governor may require any judge to hold one or more specified terms in said district in lieu of the judge assigned thereto. Code N.C. § 913, gives the governor power to appoint any judge to hold special terms of the superior court in any county and provides that ''whenever a judge shall die or resign his successor shall hold the courts of the district allotted to his predecessors.'' Held, that on the death of a judge assigned to a certain district the governor has power to appoint another judge to hold specified terms of the court in that district in lieu of the decedent, as his death is an ''unavoidable accident'' within the meaning of Const. art. 4, § 11. State v. Lewis, 1890, 12 S.E. 457, 107 N.C. 967. Judges ⚷ 15(1)

21. Clerks of court

Though the statute of 1832 which attempts to transfer the office of clerk of the superior court appointed during good behavior to another is void, yet where one was elected clerk under that statute, and at the proper time tendered his bonds, which were accepted by the court, and he was inducted into office, while the former clerk was in court, cognizant of the proceedings, and did not object thereto, but surrendered the office and records to the new clerk, and retired from performance of the duties of the office for a year thereafter, it was held that the old clerk had surrendered his office to the court, and that the new clerk was rightly inducted into office. Williams v. Somers, 1834, 18 N.C. 61. Clerks Of Courts ⚷ 7

§ 128–7. Officer to hold until successor qualified

All officers shall continue in their respective offices until their successors are elected or appointed, and duly qualified.

Historical and Statutory Notes

2005 Legislation

S.L. 2005–425, § 4 , provides:

''Sections 1.1 and 1.2 of this act become effective January 1, 2006, and apply to fees assessed or collected on or after that date. Section 2 becomes effective January 1, 2006, and applies to cases filed on or after that date. Sections 3.1 and 3.2 of this act are effective when they become law. Judges elected in 2006 and thereafter take office accordingly, and as provided by Section 10 of Article VI of the North Carolina Constitution and G.S. 128–7, those in office on the first Monday in December of 2006 or 2008 shall continue until their successors' terms begin and are duly qualified.''

Cross References

Forestry council—members; chairperson; selection; removal; compensation; quorum, see § 143B–309.
Marine fisheries commission—members; appointment; term; oath; ethical standards; removal; compensation; staff, see § 143B–289.54.
North Carolina board for licensing of soil scientists, see § 89F–4.
North Carolina mining commission—members; selection; removal; compensation; quorum; services, see § 143B–291.
North Carolina parks and recreation authority; members; selection; compensation; meetings, see § 143B–313.2.
Petroleum underground storage tank funds council, see § 143–215.94O.
Water pollution control system operators certification commission—members; selection; removal; compensation; quorum; services, see § 143B–301.

Notes of Decisions

In general 1
Appointment, qualification and tenure of judges 5
Presumptions 4
Sheriffs 6
Term of office, vacancies, and holding over 3
Vacancy 2

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1. In general

The act relating to election of tax collector for Madison county was not ineffective to provide exclusive machinery for election of collector on ground that terms of office of members of commissions were limited to four and six years and that, after expiration of their terms, chairmen of such boards were without power to act thereby authorizing board of county commissioners to fill vacancy, where statute prescribed terms of four and six years ''from the date of ratification of this act and until their successors are appointed and qualified'' and it was also provided that, if member should cease to act, remaining members should elect his successor. Pub.Loc. Laws 1931, cc. 183, 341, 343; C.S. § 3205; Const. art. 1; art. 14, § 5. Freeman v. Board of Com'rs of Madison County, 1940, 7 S.E.2d 354, 217 N.C. 209. Counties ⚷ 194

2. Vacancy

Resignation of defendant from office of district court judge, after which there was no one legally entitled to hold office by virtue of election nor an incumbent with legal right to continue in office until a successor was elected or appointed, operated to create a legal as well as an actual vacancy in office which the governor had the right and the duty to fill. People ex rel. Duncan v. Beach, 1978, 242 S.E.2d 796, 294 N.C. 713. Judges ⚷ 8

Where incumbent member of board of commissioners of town of Lumberton received only eight votes for re-election, but there were no votes for any other person, and the charter provided that member should hold office for two years and until successor was elected and qualified, there was no ''vacancy'' such as contemplated in the charter, which would empower the board of commissioners to elect a successor. Priv.Acts 1907, c. 343; C.S. § 3205. Hedgpeth v. Allen, 1941, 17 S.E.2d 781, 220 N.C. 528. Municipal Corporations ⚷ 149(1)

3. Term of office, vacancies, and holding over

Where mayor of municipality who was selected by common council was authorized to hold over until his successor was duly elected, and such mayor was selected to succeed himself, he was duly constituted official and entitled to vote in case of tie, even though his second election was invalid. Markham v. Simpson, 1918, 95 S.E. 106, 175 N.C. 135. Municipal Corporations ⚷ 149(4)

Under Priv.Laws 1915, c. 341, relating to Elizabeth City, and in view of Const. art. 14, § 5, and Revisal 1905, § 2368, containing similar provisions, city attorney once duly elected and inducted into office is entitled to same as against alleged successor not rightfully elected. Markham v. Simpson, 1918, 95 S.E. 106, 175 N.C. 135. Municipal Corporations ⚷ 149(4)

The fact that a judge of the superior court in filling a vacancy in the office of clerk of such court unauthorizedly purports to make the appointment for the unexpired term instead of merely until the next general election, cannot operate to entitle the appointee to hold for the full unexpired term, where there is

an intervening general election. Rodwell v. Rowland, 1905, 50 S.E. 319, 137 N.C. 617. Clerks Of Courts ⚷ 7

Const. art. 4, §§ 16, 17, provide for the election of a clerk of the superior court for each county in the manner prescribed for members of the General Assembly, to hold office for four years. Section 29 provides that if the office of clerk becomes vacant during the term, and the people fail to elect, the judge of the superior court shall appoint someone to fill the vacancy until an election regularly held. The general scheme of the Constitution as to appointees to vacancies in office occurring during an official term, as evidenced by article 3, §§ 12, 13, and article 4, §§ 21, 23, 24, 25, 28, is that the appointee shall hold only until the next general election. Thus vacancies in offices the terms of which are two years are filled by appointment "for the unexpired term," and vacancies in offices the terms of which are four years are filled by appointment only until the "next general election." Held, that an appointee to fill a vacancy occurring during the term in the office of clerk of the superior court holds only until the next general election, and not for the unexpired term, if there is an intervening general election. Rodwell v. Rowland, 1905, 50 S.E. 319, 137 N.C. 617. Clerks Of Courts ⚷ 7

Where an officer has been inducted into his office before the beginning of the term for which he was re-elected, one who is appointed to fill the vacancy, caused by his death before that term begins, holds only until the expiration of the first term. People ex rel. Worley v. Smith, 1879, 81 N.C. 304. Officers And Public Employees ⚷ 59

An officer elected by the people, holding over his regular term on failure of his successor to qualify, holds over until the place is filled at the next general election, under Const. art. 3, §§ 1, 13. People ex rel. Battle v. McIver, 1873, 68 N.C. 467. Officers And Public Employees ⚷ 54

Upon the death of an elected candidate to office of district court judge prior to qualifying by taking the oath of office, defeated district court judge may remain in the office until successor is appointed and qualified. Op.Atty.Gen., Browning, November 18, 2004.

4. Presumptions

Where notice of a vacancy in an office and of an election to fill such vacancy is required by law, it will be presumed that such notice was given, and the burden rests upon one who assails the validity of the election to show that such notice was not given. Rodwell v. Rowland, 1905, 50 S.E. 319, 137 N.C. 617. Evidence ⚷ 83(1)

5. Appointment, qualification and tenure of judges

Approximate 29,701 votes cast for defendant in general election for office of district court judge, though not effective to give defendant legal entitlement to office because of fact that he had obtained age of 70 years and, hence, was ineligible to hold office, were nonetheless legally effective in excluding plaintiff from entitlement to office when plaintiff received an approximate 26,157 votes for office in same election and, hence, neither defendant nor plaintiff had de jure title to office of district judge by virtue of election. People ex rel. Duncan v. Beach, 1978, 242 S.E.2d 796, 294 N.C. 713. Judges ⚷ 12

Plaintiff, having suffered defeat in general election for office of district court judge and having vacated and surrendered office to defendant as candidate receiving majority of votes without contesting defendant's right to office, had no rights under statute or under case law to reassume office. People ex rel. Duncan v. Beach, 1978, 242 S.E.2d 796, 294 N.C. 713. Judges ⚷ 12

Knowledge by public of defendant's ineligibility for office of district court judge because he had attained age of 70 years was immaterial to issue whether defendant was elected to office over plaintiffs by virtue of obtaining a majority of votes cast in election. People ex rel. Duncan v. Beach, 1978, 242 S.E.2d 796, 294 N.C. 713. Judges ⚷ 3

Where town commissioners of North Wilkesboro failed to appoint a judge of special court of that town, and duly elected and qualified mayor of town continued to act as judge of such court after date specified by statute for appointment of a judge in lieu of mayor, mayor was at least a "judge de facto" of special court and his title to judicial office was not subject to collateral attack in habeas corpus proceeding by one convicted of a misdemeanor in special court and committed to jail pending appeal. In re Wingler, 1950, 58 S.E.2d 372, 231 N.C. 560. Judges ⚷ 12

6. Sheriffs

Code, § 1872, provides that all officers shall continue in their respective offices until their successors have been duly elected and qualified. An election for sheriff resulted in a tie vote between defendant and relator, who was a candidate for re-election. The relator sued to restrain the clerk of the superior court from ordering a new election, and asked for a recount. Both candidates claim the incorrectness of the count, illegal votes, intimidation, etc., but defendant asked for a new election. Held, that the ordering of a new election was properly enjoined until the correct result of the election already had could be determined according to the issue raised by the pleadings, notwithstanding neither of the candidates is in possession of the office by virtue of the election, which was a necessary averment in quo warranto, which has been abolished (Code, § 603), but is not expressly required in the substituted action to try title to an office. Cozart v. Fleming, 1898, 31 S.E. 822, 123 N.C. 547. Injunction ⚷ 80

The induction of a sheriff into office before the beginning of his term is a nullity. People ex rel. Worley v. Smith, 1879, 81 N.C. 304. Sheriffs And Constables ⚷ 3

The irregularity of inducting a sheriff into office without all three of the bonds required by law is cured by a subsequent tender and acceptance thereof. People ex rel. Worley v. Smith, 1879, 81 N.C. 304. Sheriffs And Constables ⚷ 3

§ 128–7.1. Failure to qualify creates vacancy

If any person who has been elected to public office (i) dies or becomes disqualified for the office before qualifying for the office, or (ii) for any reason refuses to qualify for the office, the office shall be declared vacant. Unless otherwise provided by law, such vacancy shall be filled by appointment by the authority having the power to fill vacancies as prescribed by law.

Added by Laws 1971, c. 183.

Notes of Decisions

In general 1

1. In general

Code, § 1872, provides that all officers shall continue in their respective offices until their successors have been duly elected and qualified. An election for sheriff resulted in a tie vote between defendant and relator, who was a candidate for re-election. The relator sued to restrain the clerk of the superior court from ordering a new election, and asked for a recount. Both candidates claim the incorrectness of the count, illegal votes, intimidation, etc., but defendant asked for a new election. Held, that the ordering of a new election was properly enjoined until the correct result of the election already had could be determined according to the issue raised by the pleadings, notwithstanding neither of the candidates is in possession of the office by virtue of the election, which was a necessary averment in quo warranto, which has been abolished (Code, § 603), but is not expressly required in the substituted action to try title to an office. Cozart v. Fleming, 1898, 31 S.E. 822, 123 N.C. 547. Injunction ⚷ 80

An action to enjoin newly-elected county commissioners, who had not yet qualified, from declaring a public office vacant, and electing a successor, is properly dismissed as premature. Cozart v. Fleming, 1898, 31 S.E. 822, 123 N.C. 547. Officers And Public Employees ⚷ 82

Injunction does not lie to restrain county commissioners from declaring a public office vacant because of an apparent tie vote, where it is an attempt, in effect, to try the title to the office by injunction, which is not permissible. Cozart v. Fleming, 1898, 31 S.E. 822, 123 N.C. 547. Officers And Public Employees ⚷ 82

The erroneous action of the county commissioners in declaring an office vacant because of an apparent tie vote, and ordering a new election, does not warrant the granting of an injunction to one of the candidates, since the title to

the office can be inquired into by quo warranto even after such a new election. Cozart v. Fleming, 1898, 31 S.E. 822, 123 N.C. 547. Officers And Public Employees ⚷ 82

§ 128–7.2. Qualifications for appointment to fill vacancy in elective office

No person is eligible for appointment to fill a vacancy in any elective office, whether State or local, unless that person would have been qualified to vote as an elector for that office if an election were to be held on the date of appointment. This section is intended to implement the provisions of Section 8 of Article VI of the Constitution.

Added by S.L. 2007–391, § 27(a), eff. Aug. 19, 2007.

Historical and Statutory Notes

2007 Legislation

S.L. 2007–391, § 27(c), provides:

"This section is effective when it becomes law and applies only to appointments made on or after that date."

Chapter 132

Public Records

Section

132–1. ''Public records'' defined.
132–1.1. Confidential communications by legal counsel to public board or agency; State tax information; public enterprise billing information; Address Confidentiality Program information.
132–1.2. Confidential information.
132–1.3. Settlements made by or on behalf of public agencies, public officials, or public employees; public records.
132–1.4. Criminal investigations; intelligence information records; Innocence Inquiry Commission records.
132–1.5. 911 database.
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132–2. Custodian designated.
132–3. Destruction of records regulated.
132–4. Disposition of records at end of official's term.
132–5. Demanding custody.
132–5.1. Regaining custody; civil remedies.
132–6. Inspection and examination of records.
132–6.1. Electronic data-processing records.
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132–7. Keeping records in safe places; copying or repairing; certified copies.
132–8. Assistance by and to Department of Cultural Resources.
132–8.1. Records management program administered by Department of Cultural Resources; establishment of standards, procedures, etc.; surveys.
132–8.2. Selection and preservation of records considered essential; making or designation of preservation duplicates; force and effect of duplicates or copies thereof.
132–9. Access to records.
132–10. Qualified exception for geographical information systems.

Cross References

911 database, see § 132–1.5.
Abandoned property; preparation of list of owners by State Treasurer, see § 116B–30.
Access to information and public records, see § 115C–3.
Access to vital records; copies, see § 130A–93.
Admission to practice, see § 84–24.
Adoption; response to unfavorable preplacement assessment, see § 48–3–308.
Archaeological resources; confidentiality, see § 70–18.

Banks and banking; confidential records, see § 53–99.1.
Certificates of public advantage; periodic reports, see § 90–21.32.
Commercial and sports fisheries; record-keeping requirements, see § 113–163.
Commercial fishing; record-keeping requirements, see § 113–170.3.
Components of the testing program, see § 115C–174.11.
Confidentiality of competitive health care information, see § 130A–45.11.
Confidentiality of credentialing information, see § 130A–45.10.
Confidentiality of patient information, see § 130A–45.8.
Dentists and dentistry; disciplinary action, see § 90–41.
Fee-based pastoral counselors; refusal, suspension, or revocation of a certificate, see § 90–390.
Foreign legal consultants; application for a certificate of registration, see § 84A–2.
Higher education; liability insurance; confidentiality of records, see § 116–222.
Inspections; confidentiality, see § 122C–25.
Insurance regulatory information system and similar program test data not public records, see § 58–2–220.
Medical records; board to keep record; publication of names of licentiates; transcript as evidence; receipt of evidence concerning treatment of patient who has not consented to public disclosure, see § 90–16.
Mental health patients; right to confidentiality, see § 122C–52.
Motor vehicle offenses; records; copies furnished; charge, see § 20–26.
Powers and duties of principal, see § 115C–288.
Preneed funeral contracts; not public record, see § 90–210.73.
Psychology practice; denial, suspension, or revocation of licenses and health services provider certification, other disciplinary and remedial actions for violations; relinquishing of license, see § 90–270.15.
Public officers and employees liability insurance; powers and duties of commission, see § 58–32–10.
Record of proceedings; register of applications; register of registered sanitarians and sanitarians interns, see § 90A–59.
Refrigeration contractors; revocation or suspension of license for cause, see § 87–59.
Return of clients to 24–hour facilities, see § 122C–205.
Review and protection of mental health information, see § 122C–192.
Savings and loan associations; confidential records, see § 54B–63.1.
Savings banks; confidential records, see § 54C–60.1.
System of employment for public school teachers, see § 115C–325.
Toxic or hazardous substances; emergency information, see § 95–194.
Wireless telephone service; customer records, see § 62A–29.
Wireless telephone service; proprietary information, see § 62A–30.

§ 132–1. ''Public records'' defined

(a) ''Public record'' or ''public records'' shall mean all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions. Agency of North Carolina government or its subdivisions shall mean and include every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority or other unit of government of the State or of any county, unit, special district or other political subdivision of government.

(b) The public records and public information compiled by the agencies of North Carolina government or its subdivisions are the property of the people. Therefore, it is the policy of this State that

the people may obtain copies of their public records and public information free or at minimal cost unless otherwise specifically provided by law. As used herein, ''minimal cost'' shall mean the actual cost of reproducing the public record or public information.

Amended by Laws 1975, c. 787, § 1; Laws 1995, c. 388, § 1, eff. Oct. 1, 1995.

Historical and Statutory Notes

Local Modifications

Alamance County: Laws 1987 (Reg. Sess., 1988), c. 950, § 1(c).

Ashe County: Laws 1991, c. 163, § 1(c).

Burke County: Laws 1989, c. 422, § 1(c).

Cabarrus County: Laws 1989, c. 658, § 1(c); S.L. 2001–439, § 17.1.

Caldwell County: Laws 1987, c. 472, § 1(c).

Carteret County: Laws 1989, c. 171, § 8; S.L. 2001–381; S.L. 2005–120, §§ 1, 2.

Chatham County: Laws 1993 (Reg. Sess., 1994), c. 642, § 1(c).

Chowan County: Laws 1989, c. 174, § 1(c).

Cleveland County: Laws 1989, c. 173, § 1(c).

Cumberland County: Laws 1993, c. 413, § 5.

Dare County: Laws 1991, c. 177, § 1.

Davidson County: Laws 1993, c. 453, § 1(c).

Davie County: Laws 1989 (Reg. Sess., 1990, c. 928, § 1(c).

Duplin County: Laws 1987, c. 317, § 1(c); S.L. 2005–53, § 1.

Gaston County: Laws 1987, c. 618, § 1(c).

Granville County: Laws 1993, c. 454, § 1; S.L. 2000–103, §§ 1, 3, 4, 10(a).

Guilford County: Laws 1993, c. 82, § 1; Laws 1995, c. 432, § 1.

Halifax County: Laws 1987, c. 377, § 1(c); S.L. 2005–46, § 1.1.

Henderson County: Laws 1987, c. 172, § 5(c).

Hertford County: Laws 1987 (Reg. Sess., 1988), c. 979, § 1(c).

Hyde County: Laws 1991, c. 230, § 1(c).

Lee County: Laws 1987, c. 538, § 1(c).

Lenoir County: Laws 1987, c. 561, § 1(c).

Lincoln County: Laws 1993, c. 549, § 1.

Martin County: Laws 1991, c. 80, § 1(c).

Mecklenburg County: Laws 1993, c. 82, § 1; Laws 1995, c. 432, § 1.

Mitchell County: Laws 1987, c. 141, § 1(c).

Nash County: Laws 1987, c. 32, § 1(c); Laws 1993, c. 545; Laws 1995, c. 432, § 1; S.L. 1997–255; S.L. 2001–349, § 1.

New Hanover County: Laws 1995, c. 432, § 1.

Pasquotank County: Laws 1987, c. 175, § 1(c); S.L. 2005–16, § 1.

Pender County: Laws 1987 (Reg. Sess., 1988), c. 970, § 1(c); S.L. 2001–439, § 6.1.

Pitt County: Laws 1987, c. 143, § 1(c); Laws 1993, c. 82, § 1; Laws 1993, c. 410, § 1; Laws 1995, c. 432, § 1.

Rockingham County: Laws 1991, c. 322, § 1(c); S.L. 2005–233, § 5.

Rowan County: Laws 1987, c. 379, § 1(c); Laws 1991 (Reg. Sess., 1992), c. 882; S.L. 2001–439, §§ 8.1, 8.2.

Rutherford County: Laws 1991, c. 577, § 5(c).

Vance County: Laws 1987 (Reg. Sess., 1988), c. 1067, § 1(c); S.L. 2001–321, § 1.

Wake County: Laws 1991, c. 594, § 9; Laws 1995, c. 458, § 5.

Washington County: Laws 1991 (Reg. Sess., 1992), c. 821; S.L. 2001–305, § 1.

Wilmington County: Laws 1995, c. 432, § 1.

Wilson County: Laws 1987, c. 484, § 1(c).

Yancey County: Laws 1987, c. 140, § 1(c).

City of Conover: Laws 1987, c. 319, § 1.

City of Elizabeth City: Laws 1987, c. 175, § 1(c).

City of Greensboro: Laws 1987, c. 51; Laws 1989, c. 383, § 1; Laws 1993, c. 82, § 1; Laws 1995, c. 432, § 1.

City of Hickory: Laws 1987, c. 319, § 1.

City of High Point: Laws 1993, c. 82, § 1; Laws 1995, c. 432, § 1.

City of Kinston: Laws 1993 (Reg. Sess., 1994), c. 648, § 1.

City of Lexington: Laws 1993 (Reg. Sess., 1994), c. 602, § 1; S.L. 2001–365, § 2.

City of Southport: Laws 1989, c. 639, § 1; S.L. 2002–129, § 1.

City of Thomasville: Laws 1993, c. 453, § 1(c).

City of Washington: Laws 1991, c. 158, § 1(c); S.L. 2001–365, § 1.

Town of Banner Elk: Laws 1989, c. 318, § 2(a); Laws 1993, c. 428, § 1; S.L. 2000–103, §§ 6, 8, 10(b).

Town of Beech Mountain: Laws 1987, c. 376, § 2(a); S.L. 2001–434, § 8; S.L. 2001–439, § 15.1; S.L. 2002–94, § 2.1.

Town of Blowing Rock: Laws 1987, c. 171, § 1(a); S.L. 2003–281, § 13.

Town of Boone: Laws 1987, c. 170, § 1(c).

Town of Columbus: Laws 1991, c. 632, § 1(c).

Town of Hillsborough: Laws 1993, c. 449, § 1(e).

Town of Oriental: Laws 1993 (Reg. Sess., 1990), c. 695, § 1(c).

Town of Wake Forest: Laws 1989, c. 604, § 1(c).

Averasboro Township: Laws 1987, c. 142; S.L. 2001–439, § 12.1.

Village of Bald Head Island: Laws 1991, c. 664, § 2(c).

Cross References

Address confidentiality program, use of addresses by state or local agencies, see § 15C–8.
All official meetings of public bodies open to the public, see § 143–318.10.
Cardiac rehabilitation certification; inspections, see § 131E–170.
Communications between physician and patient, see § 8–53.
Compliance review, exemption from public records, see §§ 143B–426.39, 143B–426.39B.
Criminal investigations; intelligence information records, see § 132–1.4.
Disclosure in child fatality or near fatality cases, see § 7A–675.1.
Documents produced by legislative employees, see § 120–131.
Duty to file evidence of insurance and affidavits, see § 58–21–35.
Educational testing; public records exemption, see § 115C–174.13.
Emergency department data reporting, exemption from public records, see § 130A–480.
Fishery resource grant program, see § 113–200.
Hospital licensure; inspections, see § 131E–80.
Hospital licensure; medical review committee, see § 131E–95.
Inspections of local confinement facilities, see § 153A–222.
Insurance; confidentiality of medical records, see § 58–2–105.
Insurance rates; deviations, see § 58–36–30.
Job Development Investment Grant Program, public records, see § 143B–437.54.
Medical records; confidentiality of patient information, see § 143–518.
Medical records; confidentiality of records, see § 143B–139.6.
Medical review committee, see § 130A–45.7.
Medical review committees, see § 90–21.22A.
Mental health; quality of services, see § 122C–191.
Nursing home medication management advisory committee, confidentiality of meetings, see § 131E–128.1.
Orders or judgments on award, see § 50–57.
Peer review committee; immunity from liability; confidentiality, see § 122C–30.
Pharmacy quality assurance program, discovery, see § 90–85.47.
Powers and duties of heads of principal departments, see § 143B–10.
Private protection services, attorney general investigations, see § 74C–7.
Public health agencies; confidentiality of records, see § 130A–12.
Report on use of State funds by non-State entities, exemption for audit work papers, see § 143–6.1.
Requests from legislative employees for assistance in the preparation of fiscal notes and evaluation reports, see § 120–131.1.

Respiratory care practice, licensing, confidentiality of records, see § 90–652.
Self-funded health benefit plans, confidentiality of documents filed by licensee, see § 58–89a–106.
Student records; maintenance; contents; confidentiality, see § 115C–402.
Swine integrator registration, see § 143–215.10H.
Use of juvenile court information, see § 115C–404.

Administrative Code References

Alcoholic beverage control commission, inspection and copies of ABC laws, see 4 NCAC 2R.0303.
Board of examiners of electrical contractors, board records, see 21 NCAC 18B.0105.
Commerce department, employment and training, requests for information by the public, see 4 NCAC 20A.0004.
Council of state, records of meetings, see 6 NCAC 1.0007.
Environment, health, and natural resources department, public records, definitions, see 15A NCAC 1B.0401.
Inactive hazardous substance or waste disposal sites, voluntary remedial action oversight by registered environmental consultants, see 15A NCAC 13C.0302.
Labor department, apprenticeship and training division, public access to records, see 13 NCAC 14.0108.

Notes of Decisions

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1. In general

An analysis of whether documents, held by an entity other than the municipality itself, are subject to disclosure as a public record is two-fold: first, there must be a determination of whether the contractor is an agency of state government or its subdivisions, and second, if a contractor is found to be an agency, whether its records are ''public records'' that were made or received pursuant to law or ordinance in connection with the transaction of public business. Womack Newspapers, Inc. v. Town of Kitty Hawk ex rel. Kitty Hawk Town Council, 2007, 181 N.C.App. 1, 639 S.E.2d 96, review withdrawn 361 N.C. 370, 644 S.E.2d 564. Records ⚷ 51; Records ⚷ 54

In the absence of clear statutory exemption or exception, documents falling within the definition of ''public records'' in the Public Records Act must be made available for public inspection. Knight Pub. Co. v. Charlotte-Mecklenburg Hosp. Authority, 2005, 172 N.C.App. 486, 616 S.E.2d 602, review denied 360 N.C. 176, 626 S.E.2d 299. Records ⚷ 54

Under the Public Records Act, the public generally has liberal access to public records. Knight Pub. Co. v. Charlotte-Mecklenburg Hosp. Authority, 2005, 172 N.C.App. 486, 616 S.E.2d 602, review denied 360 N.C. 176, 626 S.E.2d 299. Records ⚷ 50

Newspaper publisher's action against public hospital under the Public Records Act and the Public Hospital Personnel Act, seeking disclosure of information regarding non-salary benefits and expense reimbursements paid to 17 current or former employees of hospital, was a proper case for summary judgment; a question of law, regarding the interpretation of a provision of the Public Hospital Personnel Act and its legal effect on the undisputed facts, was in controversy. Knight Pub. Co. v. Charlotte-Mecklenburg Hosp. Authority, 2005, 172 N.C.App. 486, 616 S.E.2d 602, review denied 360 N.C. 176, 626 S.E.2d 299. Judgment ⚷ 181(15.1)

Public Records Act grants public access to documents the Act defines as public records, absent a specific statutory exemption. McCormick v. Hanson

Aggregates Southeast, Inc., 2004, 164 N.C.App. 459, 596 S.E.2d 431, stay allowed 358 N.C. 544, 598 S.E.2d 563, temporary stay allowed 359 N.C. 69, 603 S.E.2d 131, writ denied, review denied, appeal dismissed 359 N.C. 69, 603 S.E.2d 131. Records ⚷ 54

As a matter of policy, the people may obtain copies of their public records and public information free or at minimal cost unless otherwise specifically provided by law. Gannett Pacific Corp. v. North Carolina State Bureau of Investigation, 2004, 164 N.C.App. 154, 595 S.E.2d 162. Records ⚷ 15

Public Records Act permits public access to all public records in an agency's possession unless either the agency or the record is specifically exempted from the statute's mandate. Gannett Pacific Corp. v. North Carolina State Bureau of Investigation, 2004, 164 N.C.App. 154, 595 S.E.2d 162. Records ⚷ 54

Absent clear statutory exemption or exception, documents falling within the definition of ''public records'' in the Public Records Law must be made available for public inspection. Virmani v. Presbyterian Health Services Corp., 1999, 350 N.C. 449, 515 S.E.2d 675, rehearing denied 351 N.C. 123, 540 S.E.2d 34, certiorari denied 120 S.Ct. 1452, 529 U.S. 1033, 146 L.Ed.2d 337. Records ⚷ 54

Through the Public Records Act, the legislature intended to provide that, as a general rule, the public would have liberal access to public records. News and Observer Pub. Co. v. State ex rel. Starling, 1984, 322 S.E.2d 133, 312 N.C. 276. Records ⚷ 50

G.S. 132–1 et seq. does not require that persons requesting public records disclose the purpose or motive for their requests; and, it may not be required that the persons requesting access to the records to divulge the use to which the records will be put. Op.Atty.Gen., Newkirk, March 16, 1994.

In light of current law, the General Assembly did not intend to mandate disclosure of State-owned computer software pursuant to G.S. § 132–1 et seq. Op.Atty.Gen., Faulkner, May, 28, 1998.

The statutory definition of a public record is broad and comprehensive. It includes sound recordings and magnetic or other tapes, or other documentary material, regardless of physical form or characteristics. It would appear that all voice mail records fall within the first part of this definition. The same is true of voice recordings made on analog tape. This means that every voice mail record could, under some circumstances, be a public record. Op.Atty. Gen., Spragens, April 18, 1996.

The application and other information obtained during the licensure procedure which are not otherwise exempt by law, are public records subject to public inspection and examination. Op. Atty.Gen., Haggard, Aug. 15, 1997.

Photographs and slides of cultural, historical, and natural resources of the State which are in the custody of the Division of Travel and Tourism are public records as defined by Chapter 132 of the North Carolina General Statutes and the division's current policy of providing slides/photography to any entity requesting them is both consistent with and mandated by the laws of this state. Op.Atty.Gen., Moran, April 2, 1997.

State Public Records Act is preempted by federal Drivers Privacy Protection Act (DPPA) so that Division of Motor Vehicles, when responding to requests for accident report under the state's public records law, must redact any personal identifying information in accordance with the DPPA prior to releasing vehicle accident report. Op.Atty. Gen., Kelley, February 9, 2005.

Vehicle registration information provided by Division of Motor Vehicles to local taxing authorities for property tax assessment purposes and carrying out of local government functions is not subject to confidentiality restrictions of federal Drivers Privacy Protection Act. Op.Atty.Gen., Kelley, February 9, 2005.

2. Connection with public business

Letter written by county employee, who was required to work with the medical director, and that was received by the board of commissioners in connection with its decision regarding whom to hire as medical director, an independent contractor of the county, constituted a public record under the Public Records Act. News Reporter Co., Inc. v. Columbus County, 2007, 184 N.C.App. 512, 646 S.E.2d 390. Records ⚷ 54

Records held by town attorney relating to engineering, surveying and other professional services rendered in connection with municipality's pending condemnation litigation were public records as defined by the Public Records Act; records were paid for by town and were made or received in connection with town's business. Womack Newspapers, Inc. v. Town of Kitty

Hawk ex rel. Kitty Hawk Town Council, 2007, 181 N.C.App. 1, 639 S.E.2d 96, review withdrawn 361 N.C. 370, 644 S.E.2d 564. Records ⚷ 54

Phrase ''pursuant to law or ordinance in connection with the transaction of public businesses,'' in statute governing public records should include, in addition to those records required by law, those records that are kept in carrying out lawful duties; thus, expense account record submitted by incorporated county health assistance president and board of directors while carrying out their lawful duties were ''public records'' under said statute. News and Observer Pub. Co. v. Wake County Hospital System, Inc., 1981, 284 S.E.2d 542, 55 N.C.App. 1, 27 A.L.R.4th 731, review denied 291 S.E.2d 151, 305 N.C. 302, appeal dismissed, certiorari denied 103 S.Ct. 26, 459 U.S. 803, 74 L.Ed.2d 42. Records ⚷ 54

The fact that the term ''private reprimand'' apparently did not mean ''secret'' in at least one other context at the time the statutes pertaining to the North Carolina Hearing Aid Dealers & Fitters Board were enacted, and the extremely clear language found in other statutory exemptions from the public records law, it appears that a private reprimand issued by the Board would be a subject to inspection on request by the public. Op.Atty.Gen., Davis, Sept. 17, 1996.

The billing records of municipal water and sewer services (and other public utilities) are records made and received by government agencies and are therefore, public records. Op.Atty.Gen., Fritschner, Feb. 20, 1997.

Documents reflecting a teacher's licensure status are public records in the hands of the State Board of Education and DPI and they must permit those documents to be inspected and examined by third parties pursuant to G.S. §§ 132–1(b) and 132–6. Op.Atty.Gen., Harris, Nov. 20, 1998.

3. Agencies of government

A corporate entity's stated purpose of performing a function that is of use to the general public, without more, is insufficient to make the Public Records Law applicable to the entity. Chatfield v. Wilmington Housing Finance and Development, Inc., 2004, 166 N.C.App. 703, 603 S.E.2d 837, review denied 359 N.C. 280, 609 S.E.2d 393. Records ⚷ 51

The government must exercise supervisory responsibilities and control over a corporate entity for such an entity to qualify as a government agency and fall within the ambit of the Public Records Law. Chatfield v. Wilmington Housing Finance and Development, Inc., 2004, 166 N.C.App. 703, 603 S.E.2d 837, review denied 359 N.C. 280, 609 S.E.2d 393. Records ⚷ 51

A corporate entity may be considered an agency of local government for the purposes of state's public records statute; however, each new arrangement must be examined anew and in its own context. Chatfield v. Wilmington Housing Finance and Development, Inc., 2004, 166 N.C.App. 703, 603 S.E.2d 837, review denied 359 N.C. 280, 609 S.E.2d 393. Records ⚷ 51

Nonprofit corporation, which was originally incorporated by executive director of city's housing authority for purpose of providing funds for low and moderate income housing, was not a government agency subject to Public Records Law, although the corporation may have previously been subject to the Public Records Law, and corporation's stated purpose was to perform a function that was of use to the general public; corporation had made structural changes so that city and county no longer exercised supervisory responsibilities or control over the corporation. Chatfield v. Wilmington Housing Finance and Development, Inc., 2004, 166 N.C.App. 703, 603 S.E.2d 837, review denied 359 N.C. 280, 609 S.E.2d 393. Records ⚷ 51

Even documents which are protected from public disclosure by a statutory exemption from the definition of ''public records'' contained in the Public Records Act are open to the public if they are placed in the public records in a governmental agency's possession. Virmani v. Presbyterian Health Services Corp., 1999, 350 N.C. 449, 515 S.E.2d 675, rehearing denied 351 N.C. 123, 540 S.E.2d 34, certiorari denied 120 S.Ct. 1452, 529 U.S. 1033, 146 L.Ed.2d 337. Records ⚷ 54

Fact that agency is not subject to Open Meetings Law does not preclude possibility that Public Records Act applies to minutes from meetings of such agency. News and Observer Pub. Co., Inc. v. Poole, 1992, 412 S.E.2d 7, 330 N.C. 465. Records ⚷ 51

Definition of ''public body'' under Open Meetings Law is narrower than definition of ''public agency'' under Public Records Act. News and Observer Pub. Co., Inc. v. Poole, 1992, 412

S.E.2d 7, 330 N.C. 465. Administrative Law And Procedure ⚷ 124; Records ⚷ 51

Statutes governing municipal hospital facilities and health care facilities finances are not of the same matter or subject as public record statute; therefore, in determining whether county hospital system was an ''agency'' of the county within meaning of public records statute, Court of Appeals was obliged only to construe phase ''agency of North Carolina government or its subdivisions'' in context of public records statutes. News and Observer Pub. Co. v. Wake County Hospital System, Inc., 1981, 284 S.E.2d 542, 55 N.C.App. 1, 27 A.L.R.4th 731, review denied 291 S.E.2d 151, 305 N.C. 302, appeal dismissed, certiorari denied 103 S.Ct. 26, 459 U.S. 803, 74 L.Ed.2d 42. Records ⚷ 51

Where county's supervisory responsibilities and control over incorporated county hospital system provided that upon systems dissolution, system would transfer its assets to county, all vacancies on board of directors of system would be subject to county commissioners' approval, that commissioners would review and approve system's annual budget, and that county conduct supervisory audit of system's books, system was ''agency'' of state government or its subdivisions within meaning of statute governing public records. News and Observer Pub. Co. v. Wake County Hospital System, Inc., 1981, 284 S.E.2d 542, 55 N.C.App. 1, 27 A.L.R.4th 731, review denied 291 S.E.2d 151, 305 N.C. 302, appeal dismissed, certiorari denied 103 S.Ct. 26, 459 U.S. 803, 74 L.Ed.2d 42. Records ⚷ 51

As a public officer of the state, a sheriff meets the definition of ''an agency of North Carolina government'' as that term is defined in N.C.G.S. 132–1; therefore, any settlement documents entered into by the sheriff as a result of ''any suit, administrative proceeding or arbitration instituted against'' the sheriff in connection with or arising out of his duties or responsibilities is a matter of public record. Op.Atty.Gen., Revelle, March 4, 1998.

4. Consultants and contractors

Papers and items generated by consultants and contractors of Low-Level Radioactive Waste Management Authority do not become ''public records'' subject to disclosure immediately upon creation or collection by consultants or contractors; instead, they become ''public records'' only when they are received by Authority in proper exercise of its discretion. Durham Herald Co., Inc. v. North Carolina Low-Level Radioactive Waste Management Authority, 1993, 110 N.C.App. 607, 430 S.E.2d 441, review denied 334 N.C. 619, 435 S.E.2d 334. Records ⚷ 54

Newspaper publishers were not entitled to court order requiring Low-Level Radioactive Waste Management Authority to obtain records and other items, which would then become public records, from its contractors; papers and items become public, not upon their creation, but only when they are received by Authority in proper exercise of its discretion, and publishers did not allege that Authority abused its discretion by attempting to prevent public disclosure of information by delaying or declining receipt of contractor-generated papers and items from contractors. Durham Herald Co., Inc. v. North Carolina Low-Level Radioactive Waste Management Authority, 1993, 110 N.C.App. 607, 430 S.E.2d 441, review denied 334 N.C. 619, 435 S.E.2d 334. Records ⚷ 63

As respects statute providing public access to public records, letter received by city manager from consulting engineer who had been employed to inspect construction work on additions and modifications to city's water treatment plant was ''public record.'' G.S. § 132–1. Advance Publications, Inc. v. City of Elizabeth City, 1981, 281 S.E.2d 69, 53 N.C.App. 504. Records ⚷ 54

Contracts and documents relating to an institution's general policies, standards, practices and procedures, and descriptions of an employee's duties, do not contain confidential information that exempts the contracts and documents from inspection and examination under the Public records Law, and such contracts and documents are available for inspection and copying upon request. Op.Atty.Gen., Speas, Feb. 6, 2003.

5. Exceptions generally

Absent town council's waiver of privilege and authorization to release the documents, town clerk was not authorized to declare documents falling within an exception to the Public Records Act to be public records subject to disclosure upon public records request. Womack Newspapers, Inc. v. Town of Kitty Hawk ex rel. Kitty Hawk Town

Council, 2007, 181 N.C.App. 1, 639 S.E.2d 96, review withdrawn 361 N.C. 370, 644 S.E.2d 564. Records ⚷ 54

Under Public Hospital Personnel Act, information regarding non-salary benefits and expense reimbursements paid to 17 current or former employees of public hospital was excepted from disclosure under the Public Records Act. Knight Pub. Co. v. Charlotte-Mecklenburg Hosp. Authority, 2005, 172 N.C.App. 486, 616 S.E.2d 602, review denied 360 N.C. 176, 626 S.E.2d 299. Records ⚷ 58

Any information satisfying the Public Hospital Personnel Act's definition of ''personnel file'' is excepted from disclosure under the Public Records Act. Knight Pub. Co. v. Charlotte-Mecklenburg Hosp. Authority, 2005, 172 N.C.App. 486, 616 S.E.2d 602, review denied 360 N.C. 176, 626 S.E.2d 299. Records ⚷ 58

Work product doctrine did not provide an exception to Public Records Act, and thus city attorney's office could not withhold documents requested by landowner on that basis; Act did not contain a general work product exception, and there was no statutory work product exception applicable to office. McCormick v. Hanson Aggregates Southeast, Inc., 2004, 164 N.C.App. 459, 596 S.E.2d 431, stay allowed 358 N.C. 544, 598 S.E.2d 563, temporary stay allowed 359 N.C. 69, 603 S.E.2d 131, writ denied, review denied, appeal dismissed 359 N.C. 69, 603 S.E.2d 131. Records ⚷ 57

Public Records Act contains no exception for disclosure of records where a criminal investigation is complete. Gannett Pacific Corp. v. North Carolina State Bureau of Investigation, 2004, 164 N.C.App. 154, 595 S.E.2d 162. Records ⚷ 50

City council could withhold from public inspection the minutes from its closed session to discuss potential acquisition of real property, but only with respect to that portion of minutes concerning council's discussions of price or other material terms of the purchase; portion of minutes concerning location of the property, purpose of acquisition, and identity of owners, which was not confidential information protected by Open Meetings Law, had to be disclosed upon request. Boney Publishers, Inc. v. Burlington City Council, 2002, 151 N.C.App. 651, 566 S.E.2d 701, review denied 356 N.C. 297, 356 N.C. 433, 571 S.E.2d 221. Municipal Corporations ⚷ 100

Documents that physician attached as exhibits to his complaint in wrongful discharge action against hospital became ''public records'' subject to disclosure under Public Records Act once they were filed with court clerk, even if they might otherwise have been protected by statutory privilege applicable to medical review committee records and materials. Virmani v. Presbyterian Health Services Corp., 1999, 350 N.C. 449, 515 S.E.2d 675, rehearing denied 351 N.C. 123, 540 S.E.2d 34, certiorari denied 120 S.Ct. 1452, 529 U.S. 1033, 146 L.Ed.2d 337. Records ⚷ 55

Statutory privilege for medical review committee records and materials applied to peer review materials that hospital submitted directly to presiding judge in support of its arguments on various pretrial motions in physician's wrongful discharge action against hospital; hospital never filed any peer review materials with clerk of court, and hospital took painstaking steps throughout motions proceedings to preserve any confidentiality afforded by law to peer review records and information it submitted to trial judge. Virmani v. Presbyterian Health Services Corp., 1999, 350 N.C. 449, 515 S.E.2d 675, rehearing denied 351 N.C. 123, 540 S.E.2d 34, certiorari denied 120 S.Ct. 1452, 529 U.S. 1033, 146 L.Ed.2d 337. Witnesses ⚷ 184(1)

Determination of whether particular material is exempted from classification as public record under Public Records Act depends upon whether agency or record is specifically exempted from statute's mandate. G.S. §§ 132–1 to 132–10 et seq. Times-News Pub. Co., Inc. v. State, 1996, 124 N.C.App. 175, 476 S.E.2d 450, appeal dismissed, review denied 345 N.C. 645, 483 S.E.2d 717. Records ⚷ 54

Section of Open Meetings Law providing exception to Public Records Act for minutes of executive sessions ''so long as public inspection would frustrate the purpose of the executive session'' did not provide ground for excepting minutes of meetings of commission appointed to investigate alleged improprieties relating to university basketball team, particularly as commission had completed its work and disbanded; commission's work and results depending on that work could not have been compromised by public inspection. News and Observ-

er Pub. Co., Inc. v. Poole, 1992, 412 S.E.2d 7, 330 N.C. 465. Records ⚷ 55

Open Meetings Law section providing exception to Public Records Act for minutes of executive sessions ''so long as public inspection would frustrate the purpose of the executive session'' requires consideration of time and content factors, allowing courts to tailor scope of statutory protection in each case. News and Observer Pub. Co., Inc. v. Poole, 1992, 412 S.E.2d 7, 330 N.C. 465. Records ⚷ 55

Courts should ensure that Open Meetings Law's exception to Public Records Act's disclosure requirement for minutes of executive sessions ''so long as public inspection would frustrate the purpose of the executive session'' should extend no further than necessary to protect ongoing efforts of public body, respecting policy against secrecy and government that underlies both Public Records Act and Open Meetings Law. News and Observer Pub. Co., Inc. v. Poole, 1992, 412 S.E.2d 7, 330 N.C. 465. Records ⚷ 55

Supreme Court would not recognize exception to Public Records Act in form of ''deliberative process privilege'' so as to protect preliminary draft reports prepared by members of state agency. News and Observer Pub. Co., Inc. v. Poole, 1992, 412 S.E.2d 7, 330 N.C. 465. Records ⚷ 57

Separation of powers doctrine did not warrant inference of ''preliminary draft'' exception to disclosure required by Public Records Act; Public Records Act allows intrusion not by legislature, or other branch of government, but by public, and policy of open government does not infringe on independence of governmental branches. News and Observer Pub. Co., Inc. v. Poole, 1992, 412 S.E.2d 7, 330 N.C. 465. Records ⚷ 57

Commission appointed by president of university of North Carolina system of higher education to investigate alleged improprieties relating to university basketball team was not subject to or governed by Open Meetings Law and, thus, section conditionally protecting from disclosure minutes of executive sessions did not provide ground for excepting minutes from disclosure requirements of Public Records Act. News and Observer Pub. Co., Inc. v. Poole, 1992, 412 S.E.2d 7, 330 N.C. 465. Administrative Law And Procedure ⚷ 124; Records ⚷ 55

5.5. Mootness

Town's appeal of order requiring disclosure, under Public Records Act, of billing statements from town attorney for legal fees was rendered moot by town's disclosure of the documents that were subject of the appeal, even though town disputed at the time of release that the billing records at issue were ''public records'' within meaning of the Act. Womack Newspapers, Inc. v. Town of Kitty Hawk ex rel. Kitty Hawk Town Council, 2007, 181 N.C.App. 1, 639 S.E.2d 96, review withdrawn 361 N.C. 370, 644 S.E.2d 564. Records ⚷ 63

Appeal taken from trial court's order, in newspaper publisher's action against city council and its members for alleged violations of Open Meetings Law and Public Records Act, was technically moot because the information sought by publisher had been fully disclosed by city in an open session; however, Court of Appeals would consider issues raised in parties' appeals under an exception to mootness doctrine, given that there was a reasonable likelihood that city, in considering acquisition of other property for municipal purposes, could repeat the conduct at issue in the case. Boney Publishers, Inc. v. Burlington City Council, 2002, 151 N.C.App. 651, 566 S.E.2d 701, review denied 356 N.C. 297, 356 N.C. 433, 571 S.E.2d 221. Appeal And Error ⚷ 843(2)

6. Trade secrets

Applying Public Records Act's exemption from disclosure for trade secrets to documents filed with agency before enactment of amendment creating exemption was not retroactive application of statute in light of fact that issue arose from request for disclosure which occurred after creation of exemption. North Carolina Elec. Membership Corp. v. North Carolina Dept. of Economic and Community Development, 1993, 108 N.C.App. 711, 425 S.E.2d 440. Records ⚷ 59

Neither trade secrets nor patentable ideas are disclosable under Public Records Act or Freedom of Information Act (FOIA). S.E.T.A. UNC-CH, Inc. v. Huffines, 1992, 420 S.E.2d 674, 107 N.C.App. 440. Records ⚷ 59

Research applications submitted to university committee that reviewed effect of proposed experiments on animals used did not contain ''trade secrets'' that were protected from disclosure under North Carolina law; although applications contained ques-

tions relating to research objectives and justifications, only very general descriptions were required. S.E.T.A. UNC-CH, Inc. v. Huffines, 1991, 399 S.E.2d 340, 101 N.C.App. 292. Records ⚷ 59

6.5. Ballot information

Statute governing preservation of ballots, under which ballot boxes could be opened only upon the written order of county board of elections or upon a proper order of court, provided the sole method for obtaining access to ballots cast in election and, thus, unsuccessful mayoral candidate was not entitled to ballot information under Public Records Act. In re Decision of State Bd. of Elections Dated November 19, 1999 v. North Carolina State Bd. of Elections, 2002, 153 N.C.App. 804, 570 S.E.2d 897, review denied 356 N.C. 671, 577 S.E.2d 114. Elections ⚷ 255

7. Court records

Virmani v. Presbyterian Health Services Corp., 1997, 127 N.C.App. 629, [main volume] 493 S.E.2d 310, temporary stay allowed 347 N.C. 585, 496 S.E.2d 394, motion to dismiss appeal denied 348 N.C. 78, 505 S.E.2d 863, affirmed in part, reversed in part 350 N.C. 449, 515 S.E.2d 675, rehearing denied 351 N.C. 123, 540 S.E.2d 34, certiorari denied 120 S.Ct. 1452, 529 U.S. 1033, 146 L.Ed.2d 337.

Notwithstanding the broad scope of the public records statute and the specific grant of authority to make court records open to public inspection, trial courts always retain the necessary inherent power granted them by the state constitution to control their proceedings and records in order to ensure that each side has a fair and impartial trial. Virmani v. Presbyterian Health Services Corp., 1999, 350 N.C. 449, 515 S.E.2d 675, rehearing denied 351 N.C. 123, 540 S.E.2d 34, certiorari denied 120 S.Ct. 1452, 529 U.S. 1033, 146 L.Ed.2d 337. Records ⚷ 32; Trial ⚷ 18

Even though court records may generally be public records under the Public Records Act, the state constitution permits a trial court, in the proper circumstances, to shield portions of court proceedings and records from the public; the power to do so is a necessary power rightfully pertaining to the judiciary as a separate branch of the government, and the General Assembly has no power to diminish it in any manner. Virmani v. Presbyterian Health Services Corp., 1999, 350 N.C. 449, 515 S.E.2d 675, rehearing denied 351 N.C. 123, 540 S.E.2d 34, certiorari denied 120 S.Ct. 1452, 529 U.S. 1033, 146 L.Ed.2d 337. Records ⚷ 32; Trial ⚷ 20

The necessary and inherent constitutional power of the judiciary to shield portions of court proceedings and records from the public should be exercised only when its use is required in the interest of the proper and fair administration of justice or where, for reasons of public policy, the openness ordinarily required of government will be more harmful than beneficial. Virmani v. Presbyterian Health Services Corp., 1999, 350 N.C. 449, 515 S.E.2d 675, rehearing denied 351 N.C. 123, 540 S.E.2d 34, certiorari denied 120 S.Ct. 1452, 529 U.S. 1033, 146 L.Ed.2d 337. Records ⚷ 32; Trial ⚷ 20

Even though it was improper for physician to attach medical review committee records and materials to his complaint in wrongful discharge action against hospital, and even though such documents continued to be inadmissible as evidence or as forecast of evidence, they became public records subject to disclosure under Public Records Act once complaint was filed with court. Virmani v. Presbyterian Health Services Corp., 1999, 350 N.C. 449, 515 S.E.2d 675, rehearing denied 351 N.C. 123, 540 S.E.2d 34, certiorari denied 120 S.Ct. 1452, 529 U.S. 1033, 146 L.Ed.2d 337. Records ⚷ 54

Disclosure of recordings of closed university undergraduate court proceedings would frustrate purposes of holding closed session within meaning of Public Records Law, and, thus, recordings could be withheld from public inspection pursuant to statute allowing public body to close its session to protect privileged or confidential evidence. DTH Pub. Corp. v. University of North Carolina at Chapel Hill, 1998, 128 N.C.App. 534, 496 S.E.2d 8, review denied 348 N.C. 496, 510 S.E.2d 381, review denied 348 N.C. 496, 510 S.E.2d 382. Colleges And Universities ⚷ 9.30(7)

Trial court was not divested of its inherent supervisory power over court records and proceedings, and was not required to allow unfettered public access to physician peer review documents and testimony regarding peer review process, even if materials became public records once they were introduced as evidence in action regarding suspension of physician's medical staff

privileges. Virmani v. Presbyterian Health Services Corp., 1997, 127 N.C.App. 629, 493 S.E.2d 310, temporary stay allowed 347 N.C. 585, 496 S.E.2d 394, motion to dismiss appeal denied 348 N.C. 78, 505 S.E.2d 863, affirmed in part, reversed in part 350 N.C. 449, 515 S.E.2d 675, rehearing denied 351 N.C. 123, 540 S.E.2d 34, certiorari denied 120 S.Ct. 1452, 529 U.S. 1033, 146 L.Ed.2d 337. Records ⚷ 32

Statute which prevents sealing of records required to be open to public inspection did not prohibit court from closing court proceedings and sealing records, in action regarding suspension of physician's medical staff privileges. Virmani v. Presbyterian Health Services Corp., 1997, 127 N.C.App. 629, 493 S.E.2d 310, temporary stay allowed 347 N.C. 585, 496 S.E.2d 394, motion to dismiss appeal denied 348 N.C. 78, 505 S.E.2d 863, affirmed in part, reversed in part 350 N.C. 449, 515 S.E.2d 675, rehearing denied 351 N.C. 123, 540 S.E.2d 34, certiorari denied 120 S.Ct. 1452, 529 U.S. 1033, 146 L.Ed.2d 337. Records ⚷ 32

Trial court may shield portions of court proceedings and records from public view, based on its inherent power to control court proceedings, subject to statutory and constitutional limitations, even though court records may generally be public. Virmani v. Presbyterian Health Services Corp., 1997, 127 N.C.App. 629, 493 S.E.2d 310, temporary stay allowed 347 N.C. 585, 496 S.E.2d 394, motion to dismiss appeal denied 348 N.C. 78, 505 S.E.2d 863, affirmed in part, reversed in part 350 N.C. 449, 515 S.E.2d 675, rehearing denied 351 N.C. 123, 540 S.E.2d 34, certiorari denied 120 S.Ct. 1452, 529 U.S. 1033, 146 L.Ed.2d 337. Records ⚷ 32; Trial ⚷ 20

Statute providing for discovery in criminal actions, as opposed to statute providing that person may examine public records, governed action brought by newspaper seeking to obtain copies of recorded communications that police department gathered in course of criminal investigation and which were part of the state's file in a pending criminal action and since there was no provision in this statute for discovery by anyone other than the state or the defendant, newspaper was not entitled to examine and obtain copies of these recorded communications. Piedmont Pub. Co., Inc. v. City of Winston-Salem, 1993, 334 N.C. 595, 434 S.E.2d 176. Criminal Law ⚷ 627.6(5)

Where funds from which settlements made by incorporated county health system in actions for wrongful termination of its agreements were considered county funds, documents connected with settlement terms were "public records" which were made pursuant to law in connection with transaction of public business within meaning of statute governing public records. News and Observer Pub. Co. v. Wake County Hospital System, Inc., 1981, 284 S.E.2d 542, 55 N.C.App. 1, 27 A.L.R.4th 731, review denied 291 S.E.2d 151, 305 N.C. 302, appeal dismissed, certiorari denied 103 S.Ct. 26, 459 U.S. 803, 74 L.Ed.2d 42. Records ⚷ 54

All correspondence, documents and records created or received by the Post–Release Supervision and Parole Commission in the performance of its duties, including those initially created or received by the Department of Correction but used by the parole commission, are confidential and do not have to be disclosed pursuant to the Public Records Law. Op.Atty.Gen., Justus & Baker, April 24, 1996.

8. Time of release

Public Records Act does not give governmental agency discretionary authority to decline to comply with order for release of records to public until time when agency has determined that release would be prudent or timely. North Carolina Press Ass'n, Inc. v. Spangler, 1989, 381 S.E.2d 187, 94 N.C.App. 694, review denied 388 S.E.2d 461, 325 N.C. 709. Records ⚷ 62

Initial or incomplete drafts of reports might not be at the stage where they are "records" subject to disclosure requirements; however, the closer a report is to completion, the more likely it would be considered to be a public record. Op. Atty.Gen. Crane, Aug. 29, 1994.

The public records law contains no disclosure exemption for documents in government agency staff investigation files prepared as part of enforcement efforts, but in advance of civil litigation; however, it may be possible to argue as a matter of public policy that investigatory materials need not be released until the investigation is completed. Op.Atty. Gen. Crane, Aug. 29, 1994.

9. Proceedings generally

Trial court possesses legal authority to stay its own orders pending appeal in

cases involving Public Records Act. Wilmington Star-News, Inc. v. New Hanover Regional Medical Center, Inc., 1997, 125 N.C.App. 174, 480 S.E.2d 53, stay denied 345 N.C. 354, 484 S.E.2d 573, review allowed 346 N.C. 185, 486 S.E.2d 221, appeal dismissed 346 N.C. 557, 488 S.E.2d 826. Records ⚷ 63

Trial court's denial of plaintiff's motion to amend pleading in action to enforce Public Records Act so as to add Attorney General as party did not prejudice plaintiffs, who had prevailed, despite speculative claim that injunction could have been obtained prohibiting Attorney General from deploying State Bureau of Investigation (SBI) without authority. News and Observer Pub. Co., Inc. v. Poole, 1992, 412 S.E.2d 7, 330 N.C. 465. Parties ⚷ 51(4)

10. Injunctions

Cooperative electric membership corporation failed to show likelihood of success on merits for claim of misappropriation of trade secrets under Trade Secrets Protection Act, absent evidence of any misappropriation, which did not support cooperative's request for preliminary injunction to prevent disclosure of documents that it had filed with Rural Electrification Authority. North Carolina Elec. Membership Corp. v. North Carolina Dept. of Economic and Community Development, 1993, 108 N.C.App. 711, 425 S.E.2d 440. Injunction ⚷ 147

Fact that Public Records Act provides exemption from disclosure for specified documents supports jurisdiction of courts to issue injunctions to prevent disclosure of documents in order to offer protection from agency error or from agency's abuse of discretion, despite strong policy in favor of disclosure. North Carolina Elec. Membership Corp. v. North Carolina Dept. of Economic and Community Development, 1993, 108 N.C.App. 711, 425 S.E.2d 440. Injunction ⚷ 74

11. Review

Trial court had subject matter jurisdiction over newspaper's action against Governor, seeking production of records relating to applications for clemency, under the Public Records Law; issue was not a political question but rather turned on the meaning of the North Carolina Constitution's proviso that the Governor's power was subject to legislation ''relative to the manner of applying for pardons.'' News and Observer Pub. Co. v. Easley, 2007, 182 N.C.App. 14, 641 S.E.2d 698, review denied 361 N.C. 429, 648 S.E.2d 508, review dismissed 361 N.C. 429, 648 S.E.2d 508. Records ⚷ 63

In suit under public records law, issue of propriety of trial court's order requiring defendants to file with court and serve upon plaintiffs index of documents in question was rendered moot on appeal after plaintiffs proceeded with merits of action without index and obtained favorable final judgment. News and Observer Pub. Co., Inc. v. Poole, 1990, 392 S.E.2d 775, 99 N.C.App. 352. Appeal And Error ⚷ 843(2)

Public disclosure of reports from chancellors of several universities within University of North Carolina system including information and recommendations from chancellors regarding intercollegiate athletics at universities mooted appeal of president and associate vice-president of University of North Carolina from trial court order requiring that reports be made available for public inspection. North Carolina Press Ass'n, Inc. v. Spangler, 1987, 360 S.E.2d 138, 87 N.C.App. 169. Records ⚷ 63

12. Invasion of privacy

Ex-wife, whose divorce was the subject of newspaper article, did not have her privacy invaded by intrusion, where newspaper article was based on public records, and there was no evidence of physical or sensory intrusion into ex-wife's confidential personal records. Broughton v. McClatchy Newspapers, Inc., 2003, 161 N.C.App. 20, 588 S.E.2d 20. Torts ⚷ 343

There can be no invasion of privacy claim, on intrusion theory, based upon the use of public records as to which plaintiff had no expectation of privacy. Broughton v. McClatchy Newspapers, Inc., 2003, 161 N.C.App. 20, 588 S.E.2d 20. Torts ⚷ 343

13. Public officers

An attorney serving as a city attorney is a public officer, for purposes of Public Records Act. Womack Newspapers, Inc. v. Town of Kitty Hawk ex rel. Kitty Hawk Town Council, 2007, 181 N.C.App. 1, 639 S.E.2d 96, review withdrawn 361 N.C. 370, 644 S.E.2d 564. Records ⚷ 51

Members of law firm that was duly appointed town attorney were public officers of the town, for purposes of Pub-

lic Records Act. Womack Newspapers, Inc. v. Town of Kitty Hawk ex rel. Kitty Hawk Town Council, 2007, 181 N.C.App. 1, 639 S.E.2d 96, review withdrawn 361 N.C. 370, 644 S.E.2d 564. Records ⚷ 51

14. Clemency applications

Public Records Law did not apply to allow newspaper to compel Governor to produce clemency applications, register of clemency applications, or other documents in support of or in opposition to petitions for commutations, reprieves and pardons; statutes governing applications for pardon, and requiring Governor to keep a register of all applications with official signatures and recommendations in favor of the applications, did not specify that the records should be considered public records, as would demonstrate an intention by the legislature to make the records subject to Public Records Law, under the legislature's power ''relative to the manner of applying for pardons.'' News and Observer Pub. Co. v. Easley, 2007, 182 N.C.App. 14, 641 S.E.2d 698, review denied 361 N.C. 429, 648 S.E.2d 508, review dismissed 361 N.C. 429, 648 S.E.2d 508. Records ⚷ 54

§ 132–1.1. Confidential communications by legal counsel to public board or agency; State tax information; public enterprise billing information; Address Confidentiality Program information

(a) Confidential Communications. – Public records, as defined in G.S. 132–1, shall not include written communications (and copies thereof) to any public board, council, commission or other governmental body of the State or of any county, municipality or other political subdivision or unit of government, made within the scope of the attorney-client relationship by any attorney–at–law serving any such governmental body, concerning any claim against or on behalf of the governmental body or the governmental entity for which such body acts, or concerning the prosecution, defense, settlement or litigation of any judicial action, or any administrative or other type of proceeding to which the governmental body is a party or by which it is or may be directly affected. Such written communication and copies thereof shall not be open to public inspection, examination or copying unless specifically made public by the governmental body receiving such written communications; provided, however, that such written communications and copies thereof shall become public records as defined in G.S. 132–1 three years from the date such communication was received by such public board, council, commission or other governmental body.

(b) State and Local Tax Information. – Tax information may not be disclosed except as provided in G.S. 105–259. As used in this subsection, ''tax information'' has the same meaning as in G.S. 105–259. Local tax records that contain information about a taxpayer's income or receipts may not be disclosed except as provided in G.S. 153A–148.1 and G.S. 160A–208.1.

(c) Public Enterprise Billing Information. – Billing information compiled and maintained by a city or county or other public entity providing utility services in connection with the ownership or operation of a public enterprise, excluding airports, is not a public record as defined in G.S. 132–1. Nothing contained herein is

intended to limit public disclosure by a city or county of billing information:

(1) That the city or county determines will be useful or necessary to assist bond counsel, bond underwriters, underwriters' counsel, rating agencies or investors or potential investors in making informed decisions regarding bonds or other obligations incurred or to be incurred with respect to the public enterprise;

(2) That is necessary to assist the city, county, State, or public enterprise to maintain the integrity and quality of services it provides; or

(3) That is necessary to assist law enforcement, public safety, fire protection, rescue, emergency management, or judicial officers in the performance of their duties.

As used herein, ''billing information'' means any record or information, in whatever form, compiled or maintained with respect to individual customers by any owner or operator of a public enterprise, as defined in G.S. 160A–311, excluding subdivision (9), and G.S. 153A–274, excluding subdivision (4), or other public entity providing utility services, excluding airports, relating to services it provides or will provide to the customer.

(d) Address Confidentiality Program Information. – The actual address and telephone number of a program participant in the Address Confidentiality Program established under Chapter 15C of the General Statutes is not a public record within the meaning of Chapter 132. The actual address and telephone number of a program participant may not be disclosed except as provided in Chapter 15C of the General Statutes.

(e) Controlled Substances Reporting System Information. — Information compiled or maintained in the Controlled Substances Reporting System established under Article 5D of Chapter 90 of the General Statutes is not a public record as defined in G.S. 132–1 and may be released only as provided under Article 5D of Chapter 90 of the General Statutes.

(f) Personally Identifiable Admissions Information.—Records maintained by The University of North Carolina or any constituent institution, or by the Community Colleges System Office or any community college, which contain personally identifiable information from or about an applicant for admission to one or more constituent institutions or to one or more community colleges shall be confidential and shall not be subject to public disclosure pursuant to G.S. 132–6(a). Notwithstanding the preceding sentence, any letter of recommendation or record containing a communication from an elected official to The University of North Carolina, any of its constituent institutions, or to a community college, concerning an applicant for admission who has not enrolled as a

student shall be considered a public record subject to disclosure pursuant to G.S. 132–6(a). Nothing in this subsection is intended to limit the disclosure of public records that do not contain personally identifiable information, including aggregated data, guidelines, instructions, summaries, or reports that do not contain personally identifiable information or from which it is feasible to redact any personally identifiable information that the record contains. As used in this subsection, the term ''community college'' is as defined in G.S. 115D–2(2), the term ''constituent institution'' is as defined in G.S. 116–2(4), and the term ''Community Colleges System Office'' is as defined in G.S. 115D–3.

Added by Laws 1975, c. 662. Amended by Laws 1993, c. 485, § 38, eff. July 23, 1993; Laws 1995 (Reg. Sess., 1996), c. 646, § 21, eff. June 21, 1996; S.L. 2001–473, § 1, eff. Nov. 29, 2001; S.L. 2002–171, § 7, eff. Jan. 1, 2003; S.L. 2003–287, § 1, eff. July 4, 2003; S.L. 2005–276, § 10.36(b), eff. Jan. 1, 2006; S.L. 2007–372, § 2, eff. Aug. 19, 2007.

Historical and Statutory Notes

2001 Legislation

S.L. 2001–473, § 1, eff. Nov. 29, 2001, in the section heading, inserted ''; public enterprise billing information'' and added subsec. (c).

2002 Legislation

S.L. 2002–171, § 7, eff. Jan. 1, 2003, in the section heading, inserted ''; Address Confidentiality Program information'' and added subsec. (d).

2003 Legislation

S.L. 2003–287, § 1, eff. July 4, 2003, rewrote subsec. (c), which prior thereto read:

''(c) Public Enterprise Billing Information. – Billing information compiled and maintained by a city or county or other public entity providing utility services in connection with the ownership or operation of a public enterprise is not a public record as defined in G.S. 132–1. Nothing contained herein is intended to limit public disclosure by a city or county of billing information:

''(i) that the city or county determines will be useful or necessary to assist bond counsel, bond underwriters, underwriters' counsel, rating agencies or investors or potential investors in making informed decisions regarding bonds or other obligations incurred or to be incurred with respect to the public enterprise;

''(ii) that is necessary to assist the city, county, State, or public enterprise to maintain the integrity and quality of services it provides; or

''(iii) that is necessary to assist law enforcement, public safety, fire protection, rescue, emergency management, or judicial officers in the performance of their duties.

''As used herein, 'billing information' means any record or information, in whatever form, compiled or maintained with respect to individual customers by any owner or operator of a public enterprise, as defined in G.S. 160A–311 and G.S. 153A–274, or other public entity providing utility services, relating to services it provides or will provide to the customer.''

2005 Legislation

S.L. 2005–276, § 10.36(b), eff. Jan. 1, 2006, added subsec. (e).

S.L. 2005–276, § 10.36(c), provides:

''This section becomes effective January 1, 2006.''

2007 Legislation

S.L. 2007–372, § 2, added subsec. (f).

S.L. 2007–372, § 4, provides:

''This act is effective when it becomes law, and Sections 2 and 3 apply to public records existing before, on, or after that date.''

Administrative Code References

Alcoholic beverage control commission, inspection and copies of ABC laws, see 4 NCAC 2R.0303.

Commerce department, employment and training, requests for information by the public, see 4 NCAC 20A.0004.

Environment, health, and natural resources department, public records, definitions, see 15A NCAC 1B.0401.
Rules for the licensing of nursing homes, public access to department licensure records, see 10A NCAC 13D.2110.
Secretary of State, securities division, public information, see 18 NCAC 6.1506.

Notes of Decisions

In general 1
Commencement of statutory period 2

1. In general

Under the North Carolina Public Records Act, privileged communications between city manager and outside counsel which were more than three years old were ''public records'' subject to disclosure in pending litigation, if not protected by the federal work product rule. MCI Construction, LLC. v. Hazen and Sawyer, P.C., 2003, 213 F.R.D. 268. Records ⚷ 57

Public Records Act provides only one exception based on privilege to its mandate of public access to public records: written statements to a public agency, by any attorney serving the government agency, made within the scope of the attorney-client privilege, and involving a claim, defense, settlement, litigation, or administrative proceeding. McCormick v. Hanson Aggregates Southeast, Inc., 2004, 164 N.C.App. 459, 596 S.E.2d 431, stay allowed 358 N.C. 544, 598 S.E.2d 563, temporary stay allowed 359 N.C. 69, 603 S.E.2d 131, writ denied, review denied, appeal dismissed 359 N.C. 69, 603 S.E.2d 131. Records ⚷ 57

The statutory protection for privileged information under the Public Records Act is more narrow than the traditional common law attorney-client privilege. McCormick v. Hanson Aggregates Southeast, Inc., 2004, 164 N.C.App. 459, 596 S.E.2d 431, stay allowed 358 N.C. 544, 598 S.E.2d 563, temporary stay allowed 359 N.C. 69, 603 S.E.2d 131, writ denied, review denied, appeal dismissed 359 N.C. 69, 603 S.E.2d 131. Records ⚷ 55

Attorney client privilege exception to disclosure requirements of Public Records Act excepted from disclosure only those portions of state agency's meeting minutes revealing written communications from counsel to agency, not statements by agency to counsel. News and Observer Pub. Co., Inc. v. Poole, 1992, 412 S.E.2d 7, 330 N.C. 465. Records ⚷ 57

Trial court should have considered whether minutes of state agency meeting were protected by attorney-client privilege provided in Public Records Act. News and Observer Pub. Co., Inc. v. Poole, 1992, 412 S.E.2d 7, 330 N.C. 465. Records ⚷ 57

2. Commencement of statutory period

Trial court's order requiring city attorney's office to produce, in response to public records request by landowner, all materials withheld on the basis of attorney-client privilege that were dated more than three years before the order did not comport with the requirements of Public Records Act; Act permitted disclosure of privileged documents three years after receipt by government body, rather than three years after creation of document, and it was unclear from court's order whether it was referring to common law attorney-client privilege or the Act's narrower definition of privileged documents. McCormick v. Hanson Aggregates Southeast, Inc., 2004, 164 N.C.App. 459, 596 S.E.2d 431, stay allowed 358 N.C. 544, 598 S.E.2d 563, temporary stay allowed 359 N.C. 69, 603 S.E.2d 131, writ denied, review denied, appeal dismissed 359 N.C. 69, 603 S.E.2d 131. Records ⚷ 63

§ 132–1.2. Confidential information

Nothing in this Chapter shall be construed to require or authorize a public agency or its subdivision to disclose any information that:

(1) Meets all of the following conditions:

a. Constitutes a ''trade secret'' as defined in G.S. 66–152(3).

b. Is the property of a private ''person'' as defined in G.S. 66–152(2).

c. Is disclosed or furnished to the public agency in connection with the owner's performance of a public contract or in connection with a bid, application, proposal, industrial development project, or in compliance with laws, regulations, rules, or ordinances of the United States, the State, or political subdivisions of the State.

d. Is designated or indicated as ''confidential'' or as a ''trade secret'' at the time of its initial disclosure to the public agency.

(2) Reveals an account number for electronic payment as defined in G.S. 147–86.20 and obtained pursuant to Articles 6A or 6B of Chapter 147 of the General Statutes or G.S. 159–32.1.

(3) Reveals a document, file number, password, or any other information maintained by the Secretary of State pursuant to Article 21 of Chapter 130A of the General Statutes.

(4) Reveals the electronically captured image of an individual's signature, date of birth, drivers license number, or a portion of an individual's social security number if the agency has those items because they are on a voter registration document.

(5) Reveals the seal of a licensed design professional who is licensed under Chapter 83A or Chapter 89C of the General Statutes that has been submitted for project approval to (i) a municipality under Part 5 of Article 19 of Chapter 160A of the General Statutes or (ii) to a county under Part 4 of Article 18 of Chapter 153A of the General Statutes. Notwithstanding this exemption, a municipality or county that receives a request for a document submitted for project approval that contains the seal of a licensed design professional who is licensed under Chapter 83A or Chapter 89C of the General Statutes and that is otherwise a public record by G.S. 132–1 shall allow a copy of the document without the seal of the licensed design professional to be examined and copied, consistent with any rules adopted by the licensing board under Chapter 83A or Chapter 89C of the General Statutes regarding an unsealed document.

Added by Laws 1989, c. 269. Amended by Laws 1991, c. 745, § 3; S.L. 1999–434, § 7, eff. Aug. 10, 1999; S.L. 2001–455, § 2, eff. May 1, 2002; S.L. 2003–226, § 5, eff. June 19, 2003; S.L. 2004–127, § 17(b), eff. June 1, 2005; S.L. 2009–346, § 1, eff. Oct. 1, 2009.

Historical and Statutory Notes

S.L. 1999–434, § 7, eff. Aug. 10, 1999, rewrote the section, which prior thereto read:

''Nothing in this Article shall be construed to require or authorize a public

agency to disclose any information which:

''(1) Constitutes a 'trade secret' as defined in G.S. 66-152(3);

''(2) Is the property of a private 'person' as defined in G.S. 66-152(2);

''(3) Is disclosed or furnished to the public agency in connection with the owner's performance of a public contract or in connection with a bid, application, proposal, industrial development project, or in compliance with laws, regulations, rules, or ordinances of the United States, the State, or political subdivisions of the State; and

''(4) Is designated or indicated as 'confidential' or as a 'trade secret' at the time of its initial disclosure to the public agency.''

2001 Legislation

S.L. 2001–455, § 2, eff. May 1, 2002, added subd. (3).

S.L. 2001–455, § 8, provides:

''Sections 1 through 6 of this act become effective May 1, 2002. The remainder of this act is effective when it becomes law.'' [Amended by S.L. 2001–513, § 30(b), eff. July 1, 2001.]

2003 Legislation

S.L. 2003–226, § 5, eff. June 19, 2003, added subd. (4).

S.L. 2003–226, §§ 1, 22, eff. June 19, 2003, provide:

''Section 1. The purpose of this act is to ensure that the State of North Carolina has a system for all North Carolina elections that complies with the requirements for federal elections set forth in the federal Help America Vote Act of 2002, Public Law 107–252, 116 Stat. 1666 (2002), codified at 42 U.S.C. §§ 15481–15485.

''The General Assembly finds that the education and training of election officials as required by G.S. 163–82.34 has met and continues to meet the mandate for the education and training of precinct officials and other election officials in section 254(a)(3) of the Help America Vote Act of 2002. The General Assembly further finds that the establishment, development, and continued operation of the statewide list maintenance program for voter registration set forth in G.S. 163–82.14 has met and continues to meet the mandates of section 303(a)(2) of the Help America Vote Act of 2002.

''In certain other areas of the election statutes and other laws, the General Assembly finds that the statutes must be amended to comply with the Help America Vote Act.''

''Section 22. Sections 1, 3, 4, 5, 12, 18, 21, and 22 of this act are effective when this act becomes law. Sections 11 and 13 of this act become effective January 1, 2006. The remainder of this act becomes effective January 1, 2004. All sections of this act apply with respect to all primaries and elections held on or after the date they become effective.''

2004 Legislation

S.L. 2004–127, § 17(b), eff. June 1, 2005, in subd. (4), inserted ''date of birth,''.

2009 Legislation

S.L. 2009–346, § 1, added subd. (5).

Cross References

Powers and duties of State Board of Elections, voting systems, see § 163–165.7.
Radiation protection; confidential information protected, see § 104E–29.
Solid waste management; confidential information protected, see § 130A–304.
State lottery, identification of prize winners, see § 18C–132.
Trade secrets; confidential information protected, see § 143–215.3C.

Administrative Code References

Alcoholic beverage control commission, inspection and copies of ABC laws, see 4 NCAC 2R.0303.
Commerce department, employment and training, requests for information by the public, see 4 NCAC 20A.0004.
Environment, health, and natural resources department, radiation protection, licenses for disposal site access, application, see 15A NCAC 11.1504.
Inactive hazardous substance or waste disposal sites, voluntary remedial action oversight by registered environmental consultants, see 15A NCAC 13C.0302.
Information technology procurement, confidentiality, see 9 NCAC 6B.1001.

Notes of Decisions

Private person 3
Proceedings generally 2
Public agency 4
Trade secrets 1

1. Trade secrets

When determining whether information is a trade secret exempted from disclosure under the Public Records Act, the following factors are proper to consider: (1) the extent to which information is known outside the business; (2) the extent to which it is known to employees and others involved in the business; (3) the extent of measures taken to guard secrecy of the information; (4) the value of information to business and its competitors; (5) the amount of effort or money expended in developing the information; and (6) the ease or difficulty with which the information could properly be acquired or duplicated by others. State ex rel. Utilities Com'n v. MCI Telecommunications Corp., 1999, 132 N.C.App. 625, 514 S.E.2d 276. Records ⚷ 59

Information within ''access line reports'' and ''Questions For Competing Carriers'' (QCC) that competitive local providers (CLPs) of telecommunication service were required to file with Utilities Commission constituted ''trade secrets,'' and thus, such information was exempt from disclosure under Public Records Act; CLPs collected that information for their own use, it was not available to public except for requirement that it be disclosed to Commission, and to provide public access to that information would provide competitors rather extensive insight into business plans and operations of particular CLP, information that otherwise would not be available generally. State ex rel. Utilities Com'n v. MCI Telecommunications Corp., 1999, 132 N.C.App. 625, 514 S.E.2d 276. Records ⚷ 59

''Trade secret'' exception to Public Records Act is construed no differently in context of regulated industry. State ex rel. Utilities Com'n v. MCI Telecommunications Corp., 1999, 132 N.C.App. 625, 514 S.E.2d 276. Records ⚷ 59

Even if negotiated price lists contained in contract between health maintenance organization (HMO) and public hospital were trade secrets, lists were not exempt from disclosure under Public Records Act section protecting certain trade secrets, as lists did not belong to ''private person'' since hospital was governmental agency. Wilmington Star-News, Inc. v. New Hanover Regional Medical Center, Inc., 1997, 125 N.C.App. 174, 480 S.E.2d 53, stay denied 345 N.C. 354, 484 S.E.2d 573, review allowed 346 N.C. 185, 486 S.E.2d 221, appeal dismissed 346 N.C. 557, 488 S.E.2d 826. Records ⚷ 59

Applying Public Records Act's exemption from disclosure for trade secrets to documents filed with agency before enactment of amendment creating exemption was not retroactive application of statute in light of fact that issue arose from request for disclosure which occurred after creation of exemption. North Carolina Elec. Membership Corp. v. North Carolina Dept. of Economic and Community Development, 1993, 108 N.C.App. 711, 425 S.E.2d 440. Records ⚷ 59

Cooperative electric membership corporation established likelihood of success on merits of its claim of protection under Public Records Act from disclosure of documents that had been filed with Rural Electrification Authority and that allegedly had been ''indicated'' to contain trade secrets at time of filing within meaning of Public Records Act, which supported cooperative's request for preliminary injunction to prevent disclosure of documents. North Carolina Elec. Membership Corp. v. North Carolina Dept. of Economic and Community Development, 1993, 108 N.C.App. 711, 425 S.E.2d 440. Injunction ⚷ 147

Where disclosing public agency software security provisions to the public would pose a significant risk of a breach of the security of a computer system, the release is not required. The software is distinguished from the records that software generates. Op.Atty. Gen., Faulkner, May 28, 1998.

In light of current law, the General Assembly did not intend to mandate disclosure of State-owned computer software pursuant to G.S. § 132–1 et seq. Op.Atty.Gen., Faulkner, May, 28, 1998.

Software is not a ''record'', and, additionally, its disclosure may cause a breach in software security inconsistent with G.S. 132–6.1(c). Op.Atty.Gen., Faulkner, May, 28, 1998.

2. Proceedings generally

University animal care and use committee chairman showed ''substantial

justification'' for refusing student organization access to applications for approval of laboratory animal protocols, such that organization was not entitled to attorney fees under statute governing attorney fees for litigants in civil action who successfully compel disclosure of public records; chairman had asserted that disclosure would violate researchers' free speech and due process rights under First and Fourteenth Amendments and their rights to trade secret protection under federal and state statutes and presented public policy concerns regarding privacy interests of researchers. S.E.T.A. UNC-CH, Inc. v. Huffines, 1992, 420 S.E.2d 674, 107 N.C.App. 440. Records ⚷ 68

3. Private person

Competitive local providers (CLPs) of telecommunication service were ''private persons'' within meaning of Public Records Act, for purposes of their claim that information they were required to file with Utilities Commission constituted ''trade secrets,'' and was thus protected from public disclosure; although CLPs were subject to ''fair regulation'' by Commission, such regulation was not comprehensive and thus did not overshadow independent authority that CLPs exercised over operation of their own businesses. State ex rel. Utilities Com'n v. MCI Telecommunications Corp., 1999, 132 N.C.App. 625, 514 S.E.2d 276. Records ⚷ 31

Whether a person is a ''private person'' within the meaning of the Public Records Act presents a mixed question of fact and law. State ex rel. Utilities Com'n v. MCI Telecommunications Corp., 1999, 132 N.C.App. 625, 514 S.E.2d 276. Records ⚷ 51

4. Public agency

Private corporations can be classified as a public agency, for purposes of determining whether information they generate can be exempted from disclosure under the Public Records Act; the critical inquiry is whether the corporation's independent authority is overshadowed by the governmental control of that corporation. State ex rel. Utilities Com'n v. MCI Telecommunications Corp., 1999, 132 N.C.App. 625, 514 S.E.2d 276. Records ⚷ 31

Portfolio company information relating to the State's investments in private equity, hedge funds and real estate funds meets the trade secret tests and is therefore confidential under an exception to the Public Records Act. Op.Atty. Gen.,Reed, Johnston, June 6, 2006.

Basic fund information and Management fee information relating to the State's investments in private equity, hedge funds, and real estate funds are not trade secrets and are not exempt from disclosure under the Public Records Act. Op.Atty.Gen.,Reed, Johnston, June 6, 2006.

§ 132–1.3. Settlements made by or on behalf of public agencies, public officials, or public employees; public records

(a) Public records, as defined in G.S. 132-1, shall include all settlement documents in any suit, administrative proceeding or arbitration instituted against any agency of North Carolina government or its subdivisions, as defined in G.S. 132-1, in connection with or arising out of such agency's official actions, duties or responsibilities, except in an action for medical malpractice against a hospital facility. No agency of North Carolina government or its subdivisions, nor any counsel, insurance company or other representative acting on behalf of such agency, shall approve, accept or enter into any settlement of any such suit, arbitration or proceeding if the settlement provides that its terms and conditions shall be confidential, except in an action for medical malpractice against a hospital facility. No settlement document sealed under subsection (b) of this section shall be open for public inspection.

(b) No judge, administrative judge or administrative hearing officer of this State, nor any board or commission, nor any

arbitrator appointed pursuant to the laws of North Carolina, shall order or permit the sealing of any settlement document in any proceeding described herein except on the basis of a written order concluding that (1) the presumption of openness is overcome by an overriding interest and (2) that such overriding interest cannot be protected by any measure short of sealing the settlement. Such order shall articulate the overriding interest and shall include findings of fact that are sufficiently specific to permit a reviewing court to determine whether the order was proper.

(c) Except for confidential communications as provided in G.S. 132-1.1, the term ''settlement documents,'' as used herein, shall include all documents which reflect, or which are made or utilized in connection with, the terms and conditions upon which any proceedings described in this section are compromised, settled, terminated or dismissed, including but not limited to correspondence, settlement agreements, consent orders, checks, and bank drafts.

Added by Laws 1989, c. 326.

Administrative Code References

Alcoholic beverage control commission, inspection and copies of ABC laws, see 4 NCAC 2R.0303.

Commerce department, employment and training, requests for information by the public, see 4 NCAC 20A.0004.

Notes of Decisions

In general 1

1. In general

A settlement agreement between a physician and Hospital Authority must be released to the requestor in its unredacted form, except for information from the physician's personnel file which was first gathered by the hospital. Op.Atty.Gen., Carmichael, Nov. 26, 1997.

As a public officer of the state, a sheriff meets the definition of ''an agency of North Carolina government'' as that term is defined in N.C.G.S. 132–1; therefore, any settlement documents entered into by the sheriff as a result of ''any suit, administrative proceeding or arbitration instituted against'' the sheriff in connection with or arising out of his duties or responsibilities is a matter of public record. Op.Atty.Gen., Revelle, March 4, 1998.

§ 132–1.4. Criminal investigations; intelligence information records; Innocence Inquiry Commission records

(a) Records of criminal investigations conducted by public law enforcement agencies, records of criminal intelligence information compiled by public law enforcement agencies, and records of investigations conducted by the North Carolina Innocence Inquiry Commission, are not public records as defined by G.S. 132–1. Records of criminal investigations conducted by public law enforcement agencies or records of criminal intelligence information may be released by order of a court of competent jurisdiction.

(b) As used in this section:

(1) ''Records of criminal investigations'' means all records or any information that pertains to a person or group of persons that is compiled by public law enforcement agencies for the purpose of attempting to prevent or solve violations of the law, including information derived from witnesses, laboratory tests, surveillance, investigators, confidential informants, photographs, and measurements.

(2) ''Records of criminal intelligence information'' means records or information that pertain to a person or group of persons that is compiled by a public law enforcement agency in an effort to anticipate, prevent, or monitor possible violations of the law.

(3) ''Public law enforcement agency'' means a municipal police department, a county police department, a sheriff's department, a company police agency commissioned by the Attorney General pursuant to G.S. 74E–1, et seq., and any State or local agency, force, department, or unit responsible for investigating, preventing, or solving violations of the law.

(4) ''Violations of the law'' means crimes and offenses that are prosecutable in the criminal courts in this State or the United States and infractions as defined in G.S. 14–3.1.

(5) ''Complaining witness'' means an alleged victim or other person who reports a violation or apparent violation of the law to a public law enforcement agency.

(c) Notwithstanding the provisions of this section, and unless otherwise prohibited by law, the following information shall be public records within the meaning of G.S. 132–1.

(1) The time, date, location, and nature of a violation or apparent violation of the law reported to a public law enforcement agency.

(2) The name, sex, age, address, employment, and alleged violation of law of a person arrested, charged, or indicted.

(3) The circumstances surrounding an arrest, including the time and place of the arrest, whether the arrest involved resistance, possession or use of weapons, or pursuit, and a description of any items seized in connection with the arrest.

(4) The contents of ''911'' and other emergency telephone calls received by or on behalf of public law enforcement agencies, except for such contents that reveal the name, address, telephone number, or other information that may identify the caller, victim, or witness.

(5) The contents of communications between or among employees of public law enforcement agencies that are broadcast over the public airways.

(6) The name, sex, age, and address of a complaining witness.

(d) A public law enforcement agency shall temporarily withhold the name or address of a complaining witness if release of the information is reasonably likely to pose a threat to the mental health, physical health, or personal safety of the complaining witness or materially compromise a continuing or future criminal investigation or criminal intelligence operation. Information temporarily withheld under this subsection shall be made available for release to the public in accordance with G.S. 132–6 as soon as the circumstances that justify withholding it cease to exist. Any person denied access to information withheld under this subsection may apply to a court of competent jurisdiction for an order compelling disclosure of the information. In such action, the court shall balance the interests of the public in disclosure against the interests of the law enforcement agency and the alleged victim in withholding the information. Actions brought pursuant to this subsection shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

(e) If a public law enforcement agency believes that release of information that is a public record under subdivisions (c)(1) through (c)(5) of this section will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation, it may seek an order from a court of competent jurisdiction to prevent disclosure of the information. In such action the law enforcement agency shall have the burden of showing by a preponderance of the evidence that disclosure of the information in question will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation. Actions brought pursuant to this subsection shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

(f) Nothing in this section shall be construed as authorizing any public law enforcement agency to prohibit or prevent another public agency having custody of a public record from permitting the inspection, examination, or copying of such public record in compliance with G.S. 132–6. The use of a public record in connection with a criminal investigation or the gathering of criminal intelligence shall not affect its status as a public record.

(g) Disclosure of records of criminal investigations and criminal intelligence information that have been transmitted to a district attorney or other attorney authorized to prosecute a violation of law shall be governed by this section and Chapter 15A of the General Statutes.

(h) Nothing in this section shall be construed as requiring law enforcement agencies to disclose the following:

(1) Information that would not be required to be disclosed under Chapter 15A of the General Statutes; or

(2) Information that is reasonably likely to identify a confidential informant.

(i) Law enforcement agencies shall not be required to maintain any tape recordings of ''911'' or other communications for more than 30 days from the time of the call, unless a court of competent jurisdiction orders a portion sealed.

(j) When information that is not a public record under the provisions of this section is deleted from a document, tape recording, or other record, the law enforcement agency shall make clear that a deletion has been made. Nothing in this subsection shall authorize the destruction of the original record.

(k) The following court records are public records and may be withheld only when sealed by court order: arrest and search warrants that have been returned by law enforcement agencies, indictments, criminal summons, and nontestimonial identification orders.

(*l*) Records of investigations of alleged child abuse shall be governed by Article 29 of Chapter 7B of the General Statutes.

Added by Laws 1993, c. 461, § 1, eff. Oct. 1, 1993. Amended by S.L. 1998–202, § 13(jj), eff. July 1, 1999; S.L. 2006–184, § 7, eff. Aug. 3, 2006.

Historical and Statutory Notes

S.L. 1998–202, effective July 1, 1999, and applicable to acts committed on or after that date, substituted reference to provision of Chapter 7B for 7A.

2006 Legislation

S.L. 2006–184, § 7, eff. Aug. 3, 2006, amended the catchline by inserting ''; Innocence Inquiry Commission records''; in subsec. (a) by substituting ''agencies,'' for ''agencies or'' and by inserting '', and records of investigations conducted by the North Carolina Innocence Inquiry Commission''.

S.L. 2006–184, § 12, provides:

''This act is effective when it becomes law and applies to claims of factual innocence filed on or before December 31, 2010.''

Cross References

Child support enforcement; additional powers and duties of the department, see § 110–129.1.
Electronic repository for criminal process, see § 15A–301.1.
Investment advisers; administrative files and opinions, see § 78C–31.
Juvenile abuse, neglect or dependency hearing, see § 7B–801.
Securities investigations; administrative files and opinions, see § 78A–50.

Administrative Code References

Commerce department, employment and training, requests for information by the public, see 4 NCAC 20A.0004.

Notes of Decisions

In general 1
Court order 2
Public records 3

1. In general

Considering the many underlying purposes for the criminal investigation exception to the Public Records Act, such as protecting investigative techniques, informant identities, and reputations of persons investigated but not charged, and encouraging citizens to volunteer information, closing an investigation should have no effect on the status of the records of that investigation. McCormick v. Hanson Aggregates Southeast, Inc., 2004, 164 N.C.App. 459, 596 S.E.2d 431, stay allowed 358 N.C. 544, 598 S.E.2d 563, temporary stay allowed 359 N.C. 69, 603 S.E.2d 131, writ denied, review denied, appeal dismissed 359 N.C. 69, 603 S.E.2d 131. Records ⚷ 60

Public Records Act does not distinguish between active and inactive or closed investigations for purposes of the criminal investigation exception. McCormick v. Hanson Aggregates Southeast, Inc., 2004, 164 N.C.App. 459, 596 S.E.2d 431, stay allowed 358 N.C. 544, 598 S.E.2d 563, temporary stay allowed 359 N.C. 69, 603 S.E.2d 131, writ denied, review denied, appeal dismissed 359 N.C. 69, 603 S.E.2d 131. Records ⚷ 60

Criminal investigation exception to Public Records Act was not limited to documents relating to ongoing violations, but rather included documents relating to closed and future investigations, and thus city attorney's office was not required to produce, in response to a public records request by landowner, records of criminal investigations that predated the limitations period for the zoning violations office was empowered to prosecute; rather, trial court was required to conduct in camera review of the withheld records to determine whether they were records of criminal investigations subject to the exception. McCormick v. Hanson Aggregates Southeast, Inc., 2004, 164 N.C.App. 459, 596 S.E.2d 431, stay allowed 358 N.C. 544, 598 S.E.2d 563, temporary stay allowed 359 N.C. 69, 603 S.E.2d 131, writ denied, review denied, appeal dismissed 359 N.C. 69, 603 S.E.2d 131. Records ⚷ 60; Records ⚷ 66

City attorney's office was a ''public law enforcement agency,'' within meaning of Public Records Act and, thus, could invoke criminal investigation exception to Act; office was responsible for investigating, preventing or solving zoning violations, which constituted ''violations of the law'' under the Act. McCormick v. Hanson Aggregates Southeast, Inc., 2004, 164 N.C.App. 459, 596 S.E.2d 431, stay allowed 358 N.C. 544, 598 S.E.2d 563, temporary stay allowed 359 N.C. 69, 603 S.E.2d 131, writ denied, review denied, appeal dismissed 359 N.C. 69, 603 S.E.2d 131. Records ⚷ 60

Public Records Act contains no exception for disclosure of records where a criminal investigation is complete. Gannett Pacific Corp. v. North Carolina State Bureau of Investigation, 2004, 164 N.C.App. 154, 595 S.E.2d 162. Records ⚷ 50

Criminal investigative materials transmitted to district attorney's office in preparation for prosecution of defendant were exempted from classification as public records under Public Records Act. Times-News Pub. Co., Inc. v. State, 1996, 124 N.C.App. 175, 476 S.E.2d 450, appeal dismissed, review denied 345 N.C. 645, 483 S.E.2d 717. Records ⚷ 60

Even if trial exhibits were subject to public disclosure upon admission in defendant's original criminal trial, under Public Records Act, exhibits were exempted from disclosure once exhibits were transferred from court clerk to district attorney for reinvestigation and retrial, as records of criminal investigations transmitted to district attorney for such purposes were specifically exempted from disclosure. Times-News Pub. Co., Inc. v. State, 1996, 124 N.C.App. 175, 476 S.E.2d 450, appeal dismissed, review denied 345 N.C. 645, 483 S.E.2d 717. Records ⚷ 60

The North Carolina Department of the Secretary of State is not a public law enforcement agency when it is making a referral of an apparent criminal violation and therefore records obtained and produced by the Department solely for the purpose of making a report of an apparent criminal violation are, as a general rule, public records. Op.Atty. Gen., Kelley, Watkins, Miller, April 3, 2006.

The North Carolina Department of the Secretary of State's function is to

making a report of apparent violations of lobbying laws to the Attorney General, and is thus not a public law enforcement agency when it is performing that function. Op.Atty.Gen., Kelley, Watkins, Miller, April 3, 2006.

2. Court order

Industrial Commission was a ''court'' for purposes of statute permitting disclosure, in tort action against Department of Juvenile Justice and Delinquency Prevention, of juvenile records, social services records, law enforcement records, and records maintained by juvenile facility and Department only with proper court order, where superior and district courts lacked jurisdiction over tort claim against state or its agencies, and Commission was vested with exclusive original jurisdiction over such actions. Jane Doe 1 v. Swannanoa Valley Youth Development Center, 2004, 163 N.C.App. 136, 592 S.E.2d 715, appeal dismissed, review denied 358 N.C. 376, 596 S.E.2d 813. Infants ⚷ 133

3. Public records

News organizations, which were neither criminal defendants nor civil litigants seeking discovery of admissible evidence to be used in a trial, were not entitled to release from the State Bureau of Investigation (SBI) of the records of its criminal investigation or criminal intelligence information related to fire at county jail; such records were not ''public records'' under the Public Records Act. Gannett Pacific Corp. v. North Carolina State Bureau of Investigation, 2004, 164 N.C.App. 154, 595 S.E.2d 162. Records ⚷ 54; Records ⚷ 60

News organizations were entitled to any information defined as ''public records'' under provision of Public Records Act related to records of criminal investigations, including arrest and search warrants, indictments, criminal summons, and nontestimonial identification orders, and any public records relating to the fire at county jail not specifically exempted from disclosure that the State Bureau of Investigation (SBI) may have or may not have possessed. Gannett Pacific Corp. v. North Carolina State Bureau of Investigation, 2004, 164 N.C.App. 154, 595 S.E.2d 162. Records ⚷ 60

Records of investigations by the Department of the Secretary of State are considered records of criminal investigation therefore they are public records subject to public review and access. Op.Atty.Gen., Kelley, Watkins and Miller, April 3, 2006.

Effective January 1, 2007, the North Carolina Department of the Secretary of State's powers and duties are expanded to include the authority to issue subpoenas and subpoena duces tecum as necessary to conduct investigations of violations of legislative branch lobbying and executive branch lobbying, and therefore all records accumulated in conjunction with the Department's investigation of lobbying complaints shall be considered records of criminal investigations. Op.Atty.Gen., Kelley, Watkins, Miller, April 3, 2006.

§ 132–1.5. 911 database

Automatic number identification and automatic location identification information that consists of the name, address, and telephone numbers of telephone subscribers, or the e-mail addresses of subscribers to an electronic emergency notification or reverse 911 system, that is contained in a county or municipal 911 database, or in a county or municipal telephonic or electronic emergency notification or reverse 911 system, is confidential and is not a public record as defined by Chapter 132 of the General Statutes if that information is required to be confidential by the agreement with the telephone company by which the information was obtained. Dissemination of the information contained in the 911, electronic emergency notification or reverse 911 system, or automatic number and automatic location database is prohibited except on a call-by-call basis only for the purpose of handling emergency calls or for training, and any permanent record of the

information shall be secured by the public safety answering points and disposed of in a manner which will retain that security except as otherwise required by applicable law.

Added by S.L. 1997–287, § 1, eff. July 10, 1997. Amended by S.L. 2007–107, § 3.2(a), eff. June 26, 2007.

Historical and Statutory Notes

2007 Legislation

S.L. 2007–107, § 3,2(a), eff. Oct. 1, 2007, rewrote section, which prior thereto read;

''Automatic number identification and automatic location identification information that consists of the name, address, and telephone numbers of telephone subscribers which is contained in a county 911 database is confidential and is not a public record as defined by Chapter 132 of the General Statutes if that information is required to be confidential by the agreement with the telephone company by which the information was obtained. Dissemination of the information contained in the 911 automatic number and automatic location database is prohibited except on a call-by-call basis only for the purpose of handling emergency calls or for training, and any permanent record of the information shall be secured by the public safety answering points and disposed of in a manner which will retain that security except as otherwise required by applicable law.''

Administrative Code References

Commerce department, employment and training, requests for information by the public, see 4 NCAC 20A.0004.

§ 132–1.6. Emergency response plans

Emergency response plans adopted by a constituent institution of The University of North Carolina, a community college, or a public hospital as defined in G.S. 159–39 and the records related to the planning and development of these emergency response plans are not public records as defined by G.S. 132–1 and shall not be subject to inspection and examination under G.S. 132–6.

Added by S.L. 2001–500, § 3.1, eff. Dec. 19, 2001.

Historical and Statutory Notes

Another § 132–1.6, as added by S.L. 2001–516, § 3, was redesignated as § 132–1.7 by the Revisor of Statutes.

§ 132–1.7. Sensitive public security information

(a) Public records, as defined in G.S. 132–1, shall not include information containing specific details of public security plans and arrangements or the detailed plans and drawings of public buildings and infrastructure facilities.

(b) Public records as defined in G.S. 132–1 do not include plans to prevent or respond to terrorist activity, to the extent such records set forth vulnerability and risk assessments, potential targets, specific tactics, or specific security or emergency procedures, the disclosure of which would jeopardize the safety of governmental personnel or the general public or the security of

any governmental facility, building, structure, or information storage system.

(c) Information relating to the general adoption of public security plans and arrangements, and budgetary information concerning the authorization or expenditure of public funds to implement public security plans and arrangements, or for the construction, renovation, or repair of public buildings and infrastructure facilities shall be public records.

Added by S.L. 2001–516, § 3, eff. Jan. 4, 2002. Amended by S.L. 2003–180, § 1, eff. June 12, 2003.

Historical and Statutory Notes

2001 Legislation

S.L. 2001–516, § 6, provides:

''Sections 1 and 2 of this act become effective January 1, 2002, and apply to court records filed on or after that date and apply to judicial proceedings commenced or pending on or after that date. The remainder of this act is effective when it becomes law. Section 3 of this act applies to public records in existence on or after the effective date.''

This section, added as § 132–1.6, was recodified as § 132–1.7 by the Revisor of Statutes.

2003 Legislation

S.L. 2003–180, § 1, eff. June 12, 2003, rewrote the section, which prior thereto read:

''Public records, as defined in G.S. 132–1, shall not include information containing specific details of public security plans and arrangements or the detailed plans and drawings of public buildings and infrastructure facilities. Information relating to the general adoption of public security plans and arrangements, and budgetary information concerning the authorization or expenditure of public funds to implement public security plans and arrangements, or for the construction, renovation, or repair of public buildings and infrastructure facilities shall be public records.''

§ 132–1.8. Confidentiality of photographs and video or audio recordings made pursuant to autopsy

Except as otherwise provided in G.S. 130A–389.1, a photograph or video or audio recording of an official autopsy is not a public record as defined by G.S. 132–1. However, the text of an official autopsy report, including any findings and interpretations prepared in accordance with G.S. 130A–389(a), is a public record and fully accessible by the public. For purposes of this section, an official autopsy is an autopsy performed pursuant to G.S. 130A–389(a).

Added by S.L. 2005–393, § 1, eff. Dec. 1, 2005.

Historical and Statutory Notes

2005 Legislation

S.L. 2005–393, § 4, provides:

''This act becomes effective December 1, 2005, and applies to offenses committed on or after that date. This act applies to all unauthorized disclosures of autopsy photographs or video or audio recordings that occur on or after the effective date, regardless of whether the autopsy was performed before or after that date.''

§ 132–1.9. Trial preparation materials

(a) Scope. — A request to inspect, examine, or copy a public record that is also trial preparation material is governed by this section, and, to the extent this section conflicts with any other provision of law, this section applies.

(b) Right to Deny Access. — Except as otherwise provided in this section, a custodian may deny access to a public record that is also trial preparation material. If the denial is based on an assertion that the public record is trial preparation material that was prepared in anticipation of a legal proceeding that has not commenced, the custodian shall, upon request, provide a written justification for the assertion that the public record was prepared in anticipation of a legal proceeding.

(c) Trial Preparation Material Prepared in Anticipation of a Legal Proceeding. — Any person who is denied access to a public record that is also claimed to be trial preparation material that was prepared in anticipation of a legal proceeding that has not yet been commenced may petition the court pursuant to G.S. 132–9 for determination as to whether the public record is trial preparation material that was prepared in anticipation of a legal proceeding.

(d) During a Legal Proceeding. —

(1) When a legal proceeding is subject to G.S. 1A–1, Rule 26(b)(3), or subject to Rule 26(b)(3) of the Federal Rules of Civil Procedure, a party to the pending legal proceeding, including any appeals and postjudgment proceedings, who is denied access to a public record that is also claimed to be trial preparation material that pertains to the pending proceeding may seek access to such record only by motion made in the pending legal proceeding and pursuant to the procedural and substantive standards that apply to that proceeding. A party to the pending legal proceeding may not directly or indirectly commence a separate proceeding for release of such record pursuant to G.S. 132–9 in any other court or tribunal.

(2) When a legal proceeding is not subject to G.S. 1A–1, Rule 26(b)(3), and not subject to Rule 26(b)(3) of the Federal Rules of Civil Procedure, a party to the pending legal proceeding, including any appeals and postjudgment proceedings, who is denied access to a public record that is also claimed to be trial preparation material that pertains to the pending legal proceeding may petition the court pursuant to G.S. 132–9 for access to such record. In determining whether to require the custodian to provide access to all or any portion of the record, the court or

other tribunal shall apply the provisions of G.S. 1A–1, Rule 26(b)(3).

(3) Any person who is denied access to a public record that is also claimed to be trial preparation material and who is not a party to the pending legal proceeding to which such record pertains, and who is not acting in concert with or as an agent for any party to the pending legal proceeding, may petition the court pursuant to G.S. 132–9 for a determination as to whether the public record is trial preparation material.

(e) Following a Legal Proceeding. — Upon the conclusion of a legal proceeding, including the completion of all appeals and postjudgment proceedings, or, in the case where no legal proceeding has been commenced, upon the expiration of all applicable statutes of limitations and periods of repose, the custodian of a public record that is also claimed to be trial preparation material shall permit the inspection, examination, or copying of such record if any law that is applicable so provides.

(f) Effect of Disclosure. — Disclosure pursuant to this section of all or any portion of a public record that is also trial preparation material, whether voluntary or pursuant to an order issued by a court, or issued by an officer in an administrative or quasi-judicial legal proceeding, shall not constitute a waiver of the right to claim that any other document or record constitutes trial preparation material.

(g) Trial Preparation Materials That Are Not Public Records. — This section does not require disclosure, or authorize a court to require disclosure, of trial preparation material that is not also a public record or that is under other provisions of this Chapter exempted or protected from disclosure by law or by an order issued by a court, or by an officer in an administrative or quasi-judicial legal proceeding.

(h) Definitions. — As used in this section, the following definitions apply:

(1) Legal proceeding. — Civil proceedings in any federal or State court. Legal proceeding also includes any federal, State, or local government administrative or quasi-judicial proceeding that is not expressly subject to the provisions of Chapter 1A of the General Statutes or the Federal Rules of Civil Procedure.

(2) Trial preparation material. — Any record, wherever located and in whatever form, that is trial preparation material within the meaning of G. S. 1A–1, Rule 26(b)(3), any comparable material prepared for any other legal proceeding, and any comparable material exchanged pursuant to a joint defense, joint prosecution, or joint interest agreement

in connection with any pending or anticipated legal proceeding.

Added by S.L. 2005–332, § 1, eff. Oct. 1, 2005.

§ 132–1.10. Social security numbers and other personal identifying information

(a) The General Assembly finds the following:

(1) The social security number can be used as a tool to perpetuate fraud against a person and to acquire sensitive personal, financial, medical, and familial information, the release of which could cause great financial or personal harm to an individual. While the social security number was intended to be used solely for the administration of the federal Social Security System, over time this unique numeric identifier has been used extensively for identity verification purposes and other legitimate consensual purposes.

(2) Although there are legitimate reasons for State and local government agencies to collect social security numbers and other personal identifying information from individuals, government should collect the information only for legitimate purposes or when required by law.

(3) When State and local government agencies possess social security numbers or other personal identifying information, the governments should minimize the instances this information is disseminated either internally within government or externally with the general public.

(b) Except as provided in subsections (c) and (d) of this section, no agency of the State or its political subdivisions, or any agent or employee of a government agency, shall do any of the following:

(1) Collect a social security number from an individual unless authorized by law to do so or unless the collection of the social security number is otherwise imperative for the performance of that agency's duties and responsibilities as prescribed by law. Social security numbers collected by an agency must be relevant to the purpose for which collected and shall not be collected until and unless the need for social security numbers has been clearly documented.

(2) Fail, when collecting a social security number from an individual, to segregate that number on a separate page from the rest of the record, or as otherwise appropriate, in order that the social security number can be more easily redacted pursuant to a valid public records request.

(3) Fail, when collecting a social security number from an individual, to provide, at the time of or prior to the actual

collection of the social security number by that agency, that individual, upon request, with a statement of the purpose or purposes for which the social security number is being collected and used.

(4) Use the social security number for any purpose other than the purpose stated.

(5) Intentionally communicate or otherwise make available to the general public a person's social security number or other identifying information. ''Identifying information'', as used in this subdivision, shall have the same meaning as in G.S. 14–113.20(b), except it shall not include electronic identification numbers, electronic mail names or addresses, Internet account numbers, Internet identification names, parent's legal surname prior to marriage, or drivers license numbers appearing on law enforcement records. Identifying information shall be confidential and not be a public record under this Chapter. A record, with identifying information removed or redacted, is a public record if it would otherwise be a public record under this Chapter but for the identifying information. The presence of identifying information in a public record does not change the nature of the public record. If all other public records requirements are met under this Chapter, the agency of the State or its political subdivisions shall respond to a public records request, even if the records contain identifying information, as promptly as possible, by providing the public record with the identifying information removed or redacted.

(6) Intentionally print or imbed an individual's social security number on any card required for the individual to access government services.

(7) Require an individual to transmit the individual's social security number over the Internet, unless the connection is secure or the social security number is encrypted.

(8) Require an individual to use the individual's social security number to access an Internet Web site, unless a password or unique personal identification number or other authentication device is also required to access the Internet Web site.

(9) Print an individual's social security number on any materials that are mailed to the individual, unless state or federal law required that the social security number be on the document to be mailed. A social security number that is permitted to be mailed under this subdivision may not be printed, in whole or in part, on a postcard or other mailer not requiring an envelope, or visible on the envelope or without the envelope having been opened.

(c) Subsection (b) of this section does not apply in the following circumstances:

(1) To social security numbers or other identifying information disclosed to another governmental entity or its agents, employees, or contractors if disclosure is necessary for the receiving entity to perform its duties and responsibilities. The receiving governmental entity and its agents, employees, and contractors shall maintain the confidential and exempt status of such numbers.

(2) To social security numbers or other identifying information disclosed pursuant to a court order, warrant, or subpoena.

(3) To social security numbers or other identifying information disclosed for public health purposes pursuant to and in compliance with Chapter 130A of the General Statutes.

(4) To social security numbers or other identifying information that have been redacted.

(5) To certified copies of vital records issued by the State Registrar and other authorized officials pursuant to G.S. 130A–93(c). The State Registrar may disclose any identifying information other than social security numbers on any uncertified vital record.

(6) To any recorded document in the official records of the register of deeds of the county.

(7) To any document filed in the official records of the courts.

(c1) If an agency of the State or its political subdivisions, or any agent or employee of a government agency, experiences a security breach, as defined in Article 2A of Chapter 75 of the General Statutes, the agency shall comply with the requirements of G.S. 75–65.

(d) No person preparing or filing a document to be recorded or filed in the official records of the register of deeds, the Department of the Secretary of State, or of the courts may include any person's social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords in that document, unless otherwise expressly required by law or court order, adopted by the State Registrar on records of vital events, or redacted. Any loan closing instruction that requires the inclusion of a person's social security number on a document to be recorded shall be void. Any person who violates this subsection shall be guilty of an infraction, punishable by a fine not to exceed five hundred dollars ($500.00) for each violation.

(e) The validity of an instrument as between the parties to the instrument is not affected by the inclusion of personal information on a document recorded or filed with the official records of the

register of deeds or the Department of the Secretary of State. The register of deeds or the Department of the Secretary of State may not reject an instrument presented for recording because the instrument contains an individual's personal information.

(f) Any person has the right to request that a register of deeds or clerk of court remove, from an image or copy of an official record placed on a register of deeds' or court's Internet Web site available to the general public or an Internet Web site available to the general public used by a register of deeds or court to display public records by the register of deeds or clerk of court, the person's social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords contained in that official record. The request must be made in writing, legibly signed by the requester, and delivered by mail, facsimile, or electronic transmission, or delivered in person to the register of deeds or clerk of court. The request must specify the personal information to be redacted, information that identifies the document that contains the personal information and unique information that identifies the location within the document that contains the social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords to be redacted. The request for redaction shall be considered a public record with access restricted to the register of deeds, the clerk of court, their staff, or upon order of the court. The register of deeds or clerk of court shall have no duty to inquire beyond the written request to verify the identity of a person requesting redaction and shall have no duty to remove redaction for any reason upon subsequent request by an individual or by order of the court, if impossible to do so. No fee will be charged for the redaction pursuant to such request. Any person who requests a redaction without proper authority to do so shall be guilty of an infraction, punishable by a fine not to exceed five hundred dollars ($500.00) for each violation.

(f1) Without a request made pursuant to subsection (f) of this section, a register of deeds or clerk of court may remove from an image or copy of an official record placed on a register of deeds' or clerk of court's Internet Web site available to the general public, or placed on an Internet Web site available to the general public used by a register of deeds or clerk of court to display public records, a person's social security or drivers license number contained in that official record. Registers of deeds and clerks of court may apply optical character recognition technology or other reasonably available technology to official records placed on Internet Web sites available to the general public in order to, in good

faith, identify and redact social security and drivers license numbers.

(g) A register of deeds or clerk of court shall immediately and conspicuously post signs throughout his or her offices for public viewing and shall immediately and conspicuously post a notice on any Internet Web site available to the general public used by a register of deeds or clerk of court a notice stating, in substantially similar form, the following:

(1) Any person preparing or filing a document for recordation or filing in the official records may not include a social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords in the document, unless expressly required by law or court order, adopted by the State Registrar on records of vital events, or redacted so that no more than the last four digits of the identification number is included.

(2) Any person has a right to request a register of deeds or clerk of court to remove, from an image or copy of an official record placed on a register of deeds' or clerk of court's Internet Web site available to the general public or on an Internet Web site available to the general public used by a register of deeds or clerk of court to display public records, any social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords contained in an official record. The request must be made in writing and delivered by mail, facsimile, or electronic transmission, or delivered in person, to the register of deeds or clerk of court. The request must specify the personal information to be redacted, information that identifies the document that contains the personal information and unique information that identifies the location within the document that contains the social security, employer taxpayer identification, drivers license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords to be redacted. No fee will be charged for the redaction pursuant to such a request. Any person who requests a redaction without proper authority to do so shall be guilty of an infraction, punishable by a fine not to exceed five hundred dollars ($500.00) for each violation.

(h) Any affected person may petition the court for an order directing compliance with this section. No liability shall accrue to

a register of deeds or clerk of court or to his or her agent for any action related to provisions of this section or for any claims or damages that might result from a social security number or other identifying information on the public record or on a register of deeds' or clerk of court's Internet website available to the general public or an Internet Web site available to the general public used by a register of deeds or clerk of court.

Added by S.L. 2005–414, § 4, eff. Dec. 1, 2005. Amended by S.L. 2006–173, §§ 2 to 7, eff. Aug. 1, 2006; S.L. 2006–173, § 1, eff. Oct. 1, 2006; S.L. 2009–355, § 3, eff. Oct. 1, 2009.

Historical and Statutory Notes

2005 Legislation

S.L. 2005–414, §§ 10, 11, provide:

''Section 10. The provisions of this act are severable. If any phrase, clause, sentence, provision, or section is declared to be invalid or preempted by federal law or regulation, the validity of the remainder of this act shall not be affected thereby.

''Section 11. G.S. 75–62(a)(2), (3), (4), and (5), as enacted in Section 1 of this act, become effective October 1, 2006. G.S. 132–1.8(b)(6), (7), (8), and (9), as enacted in Section 4 of this act, become effective July 1, 2007. Section 6 of this act becomes effective December 1, 2005, and applies to offenses committed, and to causes of action arising, on or after that date. The remainder of this act becomes effective December 1, 2005.''

Section renumbered from G.S. 132–1.8 pursuant to the Revisor of Statutes.

2006 Legislation

S.L. 2006–173, § 2, eff. Aug. 1, 2006, rewrote subd. (b)(5), which prior thereto read:

''(5) Intentionally communicate or otherwise make available to the general public a person's social security number or other identifying information. 'Identifying information', as used in this subdivision, shall have the same meaning as in G.S. 14–113.20(b), except it shall not include electronic identification numbers, electronic mail names or addresses, Internet account numbers, Internet identification names, parent's legal surname prior to marriage, or drivers license numbers appearing on law enforcement records.''

S.L. 2006–173, § 3, eff. Aug. 1, 2006, amended subsec. (d) by inserting ''the Department of the Secretary of State'' and other non-substantial changes.

S.L. 2006–173, § 4, eff. Aug. 1, 2006, amended subsec. (e) by inserting ''deeds or the Department of the Secretary of State'' and ''or the Department of the Secretary of State''.

S.L. 2006–173, § 5, eff. Aug. 1, 2006, amended subsec. (f) by inserting ''the Department of the Secretary of State'' in six places and ''Department of the Secretary of State, the''.

S.L. 2006–173, § 6, eff. Aug. 1, 2006, amended subsec. (g) by inserting ''The Department of the Secretary of State'' and ''the Department of the Secretary of State,'' in five places.

S.L. 2006–173, § 7, eff. Aug. 1, 2006, amended subsec. (h) by inserting ''the Department of the Secretary of State,'' in three places and by substituting ''their agents'' for ''his or her agent''.

S.L. 2006–173, §§ 8, 10, provide:

''Section 8. The provisions of G.S. 132–1.10(b)(5) shall not apply to identifying information accessible on the Internet Web site of the Department of the Secretary of State or by magnetic tapes, electronic data feeds, or electronic file transfers of all records or updates of records on file with the Secretary of State until July 1, 2007. Notwithstanding the exemption provided by this section, the Department of the Secretary of State shall, whenever funds are made available, make it a priority to first remove identifying information contained in Uniform Commercial Code financing statements filed with the Department of the Secretary of State under Chapter 25 of the General Statutes no later than June 30, 2007.''

''Section 10. Section 1 of this act becomes effective October 1, 2006. Sections 5 through 7 of this act are effective when the act becomes law and expire on July 1, 2007. The remainder of this act is effective when the act becomes law.''

S.L. 2006–173, § 1, eff. Oct. 1, 2006, added subsec. (c1).

2009 Legislation

S.L. 2009–355, § 3, added subsec. (f1).

§ 132–1.11. Economic development incentives

(a) Assumptions and Methodologies. — Subject to the provisions of this Chapter regarding confidential information and the withholding of public records relating to the proposed expansion or location of specific business or industrial projects when the release of those records would frustrate the purpose for which they were created, whenever a public agency or its subdivision performs a cost-benefit analysis or similar assessment with respect to economic development incentives offered to a specific business or industrial project, the agency or its subdivision must describe in detail the assumptions and methodologies used in completing the analysis or assessment. This description is a public record and is subject to all provisions of this Chapter and other law regarding public records.

(b) Disclosure of Public Records Requirements. — Whenever an agency or its subdivision first proposes, negotiates, or accepts an application for economic development incentives with respect to a specific industrial or business project, the agency or subdivision must disclose that any information obtained by the agency or subdivision is subject to laws regarding disclosure of public records. In addition, the agency or subdivision must fully and accurately describe the instances in which confidential information may be withheld from disclosure, the types of information that qualify as confidential information, and the methods for ensuring that confidential information is not disclosed.

Added by S.L. 2005–429, § 1.2, eff. Sept. 22, 2005.

Historical and Statutory Notes

2005 Legislation

S.L. 2005–429, § 4, provides:

"Sections 2.2 through 2.12 of this act become effective January 1, 2007. The remainder of this act is effective when it becomes law."

Section renumbered from G.S. 132–1.8 pursuant to the direction of the Revisor of Statutes.

§ 132–1.12. Limited access to identifying information of minors participating in local government parks and recreation programs

(a) A public record, as defined by G.S. 132–1, does not include, as to any minor participating in a park or recreation program sponsored by a local government or combination of local governments, any of the following information as to that minor participant: (i) name, (ii) address, (iii) age, (iv) date of birth, (v) telephone number, (vi) the name or address of that minor participant's parent or legal guardian, or (vii) any other

identifying information on an application to participate in such program or other records related to that program.

(b) The county, municipality, and zip code of residence of each participating minor covered by subsection (a) of this section is a public record, with the information listed in subsection (a) of this section redacted.

(c) Nothing in this section makes the information listed in subsection (a) of this section confidential information.

Added by S.L. 2008–126, § 1, eff. July 28, 2008.

§ 132–2. Custodian designated

The public official in charge of an office having public records shall be the custodian thereof.

Administrative Code References

Commerce department, employment and training, requests for information by the public, see 4 NCAC 20A.0004.

Environment, health, and natural resources department, public records, definitions, see 15A NCAC 1B.0401.

Labor department, apprenticeship and training division, public access to records, see 13 NCAC 14.0108.

§ 132–3. Destruction of records regulated

(a) Prohibition.—No public official may destroy, sell, loan, or otherwise dispose of any public record, except in accordance with G.S. 121–5 and G.S. 130A–99, without the consent of the Department of Cultural Resources. Whoever unlawfully removes a public record from the office where it is usually kept, or alters, defaces, mutilates or destroys it shall be guilty of a Class 3 misdemeanor and upon conviction only fined not less than ten dollars ($10.00) nor more than five hundred dollars ($500.00).

(b) Revenue Records.—Notwithstanding subsection (a) of this section and G.S. 121–5, when a record of the Department of Revenue has been copied in any manner, the original record may be destroyed upon the order of the Secretary of Revenue. If a record of the Department of Revenue has not been copied, the original record shall be preserved for at least three years. After three years the original record may be destroyed upon the order of the Secretary of Revenue.

(c) Employment Security Commission Records. — Notwithstanding subsection (a) of this section and G.S. 121–5, when a record of the Employment Security Commission has been copied in any manner, the original record may be destroyed upon the order of the Chairman of the Employment Security Commission. If a record of the Commission has not been copied, the original record shall be preserved for at least three years. After three years

the original record may be destroyed upon the order of the Chairman of the Employment Security Commission.

Amended by Laws 1943, c. 237; Laws 1953, c. 675, § 17; Laws 1957, c. 330, § 2; Laws 1973, c. 476, § 48; Laws 1993, c. 485, § 39, eff. July 23, 1993; Laws 1993, c. 539, § 966, eff. Oct. 1, 1994; Laws 1994 (1st Ex. Sess.), c. 24, § 14(c), eff. March 26, 1994; S.L. 1997–309, § 12, eff. July 17, 1997; S.L. 2001–115, § 2, eff. May 24, 2001.

Historical and Statutory Notes

Laws 1993, c. 539, § 1359, provides:

"This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions." [Amended by Laws 1994, Ex. Sess., c. 24, § 14(c), eff. March 26, 1994.]

Laws 1993, c. 539, was ratified July 24, 1993.

S.L. 1997–309, effective July 17, 1997, inserted in the first sentence of subd. (a) "and G.S. 130A–99".

2001 Legislation

S.L. 2001–115, § 2, eff. May 24, 2001, added subsec. (c).

Cross References

Destruction of canceled bonds, notes and coupons, see § 142–13.
Destruction of cancelled bonds, notes, and coupons, see § 159–139.
Low-level radioactive waste; powers and duties of the authority, see § 104G–6.
Misdemeanor sentencing and punishment, see § 15A–1340.13 et seq.

Administrative Code References

Commerce department, employment and training, requests for information by the public, see 4 NCAC 20A.0004.
Cultural resources department, division of archives and history, state records center, see 7 NCAC 4M.0510 et seq.

Notes of Decisions

In general 1
Removal of records 3
Sovereignty over records 2

1. In general

Resolution of issue of whether state violated statute requiring preservation of public documents by destroying first of two affidavits in support of search warrant of defendants' residence was not appropriate, as the search warrant which did issue was based on second affidavit alone, so that defendants were not prejudiced by destruction of the first affidavit. State v. Caldwell, 1981, 279 S.E.2d 852, 53 N.C.App. 1, appeal dismissed, review denied 285 S.E.2d 102, 304 N.C. 197. Records ⚷ 22

Property owned by government is held in trust for people and intentional or negligent acts of agents of government should not serve to deny people of benefits and enjoyment of their property. State v. West, 1976, 229 S.E.2d 826, 31 N.C.App. 431, affirmed 235 S.E.2d 150, 293 N.C. 18. States ⚷ 87

2. Sovereignty over records

After defeat of Great Britain in the Revolutionary War, State of North Carolina succeeded to public records of North Carolina previously owned by the Crown. State v. West, 1976, 229 S.E.2d 826, 31 N.C.App. 431, affirmed 235 S.E.2d 150, 293 N.C. 18. International Law ⚷ 9

As matter of sovereignty law, all archives, records and papers which were in North Carolina and which belonged to British Crown remained the property of the Crown until the State of North Carolina became the sovereign. State v. West, 1976, 229 S.E.2d 826, 31 N.C.App. 431, affirmed 235 S.E.2d 150, 293 N.C. 18. International Law ⚷ 9

Sovereignty is never held in suspense and survives changes in government

and forms of government. State v. West, 1976, 229 S.E.2d 826, 31 N.C.App. 431, affirmed 235 S.E.2d 150, 293 N.C. 18. International Law ⚷ 9

Title to government property may pass only in manner prescribed by duly constituted legislative body and title may not be forfeited through oversight, carelessness, negligence or intentional conduct of any of agents of government. State v. West, 1976, 229 S.E.2d 826, 31 N.C.App. 431, affirmed 235 S.E.2d 150, 293 N.C. 18. States ⚷ 89

3. Removal of records

Bills of indictment which were issued in 1767 and 1768 and docketed in Salisbury District Superior Court became public records and property of the State, they were required to be permanently retained in custody of court, they could be removed only by authority of act of legislature and in manner and for purpose designated by law and the ownership in the State could not be forfeited through oversight, carelessness, or intentional conduct of agents of State. State v. West, 1976, 229 S.E.2d 826, 31 N.C.App. 431, affirmed 235 S.E.2d 150, 293 N.C. 18. Indictment And Information ⚷ 11.1

In proceeding by State to be declared owner and to regain possession of two bills of indictment which had been issued by North Carolina colonial court in 1767 and 1768 and which had been purchased by defendant for value and in good faith on open market, State overcame presumption that public officials had properly performed their duty in preserving indictments in the public archive. State v. West, 1976, 229 S.E.2d 826, 31 N.C.App. 431, affirmed 235 S.E.2d 150, 293 N.C. 18. Evidence ⚷ 87

Even if indictments issued in 1767 and 1768 by North Carolina colonial court had been mislaid or lost, the finder would derive no title against true owner who might sue for their recovery. State v. West, 1976, 229 S.E.2d 826, 31 N.C.App. 431, affirmed 235 S.E.2d 150, 293 N.C. 18. Abandoned And Lost Property ⚷ 11

In action by State to be declared owner and to regain possession of two bills of indictment which had been issued in 1767 and 1768 by North Carolina colonial court and which defendant had purchased for value and in good faith on the open market, State proved that indictments were in public archive and were stolen or were otherwise improperly removed. State v. West, 1976, 229 S.E.2d 826, 31 N.C.App. 431, affirmed 235 S.E.2d 150, 293 N.C. 18. Indictment And Information ⚷ 11.1

Bills of indictment issued by North Carolina colonial court in 1767 and 1768 were required by law to be permanently retained in public archive. State v. West, 1976, 229 S.E.2d 826, 31 N.C.App. 431, affirmed 235 S.E.2d 150, 293 N.C. 18. Indictment And Information ⚷ 11.1

State was entitled to possession of bills of indictment issued in 1767 and 1768 by Salisbury District Superior Court, even though they had been purchased by individual citizen in good faith for value on the open market. State v. West, 1976, 229 S.E.2d 826, 31 N.C.App. 431, affirmed 235 S.E.2d 150, 293 N.C. 18. Indictment And Information ⚷ 11.1

Clerk of superior court did not have authority to remove records in criminal case which had been dismissed on defendant's motion for judgment of nonsuit, and judge exceeded his authority in ordering records to be delivered to defendant. State v. Bellar, 1972, 192 S.E.2d 86, 16 N.C.App. 339. Records ⚷ 21

§ 132–4. Disposition of records at end of official's term

Whoever has the custody of any public records shall, at the expiration of his term of office, deliver to his successor, or, if there be none, to the Department of Cultural Resources, all records, books, writings, letters and documents kept or received by him in the transaction of his official business; and any such person who shall refuse or neglect for the space of 10 days after request made in writing by any citizen of the State to deliver as herein required such public records to the person authorized to receive them shall be guilty of a Class 1 misdemeanor.

Amended by Laws 1943, c. 237; Laws 1973, c. 476, § 48; Laws 1975, c. 696, § 1; Laws 1993, c. 539, § 967, eff. Oct. 1, 1994; Laws 1994 (1st Ex. Sess.), c. 24, § 14(c), eff. March 26, 1994.

Historical and Statutory Notes

Laws 1993, c. 539, § 1359, provides:

"This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions." [Amended by Laws 1994, Ex. Sess., c. 24, § 14(c), eff. March 26, 1994.]

Laws 1993, c. 539, was ratified July 24, 1993.

Cross References

Misdemeanor sentencing and punishment, see § 15A–1340.13 et seq.

Administrative Code References

Commerce department, employment and training, requests for information by the public, see 4 NCAC 20A.0004.

Cultural resources department, division of archives and history, state records center, certification by agency with custody, see 7 NCAC 4M.0508.

§ 132–5. Demanding custody

Whoever is entitled to the custody of public records shall demand them from any person having illegal possession of them, who shall forthwith deliver the same to him. If the person who unlawfully possesses public records shall without just cause refuse or neglect for 10 days after a request made in writing by any citizen of the State to deliver such records to their lawful custodian, he shall be guilty of a Class 1 misdemeanor.

Amended by Laws 1975, c. 696, § 2; Laws 1993, c. 539, § 968, eff. Oct. 1, 1994; Laws 1994 (1st Ex. Sess.), c. 24, § 14(c), eff. March 26, 1994.

Historical and Statutory Notes

Laws 1993, c. 539, § 1359, provides:

"This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions." [Amended by Laws 1994, Ex. Sess., c. 24, § 14(c), eff. March 26, 1994.]

Laws 1993, c. 539, was ratified July 24, 1993.

Cross References

Mental health clients; right to confidentiality, see § 122C–52.

Misdemeanor sentencing and punishment, see § 15A–1340.13 et seq.

Administrative Code References

Commerce department, employment and training, requests for information by the public, see 4 NCAC 20A.0004.

§ 132–5.1. Regaining custody; civil remedies

(a) The Secretary of the Department of Cultural Resources or his designated representative or any public official who is the custodian of public records which are in the possession of a person or agency not authorized by the custodian or by law to

possess such public records may petition the superior court in the county in which the person holding such records resides or in which the materials in issue, or any part thereof, are located for the return of such public records. The court may order such public records to be delivered to the petitioner upon finding that the materials in issue are public records and that such public records are in the possession of a person not authorized by the custodian of the public records or by law to possess such public records. If the order of delivery does not receive compliance, the petitioner may request that the court enforce such order through its contempt power and procedures.

(b) At any time after the filing of the petition set out in subsection (a) or contemporaneous with such filing, the public official seeking the return of the public records may by ex parte petition request the judge or the court in which the action was filed to grant one of the following provisional remedies:

(1) An order directed at the sheriff commanding him to seize the materials which are the subject of the action and deliver the same to the court under the circumstances hereinafter set forth; or

(2) A preliminary injunction preventing the sale, removal, disposal or destruction of or damage to such public records pending a final judgment by the court.

(c) The judge or court aforesaid shall issue an order of seizure or grant a preliminary injunction upon receipt of an affidavit from the petitioner which alleges that the materials at issue are public records and that unless one of said provisional remedies is granted, there is a danger that such materials shall be sold, secreted, removed out of the State or otherwise disposed of so as not to be forthcoming to answer the final judgment of the court respecting the same; or that such property may be destroyed or materially damaged or injured if not seized or if injunctive relief is not granted.

(d) The aforementioned order of seizure or preliminary injunction shall issue without notice to the respondent and without the posting of any bond or other security by the petitioner.

Added by Laws 1975, c. 787, § 2.

Administrative Code References

Commerce department, employment and training, requests for information by the public, see 4 NCAC 20A.0004.

Notes of Decisions

In general 1
Defenses 4
Ownership 2
Persons without authority 3

1. In general

In proceeding by State to be declared owner and to regain possession of two bills of indictment which had been issued by North Carolina colonial court in 1767 and 1768 and which had been purchased by defendant for value and in good faith on open market, State overcame presumption that public officials had properly performed their duty in preserving indictments in the public archive. State v. West, 1976, 229 S.E.2d 826, 31 N.C.App. 431, affirmed 235 S.E.2d 150, 293 N.C. 18. Evidence ⚷ 87

In action by State to be declared owner and to regain possession of two bills of indictment which had been issued in 1767 and 1768 by North Carolina colonial court and which defendant had purchased for value and in good faith on the open market, State proved that indictments were in public archive and were stolen or were otherwise improperly removed. State v. West, 1976, 229 S.E.2d 826, 31 N.C.App. 431, affirmed 235 S.E.2d 150, 293 N.C. 18. Indictment And Information ⚷ 11.1

Bills of indictment issued by North Carolina colonial court in 1767 and 1768 were required by law to be permanently retained in public archive. State v. West, 1976, 229 S.E.2d 826, 31 N.C.App. 431, affirmed 235 S.E.2d 150, 293 N.C. 18. Indictment And Information ⚷ 11.1

Property owned by government is held in trust for people and intentional or negligent acts of agents of government should not serve to deny people of benefits and enjoyment of their property. State v. West, 1976, 229 S.E.2d 826, 31 N.C.App. 431, affirmed 235 S.E.2d 150, 293 N.C. 18. States ⚷ 87

2. Ownership

Treaty of Paris simply recognized established fact of history that State was, by reason of successful revolution, a free and independent State, and no longer British colony; the accomplished fact, not formal recognition of it, transferred sovereignty in state from the King to the State. State v. West, 1977, 235 S.E.2d 150, 293 N.C. 18. Treaties ⚷ 8

Bills of indictment bore upon their face notice to all world that they were part of court records of Colony and, therefore, property of State. State v. West, 1977, 235 S.E.2d 150, 293 N.C. 18. Records ⚷ 13

Turmoil and confusion incident to war of revolution did not terminate title of sovereign to public documents or defeat his right to possession thereof, or suspend sovereignty; at some time between creation of right of King George III to public documents and the signing of the Treaty of Paris, succession occurred and properties of the King, including documents, whether in or out of possession of his custodian, passed automatically to the State. State v. West, 1977, 235 S.E.2d 150, 293 N.C. 18. Records ⚷ 13

Change of sovereignty transfers but does not alter right of former sovereign to his official, as distinguished from his personal property. State v. West, 1977, 235 S.E.2d 150, 293 N.C. 18. International Law ⚷ 9

Under treaty of Paris, all rights or interest which British Crown held in archives, records, deeds and papers of government of North Carolina was extinguished. Definitive Treaty with Great Britain, art. 7, 8 Stat. 83. State v. West, 1976, 229 S.E.2d 826, 31 N.C.App. 431, affirmed 235 S.E.2d 150, 293 N.C. 18. Treaties ⚷ 8

Bills of indictment which were issued in 1767 and 1768 and docketed in Salisbury District Superior Court became public records and property of the State, they were required to be permanently retained in custody of court, they could be removed only by authority of act of legislature and in manner and for purpose designated by law and the ownership in the State could not be forfeited through oversight, carelessness, or intentional conduct of agents of State. State v. West, 1976, 229 S.E.2d 826, 31 N.C.App. 431, affirmed 235 S.E.2d 150, 293 N.C. 18. Indictment And Information ⚷ 11.1

After defeat of Great Britain in the Revolutionary War, State of North Carolina succeeded to public records of North Carolina previously owned by the Crown. State v. West, 1976, 229 S.E.2d 826, 31 N.C.App. 431, affirmed 235 S.E.2d 150, 293 N.C. 18. International Law ⚷ 9

As matter of sovereignty law, all archives, records and papers which were in North Carolina and which belonged to British Crown remained the property of the Crown until the State of North Carolina became the sovereign. State v. West, 1976, 229 S.E.2d 826, 31 N.C.App. 431, affirmed 235 S.E.2d 150, 293 N.C. 18. International Law ⚷ 9

Sovereignty is never held in suspense and survives changes in government and forms of government. State v. West, 1976, 229 S.E.2d 826, 31 N.C.App. 431, affirmed 235 S.E.2d 150, 293 N.C. 18. International Law ⚷ 9

Title to government property may pass only in manner prescribed by duly constituted legislative body and title may not be forfeited through oversight, carelessness, negligence or intentional conduct of any of agents of government. State v. West, 1976, 229 S.E.2d 826, 31 N.C.App. 431, affirmed 235 S.E.2d 150, 293 N.C. 18. States ⚷ 89

3. Persons without authority

Bona fides of person taking public documents into his possession, or of subsequent purchaser for value from him, whether on open market or otherwise, did not confer good title upon taker or subsequent purchaser but rather the purchaser, himself, regardless of his having acted in good faith, became converter liable to true owner. State v. West, 1977, 235 S.E.2d 150, 293 N.C. 18. Trover And Conversion ⚷ 25

No court had authority to direct reimbursement of defendant for expense incurred in acquiring bills of indictment at auction sale in New York City conducted by gallery, or in maintaining his possession thereof in good faith, preserving them from destruction or loss; if claim was meritorious, legislature alone could authorize use of state funds for such purpose. State v. West, 1977, 235 S.E.2d 150, 293 N.C. 18. States ⚷ 191.1

Even if indictments issued in 1767 and 1768 by North Carolina colonial court had been mislaid or lost, the finder would derive no title against true owner who might sue for their recovery. State v. West, 1976, 229 S.E.2d 826, 31 N.C.App. 431, affirmed 235 S.E.2d 150, 293 N.C. 18. Abandoned And Lost Property ⚷ 11

State was entitled to possession of bills of indictment issued in 1767 and 1768 by Salisbury District Superior Court, even though they had been purchased by individual citizen in good faith for value on the open market. State v. West, 1976, 229 S.E.2d 826, 31 N.C.App. 431, affirmed 235 S.E.2d 150, 293 N.C. 18. Indictment And Information ⚷ 11.1

4. Defenses

Absent showing that State, or sovereign under whom it claimed, intentionally abandoned bills of indictment or authorized transfer of possession by custodian whose official duty it was to keep documents in his possession, State had right to possession of the documents. State v. West, 1977, 235 S.E.2d 150, 293 N.C. 18. Records ⚷ 13

Three-year statute of limitations did not apply to action by State to recover possession of public documents, notwithstanding statute providing that limitations prescribed by law apply to civil actions brought in the name of the State, or for its benefit, in the same manner as to actions by or for the benefit of private parties. State v. West, 1977, 235 S.E.2d 150, 293 N.C. 18. Limitation Of Actions ⚷ 11(1)

Whether there should be statute of limitations applicable to suits by State was matter for legislature, not courts. State v. West, 1977, 235 S.E.2d 150, 293 N.C. 18. Constitutional Law ⚷ 2503(4)

For abandonment, it is owner who must have intent to terminate his title, and it is not enough that custodian in whose hands owner entrusted it intentionally discarded it. State v. West, 1977, 235 S.E.2d 150, 293 N.C. 18. Abandoned And Lost Property ⚷ 2

Owner of articles of personal property may terminate his ownership by abandoning it, in which event title passes to first person who thereafter takes possession, but there must be intent by owner to relinquish the article permanently. State v. West, 1977, 235 S.E.2d 150, 293 N.C. 18. Abandoned And Lost Property ⚷ 2; Abandoned And Lost Property ⚷ 5

That clerks of courts in the State, in order to provide filing and storage space for new documents had removed from their offices and discarded old records did not establish abandonment of such property by sovereign so as to confer upon first subsequent taker thereof a title good against the sovereign. State v. West, 1977, 235 S.E.2d 150, 293 N.C. 18. Records ⚷ 13

§ 132–6. Inspection and examination of records

(a) Every custodian of public records shall permit any record in the custodian's custody to be inspected and examined at reasonable times and under reasonable supervision by any person, and shall, as promptly as possible, furnish copies thereof upon payment of any fees as may be prescribed by law. As used herein, ''custodian'' does not mean an agency that holds the public records of other agencies solely for purposes of storage or safekeeping or solely to provide data processing.

(b) No person requesting to inspect and examine public records, or to obtain copies thereof, shall be required to disclose the purpose or motive for the request.

(c) No request to inspect, examine, or obtain copies of public records shall be denied on the grounds that confidential information is commingled with the requested nonconfidential information. If it is necessary to separate confidential from nonconfidential information in order to permit the inspection, examination, or copying of the public records, the public agency shall bear the cost of such separation on the following schedule:

State agencies after June 30, 1996;

Municipalities with populations of 10,000 or more, counties with populations of 25,000 or more, as determined by the 1990 U.S. Census, and public hospitals in those counties, after June 30, 1997;

Municipalities with populations of less than 10,000, counties with populations of less than 25,000, as determined by the 1990 U.S. Census, and public hospitals in those counties, after June 30, 1998;

Political subdivisions and their agencies that are not otherwise covered by this schedule, after June 30, 1998.

(d) Notwithstanding the provisions of subsections (a) and (b) of this section, public records relating to the proposed expansion or location of specific business or industrial projects may be withheld so long as their inspection, examination or copying would frustrate the purpose for which such public records were created; provided, however, that nothing herein shall be construed to permit the withholding of public records relating to general economic development policies or activities. Once the State, a local government, or the specific business has announced a commitment by the business to expand or locate a specific project in this State or a final decision not to do so and the business has communicated that commitment or decision to the State or local government agency involved with the project, the provisions of this subsection allowing public records to be withheld by the agency no longer apply. Once the provisions of this subsection no longer apply, the agency

shall disclose as soon as practicable, and within 25 business days, public records requested for the announced project that are not otherwise made confidential by law. An announcement that a business or industrial project has committed to expand or locate in the State shall not require disclosure of local government records relating to the project if the business has not selected a specific location within the State for the project. Once a specific location for the project has been determined, local government records must be disclosed, upon request, in accordance with the provisions of this section. For purposes of this section, ''local government records'' include records maintained by the State that relate to a local government's efforts to attract the project.

(e) The application of this Chapter is subject to the provisions of Article 1 of Chapter 121 of the General Statutes, the North Carolina Archives and History Act.

(f) Notwithstanding the provisions of subsection (a) of this section, the inspection or copying of any public record which, because of its age or condition could be damaged during inspection or copying, may be made subject to reasonable restrictions intended to preserve the particular record.

Amended by Laws 1987, c. 835, § 1; Laws 1995, c. 388, § 2, eff. Oct. 1, 1995; S.L. 2005–429, § 1.1, eff. Sept. 22, 2005.

Historical and Statutory Notes

2005 Legislation

S.L. 2005–429, § 1, eff. Sept. 22, 2005, rewrote subsec. (d), which had read:

''(d) Notwithstanding the provisions of subsections (a) and (b) of this section, public records relating to the proposed expansion or location of specific business or industrial projects in the State may be withheld so long as their inspection, examination or copying would frustrate the purpose for which such public records were created; provided, however, that nothing herein shall be construed to permit the withholding of public records relating to general economic development policies or activities.''

S.L. 2005–429, § 4, provides:

''Sections 2.2 through 2.12 of this act become effective January 1, 2007. The remainder of this act is effective when it becomes law.''

Local Modification

City of Durham: Laws 1993, c. 227, § 9.

New Hanover county: Laws 1981, c. 960.

Orange County: Laws 1993, c. 358, § 14; Laws 1995, c. 339, § 2.

City of Asheville: S.L. 1999–206, § 9.

City of Gastonia: Laws 1985 (Reg. Sess. 1986), c. 902, § 8; Laws 1991, c. 557, § 1.

Cross References

Area mental health agencies; privacy of personnel records, see § 122C–158.
Commissioner to share information with department of labor, see § 58–2–230.
Community colleges; personnel files not subject to inspection, see § 115D–27.
Criminal investigations; intelligence information records, see § 132–1.4.
Investment advisers; administrative files and opinions, see § 78C–31.
Local boards of education; personnel files not subject to inspection, see § 115C–319.
Occupational safety and health; inspections, see § 95–136.
Precious metals businesses; records to be kept, see § 66–169.

Radiation protection; confidential information protected, see § 104E–29.
Securities; administrative files and opinions, see § 78A–50.
Solid waste management; confidential information protected, see § 130A–304.
State employees; personnel files not subject to inspection under § 132–6, see § 126–22.
Student records; maintenance; contents; confidentiality, see § 115C–402.
Uranium exploration; confidentiality of logs, surveys, and reports, see § 74–88.
Wages and hours; records, see § 95–25.20.
''Whistleblowing''; complaint; investigation; conciliation, see § 95–242.

Administrative Code References

Alcoholic beverage control commission, inspection and copies of ABC laws, see 4 NCAC 2R.0303.
Board of examiners in optometry, public access to the rule–making record, see 21 NCAC 42K.0603.
Board of examiners in optometry, record of declaratory ruling, see 21 NCAC 42K.0704.
Commerce department, employment and training, requests for information by the public, see 4 NCAC 20A.0004.
Community colleges department, fees, see 23 NCAC 1B.0007.
Environment, health, and natural resources department, oil refining facility permits, fees, see 15A NCAC 1E.0012.
Environment, health, and natural resources department, procedures for permits, approvals, local pretreatment programs, public access to information, see 15A NCAC 2H.0913.
Environment, health, and natural resources department, procedures for permits, approvals, point source discharges to the surface waters, public access, see 15A NCAC 2H.0115.
Environment, health, and natural resources department, public access to public records, see 15A NCAC 1B.0402.
Human resources department, office for aging, division hearings, definitions, see 10A NCAC 5E.0102.
Inactive hazardous substance or waste disposal sites, voluntary remedial action oversight by registered environmental consultants, see 15A NCAC 13C.0302.
Insurance department, financial information public records, see 11 NCAC 6B.0303.
Labor department, apprenticeship and training division, public access to records, see 13 NCAC 14.0108.
Secretary of State, records, inspection, see 18 NCAC 1.0601.
Transportation department, inspection of general rules, policies, etc., see 19A NCAC 1B.0501 et seq.
Veterinary medical board, fees, see 21 NCAC 66.0108.

Notes of Decisions

In general 1
Disclosure by custodian 6
Injunctions 4
Invasion of privacy 5
Persons entitled to disclosure 2
Time of disclosure 3

1. In general

The Public Records Act permits public access to all public records in an agency's possession unless either the agency or the record is specifically exempted from the statute's mandate. McCormick v. Hanson Aggregates Southeast, Inc., 2004, 164 N.C.App. 459, 596 S.E.2d 431, stay allowed 358 N.C. 544, 598 S.E.2d 563, temporary stay allowed 359 N.C. 69, 603 S.E.2d 131, writ denied, review denied, appeal dismissed 359 N.C. 69, 603 S.E.2d 131. Records ⚷ 54

Statute providing for discovery in criminal actions, as opposed to statute providing that person may examine public records, governed action brought by newspaper seeking to obtain copies of recorded communications that police department gathered in course of criminal investigation and which were part of the state's file in a pending criminal action and since there was no provision in this statute for discovery by anyone other than the state or the defendant, newspaper was not entitled to examine and obtain copies of these recorded communications. Piedmont Pub. Co., Inc. v. City of Winston-Salem, 1993,

334 N.C. 595, 434 S.E.2d 176. Criminal Law ⚷ 627.6(5)

Disclosure of applications for position of county manager, which were governed by statute imposing conditions on disclosure of county employee personnel files, rather than by Public Records Act, was erroneous; there was no provision in the personnel record section for access to files of applicants seeking positions with counties. Elkin Tribune, Inc. v. Yadkin County Bd. of County Com'rs, 1992, 417 S.E.2d 465, 331 N.C. 735. Records ⚷ 58

State Bureau of Investigation (SBI) investigative reports became ''public records'' subject to Public Records Act when SBI submitted them to and they became part of records of commission appointed by president of University of North Carolina system of higher education to investigate and report on alleged improprieties relating to university basketball team. News and Observer Pub. Co., Inc. v. Poole, 1992, 412 S.E.2d 7, 330 N.C. 465. Records ⚷ 60

When State Bureau of Investigation (SBI) investigative reports become part of records of public agency subject to Public Records Act, they are protected only to extent that agency's records are protected. News and Observer Pub. Co., Inc. v. Poole, 1992, 412 S.E.2d 7, 330 N.C. 465. Records ⚷ 60

Contracts and documents relating to an institution's general policies, standards, practices and procedures, and descriptions of an employee's duties, do not contain confidential information that exempts the contracts and documents from inspection and examination under the Public records Law, and such contracts and documents are available for inspection and copying upon request. Op.Atty.Gen., Speas, Feb. 6, 2003.

North Carolina law does not require a governmental entity to provide the public a means to monitor its 800 megahertz radio communications. Op.Atty. Gen., Coman, Jan. 22, 2002.

Test scores and applications for licensure and related materials received by the North Carolina Board for Licensing of Geologists are not subject to public inspection and examination under G.S. § 132–6. 60 Op.Atty.Gen. 76, Gardner, June 18, 1991.

A request from a radio station and newspaper for copies of the travel expense records of the former superintendent of the school system is a request for public records that must be disclosed pursuant to G.S. 132–6 and are not part of the personnel file of the former superintendent protected from disclosure by G.S. 115C–319–321. Op. Atty.Gen., Bahner, April 5, 1993.

The public records law contains no disclosure exemption for documents in government agency staff investigation files prepared as part of enforcement efforts, but in advance of civil litigation; however, it may be possible to argue as a matter of public policy that investigatory materials need not be released until the investigation is completed. Op.Atty. Gen. Crane, Aug. 29, 1994.

Once a conversion application is received by Savings Institutions Division the public information portion of the application is subject to the disclosure requirements of Chapter 132, regardless of whether SID has taken action on the application or whether the applicant has asked SID to discontinue its consideration of the application. Op.Atty.Gen. Worth, Aug. 12, 1994.

Subsequent publication or sale of computer access to any part or all of the General Statutes database obtained pursuant to G.S. 132–6 is not subject to restriction or limitation and a third party's intended use of the information is irrelevant to whether copies of the database may be provided in the first instance. Op.Atty.Gen., Newkirk, March 16, 1994.

G.S. 132–1 et seq. does not require that persons requesting public records disclose the purpose or motive for their requests; and, it may not be required that the persons requesting access to the records to divulge the use to which the records will be put. Op.Atty.Gen., Newkirk, March 16, 1994.

2. Persons entitled to disclosure

As respects statute providing that any person has right to access to public records, corporation, a publisher of news events, was ''person'' entitled to access. Advance Publications, Inc. v. City of Elizabeth City, 1981, 281 S.E.2d 69, 53 N.C.App. 504. Records ⚷ 52

3. Time of disclosure

Initial or incomplete drafts of reports might not be at the stage where they are ''records'' subject to disclosure requirements; however, the closer a report is to completion, the more likely it would be considered to be a public record. Op. Atty.Gen. Crane, Aug. 29, 1994.

4. Injunctions

Fact that Public Records Act provides exemption from disclosure for specified documents supports jurisdiction of courts to issue injunctions to prevent disclosure of documents in order to offer protection from agency error or from agency's abuse of discretion, despite strong policy in favor of disclosure. North Carolina Elec. Membership Corp. v. North Carolina Dept. of Economic and Community Development, 1993, 108 N.C.App. 711, 425 S.E.2d 440. Injunction ⚷ 74

5. Invasion of privacy

Ex-wife, whose divorce was the subject of newspaper article, did not have her privacy invaded by intrusion, where newspaper article was based on public records, and there was no evidence of physical or sensory intrusion into ex-wife's confidential personal records. Broughton v. McClatchy Newspapers, Inc., 2003, 161 N.C.App. 20, 588 S.E.2d 20. Torts ⚷ 343

There can be no invasion of privacy claim, on intrusion theory, based upon the use of public records as to which plaintiff had no expectation of privacy. Broughton v. McClatchy Newspapers, Inc., 2003, 161 N.C.App. 20, 588 S.E.2d 20. Torts ⚷ 343

6. Disclosure by custodian

Absent town council's waiver of privilege and authorization to release the documents, town clerk was not authorized to declare documents falling within an exception to the Public Records Act to be public records subject to disclosure upon public records request. Womack Newspapers, Inc. v. Town of Kitty Hawk ex rel. Kitty Hawk Town Council, 2007, 181 N.C.App. 1, 639 S.E.2d 96, review withdrawn 361 N.C. 370, 644 S.E.2d 564. Records ⚷ 54

§ 132–6.1. Electronic data-processing records

(a) After June 30, 1996, no public agency shall purchase, lease, create, or otherwise acquire any electronic data-processing system for the storage, manipulation, or retrieval of public records unless it first determines that the system will not impair or impede the agency's ability to permit the public inspection and examination, and to provide electronic copies of such records. Nothing in this subsection shall be construed to require the retention by the public agency of obsolete hardware or software.

(b) Every public agency shall create an index of computer databases compiled or created by a public agency on the following schedule:

State agencies by July 1, 1996;

Municipalities with populations of 10,000 or more, counties with populations of 25,000 or more, as determined by the 1990 U.S. Census, and public hospitals in those counties, by July 1, 1997;

Municipalities with populations of less than 10,000, counties with populations of less than 25,000, as determined by the 1990 U.S. Census, and public hospitals in those counties, by July 1, 1998;

Political subdivisions and their agencies that are not otherwise covered by this schedule, after June 30, 1998.

The index shall be a public record and shall include, at a minimum, the following information with respect to each database listed therein: a list of the data fields; a description of the format or record layout; information as to the frequency with which the

database is updated; a list of any data fields to which public access is restricted; a description of each form in which the database can be copied or reproduced using the agency's computer facilities; and a schedule of fees for the production of copies in each available form. Electronic databases compiled or created prior to the date by which the index must be created in accordance with this subsection may be indexed at the public agency's option. The form, content, language, and guidelines for the index and the databases to be indexed shall be developed by the Office of Archives and History in consultation with officials at other public agencies.

(c) Nothing in this section shall require a public agency to create a computer database that the public agency has not otherwise created or is not otherwise required to be created. Nothing in this section requires a public agency to disclose security features of its electronic data processing systems, information technology systems, telecommunications networks, or electronic security systems, including hardware or software security, passwords, or security standards, procedures, processes, configurations, software, and codes.

(d) The following definitions apply in this section:

(1) Computer database.—A structured collection of data or documents residing in a database management program or spreadsheet software.

(2) Computer hardware.—Any tangible machine or device utilized for the electronic storage, manipulation, or retrieval of data.

(3) Computer program.—A series of instructions or statements that permit the storage, manipulation, and retrieval of data within an electronic data-processing system, together with any associated documentation. The term does not include the original data, or any analysis, compilation, or manipulated form of the original data produced by the use of the program or software.

(4) Computer software.—Any set or combination of computer programs. The term does not include the original data, or any analysis, compilation, or manipulated form of the original data produced by the use of the program or software.

(5) Electronic data-processing system.—Computer hardware, computer software, or computer programs or any combination thereof, regardless of kind or origin.

Added by Laws 1995, c. 388, § 3, eff. Oct. 1, 1995. Amended by S.L. 2000–71, § 1, eff. June 30, 2000; S.L. 2002–159, § 35(i), eff. Oct. 11, 2002.

Historical and Statutory Notes

2000 Legislation

S.L. 2000–71, § 1, eff. June 30, 2000, in subsec. (c), substituted ''security features of its electronic data processing systems, information technology systems, telecommunications networks, or electronic security systems, including hardware or software security, passwords, or security standards, procedures, processes, configurations, software, and codes'' for ''its software security, including passwords''.

2002 Legislation

S.L. 2002–159, § 35(i), eff. Oct. 11, 2002, in the second paragraph of subsec. (b), in the third sentence, substituted ''Office'' for ''Division''.

Administrative Code References

Commerce department, employment and training, requests for information by the public, see 4 NCAC 20A.0004.

Notes of Decisions

In general 1

1. In general

The addition of data after July 1, 1996 to a state agency's electronic database which was compiled or created prior to that date does not have the effect of eliminating the option not to create an index for the database under the provisions of N.C.G.S. § 132–6.1(b). Op.Atty. Gen., Buford, Feb. 26, 1996.

In light of current law, the General Assembly did not intend to mandate disclosure of State-owned computer software pursuant to G.S. § 132–1 et seq. Op.Atty.Gen., Faulkner, May, 28, 1998.

Software is not a ''record'', and, additionally, its disclosure may cause a breach in software security inconsistent with G.S. 132–6.1(c). Op.Atty.Gen., Faulkner, May, 28, 1998.

§ 132–6.2. Provisions for copies of public records; fees

(a) Persons requesting copies of public records may elect to obtain them in any and all media in which the public agency is capable of providing them. No request for copies of public records in a particular medium shall be denied on the grounds that the custodian has made or prefers to make the public records available in another medium. The public agency may assess different fees for different media as prescribed by law.

(b) Persons requesting copies of public records may request that the copies be certified or uncertified. The fees for certifying copies of public records shall be as provided by law. Except as otherwise provided by law, no public agency shall charge a fee for an uncertified copy of a public record that exceeds the actual cost to the public agency of making the copy. For purposes of this subsection, ''actual cost'' is limited to direct, chargeable costs related to the reproduction of a public record as determined by generally accepted accounting principles and does not include costs that would have been incurred by the public agency if a request to reproduce a public record had not been made. Notwithstanding the provisions of this subsection, if the request is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency involved, or if producing the record in the

medium requested results in a greater use of information technology resources than that established by the agency for reproduction of the volume of information requested, then the agency may charge, in addition to the actual cost of duplication, a special service charge, which shall be reasonable and shall be based on the actual cost incurred for such extensive use of information technology resources or the labor costs of the personnel providing the services, or for a greater use of information technology resources that is actually incurred by the agency or attributable to the agency. If anyone requesting public information from any public agency is charged a fee that the requester believes to be unfair or unreasonable, the requester may ask the State Chief Information Officer or his designee to mediate the dispute.

(c) Persons requesting copies of computer databases may be required to make or submit such requests in writing. Custodians of public records shall respond to all such requests as promptly as possible. If the request is granted, the copies shall be provided as soon as reasonably possible. If the request is denied, the denial shall be accompanied by an explanation of the basis for the denial. If asked to do so, the person denying the request shall, as promptly as possible, reduce the explanation for the denial to writing.

(d) Nothing in this section shall be construed to require a public agency to respond to requests for copies of public records outside of its usual business hours.

(e) Nothing in this section shall be construed to require a public agency to respond to a request for a copy of a public record by creating or compiling a record that does not exist. If a public agency, as a service to the requester, voluntarily elects to create or compile a record, it may negotiate a reasonable charge for the service with the requester. Nothing in this section shall be construed to require a public agency to put into electronic medium a record that is not kept in electronic medium.

Added by Laws 1995, c. 388, § 3, eff. Oct. 1, 1995. Amended by S.L. 2004–129, § 38, eff. July 1, 2004.

Administrative Code References

Commerce department, employment and training, requests for information by the public, see 4 NCAC 20A.0004.

Notes of Decisions

Construction and application 1

1. Construction and application

County government is not required to record communications transmitted over 800 megahertz radios. Op.Atty. Gen., Coman, Jan. 22, 2002.

§ 132–7. Keeping records in safe places; copying or repairing; certified copies

Insofar as possible, custodians of public records shall keep them in fireproof safes, vaults, or rooms fitted with noncombustible materials and in such arrangement as to be easily accessible for convenient use. All public records should be kept in the buildings in which they are ordinarily used. Record books should be copied or repaired, renovated or rebound if worn, mutilated, damaged or difficult to read. Whenever any State, county, or municipal records are in need of repair, restoration, or rebinding, the head of such State agency, department, board, or commission, the board of county commissioners of such county, or the governing body of such municipality may authorize that the records in need of repair, restoration, or rebinding be removed from the building or office in which such records are ordinarily kept, for the length of time required to repair, restore, or rebind them. Any public official who causes a record book to be copied shall attest it and shall certify on oath that it is an accurate copy of the original book. The copy shall then have the force of the original.

Amended by Laws 1951, c. 294.

Administrative Code References

Commerce department, employment and training, requests for information by the public, see 4 NCAC 20A.0004.

§ 132–8. Assistance by and to Department of Cultural Resources

The Department of Cultural Resources shall have the right to examine into the condition of public records and shall give advice and assistance to public officials in the solution of their problems of preserving, filing and making available the public records in their custody. When requested by the Department of Cultural Resources, public officials shall assist the Department in the preparation of an inclusive inventory of records in their custody, to which shall be attached a schedule, approved by the head of the governmental unit or agency having custody of the records and the Secretary of Cultural Resources, establishing a time period for the retention or disposal of each series of records. Upon the completion of the inventory and schedule, the Department of Cultural Resources shall (subject to the availability of necessary space, staff, and other facilities for such purposes) make available space in its Records Center for the filing of semicurrent records so scheduled and in its archives for noncurrent records of permanent value, and shall render such other assistance as needed, including the microfilming of records so scheduled.

Amended by Laws 1943, c. 237; Laws 1959, c. 68, § 2; Laws 1973, c. 476, § 48.

Administrative Code References

Commerce department, employment and training, requests for information by the public, see 4 NCAC 20A.0004.

§ 132–8.1. Records management program administered by Department of Cultural Resources; establishment of standards, procedures, etc.; surveys

A records management program for the application of efficient and economical management methods to the creation, utilization, maintenance, retention, preservation, and disposal of official records shall be administered by the Department of Cultural Resources. It shall be the duty of that Department, in cooperation with and with the approval of the Department of Administration, to establish standards, procedures, and techniques for effective management of public records, to make continuing surveys of paper work operations, and to recommend improvements in current records management practices including the use of space, equipment, and supplies employed in creating, maintaining, and servicing records. It shall be the duty of the head of each State agency and the governing body of each county, municipality and other subdivision of government to cooperate with the Department of Cultural Resources in conducting surveys and to establish and maintain an active, continuing program for the economical and efficient management of the records of said agency, county, municipality, or other subdivision of government.

Added by Laws 1961, c. 1041. Amended by Laws 1973, c. 476, § 48.

Cross References

Land records management program, see § 147–54.3.

Administrative Code References

Archives and records section, state records center, see 7 NCAC 4M.0510 et seq.
Commerce department, employment and training, requests for information by the public, see 4 NCAC 20A.0004.

§ 132–8.2. Selection and preservation of records considered essential; making or designation of preservation duplicates; force and effect of duplicates or copies thereof

In cooperation with the head of each State agency and the governing body of each county, municipality, and other subdivision of government, the Department of Cultural Resources shall establish and maintain a program for the selection and preservation of public records considered essential to the operation of government and to the protection of the rights and interests of persons, and, within the limitations of funds available for the purpose, shall make or cause to be made preservation duplicates or designate as preservation duplicates existing copies of such essential public records. Preservation duplicates shall be durable,

accurate, complete and clear, and such duplicates made by a photographic, photostatic, microfilm, micro card, miniature photographic, or other process which accurately reproduces and forms a durable medium for so reproducing the original shall have the same force and effect for all purposes as the original record whether the original record is in existence or not. A transcript, exemplification, or certified copy of such preservation duplicate shall be deemed for all purposes to be a transcript, exemplification, or certified copy of the original record. Such preservation duplicates shall be preserved in the place and manner of safekeeping prescribed by the Department of Cultural Resources.

Added by Laws 1961, c. 1041. Amended by Laws 1973, c. 476, § 48.

Administrative Code References

Commerce department, employment and training, requests for information by the public, see 4 NCAC 20A.0004.

Cultural resources department, archives and records section, state records center, see 7 NCAC 4M.0510 et seq.

§ 132–9. Access to records

(a) Any person who is denied access to public records for purposes of inspection and examination, or who is denied copies of public records, may apply to the appropriate division of the General Court of Justice for an order compelling disclosure or copying, and the court shall have jurisdiction to issue such orders. Actions brought pursuant to this section shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

(b) In an action to compel disclosure of public records which have been withheld pursuant to the provisions of G.S. 132–6 concerning public records relating to the proposed expansion or location of particular businesses and industrial projects, the burden shall be on the custodian withholding the records to show that disclosure would frustrate the purpose of attracting that particular business or industrial project.

(c) In any action brought pursuant to this section in which a party successfully compels the disclosure of public records, the court shall allow the prevailing party to recover its reasonable attorneys' fees if attributed to those public records, unless the court finds the agency acted with substantial justification in denying access to the public records or the court finds circumstances that would make the award of attorneys' fees unjust.

Any attorneys' fees assessed against a public agency under this section shall be charged against the operating expenses of the agency; provided, however, that the court may order that all or any portion of any attorneys' fees so assessed be paid personally by any public employee or public official found by the court to have knowingly or intentionally committed, caused, permitted, sub-

orned, or participated in a violation of this Article. No order against any public employee or public official shall issue in any case where the public employee or public official seeks the advice of an attorney and such advice is followed.

(d) If the court determines that an action brought pursuant to this section was filed in bad faith or was frivolous, the court shall assess a reasonable attorney's fee against the person or persons instituting the action and award it to the public agency as part of the costs.

Amended by Laws 1975, c. 787, § 3; Laws 1987, c. 835, § 2; Laws 1995, c. 388, § 4, eff. Oct. 1, 1995; S.L. 2005–332, § 2, eff. Oct. 1, 2005.

Historical and Statutory Notes

2005 Legislation

S.L. 2005–332, § 2, eff. Oct. 1, 2005, amended subsec. (d) by substituting ''shall'' for ''may, in its discretion,'' after ''the court'' and rewrote subsec. (c), which prior thereto read:

''(c) In any action brought pursuant to this section in which a party successfully compels the disclosure of public records, the court may, in its discretion, allow the prevailing party to recover reasonable attorneys' fees if:

''(1) The court finds that the agency acted without substantial justification in denying access to the public records; and

''(2) The court finds that there are no special circumstances that would make the award of attorneys' fees unjust.

''Any attorneys' fees assessed against a public agency under this section shall be charged against the operating expenses of the agency; provided, however, that the court may order that all or any portion of any attorneys' fees so assessed be paid personally by any public employee or public official found by the court to have knowingly or intentionally committed, caused, permitted, suborned, or participated in a violation of this Article. No order against any public employee or public official shall issue in any case where the public employee or public official seeks the advice of an attorney and such advice is followed.''

Local Modification

City of Durham: Laws 1993, c. 227, § 9.

New Hanover County: Laws 1981, c. 960.

Orange County: Laws 1993, c. 358, § 14; Laws 1995, c. 339, § 2.

City of Asheville: S.L. 1999–206, § 9.

City of Gastonia: Laws 1985 (Reg. Sess. 1986), c. 902, § 8; Laws 1991, c. 557, § 1.

Laws 1995, c. 509, § 135.2(*l*), provides:

''As G.S. 132–10 enacted by Section 5 of Chapter 388 of the 1995 Session Laws covers the same subject matter, effective October 1, 1995, Chapter 285 of the 1991 Session Laws and Chapter 82 of the 1993 Session Laws are repealed.''

Laws 1995, c. 509, was ratified July 29, 1995.

Cross References

Public records, trial preparation materials, see § 132–1.9.

Administrative Code References

Commerce department, employment and training, requests for information by the public, see 4 NCAC 20A.0004.

Environment, health, and natural resources department, public access to public records, see 15A NCAC 1B.0402.

Notes of Decisions

In general 1
Attorneys' fees 4
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1. In general

City attorney's office could not institute declaratory judgment action challenging landowner's public record request; Public Records Act only authorized requesting party to initiate judicial action, not government agency. McCormick v. Hanson Aggregates Southeast, Inc., 2004, 164 N.C.App. 459, 596 S.E.2d 431, stay allowed 358 N.C. 544, 598 S.E.2d 563, temporary stay allowed 359 N.C. 69, 603 S.E.2d 131, writ denied, review denied, appeal dismissed 359 N.C. 69, 603 S.E.2d 131. Declaratory Judgment ⚷ 302.1; Records ⚷ 52

Public Records Act does not give governmental agency discretionary authority to decline to comply with order for release of records to public until time when agency has determined that release would be prudent or timely. North Carolina Press Ass'n, Inc. v. Spangler, 1989, 381 S.E.2d 187, 94 N.C.App. 694, review denied 388 S.E.2d 461, 325 N.C. 709. Records ⚷ 62

Through the Public Records Act, the legislature intended to provide that, as a general rule, the public would have liberal access to public records. News and Observer Pub. Co. v. State ex rel. Starling, 1984, 322 S.E.2d 133, 312 N.C. 276. Records ⚷ 50

Assuming that housing authority violated Public Records Act by refusing to disclose appraisals of condemnee's property, that violation could not be used as affirmative defense in condemnation proceeding. Housing Authority of City of Raleigh v. Montgomery, 1982, 286 S.E.2d 114, 55 N.C.App. 422, review denied 292 S.E.2d 570, 305 N.C. 585. Eminent Domain ⚷ 171

2. Persons

Absent town council's waiver of privilege and authorization to release the documents, town clerk was not authorized to declare documents falling within an exception to the Public Records Act to be public records subject to disclosure upon public records request. Womack Newspapers, Inc. v. Town of Kitty Hawk ex rel. Kitty Hawk Town Council, 2007, 181 N.C.App. 1, 639 S.E.2d 96, review withdrawn 361 N.C. 370, 644 S.E.2d 564. Records ⚷ 54

Public Records Act did not authorize city to file declaratory judgment action against newspaper publisher to resolve dispute as to city's compliance with Act; only the person seeking public records could initiate judicial action to enforce the request. City of Burlington v. Boney Publishers, Inc., 2004, 166 N.C.App. 186, 600 S.E.2d 872, review allowed 359 N.C. 187, 606 S.E.2d 901, review improvidently allowed 359 N.C. 422, 611 S.E.2d 833, on remand 2005 WL 5368441. Declaratory Judgment ⚷ 302.1

As respects statute providing that any person has right to access to public records, corporation, a publisher of news events, was "person" entitled to access. Advance Publications, Inc. v. City of Elizabeth City, 1981, 281 S.E.2d 69, 53 N.C.App. 504. Records ⚷ 52

3. Proceedings for disclosure

Town clerk was not a necessary party in newspaper's mandamus action to compel disclosure from town, where town clerk did not have discretion to prevent inspection and copying of materials constituting public records under Public Records Act. Womack Newspapers, Inc. v. Town of Kitty Hawk ex rel. Kitty Hawk Town Council, 2007, 181 N.C.App. 1, 639 S.E.2d 96, review withdrawn 361 N.C. 370, 644 S.E.2d 564. Mandamus ⚷ 151(2)

Action to compel disclosure of public records is "civil action," not "special proceeding," and, thus, Rules of Civil Procedure apply and service of summons is required to commence action. Charns v. Brown, 1998, 129 N.C.App. 635, 502 S.E.2d 7, review denied 349 N.C. 228, 515 S.E.2d 701. Records ⚷ 63

Fact that action to compel disclosure of public records shall be set down for immediate hearing does not transform civil action into "special proceeding" that would not be subject to Rules of Civil Procedure and, thus, service of summons is necessary to commence action. Charns v. Brown, 1998, 129 N.C.App. 635, 502 S.E.2d 7, review denied 349 N.C. 228, 515 S.E.2d 701. Records ⚷ 63

Service on city officials of application for disclosure of public records and of copy of ex parte order to show cause

was not sufficient to commence lawsuit in which summons had not been served on officials; although documents served gave officials most of the information required for a summons, they did not have independent legal significance of summons. Charns v. Brown, 1998, 129 N.C.App. 635, 502 S.E.2d 7, review denied 349 N.C. 228, 515 S.E.2d 701. Records ⚷ 63

Trial court's dismissal, for lack of personal jurisdiction, insufficiency of process, and insufficiency of service of process, of action to compel disclosure of public records did not impermissibly overrule prior ex parte order to show cause that had been issued to city officials, where jurisdictional challenges had not been before judge who issued order to show cause. Charns v. Brown, 1998, 129 N.C.App. 635, 502 S.E.2d 7, review denied 349 N.C. 228, 515 S.E.2d 701. Records ⚷ 63

Ex parte show cause order entered in action to compel disclosure of public records was void and, thus, city officials would have been entitled to relief from order that was entered before any papers were served on officials; nothing indicated that certificate of service had been was attached to initial application, it was not judge's responsibility to effect issuance or service of summons before he issued ex parte order, and applicant did not effect issuance or service of summons, so personal jurisdiction was not obtained over any of officials. Charns v. Brown, 1998, 129 N.C.App. 635, 502 S.E.2d 7, review denied 349 N.C. 228, 515 S.E.2d 701. Records ⚷ 63

Where plaintiff condemnee failed to appeal ruling that records and appraisals concerning condemned land were not discoverable under Public Records Act or rules of discovery, plaintiff could not subsequently seek denied relief from another Superior Court judge two weeks later, albeit in form of action seeking order compelling disclosure of public records. Shella v. Moon, 1997, 125 N.C.App. 607, 481 S.E.2d 363. Records ⚷ 63

4. Attorneys' fees

In determining whether media was entitled to award of attorney fees relating to action to compel disclosure of written reports containing recommendations about intercollegiate athletics prepared by state university campuses at request of university president, media were "prevailing party," for they obtained order directing release of records for inspection, examination, and copying, even though stay was obtained pending appeal and it was claimed that documents were released as consequence of decision made prior to lawsuit rather than as consequence of lawsuit. North Carolina Press Ass'n, Inc. v. Spangler, 1989, 381 S.E.2d 187, 94 N.C.App. 694, review denied 388 S.E.2d 461, 325 N.C. 709. Records ⚷ 68

Bad faith is not standard to be used in determining whether withholding of public records was without substantial justification, so as to support award of attorney fees to a party who successfully compels disclosure of public records. North Carolina Press Ass'n, Inc. v. Spangler, 1989, 381 S.E.2d 187, 94 N.C.App. 694, review denied 388 S.E.2d 461, 325 N.C. 709. Records ⚷ 68

Public officials had burden of showing justification for nondisclosure of written reports containing recommendations about intercollegiate athletics prepared by chancellors of state university campuses at request of university president, for purposes of determining whether government acted without substantial justification in denying access to the documents until court ordered disclosure so as to support award of attorney fees to media. North Carolina Press Ass'n, Inc. v. Spangler, 1989, 381 S.E.2d 187, 94 N.C.App. 694, review denied 388 S.E.2d 461, 325 N.C. 709. Records ⚷ 68

Alleged fear that contextual relevance of component materials would not be apparent or could not be ascertained if information were revealed prematurely did not provide substantial justification for failure to disclose written reports containing recommendations about intercollegiate athletics prepared by chancellors of state university campuses at request of university president, so as to support denial of attorney fees. North Carolina Press Ass'n, Inc. v. Spangler, 1989, 381 S.E.2d 187, 94 N.C.App. 694, review denied 388 S.E.2d 461, 325 N.C. 709. Records ⚷ 68

Claim that there should be exception to Public Records Act for preliminary, interoffice communications, and that if there were such exception, the documents whose disclosure was ordered would be covered by it was not substantial justification for failing to disclose documents, for purposes of denying award of attorney fees. North Carolina Press Ass'n, Inc. v. Spangler, 1989, 381 S.E.2d 187, 94 N.C.App. 694, review

denied 388 S.E.2d 461, 325 N.C. 709. Records ⚷ 68

Assertions of good faith and arguments urging reasonable extensions of existing law are factors to be considered by trial court in reaching its decision on issue of whether substantial justification existed for failing to disclose documents whose disclosure was ordered, so as to support denial of attorney fees. North Carolina Press Ass'n, Inc. v. Spangler, 1989, 381 S.E.2d 187, 94 N.C.App. 694, review denied 388 S.E.2d 461, 325 N.C. 709. Records ⚷ 68

Fact that governmental agency chose to chart its own course regarding timing of requested release of public documents did not make award of attorney fees against the agency on behalf of media which had obtained order for disclosure unjust. North Carolina Press Ass'n, Inc. v. Spangler, 1989, 381 S.E.2d 187, 94 N.C.App. 694, review denied 388 S.E.2d 461, 325 N.C. 709. Records ⚷ 68

5. Review

Condemnee's action against public officials for order compelling disclosure of public records concerning plaintiff's condemnation file was moot, as she had been granted relief she sought; defendants gave plaintiff opportunity to inspect requested records, but she refused that opportunity because she doubted sincerity of defendants' offer and wanted it made before judge. Shella v. Moon, 1997, 125 N.C.App. 607, 481 S.E.2d 363. Records ⚷ 63

Public disclosure of reports from chancellors of several universities within University of North Carolina system including information and recommendations from chancellors regarding intercollegiate athletics at universities mooted appeal of president and associate vice-president of University of North Carolina from trial court order requiring that reports be made available for public inspection. North Carolina Press Ass'n, Inc. v. Spangler, 1987, 360 S.E.2d 138, 87 N.C.App. 169. Records ⚷ 63

§ 132–10. Qualified exception for geographical information systems

Geographical information systems databases and data files developed and operated by counties and cities are public records within the meaning of this Chapter. The county or city shall provide public access to such systems by public access terminals or other output devices. Upon request, the county or city shall furnish copies, in documentary or electronic form, to anyone requesting them at reasonable cost. As a condition of furnishing an electronic copy, whether on magnetic tape, magnetic disk, compact disk, or photo-optical device, a county or city may require that the person obtaining the copy agree in writing that the copy will not be resold or otherwise used for trade or commercial purposes. For purposes of this section, publication or broadcast by the news media, real estate trade associations, or Multiple Listing Services operated by real estate trade associations shall not constitute a resale or use of the data for trade or commercial purposes and use of information without resale by a licensed professional in the course of practicing the professional's profession shall not constitute use for a commercial purpose. For purposes of this section, resale at cost by a real estate trade association or Multiple Listing Services operated by a real estate trade association shall not constitute a resale or use of the data for trade or commercial purposes.

Added by Laws 1995, c. 151. Amended by Laws 1995, c. 388, § 5, eff. Oct. 1, 1995; Laws S.L. 1997–193, § 1, eff. June 19, 1997.

Historical and Statutory Notes

S.L. 1997–193, effective June 19, 1997, inserted in the fifth sentence ", real estate trade associations, or Multiple Listing Services operated by real estate trade associations", and added the sixth sentence.

Chapter 143

State Departments, Institutions, and Commissions

Article **Section**
33C. Meetings of Public Bodies. **143–318.9**

Article 33C

Meetings of Public Bodies

Section
143–318.9. Public policy.
143–318.10. All official meetings of public bodies open to the public.
143–318.11. Closed sessions.
143–318.12. Public notice of official meetings.
143–318.13. Electronic meetings; written ballots; acting by reference.
143–318.14. Broadcasting or recording meetings.
143–318.14A. Legislative commissions, committees, and standing subcommittees.
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143–318.16. Injunctive relief against violations of Article.
143–318.16A. Additional remedies for violations of Article.
143–318.16B. Assessments and awards of attorneys' fees.
143–318.16C. Accelerated hearing; priority.
143–318.16D. Local acts.
143–318.17. Disruptions of official meetings.
143–318.18. Exceptions.

Cross References

Access to records, see § 143–578.
Alliances authorized, see § 143–627.
Health care purchasing; establishment of the board; membership; terms; personnel, see § 143–625.
Local partnerships; conditions, see § 143B–168.14.
North Carolina Partnership for Children, Inc.; conditions, see § 143B–168.12.
Open meetings law, see § 115C–4.
Procedure for resolution of dispute between board of education and board of county commissioners, see § 115C–431.
Regional solid waste management; organization of authorities, see § 153A–425.
Regular and special meetings; recessed and adjourned meetings; procedure, see § 160A–71.
State child fatality review team; establishment; purpose; powers; duties, see § 143B–150.20.

§ 143–318.9. Public policy

Whereas the public bodies that administer the legislative, policymaking, quasi-judicial, administrative, and advisory functions of North Carolina and its political subdivisions exist solely to conduct the people's business, it is the public policy of North Carolina that the hearings, deliberations, and actions of these bodies be conducted openly.

Added by Laws 1979, c. 655, § 1.

Historical and Statutory Notes

Local Modifications

Edgecombe County: Laws 1991, c. 404, §§ 3(h), 4(h) and 5(e).

Franklin County: Laws 1993, c. 341; S.L. 2005–80, § 1.

City of Durham: Laws 1983, c. 373.

City of Fayetteville: Laws 1989, c. 355, § 1.

City of Franklinton: Laws 1993, c. 341; S.L. 2005–80, § 1.

City of Grensboro: Laws 1987, c. 51.

City of Trinity: S.L. 1997–44; S.L. 2002–38.

Cross References

Job Development Investment Grant Program, public records, see § 143B–437.54.
North Carolina Center for Applied Textile Technology, advisory board, see § 115D–67.2.

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1. In general

Public official immunity (POI) did not apply to claim of open meeting law violation that company that had been fixed base operator (FBO) at county airport and company's president brought against members of county airport authority; open meeting law did not allow for recovery of money damages, and company and president did not allege that they were entitled to compensation as persons distinct from the general public. Free Spirit Aviation, Inc. v. Rutherford Airport Authority, 2008, 664 S.E.2d 8. Counties ⚷ 52

County board of education could not revise minutes of its public meeting to show that it accepted its pay raise at public meeting to circumvent purpose of open meeting law. Jacksonville Daily News Co. v. Onslow County Bd. of Educ., 1993, 113 N.C.App. 127, 439 S.E.2d 607. Schools ⚷ 48(.5)

Exceptions to open meetings law should be strictly construed, and those seeking to come within exceptions have burden of justifying their action. News & Observer Pub. Co. v. Interim Bd. of Ed. for Wake County, 1976, 223 S.E.2d 580, 29 N.C.App. 37. Administrative Law And Procedure ⚷ 124

Member of board of education is not "officer" of board within contemplation of open meetings law, so as to authorize closed session of board to consider information regarding appointment of such member. News & Observer Pub. Co. v. Interim Bd. of Ed. for Wake County, 1976, 223 S.E.2d 580, 29 N.C.App. 37. Schools ⚷ 57

In absence of statutory provisions for notice, board of education would be required to give reasonable notice of its meetings, taking into consideration urgency of matter necessitating meeting; 48 hours notice for all meetings was unreasonably long. News & Observer Pub. Co. v. Interim Bd. of Ed. for Wake County, 1976, 223 S.E.2d 580, 29 N.C.App. 37. Schools ⚷ 57

The provisions of the Open Meetings Law do not apply to the Franklin County Arts Council. Op.Atty.Gen., Henderson, Oct. 4, 1994.

2. Committee of the whole

Although board of education may in some circumstances be justified in meeting as committee of whole and in closed session to investigate persons who are under consideration for appointment to board, board cannot evade provisions of statutes requiring its meetings to be open to public merely by resolving itself into committee of the whole. News & Observer Pub. Co. v. Interim Bd. of Ed. for Wake County, 1976, 223 S.E.2d 580, 29 N.C.App. 37. Schools ⚷ 57

Where names of eight persons were placed in nomination to fill vacant position on board of education, following passage of motion authorizing same, chairman of board proceeded to appoint members of board as committee of the whole to investigate such names in closed session, and at resumed meeting following closed session, names of eight persons previously nominated were presented again, board of education and its individual members failed

to carry their burden of showing that such closed session came within exception to open meetings law for "all study, research and investigative commissions and committees." G.S. §§ 143–318.1 et seq., 143–318.4(7). News & Observer Pub. Co. v. Interim Bd. of Ed. for Wake County, 1976, 223 S.E.2d 580, 29 N.C.App. 37. Schools ⚷ 57

Where board of education's sole exception to granting of preliminary injunction restraining board from designating itself committee of the whole and meeting in closed session as such to investigation nominees to fill vacancy on board was "the rendering and signing of the order," appellate review was limited to question of whether error of law appeared on record; findings of fact or sufficiency of evidence to support them were not presented for review. News & Observer Pub. Co. v. Interim Bd. of Ed. for Wake County, 1976, 223 S.E.2d 580, 29 N.C.App. 37. Appeal And Error ⚷ 274(1)

3. Actions

County board of education's decision to give itself pay raise had to be deliberated at meeting open to public; such action was exactly type of deliberation and actions that General Assembly intended to be conducted openly at public meeting. Jacksonville Daily News Co. v. Onslow County Bd. of Educ., 1993, 113 N.C.App. 127, 439 S.E.2d 607. Schools ⚷ 48(.5)

Voting for person to fill vacancy on board of education constituted "action" within meaning of open meetings law requiring that actions by bodies covered by statute be conducted openly, and thus board of education violated provisions of open meeting law by voting for person to fill such vacancy by secret ballot. News & Observer Pub. Co. v. Interim Bd. of Ed. for Wake County, 1976, 223 S.E.2d 580, 29 N.C.App. 37. Schools ⚷ 57

4. Public bodies

Human development agency, which was established by county board of commissioners, initial board of directors of which was appointed by commissioners and function of which was to administer state and federal grants, was a "public body" within meaning of the open meeting laws, notwithstanding that it was subsequently incorporated under Nonprofit Corporation Act. Winfas, Inc. v. Region P Human Development Agency, 1983, 308 S.E.2d 99, 64 N.C.App. 724. Counties ⚷ 52

5. Attorney-client exception

While there is a public policy, under open-meetings law, against closed sessions, discussions between a board and its attorney regarding matters traditionally falling within the attorney-client privilege must be allowed to be conducted in closed sessions to preserve the attorney-client privilege, including consulting on constitutional and legal challenges which might result from actions being taken or considered by a board. Carolina Holdings, Inc. v. Housing Appeals Bd. of City of Charlotte, 2002, 149 N.C.App. 579, 561 S.E.2d 541, review denied 356 N.C. 298, 570 S.E.2d 499, review dismissed 356 N.C. 298, 570 S.E.2d 500, appeal dismissed 570 S.E.2d 500. Administrative Law And Procedure ⚷ 124

The public body has the burden of demonstrating the attorney-client exception to open meetings law applies and must supply some objective indicia that the exception is applicable. Sigma Construction Co., Inc. v. Guilford County Bd. of Education, 2001, 144 N.C.App. 376, 547 S.E.2d 178, review dismissed 354 N.C. 366, 556 S.E.2d 578. Administrative Law And Procedure ⚷ 124

Findings that county school board's closed sessions were entirely for purpose of protecting board's attorney-client privilege and that release of any part of the minutes would destroy the attorney-client privilege, such that the attorney-client exception to the open meetings law applied, could not be contested on appeal, where minutes on which findings were based were not part of record on appeal. Sigma Construction Co., Inc. v. Guilford County Bd. of Education, 2001, 144 N.C.App. 376, 547 S.E.2d 178, review dismissed 354 N.C. 366, 556 S.E.2d 578. Schools ⚷ 48(.5)

6. In camera review

In camera review by the trial court of the minutes of the closed session provides the easiest and most effective way for the public body to objectively demonstrate that the closed session was in fact warranted, under open meetings law. Sigma Construction Co., Inc. v. Guilford County Bd. of Education, 2001, 144 N.C.App. 376, 547 S.E.2d 178, review dismissed 354 N.C. 366, 556 S.E.2d 578. Administrative Law And Procedure ⚷ 124

After in camera review of session minutes held during closed meeting of public body, the trial court is to make available for public inspection any portion of the closed session minutes not related to the attorney-client privilege. Sigma Construction Co., Inc. v. Guilford County Bd. of Education, 2001, 144 N.C.App. 376, 547 S.E.2d 178, review dismissed 354 N.C. 366, 556 S.E.2d 578. Administrative Law And Procedure ⚷ 124

7. Solicitation of public comment

County school board was not required under open meetings law to solicit public comment as prerequisite to voting on pending motion or to formally discuss whether to terminate contractor's performance, prior to voting on motion at open meeting. Sigma Construction Co., Inc. v. Guilford County Bd. of Education, 2001, 144 N.C.App. 376, 547 S.E.2d 178, review dismissed 354 N.C. 366, 556 S.E.2d 578. Schools ⚷ 48(.5)

§ 143–318.10. All official meetings of public bodies open to the public

(a) Except as provided in G.S. 143–318.11, 143–318.14A, 143–318.15, and 143–318.18, each official meeting of a public body shall be open to the public, and any person is entitled to attend such a meeting.

(b) As used in this Article, ''public body'' means any elected or appointed authority, board, commission, committee, council, or other body of the State, or of one or more counties, cities, school administrative units, constituent institutions of The University of North Carolina, or other political subdivisions or public corporations in the State that (i) is composed of two or more members and (ii) exercises or is authorized to exercise a legislative, policy-making, quasi-judicial, administrative, or advisory function. In addition, ''public body'' means the governing board of a ''public hospital'' as defined in G.S. 159–39 and the governing board of any nonprofit corporation to which a hospital facility has been sold or conveyed pursuant to G.S. 131E–8, any subsidiary of such nonprofit corporation, and any nonprofit corporation owning the corporation to which the hospital facility has been sold or conveyed.

(c) ''Public body'' does not include (1) a meeting solely among the professional staff of a public body, or (2) the medical staff of a public hospital or the medical staff of a hospital that has been sold or conveyed pursuant to G.S. 131E–8.

(d) ''Official meeting'' means a meeting, assembly, or gathering together at any time or place or the simultaneous communication by conference telephone or other electronic means of a majority of the members of a public body for the purpose of conducting hearings, participating in deliberations, or voting upon or otherwise transacting the public business within the jurisdiction, real or apparent, of the public body. However, a social meeting or other informal assembly or gathering together of the members of a public body does not constitute an official meeting unless called or held to evade the spirit and purposes of this Article.

(e) Every public body shall keep full and accurate minutes of all official meetings, including any closed sessions held pursuant to G.S. 143–318.11. Such minutes may be in written form or, at the option of the public body, may be in the form of sound or video and sound recordings. When a public body meets in closed session, it shall keep a general account of the closed session so that a person not in attendance would have a reasonable understanding of what transpired. Such accounts may be a written narrative, or video or audio recordings. Such minutes and accounts shall be public records within the meaning of the Public Records Law, G.S. 132–1 et seq.; provided, however, that minutes or an account of a closed session conducted in compliance with G.S. 143–318.11 may be withheld from public inspection so long as public inspection would frustrate the purpose of a closed session.

Added by Laws 1979, c. 655, § 1. Amended by Laws 1985 (Reg. Sess., 1986), c. 932, § 4; Laws 1991, c. 694, §§ 1, 2; Laws 1993 (Reg. Sess., 1994), c. 570, § 1, eff. Oct. 1, 1994; Laws 1995, c. 509, § 135.2(p), eff. July 29, 1995; S.L. 1997–290, § 1, eff.Oct. 1, 1997; S.L. 1997–465, § 27.

Historical and Statutory Notes

Laws 1993, c. 570, § 12 provides:

"This act becomes effective October 1, 1994, and shall not affect pending litigation."

Laws 1993, c. 570, was ratified June 23, 1994.

Local Modifications

Hyde County: S.L. 2008–111, §§ 2, 3.

Cross References

North Carolina Center for Applied Textile Technology, advisory board, see § 115D–67.2.

Administrative Code References

Board of nursing, open meetings, see 21 NCAC 36.0110.

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1. In general

County board of education's decision to give itself pay raise had to be deliberated at meeting open to public; such action was exactly type of deliberation and actions that General Assembly intended to be conducted openly at public meeting. Jacksonville Daily News Co. v. Onslow County Bd. of Educ., 1993, 113 N.C.App. 127, 439 S.E.2d 607. Schools ⚷ 48(.5)

Wisdom or lack of wisdom, practicability or impracticability of provisions of Open Meetings Law are matters for legislature, not courts, once meaning of its provisions is judicially determined; however, court may legitimately consider consequences to be anticipated from respective possible constructions of statute in determining which one legislature most probably had in mind when enacting same. Student Bar Ass'n Bd. of Governors, of School of Law, University of North Carolina at Chapel Hill v.

Byrd, 1977, 239 S.E.2d 415, 293 N.C. 594. Constitutional Law ⚷ 2500

Faculty of law school at state university was a ''component part'' of university, but that alone did not bring its meetings within scope of Open Meetings Law; rather, to fall within scope of Law, faculty had to (1) be a component part of a ''governing and governmental'' body of State, and (2) faculty had to ''have or claim authority to conduct hearings, deliberate or act'' as a ''body politic.'' G.S. § 143–318.2. Student Bar Ass'n Bd. of Governors, of School of Law, University of North Carolina at Chapel Hill v. Byrd, 1977, 239 S.E.2d 415, 293 N.C. 594. Colleges And Universities ⚷ 8(1)

Statute requiring that all official meetings of state commissions which have or claim authority to conduct hearings, deliberate or act as bodies politic and in the public interest shall be open to the public does not require that all action taken at meeting of any state governmental body or one of its political subdivisions is completely void if such meeting was not open to the public. Lewis v. White, 1975, 216 S.E.2d 134, 287 N.C. 625. States ⚷ 72

1.2. Due process

County board of elections violated due process rights of voter who was subject of voter registration challenge, where voter moved for recusal of board member with three supporting affidavits alleging the member had publicly stated that voter did not live in that county, board failed to make decision as to whether member should be disqualified, and board upheld the challenge to voter's registration by 2-1 vote in which member in question voted in the majority. Knight v. Higgs, 2008, 189 N.C.App. 696, 659 S.E.2d 742. Constitutional Law ⚷ 4232; Elections ⚷ 54

1.5. Purpose

Purpose of the Open Meetings Law is to promote openness in the daily workings of public bodies. Boney Publishers, Inc. v. Burlington City Council, 2002, 151 N.C.App. 651, 566 S.E.2d 701, review denied 356 N.C. 297, 356 N.C. 433, 571 S.E.2d 221. Municipal Corporations ⚷ 92

2. Notice

County school board was not required under open meetings law to solicit public comment as prerequisite to voting on pending motion or to formally discuss whether to terminate contractor's performance, prior to voting on motion at open meeting. Sigma Construction Co., Inc. v. Guilford County Bd. of Education, 2001, 144 N.C.App. 376, 547 S.E.2d 178, review dismissed 354 N.C. 366, 556 S.E.2d 578. Schools ⚷ 48(.5)

Drainage district's failure to notify landowners of meetings at which assessments were levied, although in violation of open meetings laws, did not deprive landowners of due process, where they had right within 45 days after action was disclosed to seek declaratory judgment voiding disputed action and prospective injunction against its repetition. Northampton County Drainage Dist. No. One v. Bailey, 1988, 373 S.E.2d 560, 92 N.C.App. 68, review allowed 377 S.E.2d 226, 323 N.C. 705, opinion withdrawn in part 378 S.E.2d 796, 324 N.C. 336, reconsideration dismissed 378 S.E.2d 797, 324 N.C. 337, affirmed in part, reversed in part 392 S.E.2d 352, 326 N.C. 742. Administrative Law And Procedure ⚷ 124; Constitutional Law ⚷ 4061; Drains ⚷ 76

It was error for trial court to order dean of law school to cause notice to be given to public of meetings of faculty, or of its various committees and subcommittees, in action by student bar association board of governors against state university and various university officials, including dean, to enjoin defendants from allowing official meetings of law school faculty to be closed to members of public. Student Bar Ass'n Bd. of Governors, of School of Law, University of North Carolina at Chapel Hill v. Byrd, 1977, 239 S.E.2d 415, 293 N.C. 594. Injunction ⚷ 189

3. Public bodies

Nonprofit corporation, which was originally incorporated by executive director of city's housing authority for purpose of providing funds for low and moderate income housing, did not qualify as a ''public body'' subject to the Open Meetings Law, although corporation's by-laws previously gave city and county the authority to appoint members of corporation's board of directors; corporation was not an elected body, and corporation's current by-laws provided that only the corporation's board could appoint new board members. Chatfield v. Wilmington Housing Finance and Development, Inc., 2004, 166 N.C.App. 703, 603 S.E.2d 837, review denied 359 N.C. 280, 609 S.E.2d

393. Municipal Corporations ⚷ 717.5(1)

University undergraduate court which holds student disciplinary proceedings is ''public body'' subject to Open Meetings Law; members of court are appointed and confirmed by student body president and student congress, which is authorized to do so under laws of state and pursuant to policies and restrictions of university, court is composed of chairpersons, vice chairs and at least thirty members and is authorized to exercise administrative or advisory function when it holds hearings, issues subpoenas, renders verdicts and recommends sanctions pursuant to power granted to it by university. DTH Pub. Corp. v. University of North Carolina at Chapel Hill, 1998, 128 N.C.App. 534, 496 S.E.2d 8, review denied 348 N.C. 496, 510 S.E.2d 381, review denied 348 N.C. 496, 510 S.E.2d 382. Colleges And Universities ⚷ 9.30(7)

Definition of ''public body'' under Open Meetings Law is narrower than definition of ''public agency'' under Public Records Act. News and Observer Pub. Co., Inc. v. Poole, 1992, 412 S.E.2d 7, 330 N.C. 465. Administrative Law And Procedure ⚷ 124; Records ⚷ 51

Drainage district, which was subdivision of state with quasi-judicial and administrative authority, was subject to open meetings laws. Northampton County Drainage Dist. No. One v. Bailey, 1988, 373 S.E.2d 560, 92 N.C.App. 68, review allowed 377 S.E.2d 226, 323 N.C. 705, opinion withdrawn in part 378 S.E.2d 796, 324 N.C. 336, reconsideration dismissed 378 S.E.2d 797, 324 N.C. 337, affirmed in part, reversed in part 392 S.E.2d 352, 326 N.C. 742. Administrative Law And Procedure ⚷ 124; Drains ⚷ 18

Human development agency, which was established by county board of commissioners, initial board of directors of which was appointed by commissioners and function of which was to administer state and federal grants, was a ''public body'' within meaning of the open meeting laws, notwithstanding that it was subsequently incorporated under Nonprofit Corporation Act. Winfas, Inc. v. Region P Human Development Agency, 1983, 308 S.E.2d 99, 64 N.C.App. 724. Counties ⚷ 52

By virtue of definitions in statute governing official meetings of public bodies open to public and statute governing public hospitals, incorporated county health care system was ''public body'' that was required by law, to record settlement terms considered in executive sessions under statute governing executive sessions. News and Observer Pub. Co. v. Wake County Hospital System, Inc., 1981, 284 S.E.2d 542, 55 N.C.App. 1, 27 A.L.R.4th 731, review denied 291 S.E.2d 151, 305 N.C. 302, appeal dismissed, certiorari denied 103 S.Ct. 26, 459 U.S. 803, 74 L.Ed.2d 42. Administrative Law And Procedure ⚷ 506

Telephone membership corporations established pursuant to Article 4 of Chapter 117 are public bodies and political subdivisions of the state. Because of the very broad definition of a public body set forth in N.C.G.S. § 143–318.10(b), telephone membership corporations established pursuant to Article 4 of Chapter 117 are public bodies subject to the Open Meetings Law. Op.Atty.Gen., Gilkeson, Sept. 16, 1996.

4. Governing bodies

As used in Open Meetings Law, term ''body politic'' connotes a body acting as a government, i. e., exercising powers which pertain exclusively to government, as distinguished from those possessed also by a private individual or a private association, and thus, language of statute, extending its reach to meetings of commissions, subdivisions and component parts of ''governing and governmental bodies of this State'' which ''act as bodies politic,'' is designed to be restrictive, rather than broadening, and shows legislative intent to limit Open Meetings Law to meetings of ''governing *and* governmental bodies'' strictly construed. Student Bar Ass'n Bd. of Governors, of School of Law, University of North Carolina at Chapel Hill v. Byrd, 1977, 239 S.E.2d 415, 293 N.C. 594. Municipal Corporations ⚷ 92

Open Meetings Law uses term ''governing'' and term ''governmental'' in conjunctive, not disjunctive relation, and thus, body to which statute applies must be both a ''governing'' body and a ''governmental'' body. Student Bar Ass'n Bd. of Governors, of School of Law, University of North Carolina at Chapel Hill v. Byrd, 1977, 239 S.E.2d 415, 293 N.C. 594. Municipal Corporations ⚷ 92

Faculty of law school at state university was not ''governing body'' of school, for purposes of falling within purview of Open Meetings Law; rather,

''governing body'' was board of governors. Student Bar Ass'n Bd. of Governors, of School of Law, University of North Carolina at Chapel Hill v. Byrd, 1977, 239 S.E.2d 415, 293 N.C. 594. Colleges And Universities ⚷ 7; Colleges And Universities ⚷ 8(1)

Purpose of Open Meetings Law provision that said Law should not be construed to prevent any board of education or governing body of any public educational institution, or any committee or officer thereof, from hearing, considering and deciding disciplinary cases involving students in closed sessions was simply to remove any possibility that a board of education, a governing body of a public educational institution or court could believe that said Law requires a public hearing of such disciplinary matters, and said provision does not extend scope of provision requiring certain meetings to be open to public beyond meetings of ''governing and governmental bodies'' of state and its political subdivisions. Student Bar Ass'n Bd. of Governors, of School of Law, University of North Carolina at Chapel Hill v. Byrd, 1977, 239 S.E.2d 415, 293 N.C. 594. Colleges And Universities ⚷ 9.30(7); Schools ⚷ 169

Board of governors of state university had no governmental powers, i. e., no powers peculiar to sovereign, and therefore was not, itself, a ''governmental body'' of state, and Open Meetings Law did not extend to meetings of its employees, even though such employees had no governmental powers, i. e., no powers peculiar to sovereign, and therefore are deemed a ''component part'' of board, and consequently Law did not require that meetings of faculty of university's law school be open to public. Student Bar Ass'n Bd. of Governors, of School of Law, University of North Carolina at Chapel Hill v. Byrd, 1977, 239 S.E.2d 415, 293 N.C. 594. Colleges And Universities ⚷ 7; Colleges And Universities ⚷ 8(1)

4.5. Recusal

Failure of county board of elections to consider, in a public setting, voter's motion to recuse board member from proceeding involving a challenge to a voter's registration violated the Open Meetings Law. Knight v. Higgs, 2008, 189 N.C.App. 696, 659 S.E.2d 742. Elections ⚷ 54

While county board of elections has the right, in hearing voter registration challenges, to consult with its attorney concerning a challenge to impartiality of a board member, board may not delegate its decision-making authority with respect to ruling on a motion for recusal. Knight v. Higgs, 2008, 189 N.C.App. 696, 659 S.E.2d 742. Elections ⚷ 54

5. Records

Minutes from closed session of county board of commissioners were sufficient to satisfy both statutory requirements that minutes be ''full and accurate'' and provide ''general account'' of events, where redacted minutes stated that during closed session, staff attorney informed board that it was informed that action on moratorium on construction or operation of race tracks would be challenged, in unredacted form, minutes revealed that attorney briefly explained difference between land use ordinance and police power ordinance, and that there was discussion about legality of making moratorium term longer than 90 days, and record reflected no discussion of general policy matters or propriety of moratorium. Multimedia Publishing of North Carolina, Inc. v. Henderson County, 2001, 145 N.C.App. 365, 550 S.E.2d 846. Counties ⚷ 53

Generally, the minutes for a closed session of a county board of commissioners should contain mainly a record of what was done at the meeting, not what was said by the members, given that the purpose of the minutes is to reflect matters such as motions made, the movant, points of order, and appeals, not to show discussion or absence of action. Multimedia Publishing of North Carolina, Inc. v. Henderson County, 2001, 145 N.C.App. 365, 550 S.E.2d 846. Counties ⚷ 53

The question of whether the Public Records Law requires disclosure of the minutes of a public body's meeting that was closed to the public under the Open Meetings Law requires consideration of time and content factors, allowing courts to tailor the scope of statutory protection in each case; courts should ensure that the exception to the disclosure requirement should extend no further than necessary to protect ongoing efforts of a public body, respecting the policy against secrecy in government that underlies both the Public Records Law and the Open Meetings Law. Multimedia Pub. of North Carolina, Inc. v. Henderson County, 2000, 136 N.C.App. 567, 525 S.E.2d 786, review denied 351

N.C. 474, 543 S.E.2d 492. Records ⚷ 55

In camera hearing of minutes of county board of supervisors' meeting that was closed to public was necessary, in order to determine whether, even if closed session were warranted under attorney-client exception to Open Meetings Law, publisher was nonetheless entitled to public disclosure of minutes of closed session pursuant to Public Records Law. Multimedia Pub. of North Carolina, Inc. v. Henderson County, 2000, 136 N.C.App. 567, 525 S.E.2d 786, review denied 351 N.C. 474, 543 S.E.2d 492. Counties ⚷ 52

Under Open Meetings Law, if public body uses closed session only for discussion and takes no action, nothing need appear in minutes of meeting other than the fact that meeting was held. Maready v. City of Winston-Salem, 1996, 342 N.C. 708, 467 S.E.2d 615. Administrative Law And Procedure ⚷ 124

Section of Open Meetings Law requiring that every public body shall keep full and accurate minutes of all official meetings, including any closed sessions, obligated county board of commissioners, in meeting to discuss what economic incentives should be offered to attract businesses to county, to keep record only of such actions as were taken at meeting; where no final decision was made on any incentives, board of county commissioners did not violate Open Meetings Law merely by noting in minutes of meetings that "discussion" took place. Maready v. City of Winston-Salem, 1996, 342 N.C. 708, 467 S.E.2d 615. Counties ⚷ 53

County board of education could not revise minutes of its public meeting to show that it accepted its pay raise at public meeting to circumvent purpose of open meeting law. Jacksonville Daily News Co. v. Onslow County Bd. of Educ., 1993, 113 N.C.App. 127, 439 S.E.2d 607. Schools ⚷ 48(.5)

Fact that agency is not subject to Open Meetings Law does not preclude possibility that Public Records Act applies to minutes from meetings of such agency. News and Observer Pub. Co., Inc. v. Poole, 1992, 412 S.E.2d 7, 330 N.C. 465. Records ⚷ 51

5.5. Disclosure of minutes of closed session

City council could withhold from public inspection the minutes from its closed session to discuss potential acquisition of real property, but only with respect to that portion of minutes concerning council's discussions of price or other material terms of the purchase; portion of minutes concerning location of the property, purpose of acquisition, and identity of owners, which was not confidential information protected by Open Meetings Law, had to be disclosed upon request. Boney Publishers, Inc. v. Burlington City Council, 2002, 151 N.C.App. 651, 566 S.E.2d 701, review denied 356 N.C. 297, 356 N.C. 433, 571 S.E.2d 221. Municipal Corporations ⚷ 100

Upon statement that during closed session staff attorney suggested amendments to draft of proposed moratorium on construction of race tracts, county board of commissioners had duty to disclose minutes of closed session, and failure to disclose minutes was violation of Public Records Act, even though discussion with staff attorney during closed session was originally attorney client privileged, given that, additional disclosure would not frustrate purpose of closed session. Multimedia Publishing of North Carolina, Inc. v. Henderson County, 2001, 145 N.C.App. 365, 550 S.E.2d 846. Counties ⚷ 53

While in a closed session, a public body must maintain full and accurate minutes of the session; the recordings are public records but may be withheld from public inspection so long as inspection would frustrate the purpose of the closed session. Op.Atty.Gen., Kelly, Kelley, Oct. 5, 2005.

6. Exceptions

Mediation between city council and county board of commissioners concerning the termination of the regional water authority agreement did not constitute an official meeting under the Open Meetings Law, and thus, the mediation was not required to be open to the public, where only one representative from the council and one representative from the board attended, and the mediation was not called to evade the spirit or purpose of the Open Meetings Law. Gannett Pacific Corp. v. City of Asheville, 2006, 178 N.C.App. 711, 632 S.E.2d 586, review denied 360 N.C. 645, 638 S.E.2d 466. Counties ⚷ 52; Municipal Corporations ⚷ 92

Appeal taken from trial court's order, in newspaper publisher's action against city council and its members for alleged violations of Open Meetings Law and Public Records Act, was technically moot because the information sought by

publisher had been fully disclosed by city in an open session; however, Court of Appeals would consider issues raised in parties' appeals under an exception to mootness doctrine, given that there was a reasonable likelihood that city, in considering acquisition of other property for municipal purposes, could repeat the conduct at issue in the case. Boney Publishers, Inc. v. Burlington City Council, 2002, 151 N.C.App. 651, 566 S.E.2d 701, review denied 356 N.C. 297, 356 N.C. 433, 571 S.E.2d 221. Appeal And Error ⚷ 843(2)

City housing appeals board did not violate open-meetings law at two meetings where it discussed apartment owner's appeal of ordered demolition and repair of apartment units, where meetings were held to consult with board's attorney on matters within the scope of attorney-client privilege. Carolina Holdings, Inc. v. Housing Appeals Bd. of City of Charlotte, 2002, 149 N.C.App. 579, 561 S.E.2d 541, review denied 356 N.C. 298, 570 S.E.2d 499, review dismissed 356 N.C. 298, 570 S.E.2d 500, appeal dismissed 570 S.E.2d 500. Administrative Law And Procedure ⚷ 124; Municipal Corporations ⚷ 628

Those seeking exemption from Open Meetings Law have burden of establishing that exception embraces their action. Maready v. City of Winston-Salem, 1996, 342 N.C. 708, 467 S.E.2d 615. Administrative Law And Procedure ⚷ 124

Exceptions to Open Meetings Law should be strictly construed. Maready v. City of Winston-Salem, 1996, 342 N.C. 708, 467 S.E.2d 615. Administrative Law And Procedure ⚷ 124

Meetings of county commissioner and of city's board of aldermen to discuss what economic incentives should be offered to attract businesses to area came within ''economic development'' exception to Open Meetings Law, as long as no final decision was made on what incentives would be offered, and as long as execution of any contracts or expenditure of any funds was made contingent on final approval of proposed incentives at hearing open to public. Maready v. City of Winston-Salem, 1996, 342 N.C. 708, 467 S.E.2d 615. Municipal Corporations ⚷ 92

7. Review

Whether a violation of the Open Meetings Law occurred is a question of law that is reviewed de novo by appellate court. Knight v. Higgs, 2008, 189 N.C.App. 696, 659 S.E.2d 742. Appeal And Error ⚷ 893(1)

§ 143–318.11. Closed sessions

(a) Permitted Purposes. —It is the policy of this State that closed sessions shall be held only when required to permit a public body to act in the public interest as permitted in this section. A public body may hold a closed session and exclude the public only when a closed session is required:

(1) To prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes.

(2) To prevent the premature disclosure of an honorary degree, scholarship, prize, or similar award.

(3) To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged. General policy matters may not be discussed in a closed session and nothing herein shall be construed to permit a public body to close a meeting that otherwise would be open merely because an attorney employed or retained by the public body is a participant. The public body may consider and give in-

structions to an attorney concerning the handling or settlement of a claim, judicial action, mediation, arbitration, or administrative procedure. If the public body has approved or considered a settlement, other than a malpractice settlement by or on behalf of a hospital, in closed session, the terms of that settlement shall be reported to the public body and entered into its minutes as soon as possible within a reasonable time after the settlement is concluded.

(4) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body, including agreement on a tentative list of economic development incentives that may be offered by the public body in negotiations. The action approving the signing of an economic development contract or commitment, or the action authorizing the payment of economic development expenditures, shall be taken in an open session.

(5) To establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (i) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease; or (ii) the amount of compensation and other material terms of an employment contract or proposed employment contract.

(6) To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee. General personnel policy issues may not be considered in a closed session. A public body may not consider the qualifications, competence, performance, character, fitness, appointment, or removal of a member of the public body or another body and may not consider or fill a vacancy among its own membership except in an open meeting. Final action making an appointment or discharge or removal by a public body having final authority for the appointment or discharge or removal shall be taken in an open meeting.

(7) To plan, conduct, or hear reports concerning investigations of alleged criminal misconduct.

(8) To formulate plans by a local board of education relating to emergency response to incidents of school violence.

(9) To discuss and take action regarding plans to protect public safety as it relates to existing or potential terrorist activity and to receive briefings by staff members, legal counsel, or law enforcement or emergency service officials concerning actions taken or to be taken to respond to such activity.

(b) Repealed by Laws 1991, c. 694, § 4.

(c) Calling a Closed Session.—A public body may hold a closed session only upon a motion duly made and adopted at an open meeting. Every motion to close a meeting shall cite one or more of the permissible purposes listed in subsection (a) of this section. A motion based on subdivision (a)(1) of this section shall also state the name or citation of the law that renders the information to be discussed privileged or confidential. A motion based on subdivision (a)(3) of this section shall identify the parties in each existing lawsuit concerning which the public body expects to receive advice during the closed session.

(d) Repealed by Laws 1993, c. 570, § 2, eff. Oct. 1, 1994.

Added by Laws 1979, c. 655, § 1. Amended by Laws 1981, c. 831; Laws 1985 (Reg. Sess., 1986), c. 932, § 5; Laws 1991, c. 694, §§ 3, 4; Laws 1993 (Reg. Sess., 1994), c. 570, § 2, eff. Oct. 1, 1994; Laws 1995, c. 509, § 84, eff. July 29, 1995; S.L.1997–222, § 2, eff. June 25, 1997; S.L. 1997–290, § 2, eff. Oct. 1, 1997; S.L. 2001–500, § 2, eff. Dec. 19, 2001; S.L. 2003–180, § 2, eff. June 12, 2003.

Historical and Statutory Notes

Laws 1993, c. 570, § 12 provides:

"This act becomes effective October 1, 1994, and shall not affect pending litigation."

Laws 1993, c. 570, was ratified June 23, 1994.

Cross References

Inquiries by State Ethics Commission, see § 138A–12.
Powers and duties of State Board of Elections, voting systems, see § 163–165.7.
State lottery, independent audits, see § 18C–122.

Administrative Code References

Low–level radioactive waste management authority, preferred site, see 1 NCAC 37.0306.

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1. In general

Closed session of county board of elections, which chair announced as being for the purpose of allowing board members to talk among themselves and make a decision concerning challenge to voter's registration, violated Open

Meetings Law; there was no motion and vote taken on chair's announcement, nor was the stated purpose among the permitted exceptions to requirements of Open Meetings Law. Knight v. Higgs, 2008, 189 N.C.App. 696, 659 S.E.2d 742. Elections ⚷ 54

Under Open Meetings Law, statement of the purpose for the closed session of a public body must precede, rather than follow, a motion and vote to go into closed session. Knight v. Higgs, 2008, 189 N.C.App. 696, 659 S.E.2d 742. Administrative Law And Procedure ⚷ 124

Degree of openness as to governmental matters is a matter of public policy that must be settled by legislators in their capacity as elected representatives of the people, and this determination necessarily involves a balancing of the public's right to know and the government's interest in maintaining confidentiality to protect its citizens. Multimedia Publishing of North Carolina, Inc. v. Henderson County, 2001, 145 N.C.App. 365, 550 S.E.2d 846. Constitutional Law ⚷ 2340

The question of whether the Public Records Law requires disclosure of the minutes of a public body's meeting that was closed to the public under the Open Meetings Law requires consideration of time and content factors, allowing courts to tailor the scope of statutory protection in each case; courts should ensure that the exception to the disclosure requirement should extend no further than necessary to protect ongoing efforts of a public body, respecting the policy against secrecy in government that underlies both the Public Records Law and the Open Meetings Law. Multimedia Pub. of North Carolina, Inc. v. Henderson County, 2000, 136 N.C.App. 567, 525 S.E.2d 786, review denied 351 N.C. 474, 543 S.E.2d 492. Records ⚷ 55

A local board of education is not required to disclose the reasons for not renewing the contract of a probationary teacher in its minutes or in other documents in a manner which makes those reasons public information. 54 Op.Atty. Gen. 84, Garland, June 5, 1985.

The location and the identity of the owner of real property for a proposed land acquisition by a public body are not normally ''material terms'' which may be reserved for discussion in closed session under the state's Open Meetings law unless the public body, in good faith, intends to negotiate those items as materials terms of a purchase contract. Op.Atty.Gen. Basnight, Oct. 17, 1994.

A public body can only enter into a closed session when it is meeting in public, a motion is made to go into a closed session, the motion specifically cites the statute provision that provides the basis for entering into the closed session, and the body must vote on the motion; if the motion carries, the body can enter into a closed session for that limited purpose and no other. Op.Atty. Gen., Kelly, Kelley, Oct. 5, 2005.

If activities for which a closed session was entered into are not complete and the public body wishes to recess and continue the closed session at a later time, the public body must give public notice of that decision including the time and location for the reconvened meeting. Op.Atty.Gen., Kelly, Kelley, Oct. 5, 2005.

1.5. Exceptions, generally

County mental health, developmental disabilities, substance abuse services area authority did not violate the Open Meetings Law by entering into closed sessions to evaluate the qualifications of three candidates for the position of area director, where the appointment of the candidate and the approval of her contract took place in open meetings. Davis v. Durham Mental Health/Development Disabilities/Substance Abuse Area Authoritiy, 2004, 165 N.C.App. 100, 598 S.E.2d 237. Counties ⚷ 52

Exceptions to the operation of open meetings laws must be narrowly construed. Boney Publishers, Inc. v. Burlington City Council, 2002, 151 N.C.App. 651, 566 S.E.2d 701, review denied 356 N.C. 297, 356 N.C. 433, 571 S.E.2d 221. Administrative Law And Procedure ⚷ 124

2. Attorneys

Under North Carolina law, public bodies can give instructions to their attorneys to settle litigation, so long as settlement terms are later entered into minutes in open session. Moore v. Beaufort County, N.C., 1991, 936 F.2d 159. Municipal Corporations ⚷ 1018

Chair's mere mention of discussing ''procedure'' with attorney for county board of elections was insufficient to invoke attorney-client privilege as basis under Open Meetings Law for board to go into closed session in proceeding involving a voter registration challenge. Knight v. Higgs, 2008, 189 N.C.App. 696, 659 S.E.2d 742. Elections ⚷ 54

City housing appeals board did not violate open-meetings law at two meetings where it discussed apartment owner's appeal of ordered demolition and repair of apartment units, where meetings were held to consult with board's attorney on matters within the scope of attorney-client privilege. Carolina Holdings, Inc. v. Housing Appeals Bd. of City of Charlotte, 2002, 149 N.C.App. 579, 561 S.E.2d 541, review denied 356 N.C. 298, 570 S.E.2d 499, review dismissed 356 N.C. 298, 570 S.E.2d 500, appeal dismissed 570 S.E.2d 500. Administrative Law And Procedure ⚷ 124; Municipal Corporations ⚷ 628

While there is a public policy, under open-meetings law, against closed sessions, discussions between a board and its attorney regarding matters traditionally falling within the attorney-client privilege must be allowed to be conducted in closed sessions to preserve the attorney-client privilege, including consulting on constitutional and legal challenges which might result from actions being taken or considered by a board. Carolina Holdings, Inc. v. Housing Appeals Bd. of City of Charlotte, 2002, 149 N.C.App. 579, 561 S.E.2d 541, review denied 356 N.C. 298, 570 S.E.2d 499, review dismissed 356 N.C. 298, 570 S.E.2d 500, appeal dismissed 570 S.E.2d 500. Administrative Law And Procedure ⚷ 124

The attorney-client privilege exception to the Open Meetings Law's mandate that all "official meeting[s] of a public body" be conducted in the open is not limited to those instances in which a claim is threatened or pending against the public body seeking to invoke that exception. Multimedia Pub. of North Carolina, Inc. v. Henderson County, 2000, 136 N.C.App. 567, 525 S.E.2d 786, review denied 351 N.C. 474, 543 S.E.2d 492. Administrative Law And Procedure ⚷ 124

Attorney-client privilege exception to Open Meetings Law as amended in 1994 creates only one exception, which pertains to matters falling within attorney-client privilege; it does not create separate exception for discussions of specific claims. Multimedia Pub. of North Carolina, Inc. v. Henderson County, 2000, 136 N.C.App. 567, 525 S.E.2d 786, review denied 351 N.C. 474, 543 S.E.2d 492. Administrative Law And Procedure ⚷ 124

In light of the general public policy favoring open meetings, the attorney-client exception to the Open Meetings Law is to be construed and applied narrowly, notwithstanding the countervailing policy favoring confidentiality between attorneys and clients. Multimedia Pub. of North Carolina, Inc. v. Henderson County, 2000, 136 N.C.App. 567, 525 S.E.2d 786, review denied 351 N.C. 474, 543 S.E.2d 492. Administrative Law And Procedure ⚷ 124

The attorney-client exception to the Open Meetings Law must be viewed in light of the traditional duties performed by attorneys; thus, public bodies cannot simply delegate responsibilities to attorneys and then cloak negotiations and closed sessions in secrecy by having attorneys present. Multimedia Pub. of North Carolina, Inc. v. Henderson County, 2000, 136 N.C.App. 567, 525 S.E.2d 786, review denied 351 N.C. 474, 543 S.E.2d 492. Administrative Law And Procedure ⚷ 124

Under the attorney-client exception to the Open Meetings Law, discussions regarding the drafting, phrasing, scope, and meaning of proposed enactments, and discussions regarding their constitutionality and possible legal challenges, would be permissible during a closed session; however, as soon as discussions move beyond legal technicalities and into the propriety and merits of proposed enactments, the legal justification for closing the session ends. Multimedia Pub. of North Carolina, Inc. v. Henderson County, 2000, 136 N.C.App. 567, 525 S.E.2d 786, review denied 351 N.C. 474, 543 S.E.2d 492. Administrative Law And Procedure ⚷ 124

County board of education's direction to attorney to terminate construction contract did not fall under attorney-client privilege as decision had to be divulged to contractor, and thus, did not fall under exception to Open Meetings Law permitting closing of meeting to preserve attorney-client privilege. H.B.S. Contractors, Inc. v. Cumberland County Bd. of Educ., 1996, 122 N.C.App. 49, 468 S.E.2d 517, review allowed 343 N.C. 751, 473 S.E.2d 615, review improvidently allowed 345 N.C. 178, 477 S.E.2d 926. Administrative Law And Procedure ⚷ 124; Schools ⚷ 57; Witnesses ⚷ 206

County board of education's direction to attorney to terminate construction contract was not an administrative procedure, and thus, did not fall under exception to Open Meetings Law permitting closing of meeting to permit public body to consider and give instructions to attorney concerning ad-

ministrative procedure. H.B.S. Contractors, Inc. v. Cumberland County Bd. of Educ., 1996, 122 N.C.App. 49, 468 S.E.2d 517, review allowed 343 N.C. 751, 473 S.E.2d 615, review improvidently allowed 345 N.C. 178, 477 S.E.2d 926. Administrative Law And Procedure ⚷ 124; Schools ⚷ 57

''Administrative procedure,'' as used in statute providing exception to requirement that meetings of public bodies be open for instructions to attorney concerning handling of administrative procedure, refers only to administrative proceedings instituted under state Administrative Procedure Act, and does not include mere clerical or managerial instructions to terminate contract. H.B.S. Contractors, Inc. v. Cumberland County Bd. of Educ., 1996, 122 N.C.App. 49, 468 S.E.2d 517, review allowed 343 N.C. 751, 473 S.E.2d 615, review improvidently allowed 345 N.C. 178, 477 S.E.2d 926. Administrative Law And Procedure ⚷ 124

A public body may go into closed session with its attorney to discuss any matters otherwise included within the attorney-client privilege, including a discussion regarding the validity of a proposed contract and the respective rights and obligations of the contracting parties. Op.Atty.Gen., Johnson, Oct. 28, 1994.

While the Open Meetings Law permits a board to hold a closed session in order to consult with an attorney retained by the public body, it does not permit a public body to close a meeting for any discussion with an attorney. The exception is limited by the scope of the attorney-client privilege as defined by common law. Thus, there must be an attorney-client relationship between the public body and the attorney; the communications that are the subject of the closed session must concern legal advice in the course of the professional employment; the communications must be confidential; and the public body must not have waived the privilege. Op. Atty.Gen., Summerell, April 2, 1997.

2.5. Disclosure of minutes of closed session

Open Meetings Law required city council to disclose, in open session, the location of real property proposed for acquisition and the intended use of the property, before going into closed session to discuss potential purchase of the real property, where location and intended use of the property were not material terms of contract to acquire the property, and only material terms subject to discussion during closed session were price and whether seller would be seeking to structure the conveyance to gain tax advantages. Boney Publishers, Inc. v. Burlington City Council, 2002, 151 N.C.App. 651, 566 S.E.2d 701, review denied 356 N.C. 297, 356 N.C. 433, 571 S.E.2d 221. Municipal Corporations ⚷ 92

A public body may not reserve for discussion in closed session, under Open Meetings Law, matters relating to the terms of a contract for acquisition of real property unless those terms are material to the contract and also actually subject to negotiation. Boney Publishers, Inc. v. Burlington City Council, 2002, 151 N.C.App. 651, 566 S.E.2d 701, review denied 356 N.C. 297, 356 N.C. 433, 571 S.E.2d 221. Municipal Corporations ⚷ 92

Open Meetings Law required city council to disclose, in open session, the identity of the owners of real property proposed for acquisition, before going into closed session to discuss potential purchase of the property, where city was considering only one particular tract of land, such that identity of owners of the property was not a material term for which city was required to establish a position for purposes of negotiation. Boney Publishers, Inc. v. Burlington City Council, 2002, 151 N.C.App. 651, 566 S.E.2d 701, review denied 356 N.C. 297, 356 N.C. 433, 571 S.E.2d 221. Municipal Corporations ⚷ 92

City council could withhold from public inspection the minutes from its closed session to discuss potential acquisition of real property, but only with respect to that portion of minutes concerning council's discussions of price or other material terms of the purchase; portion of minutes concerning location of the property, purpose of acquisition, and identity of owners, which was not confidential information protected by Open Meetings Law, had to be disclosed upon request. Boney Publishers, Inc. v. Burlington City Council, 2002, 151 N.C.App. 651, 566 S.E.2d 701, review denied 356 N.C. 297, 356 N.C. 433, 571 S.E.2d 221. Municipal Corporations ⚷ 100

3. Executive sessions

Section of Open Meetings Law providing exception to Public Records Act for minutes of executive sessions

"so long as public inspection would frustrate the purpose of the executive session" did not provide ground for excepting minutes of meetings of commission appointed to investigate alleged improprieties relating to university basketball team, particularly as commission had completed its work and disbanded; commission's work and results depending on that work could not have been compromised by public inspection. News and Observer Pub. Co., Inc. v. Poole, 1992, 412 S.E.2d 7, 330 N.C. 465. Records ⚷ 55

Open Meetings Law section providing exception to Public Records Act for minutes of executive sessions "so long as public inspection would frustrate the purpose of the executive session" requires consideration of time and content factors, allowing courts to tailor scope of statutory protection in each case. News and Observer Pub. Co., Inc. v. Poole, 1992, 412 S.E.2d 7, 330 N.C. 465. Records ⚷ 55

Courts should ensure that Open Meetings Law's exception to Public Records Act's disclosure requirement for minutes of executive sessions "so long as public inspection would frustrate the purpose of the executive session" should extend no further than necessary to protect ongoing efforts of public body, respecting policy against secrecy and government that underlies both Public Records Act and Open Meetings Law. News and Observer Pub. Co., Inc. v. Poole, 1992, 412 S.E.2d 7, 330 N.C. 465. Records ⚷ 55

There is no clear legislative intent in Article 33C of G.S. Chapter 143 that contracts between public bodies and independent contractors, otherwise properly approved and executed, are void or vitiated because final action by the public body was not taken at public meeting; therefore, if approval in executive session would otherwise suffice, failure to take final action in open meeting would not invalidate a public body's contract, G.S. 143–318.11(a)(9) notwithstanding. 51 Op.Atty.Gen. 79, Millar, Jan. 28, 1982.

4. Economic development

Meetings of county commissioner and of city's board of aldermen to discuss what economic incentives should be offered to attract businesses to area came within "economic development" exception to Open Meetings Law, as long as no final decision was made on what incentives would be offered, and as long as execution of any contracts or expenditure of any funds was made contingent on final approval of proposed incentives at hearing open to public. Maready v. City of Winston-Salem, 1996, 342 N.C. 708, 467 S.E.2d 615. Municipal Corporations ⚷ 92

5. Privileged or confidential evidence

Minutes from closed session of county board of commissioners reflected that closure of session with staff attorney was appropriate in light of attorney-client privilege, and thus closure was not violation of Open Meetings Act, where redacted minutes stated that during closed session, staff attorney informed board that it was informed that action on moratorium on construction or operation of race tracks would be challenged, in unredacted form, minutes revealed that attorney briefly explained difference between land use ordinance and police power ordinance, and that there was discussion about legality of making moratorium term longer than 90 days, and record reflected no discussion of general policy matters or propriety of moratorium. Multimedia Publishing of North Carolina, Inc. v. Henderson County, 2001, 145 N.C.App. 365, 550 S.E.2d 846. Counties ⚷ 52

Balancing of the public's right to know and the government's interest in maintaining confidentiality to protect its citizens, as delineated by statute permitting closed sessions of a county board of commissioners to consult with an attorney to preserve the attorney-client privilege, but in prohibiting discussion of general policy matters in those closed sessions, is appropriate. Multimedia Publishing of North Carolina, Inc. v. Henderson County, 2001, 145 N.C.App. 365, 550 S.E.2d 846. Counties ⚷ 52

Findings that county school board's closed sessions were entirely for purpose of protecting board's attorney-client privilege and that release of any part of the minutes would destroy the attorney-client privilege, such that the attorney-client exception to the open meetings law applied, could not be contested on appeal, where minutes on which findings were based were not part of record on appeal. Sigma Construction Co., Inc. v. Guilford County Bd. of Education, 2001, 144 N.C.App. 376, 547 S.E.2d 178, review dismissed 354 N.C. 366, 556 S.E.2d 578. Schools ⚷ 48(.5)

University undergraduate court which holds student disciplinary proceedings is authorized to close its proceedings pursuant to statute allowing public body to close its session to protect privileged or confidential evidence and provision of Family Educational and Privacy Rights Act (FERPA) withholding federal funds to educational agency or institution which has policy or practice of releasing educational records, as it was impossible to hold student disciplinary hearings without divulging student records as defined in FERPA. DTH Pub. Corp. v. University of North Carolina at Chapel Hill, 1998, 128 N.C.App. 534, 496 S.E.2d 8, review denied 348 N.C. 496, 510 S.E.2d 381, review denied 348 N.C. 496, 510 S.E.2d 382. Colleges And Universities ⚷ 9.30(7)

Disclosure of recordings of closed university undergraduate court proceedings would frustrate purposes of holding closed session within meaning of Public Records Law, and, thus, recordings could be withheld from public inspection pursuant to statute allowing public body to close its session to protect privileged or confidential evidence. DTH Pub. Corp. v. University of North Carolina at Chapel Hill, 1998, 128 N.C.App. 534, 496 S.E.2d 8, review denied 348 N.C. 496, 510 S.E.2d 381, review denied 348 N.C. 496, 510 S.E.2d 382. Colleges And Universities ⚷ 9.30(7)

6. Presumptions and burden of proof

A governmental body seeking to invoke the attorney-client exception to the Open Meetings Law has the burden of demonstrating that the exception applies. Multimedia Pub. of North Carolina, Inc. v. Henderson County, 2000, 136 N.C.App. 567, 525 S.E.2d 786, review denied 351 N.C. 474, 543 S.E.2d 492. Administrative Law And Procedure ⚷ 124

In demonstrating the applicability of the attorney-client exception to the Open Meetings Law, government bodies may not simply treat the words ''attorney-client privilege'' or ''legal advice'' as some talisman, the mere utterance of which magically casts a spell of secrecy over their meetings; rather, the government body can only meet its burden by providing some objective indicia that the exception is applicable under the circumstances. Multimedia Pub. of North Carolina, Inc. v. Henderson County, 2000, 136 N.C.App. 567, 525 S.E.2d 786, review denied 351 N.C. 474, 543 S.E.2d 492. Administrative Law And Procedure ⚷ 124

7. In camera review

After in camera review of session minutes held during closed meeting of public body, the trial court is to make available for public inspection any portion of the closed session minutes not related to the attorney-client privilege. Sigma Construction Co., Inc. v. Guilford County Bd. of Education, 2001, 144 N.C.App. 376, 547 S.E.2d 178, review dismissed 354 N.C. 366, 556 S.E.2d 578. Administrative Law And Procedure ⚷ 124

In camera review by the trial court of the minutes of a government body's closed session provides the easiest and most effective way for the government body to objectively demonstrate that the closed session was in fact warranted under the attorney-client exception to the Open Meetings Law; such review affords the benefits of an impartial arbiter without the risks accompanying public disclosure of the minutes. Multimedia Pub. of North Carolina, Inc. v. Henderson County, 2000, 136 N.C.App. 567, 525 S.E.2d 786, review denied 351 N.C. 474, 543 S.E.2d 492. Administrative Law And Procedure ⚷ 124

Record was insufficient to permit Court of Appeals to determine whether it was appropriate under attorney-client exception to Open Meetings Law for county board of supervisors to close portion of special board meeting in which board met with county attorney and staff attorney, purportedly to obtain legal advice, and thus, remand to trial court for in camera review of minutes of closed session was required; only information in record as to content of discussions at closed session came from self-serving affidavits of staff attorney and clerk in attendance. Multimedia Pub. of North Carolina, Inc. v. Henderson County, 2000, 136 N.C.App. 567, 525 S.E.2d 786, review denied 351 N.C. 474, 543 S.E.2d 492. Counties ⚷ 52

In camera hearing of minutes of county board of supervisors' meeting that was closed to public was necessary, in order to determine whether, even if closed session were warranted under attorney-client exception to Open Meetings Law, publisher was nonetheless entitled to public disclosure of minutes of closed session pursuant to Public Records Law. Multimedia Pub. of North Carolina, Inc. v. Henderson County,

2000, 136 N.C.App. 567, 525 S.E.2d 786, review denied 351 N.C. 474, 543 S.E.2d 492. Counties ⚷ 52

8. Motions

Chair of county board of elections, acting alone, did not have the authority under Open Meetings Law to direct that the board go into closed session in proceeding involving a challenge to voter's registration; rather, a motion and a vote by the board to go into closed session was required. Knight v. Higgs, 2008, 189 N.C.App. 696, 659 S.E.2d 742. Elections ⚷ 54

§ 143–318.12. Public notice of official meetings

(a) If a public body has established, by ordinance, resolution, or otherwise, a schedule of regular meetings, it shall cause a current copy of that schedule, showing the time and place of regular meetings, to be kept on file as follows:

(1) For public bodies that are part of State government, with the Secretary of State;

(2) For the governing board and each other public body that is part of a county government, with the clerk to the board of county commissioners;

(3) For the governing board and each other public body that is part of a city government, with the city clerk;

(4) For each other public body, with its clerk or secretary, or, if the public body does not have a clerk or secretary, with the clerk to the board of county commissioners in the county in which the public body normally holds its meetings.

If a public body changes its schedule of regular meetings, it shall cause the revised schedule to be filed as provided in subdivisions (1) through (4) of this subsection at least seven calendar days before the day of the first meeting held pursuant to the revised schedule.

(b) If a public body holds an official meeting at any time or place other than a time or place shown on the schedule filed pursuant to subsection (a) of this section, it shall give public notice of the time and place of that meeting as provided in this subsection.

(1) If a public body recesses a regular, special, or emergency meeting held pursuant to public notice given in compliance with this subsection, and the time and place at which the meeting is to be continued is announced in open session, no further notice shall be required.

(2) For any other meeting, except an emergency meeting, the public body shall cause written notice of the meeting stating its purpose (i) to be posted on the principal bulletin board of the public body or, if the public body has no such bulletin board, at the door of its usual meeting room, and (ii) to be mailed, e-mailed, or delivered to each newspaper, wire service, radio station, and television station that has

filed a written request for notice with the clerk or secretary of the public body or with some other person designated by the public body. The public body shall also cause notice to be mailed, e-mailed, or delivered to any person, in addition to the representatives of the media listed above, who has filed a written request with the clerk, secretary, or other person designated by the public body. This notice shall be posted and mailed, e-mailed, or delivered at least 48 hours before the time of the meeting. The notice required to be posted on the principal bulletin board or at the door of its usual meeting room shall be posted on the door of the building or on the building in an area accessible to the public if the building containing the principal bulletin board or usual meeting room is closed to the public continuously for 48 hours before the time of the meeting. The public body may require each newspaper, wire service, radio station, and television station submitting a written request for notice to renew the request annually. The public body shall charge a fee to persons other than the media, who request notice, of ten dollars ($10. 00) per calendar year, and may require them to renew their requests quarterly. No fee shall be charged for notices sent by e-mail.

(3) For an emergency meeting, the public body shall cause notice of the meeting to be given to each local newspaper, local wire service, local radio station, and local television station that has filed a written request, which includes the newspaper's, wire service's, or station's telephone number, for emergency notice with the clerk or secretary of the public body or with some other person designated by the public body. This notice shall be given either by e-mail, by telephone, or by the same method used to notify the members of the public body and shall be given immediately after notice has been given to those members. This notice shall be given at the expense of the party notified. Only business connected with the emergency may be considered at a meeting to which notice is given pursuant to this paragraph.

(c) Repealed by S.L. 1991–694, § 6.

(d) If a public body has a Web site and has established a schedule of regular meetings, the public body shall post the schedule of regular meetings to the Web site.

(e) If a public body has a Web site that one or more of its employees maintains, the public body shall post notice of any meeting held under subdivisions (b)(1) and (b)(2) of this section prior to the scheduled time of that meeting.

(f) For purposes of this section, an ''emergency meeting'' is one called because of generally unexpected circumstances that require immediate consideration by the public body.

Added by Laws 1979, c. 655, § 1. Amended by Laws 1991, c. 694, §§ 5, 6; S.L. 2009–350, § 1, eff. Oct. 1, 2009.

Historical and Statutory Notes

2009 Legislation

S.L. 2009–350, § 2, provides:

"This act is effective for open meetings noticed on or after October 1, 2009."

Cross References

Hazardous waste; volunteer host counties, see § 130B–23.

Administrative Code References

Board of employee assistance professionals, administration, meetings, see 21 NCAC 11.0103.

Hazardous waste management commission, mailing list, see 4 NCAC 18.0103.

Interpreter and transliterator board, general provisions, see 21 NCAC 25.0101 et seq.

Low–level radioactive waste management authority, preferred site, see 1 NCAC 37.0306.

Notes of Decisions

In general 1

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1. In general

Owners of property annexed by city, who alleged that city council failed to provide written notice of special meeting at which annexation was voted on more than 48 hours in advance, as required by Open Meetings Law, failed to rebut summary judgment evidence submitted by city and city officials establishing that city council provided the required notice; city and city officials submitted affidavits stating that notice was given to local media more than 48 hours in advance, and property owners submitted no contrary affidavits. Brown v. City of Winston-Salem, 2005, 171 N.C.App. 266, 614 S.E.2d 599, certiorari denied 360 N.C. 60, 621 S.E.2d 176. Municipal Corporations ⚷ 33(4)

Board of county commissioners had authority to adopt school bond order on same day as public hearing where adequate notice had been given of both public hearing and adjourned regular meeting. Wright v. Macon County, 1983, 308 S.E.2d 97, 64 N.C.App. 718, review denied 318 S.E.2d 1, 311 N.C. 310. Schools ⚷ 97(6)

In absence of statutory provisions for notice, board of education would be required to give reasonable notice of its meetings, taking into consideration urgency of matter necessitating meeting; 48 hours notice for all meetings was unreasonably long. News & Observer Pub. Co. v. Interim Bd. of Ed. for Wake County, 1976, 223 S.E.2d 580, 29 N.C.App. 37. Schools ⚷ 57

Official meetings require 48 hours' notice, by posting and mail or delivery to news media and other person s who have filed written requests for notification, even when a public meeting is recessed without adjournment; a meeting reconvened without notice violates open meetings law. Op.Atty.Gen., Kelly, Kelley, Oct. 5, 2005.

§ 143–318.13. Electronic meetings; written ballots; acting by reference

(a) Electronic Meetings.—If a public body holds an official meeting by use of conference telephone or other electronic means, it shall provide a location and means whereby members of the

public may listen to the meeting and the notice of the meeting required by this Article shall specify that location. A fee of up to twenty-five dollars ($25.00) may be charged each such listener to defray in part the cost of providing the necessary location and equipment.

(b) Written Ballots.—Except as provided in this subsection or by joint resolution of the General Assembly, a public body may not vote by secret or written ballot. If a public body decides to vote by written ballot, each member of the body so voting shall sign his or her ballot; and the minutes of the public body shall show the vote of each member voting. The ballots shall be available for public inspection in the office of the clerk or secretary to the public body immediately following the meeting at which the vote took place and until the minutes of that meeting are approved, at which time the ballots may be destroyed.

(c) Acting by Reference.—The members of a public body shall not deliberate, vote, or otherwise take action upon any matter by reference to a letter, number or other designation, or other secret device or method, with the intention of making it impossible for persons attending a meeting of the public body to understand what is being deliberated, voted, or acted upon. However, this subsection does not prohibit a public body from deliberating, voting, or otherwise taking action by reference to an agenda, if copies of the agenda, sufficiently worded to enable the public to understand what is being deliberated, voted, or acted upon, are available for public inspection at the meeting.

Added by Laws 1979, c. 655, § 1.

Historical and Statutory Notes

Local Modifications

Hyde County: S.L. 2008–111, § 1.

Cross References

Contested elections for Council of State offices, see § 163–182.13A.

§ 143–318.14. Broadcasting or recording meetings

(a) Except as herein below provided, any radio or television station is entitled to broadcast all or any part of a meeting required to be open. Any person may photograph, film, tape-record, or otherwise reproduce any part of a meeting required to be open.

(b) A public body may regulate the placement and use of equipment necessary for broadcasting, photographing, filming, or recording a meeting, so as to prevent undue interference with the meeting. However, the public body must allow such equipment to be placed within the meeting room in such a way as to permit its intended use, and the ordinary use of such equipment shall not be

declared to constitute undue interference; provided, however, that if the public body, in good faith, should determine that the size of the meeting room is such that all the members of the public body, members of the public present, and the equipment and personnel necessary for broadcasting, photographing, filming, and tape-recording the meeting cannot be accommodated in the meeting room without unduly interfering with the meeting and an adequate alternative meeting room is not readily available, then the public body, acting in good faith and consistent with the purposes of this Article, may require the pooling of such equipment and the personnel operating it; and provided further, if the news media, in order to facilitate news coverage, request an alternate site for the meeting, and the public body grants the request, then the news media making such request shall pay any costs incurred by the public body in securing an alternate meeting site.

Added by Laws 1979, c. 655, § 1.

§ 143–318.14A. Legislative commissions, committees, and standing subcommittees

(a) Except as provided in subsection (e) below, all official meetings of commissions, committees, and standing subcommittees of the General Assembly (including, without limitation, joint committees and study committees), shall be held in open session. For the purpose of this section, the following also shall be considered to be ''commissions, committees, and standing subcommittees of the General Assembly'':

(1) The Legislative Research Commission;

(2) The Legislative Services Commission;

(3) Repealed by S.L. 2006–203, § 93, eff. July 1, 2007.

(4) The Joint Legislative Utility Review Committee;

(5) The Joint Legislative Commission on Governmental Operations;

(6) The Joint Legislative Commission on Municipal Incorporations;

(7) Deleted by S.L. 1997–443, § 12.30, eff. August 28, 1997.

(8) The Joint Select Committee on Low–Level Radioactive Waste;

(9) The Environmental Review Commission;

(10) The Joint Legislative Transportation Oversight Committee;

(11) The Joint Legislative Education Oversight Committee;

(12) The Joint Legislative Commission on Future Strategies for North Carolina;

(13) The Commission on Children with Special Needs;

(14) The Legislative Committee on New Licensing Boards;

(15) The Agriculture and Forestry Awareness Study Commission;

(16) The North Carolina Study Commission on Aging; and

(17) The standing Committees on Pensions and Retirement.

(b) Reasonable public notice of all meetings of commissions, committees, and standing subcommittees of the General Assembly shall be given. For purposes of this subsection, ''reasonable public notice'' includes, but is not limited to:

(1) Notice given openly at a session of the Senate or of the House; or

(2) Notice mailed or sent by electronic mail to those who have requested notice, and to the Legislative Services Office, which shall post the notice on the General Assembly web site.

G.S. 143–318.12 shall not apply to meetings of commissions, committees, and standing subcommittees of the General Assembly.

(c) A commission, committee, or standing subcommittee of the General Assembly may take final action only in an open meeting.

(d) A violation of this section by members of the General Assembly shall be punishable as prescribed by the rules of the House or the Senate.

(e) The following sections shall apply to meetings of commissions, committees, and standing subcommittees of the General Assembly: G.S. 143-318.10(e) and G.S. 143-318.11, G.S. 143-318.13 and G.S. 143-318.14, G.S. 143-318.16 through G.S. 143-318.17.

Added by Laws 1991, c. 694, § 7. Amended by Laws 1991 (Reg. Sess., 1992), c. 785, § 4; Laws 1991 (Reg. Sess., 1992), c. 1030, § 42; Laws 1993, c. 321, § 169.2(f), eff. July 1,1993; S.L. 1997–443, § 12.30, eff. July 1, 1997; S.L. 2003–374, § 1, eff. Aug. 31, 2003; S.L. 2006–203, § 93, eff. July 1, 2007.

Historical and Statutory Notes

Laws 1993, c. 321, §§ 321, 322, provide:

''Sec. 321. Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993–95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993–95 biennium.

''Sec. 322. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of the act as a whole or any part other than the part so declared to be unconstitutional or invalid.''

Laws 1993, c. 321, was ratified July 9, 1993.

2006 Legislation

S.L. 2006–203, § 126, provides:

''This act becomes effective July 1, 2007, and applies to the budget for the 2007–2009 biennium and each subsequent biennium thereafter. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.''

§ 143–318.15. Repealed by S.L. 2006–203, § 94, eff. July 1, 2007

Historical and Statutory Notes

The repealed section, which related to Advisory Budget Commission and appropriation committees of General Assembly, was derived from Laws 1979, c. 655, § 1.

§ 143–318.16. Injunctive relief against violations of Article

(a) The General Court of Justice has jurisdiction to enter mandatory or prohibitory injunctions to enjoin (i) threatened violations of this Article, (ii) the recurrence of past violations of this Article, or (iii) continuing violations of this Article. Any person may bring an action in the appropriate division of the General Court of Justice seeking such an injunction; and the plaintiff need not allege or prove special damage different from that suffered by the public at large. It is not a defense to such an action that there is an adequate remedy at law.

(b) Any injunction entered pursuant to this section shall describe the acts enjoined with reference to the violations of this Article that have been proved in the action.

(c) Repealed by Laws 1985 (Reg. Sess., 1986), c. 932, § 3, eff. Oct. 1, 1986.

Added by Laws 1979, c. 655, § 1. Amended by Laws 1985 (Reg. Sess., 1986), c. 932, § 3.

Notes of Decisions

In general 1
Attorney fees 4
Damages 3
Standing 2

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1. In general

Public official immunity (POI) did not apply to claim of open meeting law violation that company that had been fixed base operator (FBO) at county airport and company's president brought against members of county airport authority; open meeting law did not allow for recovery of money damages, and company and president did not allege that they were entitled to compensation as persons distinct from the general public. Free Spirit Aviation, Inc. v. Rutherford Airport Authority, 2008, 664 S.E.2d 8. Counties ⚷ 52

Plaintiffs in class action against school board were not entitled to permanent injunction against violation of open meetings law where, at summary judgment hearing, it appeared that there was evidence of exclusion of only one plaintiff from a meeting and there was statutory remedy. Eggimann v. Wake County Bd. of Ed., 1974, 206 S.E.2d 754, 22 N.C.App. 459, certiorari denied 209 S.E.2d 280, 285 N.C. 756. Judgment ⚷ 181(15.1); Judgment ⚷ 185.3(11)

2. Standing

Open Meetings Act did not authorize city to file declaratory judgment action against newspaper publisher to resolve dispute as to city's compliance with Act at closed meeting of city council; only the person seeking a declaration that action of a public body was in violation of Act was entitled to initiate judicial action to enforce the request, and permitting city to bring declaratory judgment action would have chilling effect on public, thereby eliminating the protection Act was intended to provide. City of Burlington v. Boney Publishers, Inc., 2004, 166 N.C.App. 186, 600 S.E.2d 872, review allowed 359 N.C. 187, 606 S.E.2d 901, review improvidently allowed 359 N.C. 422, 611 S.E.2d 833, on remand 2005 WL 5368441. Declaratory Judgment ⚷ 302.1; Municipal Corporations ⚷ 92

3. Damages

Open meetings law does not allow for recovery of money damages. Free Spirit Aviation, Inc. v. Rutherford Airport

Authority, 2008, 664 S.E.2d 8. Municipal Corporations ⚷ 92

4. Attorney fees

Trial court may award reasonable attorney fees to the prevailing party in an action for violation of the open meetings law. Free Spirit Aviation, Inc. v. Rutherford Airport Authority, 2008, 664 S.E.2d 8. Municipal Corporations ⚷ 1040

§ 143–318.16A. Additional remedies for violations of Article

(a) Any person may institute a suit in the superior court requesting the entry of a judgment declaring that any action of a public body was taken, considered, discussed, or deliberated in violation of this Article. Upon such a finding, the court may declare any such action null and void. Any person may seek such a declaratory judgment, and the plaintiff need not allege or prove special damage different from that suffered by the public at large. The public body whose action the suit seeks to set aside shall be made a party. The court may order other persons be made parties if they have or claim any right, title, or interest that would be directly affected by a declaratory judgment voiding the action that the suit seeks to set aside.

(b) A suit seeking declaratory relief under this section must be commenced within 45 days following the initial disclosure of the action that the suit seeks to have declared null and void; provided, however, that any suit for declaratory judgment brought pursuant to this section that seeks to set aside a bond order or bond referendum shall be commenced within the limitation periods prescribed by G.S. 159-59 and G.S. 159-62. If the challenged action is recorded in the minutes of the public body, its initial disclosure shall be deemed to have occurred on the date the minutes are first available for public inspection. If the challenged action is not recorded in the minutes of the public body, the date of its initial disclosure shall be determined by the court based on a finding as to when the plaintiff knew or should have known that the challenged action had been taken.

(c) In making the determination whether to declare the challenged action null and void, the court shall consider the following and any other relevant factors:

(1) The extent to which the violation affected the substance of the challenged action;

(2) The extent to which the violation thwarted or impaired access to meetings or proceedings that the public had a right to attend;

(3) The extent to which the violation prevented or impaired public knowledge or understanding of the people's business;

(4) Whether the violation was an isolated occurrence, or was a part of a continuing pattern of violations of this Article by the public body;

(5) The extent to which persons relied upon the validity of the challenged action, and the effect on such persons of declaring the challenged action void;

(6) Whether the violation was committed in bad faith for the purpose of evading or subverting the public policy embodied in this Article.

(d) A declaratory judgment pursuant to this section may be entered as an alternative to, or in combination with, an injunction entered pursuant to G.S. 143-318.16.

(e) The validity of any enacted law or joint resolution or passed simple resolution of either house of the General Assembly is not affected by this Article.

Added by Laws 1985 (Reg. Sess., 1986), c. 932, § 1. Amended by Laws 1991, c. 694, § 8.

Notes of Decisions

In general 1
Attorney fees 4
Conclusions of law 5
Damages 3
Review 6
Voiding or rescinding actions 2

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1. In general

Public official immunity (POI) did not apply to claim of open meeting law violation that company that had been fixed base operator (FBO) at county airport and company's president brought against members of county airport authority; open meeting law did not allow for recovery of money damages, and company and president did not allege that they were entitled to compensation as persons distinct from the general public. Free Spirit Aviation, Inc. v. Rutherford Airport Authority, 2008, 664 S.E.2d 8. Counties ⚷ 52

Proper remedy for county board of education's failure to declare pay raise in public meeting in violation of open meetings law was not to require board members to return pay raises but to issue declaration that board violated open meetings law. Jacksonville Daily News Co. v. Onslow County Bd. of Educ., 1993, 113 N.C.App. 127, 439 S.E.2d 607. Schools ⚷ 48(.5)

2. Voiding or rescinding actions

Trial court did not abuse its discretion by declining to void county board of education's action terminating construction contract in closed meeting in violation of Open Meetings Law. H.B.S. Contractors, Inc. v. Cumberland County Bd. of Educ., 1996, 122 N.C.App. 49, 468 S.E.2d 517, review allowed 343 N.C. 751, 473 S.E.2d 615, review improvidently allowed 345 N.C. 178, 477 S.E.2d 926. Administrative Law And Procedure ⚷ 124; Schools ⚷ 57

For purposes of statute requiring court, in determining whether to void action in violation of Open Meetings Law, to consider extent to which persons relied upon validity of challenged action and effect on such persons of declaring action void, "person" includes any citizen of state whose interests will be affected by voiding the action. H.B.S. Contractors, Inc. v. Cumberland County Bd. of Educ., 1996, 122 N.C.App. 49, 468 S.E.2d 517, review allowed 343 N.C. 751, 473 S.E.2d 615, review improvidently allowed 345 N.C. 178, 477 S.E.2d 926. Administrative Law And Procedure ⚷ 124

Decision to void action challenged under Open Meetings Law is committed to sound discretion of trial court and can be reversed on appeal only if decision is manifestly unsupported by reason and so arbitrary that it could not have been the result of reasoned decision. H.B.S. Contractors, Inc. v. Cumberland County Bd. of Educ., 1996, 122 N.C.App. 49, 468 S.E.2d 517, review allowed 343 N.C. 751, 473 S.E.2d 615, review improvidently allowed 345 N.C. 178, 477 S.E.2d 926. Administrative Law And Procedure ⚷ 683

Party seeking to rescind actions taken in executive session has burden of producing evidence concerning one or

more of the statutory factors. Dockside Discotheque, Inc. v. Board of Adjustment of Town of Southern Pines, 1994, 115 N.C.App. 303, 444 S.E.2d 451, review denied 338 N.C. 309, 451 S.E.2d 634. Administrative Law And Procedure ⚷ 124

Whether to declare town board adjustment's action null and void because of violation of open meeting law is within the discretion of the trial court, and its decision can be reversed on appeal only if decision is manifestly unsupported by reason and so arbitrary that it could not have been the result of reasoned decision. Dockside Discotheque, Inc. v. Board of Adjustment of Town of Southern Pines, 1994, 115 N.C.App. 303, 444 S.E.2d 451, review denied 338 N.C. 309, 451 S.E.2d 634. Zoning And Planning ⚷ 746

Even if executive session of town board of adjustment was a violation of the open meeting law, it was not an abuse of discretion to refuse to declare null and void its decision denying appeal from administrator's decision that business was operating in violation of ordinance where trial court found that the executive session had little effect upon the substance of the challenged action. Dockside Discotheque, Inc. v. Board of Adjustment of Town of Southern Pines, 1994, 115 N.C.App. 303, 444 S.E.2d 451, review denied 338 N.C. 309, 451 S.E.2d 634. Zoning And Planning ⚷ 359

3. Damages

Open meetings law does not allow for recovery of money damages. Free Spirit Aviation, Inc. v. Rutherford Airport Authority, 2008, 664 S.E.2d 8. Municipal Corporations ⚷ 92

4. Attorney fees

Trial court may award reasonable attorney fees to the prevailing party in an action for violation of the open meetings law. Free Spirit Aviation, Inc. v. Rutherford Airport Authority, 2008, 664 S.E.2d 8. Municipal Corporations ⚷ 1040

5. Conclusions of law

Trial court's failure, on voter's appeal from decision of county board of elections to remove voter's name from county's registration rolls, to make conclusions of law that demonstrated court's consideration of relevant statutory factors in connection with voter's allegation that board violated Open Meetings Law, was reversible error. Knight v. Higgs, 2008, 189 N.C.App. 696, 659 S.E.2d 742. Elections ⚷ 112

6. Review

Whether a violation of the Open Meetings Law occurred is a question of law that is reviewed de novo by appellate court. Knight v. Higgs, 2008, 189 N.C.App. 696, 659 S.E.2d 742. Appeal And Error ⚷ 893(1)

§ 143–318.16B. Assessments and awards of attorneys' fees

When an action is brought pursuant to G.S. 143–318.16 or G.S. 143–318.16A, the court may make written findings specifying the prevailing party or parties, and may award the prevailing party or parties a reasonable attorney's fee, to be taxed against the losing party or parties as part of the costs. The court may order that all or any portion of any fee as assessed be paid personally by any individual member or members of the public body found by the court to have knowingly or intentionally committed the violation; provided, that no order against any individual member shall issue in any case where the public body or that individual member seeks the advice of an attorney, and such advice is followed.

Added by Laws 1985 (Reg. Sess., 1986), c. 932, § 2. Amended by Laws 1993 (Reg. Sess., 1994), c. 570, § 3, eff. Oct. 1, 1994.

Historical and Statutory Notes

Laws 1993, c. 570, § 12 provides:

"This act becomes effective October 1, 1994, and shall not affect pending litigation."

Laws 1993, c. 570, was ratified June 23, 1994.

Notes of Decisions

Prevailing party 1

1. Prevailing party

Trial court may award reasonable attorney fees to the prevailing party in an action for violation of the open meetings law. Free Spirit Aviation, Inc. v. Rutherford Airport Authority, 2008, 664 S.E.2d 8. Municipal Corporations ⚷ 1040

Voter whose pleadings in trial court sought to establish a violation of Open Meetings Law, on appeal from decision of county board of elections to remove voter's name from registration rolls, was ''prevailing party'' to whom a discretionary award of attorney fees should be considered on remand to trial court, where appellate court determined as a matter of law that an Open Meetings Law violation had occurred. Knight v. Higgs, 2008, 189 N.C.App. 696, 659 S.E.2d 742. Elections ⚷ 112

Public contractor was a ''prevailing party'' entitled to recover attorney fees in action challenging county board of education's decision, in closed meeting, to terminate construction contract as a violation of Open Meetings Law, even though trial court refused to declare board's action void, where contractor prevailed on primary legal question of whether board violated Open Meetings Law. H.B.S. Contractors, Inc. v. Cumberland County Bd. of Educ., 1996, 122 N.C.App. 49, 468 S.E.2d 517, review allowed 343 N.C. 751, 473 S.E.2d 615, review improvidently allowed 345 N.C. 178, 477 S.E.2d 926. Schools ⚷ 126

§ 143–318.16C. Accelerated hearing; priority

Actions brought pursuant to G.S. 143–318.16 or G.S. 143–318.16A shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

Added by Laws 1993 (Reg. Sess., 1994), c. 570, § 4, eff. Oct. 1, 1994.

Historical and Statutory Notes

Laws 1993, c. 570, § 12 provides:

''This act becomes effective October 1, 1994, and shall not affect pending litigation.''

Laws 1993, c. 570, was ratified June 23, 1994.

§ 143–318.16D. Local acts

Any reference in any city charter or local act to an ''executive session'' is amended to read ''closed session''.

Added by Laws 1993 (Reg. Sess., 1994), c. 570, § 4, eff. Oct. 1, 1994.

Historical and Statutory Notes

Laws 1993, c. 570, § 12 provides:

''This act becomes effective October 1, 1994, and shall not affect pending litigation.''

Laws 1993, c. 570, was ratified June 23, 1994.

§ 143–318.17. Disruptions of official meetings

A person who willfully interrupts, disturbs, or disrupts an official meeting and who, upon being directed to leave the meeting by

the presiding officer, willfully refuses to leave the meeting is guilty of a Class 2 misdemeanor.

Added by Laws 1979, c. 655, § 1. Amended by Laws 1993, c. 539, § 1028, eff. Oct.1, 1994; Laws 1994 (1st Ex. Sess.), c. 24, § 14(c), eff. March 26, 1994.

Historical and Statutory Notes

Laws 1993, c. 539, § 1359, provides:

"This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions." [Amended by Laws 1994, Ex. Sess., c. 24, § 14(c), eff. March 26, 1994.]

Laws 1993, c. 539, was ratified July 24, 1993.

Cross References

Misdemeanor sentencing and punishment, see § 15A–1340.13 et seq.

Notes of Decisions

Construction and application 1

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1. Construction and application

Police officers who arrested and removed alderman from session could reasonably belief they had probable cause, allowing them qualified immunity from false arrest suit under §§ 1983; state statute governing recording was not sufficiently clear that police knew or should have known they were violating alderman's rights when they arrested him. King v. Jefferies, 2005, 402 F.Supp.2d 624. Civil Rights ⚷ 1376(6)

§ 143–318.18. Exceptions

This Article does not apply to:

(1) Grand and petit juries.

(2) Any public body that is specifically authorized or directed by law to meet in executive or confidential session, to the extent of the authorization or direction.

(3) The Judicial Standards Commission.

(3a) The North Carolina Innocence Inquiry Commission.

(4) Repealed by Laws 1991, c. 694, § 9.

(4a) The Legislative Ethics Committee.

(4b) A conference committee of the General Assembly.

(4c) A caucus by members of the General Assembly; however, no member of the General Assembly shall participate in a caucus which is called for the purpose of evading or subverting this Article.

(5) Law enforcement agencies.

(6) A public body authorized to investigate, examine, or determine the character and other qualifications of applicants for professional or occupational licenses or certificates or to take disciplinary actions against persons holding such licenses or certificates, (i) while preparing, approving,

administering, or grading examinations or (ii) while meeting with respect to an individual applicant for or holder of such a license or certificate. This exception does not amend, repeal, or supersede any other statute that requires a public hearing or other practice and procedure in a proceeding before such a public body.

(7) Any public body subject to the State Budget Act, Chapter 143C of the General Statutes and exercising quasi-judicial functions, during a meeting or session held solely for the purpose of making a decision in an adjudicatory action or proceeding.

(8) The boards of trustees of endowment funds authorized by G.S. 116-36 or G.S. 116-238.

(9) Repealed by Laws 1991, c. 694, § 9.

(10) The Board of Awards.

(11) The General Court of Justice.

Added by Laws 1979, c. 655, § 1. Amended by Laws 1985, c. 757, § 206(e); Laws 1991, c. 694, § 9; S.L. 2006–184, § 6, eff. Aug. 3, 2006; S.L. 2006–203, § 95, eff. July 1, 2007.

Historical and Statutory Notes

2006 Legislation

S.L. 2006–184, § 6, eff. Aug. 3, 2006, amended section by adding subd. (3a).

S.L. 2006–184, § 12, provides:

''This act is effective when it becomes law and applies to claims of factual innocence filed on or before December 31, 2010.''

S.L. 2006–203, § 126, provides:

''This act becomes effective July 1, 2007, and applies to the budget for the 2007–2009 biennium and each subsequent biennium thereafter. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.''

Administrative Code References

Administration department, purchase procedures, board of award, see 1 NCAC 5B.1518.

Board of geologists, organization, see 21 NCAC 21.0103.

Notes of Decisions

In general 1

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1. In general

Exceptions to open meetings law should be strictly construed, and those seeking to come within exceptions have burden of justifying their action. News & Observer Pub. Co. v. Interim Bd. of Ed. for Wake County, 1976, 223 S.E.2d 580, 29 N.C.App. 37. Administrative Law And Procedure ⚷ 124

The Property Tax Commission is covered by the Executive Budget Act since it receives and expends State funds; consequently, G.S. § 143–318.18(7) authorizes the Commission in its discretion to close adjudicatory sessions conducted under G.S. § 105–290(b)(3). Op. Atty.Gen., Shires, Feb. 19, 1996.

As part of its quasi judicial duties, the Property Tax Commission enters findings of fact and conclusions of law ''after'' the full evidentiary hearings it conducts for taxpayer/appellants. G.S. § 105–290(b)(3). G.S. § 143–318.18(7) specifically excludes from open meetings requirements sessions convened by public bodies subject to the Executive Budget Act and held solely to make

decisions in an adjudicatory proceeding. Op.Atty.Gen., Shires, Feb. 19, 1996.

Chapter 153A

Counties

Article		Section
3.	**Boundaries.**	**153A–17**
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Article 3

Boundaries

Section
153A–17. Existing boundaries.
153A–18. Uncertain or disputed boundary.
153A–19. Establishing and naming townships.
153A–20. Map of electoral districts.
153A–21. Repealed.
153A–22. Redefining electoral district boundaries.
153A–23, 153A–24. Reserved.

§ 153A–17. Existing boundaries

The boundaries of each county shall remain as presently established, until changed in accordance with law.

Added by Laws 1973, c. 822, § 1.

Notes of Decisions

Assumption of county debt 1

1. Assumption of county debt

When a portion of a county is detached and added to another, the burdens of existing indebtedness and the apportionment thereof, in the absence of constitutional provision, and in so far as the inhabitants are concerned, are matters entirely of legislative discretion. Commissioners of Cumberland County v. Commissioners of Harnett County, 1911, 73 S.E. 195, 157 N.C. 514. Counties ⚷ 16(2)

Pub.Loc.Laws 1911, c. 591, amending Pub.Laws 1854–55, c. 8, by detaching certain territory from Cumberland county and adding it to Harnett county, provides (section 6) that the commissioners of the two counties shall have full power to properly adjust the indebtedness of Cumberland county, outstanding on May 1, 1911, which is properly chargeable to such detached portion, and to make an equitable tax levy thereof. Held that, so far as such act provided for the adjustment of the Cumberland county floating debt, it not only conferred a power, but imposed a duty, that the commissioners were bound to exercise. Commissioners of Cumberland County v. Commissioners of Harnett County, 1911, 73 S.E. 195, 157 N.C. 514. Counties ⚷ 16(2)

§ 153A–18. Uncertain or disputed boundary

(a) If two or more counties are uncertain as to the exact location of the boundary between them, they may cause the boundary to be surveyed, marked, and mapped. The counties may appoint

special commissioners to supervise the surveying, marking, and mapping. A commissioner so appointed or a person surveying or marking the boundary may enter upon private property to view and survey the boundary or to erect boundary markers. Upon ratification of the survey by the board of commissioners of each county, a map showing the surveyed boundary shall be recorded in the office of the register of deeds of each county in the manner provided by law for the recordation of maps or plats and in the Secretary of State's office. The map shall contain a reference to the date of each resolution of ratification and to the page in the minutes of each board of commissioners where the resolution may be found. Upon recordation, the map is conclusive as to the location of the boundary.

(b) If two or more counties dispute the exact location of the boundary between them, and the dispute cannot be resolved pursuant to subsection (a) of this section, any of the counties may apply to a superior court judge who has jurisdiction pursuant to G.S. 7A-47.1 or 7A-48 in any of the districts or sets of districts as defined in G.S. 7A-41.1 in which any of the counties is located for appointment of a boundary commission. The application shall identify the disputed boundary and ask that a boundary commission be appointed. Upon receiving the application, the court shall set a date for a hearing on whether to appoint the commission. The court shall cause notice of the hearing to be served on the other county or counties. If, after the hearing, the court finds that the location of the boundary is disputed, it shall appoint a boundary commission.

The commission shall consist of one resident of each disputing county and a resident of some other county. The court may appoint one or more surveyors to assist the commission. The commission shall locate, survey, and map and may mark the disputed boundary. To do so it may take evidence and hear testimony, and any commissioner and any person surveying or marking the boundary may enter upon private property to view and survey the boundary or to erect boundary markers. Within 45 days after the day it is appointed, unless this time is extended by the court, the commission shall make its report (which shall include a map of the surveyed boundary) to the court. To be sufficient, the report must be concurred in by a majority of the commissioners. If the court is satisfied that the commissioners have made no error of law, it shall ratify the report, after which the map shall be recorded in the office of the register of deeds of each county in the manner provided by law for the recordation of maps or plats and in the Secretary of State's office. Upon recordation, the map is conclusive as to the location of the boundary.

The disputing counties shall divide equally the costs of locating, surveying, marking, and mapping the boundary, unless the court

finds that an equal division of the costs would be unjust. In that case the court may determine the division of costs.

(c) Two or more counties may establish the boundary between them pursuant to subsection (a), above, by the use of base maps prepared from orthophotography, which base maps show the monuments of the United States Geological Survey and North Carolina State Plane Coordinate System established pursuant to Chapter 102 of the General Statutes. Upon ratification of the location of the boundary determined from orthophotography by the board of commissioners of each county, the map showing the boundary and the monuments of the United States Geological Survey and North Carolina State Plane Coordinate System shall be recorded in the Office of the Register of Deeds of each county and in the Secretary of State's office. The map shall contain a reference to the date of each resolution of ratification and to the page in the minutes of each board of commissioners where the resolution may be found. Upon recordation, the map is conclusive as to the location of the boundary.

Added by Laws 1973, c. 822, § 1. Amended by Laws 1987 (Reg. Sess., 1988), c. 1037, § 121; S.L. 1997–299, § 1.

§ 153A–19. Establishing and naming townships

(a) A county may by resolution establish and abolish townships, change their boundaries, and prescribe their names, except that no such resolution may become effective during the period beginning January 1, 1998, and ending January 2, 2000, and any resolution providing that the boundaries of a township shall change automatically with changes in the boundaries of a city shall not be effective during that period. The current boundaries of each township within a county shall at all times be drawn on a map, or set out in a written description, or shown by a combination of these techniques. This current delineation shall be available for public inspection in the office of the clerk.

(b) Any provision of a city charter or other local act which provides that the boundaries of a township shall change automatically upon a change in a city boundary shall not be effective during the period beginning January 1, 1998, and ending January 2, 2000.

(c) The county manager or, where there is no county manager, the chairman of the board of commissioners, shall report township boundaries and changes in those boundaries to the United States Bureau of the Census in the Boundary and Annexations Survey. In responding to the surveys, each county manager or, if there is no manager, chairman of the board of commissioners shall consult with the county board of elections and other appropriate local agencies as to the location of township boundaries, so that the Census Bureau's mapping of township boundaries does not dis-

agree with any county voting precinct boundaries that may be based on township boundaries.

Added by Laws 1973, c. 822, § 1. Amended by Laws 1987, c. 715, § 1; Laws 1987, c. 879, § 2; Laws 1993, c. 352, § 1, eff. July 15, 1993; Laws 1995, c. 423, § 4, eff.July 12, 1995.

Notes of Decisions

In general 1

1. In general

The county government act (Acts 1877, c. 141) deprived the board of township trustees of its existence as a municipal corporation, and hence it cannot be a party to a suit. Wallace v. Board of Trustees of Sharon Tp., 1881, 84 N.C. 164. Towns ⚷ 64

§ 153A–20. Map of electoral districts

If a county is divided into electoral districts for the purpose of nominating or electing persons to the board of commissioners, the current boundaries of the electoral districts shall at all times be drawn on a map, or set out in a written description, or shown by a combination of these techniques. This current delineation shall be available for public inspection in the office of the clerk.

Added by Laws 1973, c. 822, § 1.

§ 153A–21. Repealed by Laws 1973, c. 884

Historical and Statutory Notes

The repealed section provided for redefining electoral district boundaries. Laws 1975, c. 389, reenacted this section insofar as it is applicable to Robeson County.

§ 153A–22. Redefining electoral district boundaries

(a) If a county is divided into electoral districts for the purpose of nominating or electing persons to the board of commissioners, the board of commissioners may find as a fact whether there is substantial inequality of population among the districts.

(b) If the board finds that there is substantial inequality of population among the districts, it may by resolution redefine the electoral districts.

(c) Redefined electoral districts shall be so drawn that the quotients obtained by dividing the population of each district by the number of commissioners apportioned to the district are as nearly equal as practicable, and each district shall be composed of territory within a continuous boundary.

(d) No change in the boundaries of an electoral district may affect the unexpired term of office of a commissioner residing in the district and serving on the board on the effective date of the resolution. If the terms of office of members of the board do not all expire at the same time, the resolution shall state which seats are to be filled at the initial election held under the resolution.

(e) A resolution adopted pursuant to this section shall be the basis of electing persons to the board of commissioners at the first general election for members of the board of commissioners occurring after the resolution's effective date, and thereafter. A resolution becomes effective upon its adoption, unless it is adopted during the period beginning 150 days before the day of a primary and ending on the day of the next succeeding general election for membership on the board of commissioners, in which case it becomes effective on the first day after the end of the period.

(f) Not later than 10 days after the day on which a resolution becomes effective, the clerk shall file in the Secretary of State's office, in the office of the register of deeds of the county, and with the chairman of the county board of elections, a certified copy of the resolution.

(g) This section shall not apply to counties where under G.S. 153A-58(3)d. or under public or local act, districts are for residence purposes only, and the qualified voters of the entire county nominate all candidates for and elect all members of the board.

Added by Laws 1981, c. 795.

§§ 153A–23, 153A–24. Reserved

Article 4

Form of Government

Part 1. General Provisions

Section

153A–25. Qualifications for appointive office.
153A–26. Oath of office.
153A–27. Vacancies on the board of commissioners.
153A–27.1. Vacancies on board of commissioners in certain counties.

Part 4. Modification in the Structure of the Board of Commissioners

153A–58. Optional structures.
153A–59. Implementation when board has members serving a combination of four- and two-year terms.
153A–60. Initiation of alterations by resolution.
153A–61. Submission of proposition to voters; form of ballot.
153A–62. Effective date of any alteration.
153A–63. Filing copy of resolution.
153A–64. Filing results of election.
153A–65 to 153A–75. Reserved.

Part 1. General Provisions

§ 153A–25. Qualifications for appointive office

The board of commissioners may fix qualifications for any appointive office, including a requirement that a person serving in

such an office reside within the county. The board may not waive qualifications fixed by law for an appointive office but may fix additional qualifications for that office.

Added by Laws 1973, c. 822, § 1.

§ 153A–26. Oath of office

Each person elected by the people or appointed to a county office shall, before entering upon the duties of the office, take and subscribe the oath of office prescribed in Article VI, Sec. 7 of the Constitution. The oath of office shall be administered by some person authorized by law to administer oaths and shall be filed with the clerk.

On the first Monday in December following each general election at which county officers are elected, the persons who have been elected to county office in that election shall assemble at the regular meeting place of the board of commissioners. At that time each such officer shall take and subscribe the oath of office. An officer not present at this time may take and subscribe the oath at a later time.

Added by Laws 1973, c. 822, § 1.

§ 153A–27. Vacancies on the board of commissioners

If a vacancy occurs on the board of commissioners, the remaining members of the board shall appoint a qualified person to fill the vacancy. If the number of vacancies on the board is such that a quorum of the board cannot be obtained, the chairman of the board shall appoint enough members to make up a quorum, and the board shall then proceed to fill the remaining vacancies. If the number of vacancies on the board is such that a quorum of the board cannot be obtained and the office of chairman is vacant, the clerk of superior court of the county shall fill the vacancies upon the request of any remaining member of the board or upon the petition of any five registered voters of the county. If for any other reason the remaining members of the board do not fill a vacancy within 60 days after the day the vacancy occurs, the clerk shall immediately report the vacancy to the clerk of superior court of the county. The clerk of superior court shall, within 10 days after the day the vacancy is reported to him, fill the vacancy.

If the member being replaced was serving a two-year term, or if the member was serving a four-year term and the vacancy occurs later than 60 days before the general election held after the first two years of the term, the appointment to fill the vacancy is for the remainder of the unexpired term. Otherwise, the term of the person appointed to fill the vacancy extends to the first Monday in December next following the first general election held more than 60 days after the day the vacancy occurs; at that general election,

a person shall be elected to the seat vacated, either to the remainder of the unexpired term or, if the term has expired, to a full term.

To be eligible for appointment to fill a vacancy, a person must (i) be a member of the same political party as the member being replaced, if that member was elected as the nominee of a political party, and (ii) be a resident of the same district as the member being replaced, if the county is divided into electoral districts. The board of commissioners or the clerk of superior court, as the case may be, shall consult the county executive committee of the appropriate political party before filling a vacancy, but neither the board nor the clerk of the superior court is bound by the committee's recommendation.

Added by Laws 1973, c. 822, § 1. Amended by Laws 1985, c. 563, §§ 7.3, 7.4.

Cross References

Special provisions for obtaining nominations when vacancies occur in a county board of commissioners, see § 163–115.

Notes of Decisions

Appointed officers 4
Death 3
Qualification 1
Resignation 2

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1. Qualification

Upon the failure of new county commissioners to qualify, the old board may qualify one elected as county treasurer. Jones v. Jones, 1879, 80 N.C. 127. Counties ⚷ 43

2. Resignation

Resignation of county commissioner filed with clerk of superior court, when accepted by clerk, vacated office, and commissioner thereafter had no power to withdraw resignation (C.S.N.C. § 1294). Rockingham County v. Luten Bridge Co., 1929, 35 F.2d 301, 66 A.L.R. 735. Counties ⚷ 44

Public officer at common law may resign, provided proper authority accepts resignation. Rockingham County v. Luten Bridge Co., 1929, 35 F.2d 301, 66 A.L.R. 735. Officers And Public Employees ⚷ 62

Officer's resignation, in absence of statute, should be tendered to tribunal having power to appoint successor. Rockingham County v. Luten Bridge Co., 1929, 35 F.2d 301, 66 A.L.R. 735. Officers And Public Employees ⚷ 62

3. Death

If a county commissioner who is holding office in the first two years of a four-year term dies on a date following the close of the filing period for the upcoming primary and general election, party nominees are to be selected for the purpose of running in the next general election, absent any applicable provision of law, under N.C. Gen. Stat. § 163–115. 53 Op.Atty.Gen. 67, Johnston, Feb. 24, 1984.

4. Appointed officers

One appointed county commissioner by clerk of superior court, who took oath and discharged duties as commissioner, was de facto officer, whose actions at meetings regularly held were binding on county, irrespective of validity of appointment (C.S.N.C. § 1294). Rockingham County v. Luten Bridge Co., 1929, 35 F.2d 301, 66 A.L.R. 735. Counties ⚷ 52

Acts of de facto officer will be held valid in respect to public and third persons, with whom he deals officially. Rockingham County v. Luten Bridge Co., 1929, 35 F.2d 301, 66 A.L.R. 735. Officers And Public Employees ⚷ 104

§ 153A–27.1. Vacancies on board of commissioners in certain counties

(a) If a vacancy occurs on the board of commissioners, the remaining members of the board shall appoint a qualified person to fill the vacancy. If the number of vacancies on the board is such that a quorum of the board cannot be obtained, the chairman of the board shall appoint enough members to make up a quorum, and the board shall then proceed to fill the remaining vacancies. If the number of vacancies on the board is such that a quorum of the board cannot be obtained and the office of chairman is vacant, the clerk of superior court of the county shall fill the vacancies upon the request of any remaining member of the board or upon the petition of any registered voters of the county.

(b) If the member being replaced was serving a two-year term, or if the member was serving a four-year term and the vacancy occurs later than 60 days before the general election held after the first two years of the term, the appointment to fill the vacancy is for the remainder of the unexpired term. Otherwise, the term of the person appointed to fill the vacancy extends to the first Monday in December next following the first general election held more than 60 days after the day the vacancy occurs; at that general election, a person shall be elected to the seat vacated for the remainder of the unexpired term.

(c) To be eligible for appointment to fill a vacancy, a person must (i) be a member of the same political party as the member being replaced, if that member was elected as the nominee of a political party, and (ii) be a resident of the same district as the member being replaced, if the county is divided into electoral districts.

(d) If the member who vacated the seat was elected as a nominee of a political party, the board of commissioners, the chairman of the board, or the clerk of superior court, as the case may be, shall consult the county executive committee of the appropriate political party before filling the vacancy, and shall appoint the person recommended by the county executive committee of the political party of which the commissioner being replaced was a member, if the party makes a recommendation within 30 days of the occurrence of the vacancy.

(e) Whenever because of G.S. 153A-58(3)b. or because of any local act, only the qualified voters of an area which is less than the entire county were eligible to vote in the general election for the member whose seat is vacant, the appointing authority must accept the recommendation only if the county executive committee restricted voting to committee members who represent precincts

all or part of which were within the territorial area of the district of the county commissioner.

(f) The provisions of any local act which provides that a county executive committee of a political party shall fill any vacancy on a board of county commissioners are repealed.

(g) Counties subject to this section are not subject to G.S. 153A-27.

(h) This section shall apply only in the following counties: Alamance, Alexander, Alleghany, Avery, Beaufort, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Carteret, Cherokee, Clay, Cleveland, Cumberland, Dare, Davidson, Davie, Forsyth, Graham, Guilford, Haywood, Henderson, Hyde, Jackson, Lee, Lincoln, Macon, Madison, McDowell, Mecklenburg, Moore, Pender, Polk, Randolph, Rockingham, Rutherford, Sampson, Stanly, Stokes, Transylvania, Wake, and Yancey.

Added by Laws 1981, c. 763, §§ 6. Amended by Laws 1981, c. 830; Laws 1983, c. 418; Laws 1985, c. 563, § 7.2; Laws 1987, c. 196, § 1; Laws 1989, c. 296; Laws 1989, c. 497, § 2; Laws 1991, c. 395, § 1; Laws 1991, c. 558, § 1; Laws 1995 (Reg. Sess., 1996), c. 683, § 1, eff. June 21, 1996; S.L. 1997–88, § 1, eff. May 26, 1997; S.L. 2009–32, § 1, eff. May 21, 2009.

Historical and Statutory Notes

Local Modifications

Beaufort County: S.L. 1999–248, § 3(a).

Cross References

Special provisions for obtaining nominations when vacancies occur in a county board of commissioners, see § 163–115.

Part 4. Modification in the Structure of the Board of Commissioners

§ 153A–58. Optional structures

A county may alter the structure of its board of commissioners by adopting one or any combination of the options prescribed by this section.

(1) Number of members of the board of commissioners: The board may consist of any number of members not less than three, except as limited by subdivision (2)d of this section.

(2) Terms of office of members of the board of commissioners:

a. Members shall be elected for two-year terms of office.

b. Members shall be elected for four-year terms of office.

c. Members shall be elected for overlapping four-year terms of office.

d. The board shall consist of an odd number of members, who are elected for a combination of four- and two-year terms of office, so that a majority of members is elected each two years. This option may be used only if all members of the board are nominated and elected by the voters of the entire county, and only if the chairman of the board is elected by and from the members of the board.

(3) Mode of election of the board of commissioners:

a. The qualified voters of the entire county shall nominate all candidates for and elect all members of the board.

For options b, c, and d, the county shall be divided into electoral districts, and board members shall be apportioned to the districts so that the quotients obtained by dividing the population of each district by the number of commissioners apportioned to the district are as nearly equal as practicable.

b. The qualified voters of each district shall nominate candidates and elect members who reside in the district for seats apportioned to that district; and the qualified voters of the entire county shall nominate candidates and elect members apportioned to the county at large, if any.

c. The qualified voters of each district shall nominate candidates who reside in the district for seats apportioned to that district, and the qualified voters of the entire county shall nominate candidates for seats apportioned to the county at large, if any; and the qualified voters of the entire county shall elect all the members of the board.

d. Members shall reside in and represent the districts according to the apportionment plan adopted, but the qualified voters of the entire county shall nominate all candidates for and elect all members of the board.

If any of options b, c, or d is adopted, the board shall divide the county into the requisite number of electoral districts according to the apportionment plan adopted, and shall cause a delineation of the districts so laid out to be drawn up and filed as required by G.S. 153A-20. No more than half the board may be apportioned to the county at large.

(4) Selection of chairman of the board of commissioners:

a. The board shall elect a chairman from among its membership to serve a one-year term, as provided by G.S. 153A-39.

b. The chairmanship shall be a separate office. The qualified voters of the entire county nominate candidates for and elect the chairman for a two- or four-year term.

Added by Laws 1973, c. 822, § 1.

Historical and Statutory Notes

Local Modifications

Union County: S.L. 2007–328, §§ 1 to 8

§ 153A–59. Implementation when board has members serving a combination of four- and two-year terms

If the structure of the board of commissioners is altered to establish a board with an odd number of members serving a combination of four- and two-year terms of office, the new structure shall be implemented as follows:

At the first election all members of the board shall be elected. A simple majority of those elected shall be elected for two-year terms, and the remaining members shall be elected for four-year terms. The candidate or candidates receiving the highest number of votes shall be elected for the four-year terms.

At each subsequent general election, a simple majority of the board shall be elected. That candidate who is elected with the least number of votes shall be elected for a two-year term, and the other member or members elected shall be elected for four-year terms.

Added by Laws 1973, c. 822, § 1.

Historical and Statutory Notes

Local Modifications

Union County: S.L. 2007–328, §§ 1 to 8

§ 153A–60. Initiation of alterations by resolution

The board of commissioners shall initiate any alteration in the structure of the board by adopting a resolution. The resolution shall:

(1) Briefly but completely describe the proposed alterations;
(2) Prescribe the manner of transition from the existing structure to the altered structure;
(3) Define the electoral districts, if any, and apportion the members among the districts;
(4) Call a special referendum on the question of adoption of the alterations. The referendum shall be held and conducted by the county board of elections. The referendum may be held at the same time as any other state, county or municipal primary, election, special election or referen-

dum, or on any date set by the board of county commissioners, provided, that such referendum shall not be held within the period of time beginning 60 days before and ending 60 days after any other primary, election, special election or referendum held in the county.

Upon its adoption, the resolution shall be published in full.

Added by Laws 1973, c. 822, § 1. Amended by Laws 1977, c. 382.

Historical and Statutory Notes

Local Modifications

Craven County: S.L. 2001–447, § 1.

Union County: S.L. 2007–328, §§ 1 to 8

§ 153A–61. Submission of proposition to voters; form of ballot

A proposition to approve an alteration shall be printed on the ballot in substantially the following form:

''Shall the structure of the board of commissioners be altered? (Describe the effect of the alteration.)

( ) YES

( ) NO''

The ballot shall be separate from other ballots used at the election.

If a majority of the votes cast on the proposition are in the affirmative, the plan contained in the resolution shall be put into effect as provided in this Part. If a majority of the votes cast are in the negative, the resolution and the plan contained therein are void.

Added by Laws 1973, c. 822, § 1.

Historical and Statutory Notes

Local Modifications

Craven County: S.L. 2001–447, § 1.

Union County: S.L. 2007–328, §§ 1 to 8

§ 153A–62. Effective date of any alteration

Any approved alteration shall be the basis for nominating and electing the members of the board of commissioners at the first succeeding primary and general election for county offices held after approval of the alteration; and the alteration takes effect on the first Monday in December following that general election.

Added by Laws 1973, c. 822, § 1.

Historical and Statutory Notes

Local Modifications

Union County: S.L. 2007–328, §§ 1 to 8

§ 153A–63. Filing copy of resolution

A copy of a resolution approved pursuant to this Part shall be filed and indexed in the ordinance book required by G.S. 153A-48.

Added by Laws 1973, c. 822, § 1. Amended by Laws 1975, c. 19, § 60.

Historical and Statutory Notes

Local Modifications

Union County: S.L. 2007–328, §§ 1 to 8

§ 153A–64. Filing results of election

If the proposition is approved under G.S. 153A-61, a certified true copy of the resolution and a copy of the abstract of the election shall be filed with the Secretary of State, and with the Legislative Library.

Added by Laws 1985 (Reg. Sess., 1986), c. 935, § 1. Amended by Laws 1989, c. 191, § 1.

Historical and Statutory Notes

Local Modifications

Craven County: S.L. 2001–447, § 2.

Union County: S.L. 2007–328, §§ 1 to 8

§§ 153A–65 to 153A–75. Reserved

Article 5

Administration

Part 4. Personnel

Section

153A–99. County employee political activity.

Part 4. Personnel

§ 153A–99. County employee political activity

(a) Purpose. The purpose of this section is to ensure that county employees are not subjected to political or partisan coercion while performing their job duties, to ensure that employees are not restricted from political activities while off duty, and to ensure that public funds are not used for political or partisan activities.

It is not the purpose of this section to allow infringement upon the rights of employees to engage in free speech and free association. Every county employee has a civic responsibility to support good government by every available means and in every appropriate manner. Employees shall not be restricted from affiliating

with civic organizations of a partisan or political nature, nor shall employees, while off duty, be restricted from attending political meetings, or advocating and supporting the principles or policies of civic or political organizations, or supporting partisan or nonpartisan candidates of their choice in accordance with the Constitution and laws of the State and the Constitution and laws of the United States of America.

(b) Definitions. For the purposes of this section:

(1) ''County employee'' or ''employee'' means any person employed by a county or any department or program thereof that is supported, in whole or in part, by county funds;

(2) ''On duty'' means that time period when an employee is engaged in the duties of his or her employment; and

(3) ''Workplace'' means any place where an employee engages in his or her job duties.

(c) No employee while on duty or in the workplace may:

(1) Use his or her official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for political office; or

(2) Coerce, solicit, or compel contributions for political or partisan purposes by another employee.

(d) No employee may be required as a duty or condition of employment, promotion, or tenure of office to contribute funds for political or partisan purposes.

(e) No employee may use county funds, supplies, or equipment for partisan purposes, or for political purposes except where such political uses are otherwise permitted by law.

(f) To the extent that this section conflicts with the provisions of any local act, local ordinance, resolution, or policy, this section prevails to the extent of the conflict.

Added by Laws 1991, c. 619, § 1. Amended by Laws 1993, c. 298, § 1, eff. Oct. 1, 1993.

Notes of Decisions

Actions and proceedings 3
Construction with other laws 1
Elected officials 2
Sufficiency of evidence 4

1. Construction with other laws

The provisions of the right to work law and prohibition on public employee collective bargaining do not attempt to regulate political activities by city and county employees. Op.Atty.Gen. Cooper, June 23, 1993.

There is no conflict between N.C.G.S. 153A–99 and 160A–169, which concerns only political activities, and existing right to work laws and collective bargaining prohibition for public employees, which do not concern political activities by public employees. Op.Atty. Gen. Cooper, June 23, 1993.

2. Elected officials

The provisions of N.C.G.S. 153A–99 and N.C.G.S. 160A–169 are applicable to elected officials as ''employees'' of counties and cities. Op.Atty.Gen., Gilkeson, Jan. 14, 1998.

3. Actions and proceedings

Sheriff's department employee, who was allegedly discharged for supporting

opposing candidate for sheriff, could maintain claim under North Carolina statute prohibiting counties from restricting county employees in any manner concerning their political affiliation and activities. Carter v. Good, 1996, 951 F.Supp. 1235, reversed 145 F.3d 1323, certiorari denied 119 S.Ct. 509, 525 U.S. 1000, 142 L.Ed.2d 423. Sheriffs And Constables ⚷ 21

Former county sheriff's department employee could maintain claim under North Carolina law for wrongful termination in violation of public policy, based on allegation that he was fired for his political activities on behalf of opposing candidate for sheriff. Carter v. Good, 1996, 951 F.Supp. 1235, reversed 145 F.3d 1323, certiorari denied 119 S.Ct. 509, 525 U.S. 1000, 142 L.Ed.2d 423. Sheriffs And Constables ⚷ 21

4. Sufficiency of evidence

Former deputy sheriff's testimony that he was subjected to political coercion instigated by employees of sheriff's department, who were acting as agents of sheriff, amounted to mere conjecture that was insufficient to establish that deputy, who was friend of candidate who opposed sheriff in election, was terminated for political reasons, in violation of public policy. Venable v. Vernon, 2004, 162 N.C.App. 702, 592 S.E.2d 256. Sheriffs And Constables ⚷ 21

Chapter 160A

Cities and Towns

Article		Section
5.	**Form of Government.**	**160A–59**
7.	**Administrative Offices.**	**160A–169**

Article 5

Form of Government

Part 1. General Provisions

Section

160A–59. Qualifications for elective office.
160A–60. Qualifications for appointive office.
160A–61. Oath of office.
160A–62. Officers to hold over until successors qualified.
160A–63. Vacancies.

Part 4. Modification of Form of Government

160A–101. Optional forms.
160A–102. Amendment by ordinance.
160A–103. Referendum on charter amendments by ordinance.
160A–104. Initiative petitions for charter amendments.
160A–105. Submission of propositions to voters; form of ballot.
160A–106. Amendment of charter provisions dependent on form of government.
160A–107. Plan to continue for two years.
160A–108. Municipal officers to carry out plan.
160A–109. Effective date.
160A–110. Charters to remain in force.
160A–111. Filing certified true copies of charter amendments.
160A–112 to 160A–115. Reserved.

Part 1. General Provisions

§ 160A–59. Qualifications for elective office

All city officers elected by the people shall possess the qualifications set out in Article VI of the Constitution. In addition, when the city is divided into electoral districts for the purpose of electing members of the council, council members shall reside in the district they represent. When any elected city officer ceases to meet all of the qualifications for holding office pursuant to the Constitution, or when a council member ceases to reside in an electoral district that he was elected to represent, the office is ipso facto vacant.

Added by Laws 1973, c. 609.

Historical and Statutory Notes

Local Modifications

City of Durham: Laws 1993, c. 342, § 1.

City of Roanoke Rapids: Laws 1995, c. 34, § 1.

Town of Tarboro: Laws 1995, c. 73, § 3.2.

§ 160A–60. Qualifications for appointive office

Residence within a city shall not be a qualification for or prerequisite to appointment to any city office not filled by election of the people, unless the charter or an ordinance provides otherwise. City councils shall have authority to fix qualifications for appointive offices, but shall have no authority to waive qualifications for appointive offices fixed by charters or general laws.

Amended by Laws 1951, c. 24; Laws 1969, c. 134, § 1; Laws 1971, c. 698, § 1.

Notes of Decisions

Governmental powers and functions 1
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Removal of office holder 4-6
In general 4
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Residence 2
Waiver 8

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1. Governmental powers and functions

A municipal corporation has only such powers as are granted to it by the General Assembly in its specific charter or by general laws of state applicable to all municipal corporations or such powers as are necessarily implied by those given. State v. Hord, 1965, 141 S.E.2d 241, 264 N.C. 149. Municipal Corporations ⚷ 57; Municipal Corporations ⚷ 59

A municipal corporation has power to appoint policeman. State v. Hord, 1965, 141 S.E.2d 241, 264 N.C. 149. Municipal Corporations ⚷ 184(1)

2. Residence

In light of requirement in city charter that its firemen possess right of suffrage, firemen were required to reside within city. Bland v. City of Wilmington, 1971, 180 S.E.2d 813, 278 N.C. 657. Municipal Corporations ⚷ 197

3. Nature of public office

Position, to constitute an office as distinguished from an employment, must be created by constitution or statutes of the sovereignty or sovereign power must have delegated to an inferior body the right to create the position. State v. Hord, 1965, 141 S.E.2d 241, 264 N.C. 149. Officers And Public Employees ⚷ 1

Essential difference between a public office and mere employment is fact that officer's duties involve exercise of some portion of the sovereign power. State v. Hord, 1965, 141 S.E.2d 241, 264 N.C. 149. Officers And Public Employees ⚷ 1

Duly appointed city chief of police, like a policeman, charged with enforcement of municipal ordinances and state criminal laws within the municipality was an "officer", and his position was an "office", within statute making county, city, or town officer who wilfully and corruptly neglects or refuses to discharge his official duties guilty of misbehavior in office and punishable by removal therefrom, fine, and imprisonment. State v. Hord, 1965, 141 S.E.2d 241, 264 N.C. 149. Municipal Corporations ⚷ 182

4. Removal of office holder—In general

Where a party has been removed from his seat as an alderman and another put in his place, under the power to fill vacancies, the latter is the de facto officer, and the former can only be reinstated by quo warranto. Ellison v.

Raleigh, 1883, 89 N.C. 125. Municipal Corporations ⚷ 136

A board of aldermen cannot deprive one of their number of his seat for causes affecting his eligibility existing at the time of his election. Ellison v. Raleigh, 1883, 89 N.C. 125. Municipal Corporations ⚷ 156

5. —— Mandamus, removal of office holder

Where a member of a municipal body has been deprived of his place, and no successor has been appointed, mandamus is the proper remedy to secure his reinstatement. Ellison v. Raleigh, 1883, 89 N.C. 125. Mandamus ⚷ 77(4)

6. —— Quo warranto, removal of office holder

Where an officer has been removed, and the successor installed in office, quo warranto is the proper remedy to determine his title. Ellison v. Raleigh, 1883, 89 N.C. 125. Quo Warranto ⚷ 11

Quo warranto, or an information in the nature of quo warranto, is the proper remedy for the trial of title to office. Ellison v. Raleigh, 1883, 89 N.C. 125. Quo Warranto ⚷ 11

7. Pleadings

Pleadings in suit brought by city firemen who claimed right under statute to request permission to live outside corporate limits of city but whose request was denied by city declaring it would terminate employment of any fireman who moved his residence outside corporate limits presented an actual controversy justiciable under Declaratory Judgment Act. Bland v. City of Wilmington, 1971, 180 S.E.2d 813, 278 N.C. 657. Declaratory Judgment ⚷ 319

8. Waiver

Where issue whether General Assembly could constitutionally authorize cities to permit their firemen to reside outside corporate limits was not raised in lower court, it could not be raised for first time on appeal in Supreme Court. Bland v. City of Wilmington, 1971, 180 S.E.2d 813, 278 N.C. 657. Appeal And Error ⚷ 170(2)

§ 160A–61. Oath of office

Every person elected by the people or appointed to any city office shall, before entering upon the duties of the office, take and subscribe the oath of office prescribed in Article VI, § 7 of the Constitution. Oaths of office shall be administered by some person authorized by law to administer oaths, and shall be filed with the city clerk.

Amended by Laws 1971, c. 698, § 1.

§ 160A–62. Officers to hold over until successors qualified

All city officers, whether elected or appointed, shall continue to hold office until their successors are chosen and qualified. This section shall not apply when an office or position has been abolished, when an appointed officer or employee has been discharged, or when an elected officer has been removed from office.

Amended by Laws 1971, c. 698, § 1.

§ 160A–63. Vacancies

A vacancy that occurs in an elective office of a city shall be filled by appointment of the city council. If the term of the office expires immediately following the next regular city election, or if the next regular city election will be held within 90 days after the vacancy occurs, the person appointed to fill the vacancy shall

serve the remainder of the unexpired term. Otherwise, a successor shall be elected at the next regularly scheduled city election that is held more than 90 days after the vacancy occurs, and the person appointed to fill the vacancy shall serve only until the elected successor takes office. The elected successor shall then serve the remainder of the unexpired term. If the number of vacancies on the council is such that a quorum of the council cannot be obtained, the mayor shall appoint enough members to make up a quorum, and the council shall then proceed to fill the remaining vacancies. If the number of vacancies on the council is such that a quorum of the council cannot be obtained and the office of mayor is vacant, the Governor may fill the vacancies upon the request of any remaining member of the council, or upon the petition of any five registered voters of the city. Vacancies in appointive offices shall be filled by the same authority that makes the initial appointment. This section shall not apply to vacancies in cities that have not held a city election, levied any taxes, or engaged in any municipal functions for a period of five years or more.

In cities whose elections are conducted on a partisan basis, a person appointed to fill a vacancy in an elective office shall be a member of the same political party as the person whom he replaces if that person was elected as the nominee of a political party.

Amended by Laws 1971, c. 698, § 1; Laws 1973, c. 426, § 11; Laws 1983, c. 827.

Historical and Statutory Notes

S.L. 1997–317, § 12, provides:

"The provisions of G.S. 160A–63 shall not apply to the Town of Cedar Rock until after the first election of the Town Council."

Local Modifications

Cedar Rock County: 1997–317, § 2.

Wilmington/New Hanover County Consolidated Government: Laws 1987, c. 643.

City of Lumberton: Laws 1983 (Reg. Sess., 1984), c. 1009.

City of Roanoke Rapids: Laws 1995, c. 34, § 1.

City of Trinity: S.L. 1997–44, § 3.

Town of Connelly: Laws 1989, c. 528, § 1.

Town of Franklinton: Laws 1993, c. 160, § 1.

Town of Tarboro: Laws 1995, c. 73, § 1.

Cross References

Death of candidates or elected officers, see § 163–294.1.

Notes of Decisions

In general 1

1. In general

An elected member of a town council who ceases to reside in the town may not continue to serve on that town council and upon arriving at a determination that an elected town official has removed his residence to another electoral jurisdiction, a town council, pursuant to the provisions of N. C. Gen. Stat. § 160A–63, may fill the vacancy

created by the official's departure. 58 Op.Atty.Gen. 28, Wessell, April 18, 1988.

Part 4. Modification of Form of Government

§ 160A–101. Optional forms

Any city may change its name or alter its form of government by adopting any one or combination of the options prescribed by this section:

(1) Name of the corporation:

The name of the corporation may be changed to any name not deceptively similar to that of another city in this State.

(2) Style of the corporation:

The city may be styled a city, town, or village.

(3) Style of the governing board:

The governing board may be styled the board of commissioners, the board of aldermen, or the council.

(4) Terms of office of members of the council:

Members of the council shall serve terms of office of either two or four years. All of the terms need not be of the same length, and all of the terms need not expire in the same year.

(5) Number of members of the council:

The council shall consist of any number of members not less than three nor more than 12.

(6) Mode of election of the council:

a. All candidates shall be nominated and elected by all the qualified voters of the city.

b. The city shall be divided into single-member electoral districts; council members shall be apportioned to the districts so that each member represents the same number of persons as nearly as possible, except for members apportioned to the city at large, if any; the qualified voters of each district shall nominate and elect candidates who reside in the district for seats apportioned to that district; and all the qualified voters of the city shall nominate and elect candidates apportioned to the city at large, if any.

c. The city shall be divided into single-member electoral districts; council members shall be apportioned to the districts so that each member represents the same number of persons as nearly as possible, except for members apportioned to the city at large; and candidates shall reside in and represent the districts according to the

apportionment plan adopted, but all candidates shall be nominated and elected by all the qualified voters of the city.

d. The city shall be divided into electoral districts equal in number to one half the number of council seats; the council seats shall be divided equally into ''ward seats'' and ''at-large seats,'' one each of which shall be apportioned to each district, so that each council member represents the same number of persons as nearly as possible; the qualified voters of each district shall nominate and elect candidates to the ''ward seats''; candidates for the ''at-large seats'' shall reside in and represent the districts according to the apportionment plan adopted, but all candidates for ''at-large'' seats shall be nominated and elected by all the qualified voters of the city.

e. The city shall be divided into single-member electoral districts; council members shall be apportioned to the districts so that each member represents the same number of persons as nearly as possible, except for members apportioned to the city at large, if any; in a nonpartisan primary, the qualified voters of each district shall nominate two candidates who reside in the district, and the qualified voters of the entire city shall nominate two candidates for each seat apportioned to the city at large, if any; and all candidates shall be elected by all the qualified voters of the city.

If either of options b, c, d or e is adopted, the council shall divide the city into the requisite number of single-member electoral districts according to the apportionment plan adopted, and shall cause a map of the districts so laid out to be drawn up and filed as provided by G.S. 160A-22 and 160A-23. No more than one half of the council may be apportioned to the city at large. An initiative petition may specify the number of single-member electoral districts to be laid out, but the drawing of district boundaries and apportionment of members to the districts shall be done in all cases by the council.

(7) Elections:

a. Partisan.—Municipal primaries and elections shall be conducted on a partisan basis as provided in G.S. 163-291.

b. Nonpartisan Plurality.—Municipal elections shall be conducted as provided in G.S. 163-292.

c. Nonpartisan Election and Runoff Election.—Municipal elections and runoff elections shall be conducted as provided in G.S. 163-293.

d. Nonpartisan Primary and Election.—Municipal primaries and elections shall be conducted as provided in G.S. 163-294.

(8) Selection of mayor:

a. The mayor shall be elected by all the qualified voters of the city for a term of not less than two years nor more than four years.

b. The mayor shall be selected by the council from among its membership to serve at its pleasure.

Under option a, the mayor may be given the right to vote on all matters before the council, or he may be limited to voting only to break a tie. Under option b, the mayor has the right to vote on all matters before the council. In both cases the mayor has no right to break a tie vote in which he participated.

(9) Form of government:

a. The city shall operate under the mayor-council form of government in accordance with Part 3 of Article 7 of this Chapter.

b. The city shall operate under the council-manager form of government in accordance with Part 2 of Article 7 of this Chapter and any charter provisions not in conflict therewith.

Added by Laws 1969, c. 629, § 2. Amended by Laws 1971, c. 698, § 1; Laws 1971, c. 1076, § 1; Laws 1973, c. 426, § 19; Laws 1973, c. 1001, §§ 1, 2; Laws 1975, c. 19, § 64; Laws 1975, c. 664, § 6.

Historical and Statutory Notes

Local Modifications

Wilmington/New Hanover County Consolidated Government: Laws 1987, c. 643.

City of Bessemer City: Laws 1991, c. 293.

City of Lexington: Laws 1987, c. 64, § 1(2).

Notes of Decisions

In general 1
Powers and duties 2

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1. In general

A town charter may be amended by ordinance pursuant to N.C.G.S. § 160A–102 to delete the provisions authorizing the mayor to vote with regard to the appointment of officers. The procedures set out in Part 4 of Article 5 of Chapter 160A, N.C.G.S. § 160A–101 through 160A–111 (hereinafter ''Part 4''), may be used to amend the charter. Op.Atty.Gen., Ritchie, March 16, 1994.

2. Powers and duties

Provisions of city's charter and ordinances providing a fixed term of employment and certain procedures for discharge did not give city police officer property interest in her job protected by due process, where city subsequently adopted a city manager form of government, giving city manager power to remove all city employees. Disher v. Weaver, 2004, 308 F.Supp.2d 614. Constitutional Law ⚷ 4172(6)

§ 160A–102. Amendment by ordinance

By following the procedure set out in this section, the council may amend the city charter by ordinance to implement any of the optional forms set out in G.S. 160A-101. The council shall first adopt a resolution of intent to consider an ordinance amending the charter. The resolution of intent shall describe the proposed charter amendments briefly but completely and with reference to the pertinent provisions of G.S. 160A-101, but it need not contain the precise text of the charter amendments necessary to implement the proposed changes. At the same time that a resolution of intent is adopted, the council shall also call a public hearing on the proposed charter amendments, the date of the hearing to be not more than 45 days after adoption of the resolution. A notice of the hearing shall be published at least once not less than 10 days prior to the date fixed for the public hearing, and shall contain a summary of the proposed amendments. Following the public hearing, but not earlier than the next regular meeting of the council and not later than 60 days from the date of the hearing, the council may adopt an ordinance amending the charter to implement the amendments proposed in the resolution of intent.

The council may, but shall not be required to unless a referendum petition is received pursuant to G.S. 160A-103, make any ordinance adopted pursuant to this section effective only if approved by a vote of the people, and may by resolution adopted at the same time call a special election for the purpose of submitting the ordinance to a vote. The date fixed for the special election shall be not more than 90 days after adoption of the ordinance.

Within 10 days after an ordinance is adopted under this section, the council shall publish a notice stating that an ordinance amending the charter has been adopted and summarizing its contents and effect. If the ordinance is made effective subject to a vote of the people, the council shall publish a notice of the election in accordance with G.S. 163-287, and need not publish a separate notice of adoption of the ordinance.

The council may not commence proceedings under this section between the time of the filing of a valid initiative petition pursuant to G.S. 160A-104 and the date of any election called pursuant to such petition.

Added by Laws 1969, c. 629, § 2. Amended by Laws 1971, c. 698, § 1; Laws 1973, c. 426, § 20; Laws 1979 (2nd Sess.), c. 1247, § 11.

Historical and Statutory Notes

Local Modifications

City of Greenville: Laws 1989, c. 359, § 1.

Cross References

Special rules for redistricting after 1990 census, see § 160A–23.1.

Notes of Decisions

In general 1

1. In general

A town charter may be amended by ordinance pursuant to N.C.G.S. § 160A–102 to delete the provisions authorizing the mayor to vote with regard to the appointment of officers. The procedures set out in Part 4 of Article 5 of Chapter 160A, N.C.G.S. § 160A–101 through 160A–111 (hereinafter ''Part 4''), may be used to amend the charter. Op.Atty.Gen., Ritchie, March 16, 1994.

§ 160A–103. Referendum on charter amendments by ordinance

An ordinance adopted under G.S. 160A-102 that is not made effective upon approval by a vote of the people shall be subject to a referendum petition. Upon receipt of a referendum petition bearing the signatures and residence addresses of a number of qualified voters of the city equal to at least 10 percent of the whole number of voters who are registered to vote in city elections according to the most recent figures certified by the State Board of Elections or 5,000, whichever is less, the council shall submit an ordinance adopted under G.S. 160A-102 to a vote of the people. The date of the special election shall be fixed at not more than 120 nor fewer than 60 days after receipt of the petition. A referendum petition shall be addressed to the council and shall identify the ordinance to be submitted to a vote. A referendum petition must be filed with the city clerk not later than 30 days after publication of the notice of adoption of the ordinance.

Added by Laws 1969, c. 629, § 2. Amended by Laws 1971, c. 698, § 1; Laws 1979 (2nd Sess.), c. 1247, § 13; Laws 1979 (2nd Sess.), c. 1247, § 15.

Historical and Statutory Notes

Local Modifications

City of Wilson: Laws 1989, c. 107, § 1.

Town of St. James: S.L. 1999–241, §1.

Cross References

Special rules for redistricting after 1990 census, see § 160A–23.1.

§ 160A–104. Initiative petitions for charter amendments

The people may initiate a referendum on proposed charter amendments. An initiative petition shall bear the signatures and resident addresses of a number of qualified voters of the city equal to at least ten percent (10%) of the whole number of voters who are registered to vote in city elections according to the most recent figures certified by the State Board of Elections or 5,000, whichever is less. The petition shall set forth the proposed amendments

by describing them briefly but completely and with reference to the pertinent provisions of G.S. 160A-101, but it need not contain the precise text of the charter amendments necessary to implement the proposed changes. The petition may not propose changes in the alternative, or more than one integrated set of charter amendments. Upon receipt of a valid initiative petition, the council shall call a special election on the question of adopting the charter amendments proposed therein, and shall give public notice thereof in accordance with G.S. 163-287. The date of the special election shall be fixed at not more than 120 nor fewer than 60 days after receipt of the petition. If a majority of the votes cast in the special election shall be in favor of the proposed changes, the council shall adopt an ordinance amending the charter to put them into effect. Such an ordinance shall not be subject to a referendum petition. No initiative petition may be filed (i) between the time the council initiates proceedings under G.S. 160A-102 by publishing a notice of hearing on proposed charter amendments and the time proceedings under that section have been carried to a conclusion either through adoption or rejection of a proposed ordinance or lapse of time, nor (ii) within one year and six months following the effective date of an ordinance amending the city charter pursuant to this Article, nor (iii) within one year and six months following the date of any election on charter amendments that were defeated by the voters.

The restrictions imposed by this section on filing initiative petitions shall apply only to petitions concerning the same subject matter. For example, pendency of council action on amendments concerning the method of electing the council shall not preclude an initiative petition on adoption of the council-manager form of government.

Nothing in this section shall be construed to prohibit the submission of more than one proposition for charter amendments on the same ballot so long as no proposition offers a different plan under the same option as another proposition on the same ballot.

Added by Laws 1969, c. 629, § 2. Amended by Laws 1971, c. 698, § 1; Laws 1973, c. 426, § 21; Laws 1979 (2nd Sess.), c. 1247, § 12; Laws 1979 (2nd Sess.), c. 1247, §§ 12, 14.

Historical and Statutory Notes

Local Modifications

City of Charlotte: S.L. 1999–212, § 24.2(a).

§ 160A–105. Submission of propositions to voters; form of ballot

A proposition to approve an ordinance or petition shall be printed on the ballot in substantially the following form:

''Shall the ordinance (describe the effect of the ordinance) be approved?

( ) YES

( ) NO''

The ballot shall be separate from all other ballots used at the election.

If a majority of the votes cast on a proposition shall be in the affirmative, the plan contained therein shall be put into effect as provided in this Article. If a majority of the votes cast shall be against the proposition, the ordinance or petition proposing the amendments shall be void and of no effect.

Added by Laws 1969, c. 629, § 2. Amended by Laws 1971, c. 698, § 1.

§ 160A–106. Amendment of charter provisions dependent on form of government

The authority conferred by this Article to amend charter provisions within the options set out in G.S. 160A-101 also includes authority to amend other charter provisions dependent on the form of city government to conform them to the form of government amendments. By way of illustration and not limitation, if a charter providing for a five-member council is amended to increase the size of the council to seven members, a charter provision defining a quorum of the council as three members shall be amended to define a quorum as four members.

Added by Laws 1971, c. 698, § 1.

§ 160A–107. Plan to continue for two years

Charter amendments adopted as provided in this Article shall continue in force for at least two years after the beginning of the term of office of the officers elected thereunder.

Added by Laws 1969, c. 629, s. 2. Amended by Laws 1971, c. 698, § 1.

§ 160A–108. Municipal officers to carry out plan

It shall be the duty of the mayor, the council, the city clerk, and other city officials in office, and all boards of election and election officials, when any plan of government is adopted as provided by this Article or is proposed for adoption, to comply with all requirements of this Article, to the end that all things may be done which are necessary for the nomination and election of the officers first to be elected under the new plan so adopted.

Added by Laws 1969, c. 629, § 2. Amended by Laws 1971, c. 698, § 1.

§ 160A–109. Effective date

The council may submit new charter amendments proposed under this Article at any regular or special municipal election, or

at a special election called for that sole purpose. Any amendment affecting the election of city officers shall be finally adopted and approved at least 90 days before the first election for mayor or council members held thereunder.

Added by Laws 1969, c. 629, § 2. Amended by Laws 1971, c. 698, § 1.

§ 160A–110. Charters to remain in force

The charter of any city that adopts a new form of government as provided in this Article shall continue in full force and effect notwithstanding adoption of a new form of government, except to the extent modified by an ordinance adopted under the authority conferred and pursuant to the procedures prescribed by this Article.

Added by Laws 1969, c. 629, § 2. Amended by Laws 1971, c. 698, § 1.

§ 160A–111. Filing certified true copies of charter amendments

The city clerk shall file a certified true copy of any charter amendment adopted under this Part with the Secretary of State, and the Legislative Library.

Added by Laws 1985 (Reg. Sess., 1986), c. 935, § 2. Amended by Laws 1989, c. 191, § 2.

§§ 160A–112 to 160A–115. Reserved

Article 7

Administrative Offices

Part 4. Personnel

Section

160A–169. City employee political activity.

Part 4. Personnel

§ 160A–169. City employee political activity

(a) Purpose. The purpose of this section is to ensure that city employees are not subjected to political or partisan coercion while performing their job duties, to ensure that employees are not restricted from political activities while off duty, and to ensure that public funds are not used for political or partisan activities.

It is not the purpose of this section to allow infringement upon the rights of employees to engage in free speech and free association. Every city employee has a civic responsibility to support good government by every available means and in every appropriate manner. Employees shall not be restricted from affiliating

with civic organizations of a partisan or political nature, nor shall employees, while off duty, be restricted from attending political meetings, or advocating and supporting the principles or policies of civic or political organizations, or supporting partisan or nonpartisan candidates of their choice in accordance with the Constitution and laws of the State and the Constitution and laws of the United States of America.

(b) Definitions. For the purposes of this section:

(1) ''City employee'' or ''employee'' means any person employed by a city or any department or program thereof that is supported, in whole or in part, by city funds;

(2) ''On duty'' means that time period when an employee is engaged in the duties of his or her employment; and

(3) ''Workplace'' means any place where an employee engages in his or her job duties.

(c) No employee while on duty or in the workplace may:

(1) Use his or her official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for political office; or

(2) Coerce, solicit, or compel contributions for political or partisan purposes by another employee.

(d) No employee may be required as a duty or condition of employment, promotion, or tenure of office to contribute funds for political or partisan purposes.

(e) No employee may use city funds, supplies, or equipment for partisan purposes, or for political purposes except where such political uses are otherwise permitted by law.

(f) To the extent that this section conflicts with the provisions of any local act, city charter, local ordinance, resolution, or policy, this section prevails to the extent of the conflict.

Added by Laws 1991, c. 619, § 2. Amended by Laws 1993, c. 298, § 2, eff. Oct. 1, 1993.

Notes of Decisions

Construction and application 1

1. Construction and application

The provisions of the right to work law and prohibition on public employee collective bargaining do not attempt to regulate political activities by city and county employees. Op.Atty.Gen. Cooper, June 23, 1993.

There is no conflict between N.C.G.S. 153A–99 and 160A–169, which concerns only political activities, and existing right to work laws and collective bargaining prohibition for public employees, which do not concern political activities by public employees. Op.Atty. Gen. Cooper, June 23, 1993.

The provisions of N.C.G.S. 153A–99 and N.C.G.S. 160A–169 are applicable to elected officials as ''employees'' of counties and cities. Op.Atty.Gen., Gilkeson, Jan. 14, 1998.

NORTH CAROLINA ADMINISTRATIVE CODE

TITLE 8. STATE BOARD OF ELECTIONS

Chapter
1. **Departmental Rules**
2. **Election Protests**
3. **Charges Against County Election Officials**
4. **Voting Equipment**
5. **Modified Full Time Registration System**
6. **Partisan Elections**
7. **Filing Of Notice Of Candidacy For Office Of Superior Court Judge**
8. **Compliance With Federal P.L. 98–435: The Voting Accessibility For The Elderly And Handicapped Act**
9. **Conduct Of Vote Recounts By County Boards Of Elections**
10. **Ballot Rotation Rules For Primary Election Ballots**
11. **Procedure For Withdrawal Of Approval Of Voting System**
12. **Rules For Military And Overseas Citizens Absentee Voting Procedures**
13. **Interim Rules**
14. **Written Opinions**

CHAPTER 1. DEPARTMENTAL RULES

Rule
.0101 Agency Name: Address: and Hours.
.0002 Duties of Board [Repealed].
.0003 Meetings of Board [Repealed].
.0104 Procedures for Political Committees.
.0105 Municipal Financing of Election Campaigns.

.0101 AGENCY NAME: ADDRESS: AND HOURS

The offices of the State Board of Elections are located at 506 North Harrington St., Raleigh, North Carolina, and the operating hours are 8:00 a.m. to 5:00 p.m., Monday through Friday.

History Note

Authority G.S. 163–22;
Eff. March 12, 1976;
Amended Eff. January 1, 2004.

.0002 DUTIES OF BOARD [REPEALED]

.0003 MEETINGS OF BOARD [REPEALED]

History Note

Statutory Authority G.S. 163–20; 163–22;
Eff. March 12, 1976;
Repealed Eff. June 1, 1988.

.0104 PROCEDURES FOR POLITICAL COMMITTEES

(a) Political treasurers appointed pursuant to G.S. 163–278.7(a) must be a resident of North Carolina.

(b) All bank accounts, safety deposit boxes, and other depositories utilized by political committees and listed on the statement of organization as required by G.S. 163–278.7(b)(7) must be maintained in North Carolina.

(c) As an alternative to (a) and (b) of this Rule, a political action committee may designate and appoint an assistant treasurer who is a resident of North Carolina and who shall be the person upon whom service and process may be served and who shall be responsible for the production in North Carolina of all financial records of the political committee.

(d) Whenever a political committee or referendum committee shall fail to file with the State Board of Elections any report required to be filed under the provisions of G.S. 163–278.9 or G.S. 163–278.9A, the Board, by certified mail, shall issue a formal NOTICE OF NONCOMPLIANCE to the political treasurer of said committee and shall order that the report be filed immediately. In the event said committee does not file its report within 20 days of the issuance of the NOTICE OF NONCOMPLIANCE, the Board, by certified mail, shall issue NOTICE OF TERMINATION OF ACTIVE STATUS, which shall render said committee ineligible to receive or make contributions until such time as it has filed the delinquent report and has satisfied any statutory penalty incurred as a result of noncompliance with the provisions of Article 22A of Chapter 163.

History Note

Statutory Authority G.S. 163–278.7; 163–278.8; 163–278.21; 163–278.22; 163–278.23; 163–278.27;
Eff. December 1, 1982;
Amended Eff. February 1, 1990.

.0105 MUNICIPAL FINANCING OF ELECTION CAMPAIGNS

A municipal corporation is a corporation subject to the requirements and prohibitions of G.S. 163–278.19 and does not fall within the exception set forth in G.S. 163–278.19(f).

History Note

Authority G.S. 163–278.19; 163–278.21;
Temporary Adoption Eff. July 3, 2003.

CHAPTER 2. ELECTION PROTESTS

SECTION .0100. ELECTION PROTESTS

Rule

.0101 Complaints Concerning Conduct of Elections [Repealed].
.0102 Preliminary Consideration of Complaint by County Board [Repealed].
.0103 Scheduling and Notice of County Board Hearing [Repealed].
.0104 Conduct of Hearing by County Board [Repealed].
.0105 Decision by County Board [Repealed].
.0106 Notice and Perfection of Appeal [Repealed].
.0107 Consideration of Appeal by State Board [Repealed].
.0108 State Board Authority Over Election Protests [Repealed].
.0109 No Frivolous Protests.
.0110 Actions of County Board as to Election Protests.
.0111 Election Protest Form.
.0112 Appeal to the State Board of Elections.
.0113 New Elections Ordered by State Board of Elections.

SECTION .0100. ELECTION PROTESTS

.0101 COMPLAINTS CONCERNING CONDUCT OF ELECTIONS [REPEALED]

.0102 PRELIMINARY CONSIDERATION OF COMPLAINT BY COUNTY BOARD [REPEALED]

.0103 SCHEDULING AND NOTICE OF COUNTY BOARD HEARING [REPEALED]

.0104 CONDUCT OF HEARING BY COUNTY BOARD [REPEALED]

.0105 DECISION BY COUNTY BOARD [REPEALED]

.0106 NOTICE AND PERFECTION OF APPEAL [REPEALED]

.0107 CONSIDERATION OF APPEAL BY STATE BOARD [REPEALED]

.0108 STATE BOARD AUTHORITY OVER ELECTION PROTESTS [REPEALED]

History Note

Authority G.S. 163–22; 163–22.1
Eff. March 12, 1976;
Amended Eff. November 1, 1984;
Temporary Repeal Eff. April 15, 2002;
Repealed Eff. August 1, 2004.

.0109 NO FRIVOLOUS PROTESTS

Neither the county board of elections nor the State Board of Elections will investigate or conduct any hearing of charges or protests frivolous in nature, or which in the opinion of either board have been filed for the mere purpose of delay, or which have not been made in good faith.

When any charges are preferred either before the county board of elections or the State Board of Elections, with respect to the canvass or the vote in any primary or general election, pending the hearing an examination or inspection of the ballots and other official documents of the election officials shall be permitted under such conditions as the board may prescribe in each particular case, great care being exercised in each instance to preserve all ballots and official records and papers.

History Note

Authority G.S. 163-22; 163-22.1;
Eff. March 12, 1976.

.0110 ACTIONS OF COUNTY BOARD AS TO ELECTION PROTESTS

(a) The county board shall deliver or place in the mail, a copy of an election protest form and any attachments to it, to the State Board of Elections within 24 hours after it is filed. Faxing the protest, with attachments, on that same day it was filed to the State Board shall constitute the required delivery. Sending the protest and attachments, by e-mail, on the same day it was filed shall also constitute the required delivery.

(b) The county board may not consider election protests not filed in time, but shall refer all such untimely protests, along with copies of the protest and attachments, to the State Board of Elections office for consideration of a possible hearing by the State Board of Elections under G.S. 163–182.12.

(c) If after preliminary consideration of a protest, the county board determines that a hearing should be held as authorized by G.S. 163–182.10, the board shall set the hearing no later than ten business days from the date of the preliminary consideration, and shall start no earlier than 8:00 a.m. and no later than 8:00 p.m. at any location set by the county board of elections. The county board may continue hearings for good cause. Only for good cause and upon informing the State Board of Elections office, may a hearing be set on or continued to a weekend day or holiday.

(d) Notice of hearing as required by G.S. 163–182.10 (b)(2) shall be given at least three business prior to the day of the hearing, and the notice required shall be actual notice by any means chosen by the county board. Any oral notice of the hearing shall be followed as soon as possible with a written notice. The oral notice shall constitute valid notice meeting the three-day notice requirement.

(1) Upon a reasonable and relevant request by a protester or interested person, the chair or any two members of the county board may issue subpoenas for persons or documents. Such subpoenas shall be served in the same matter as allowed in the North Carolina Rules of Civil Procedure.

(2) The county board shall notify the person protesting, any affected candidate, and any affected officeholder of its decision in a protest hearing no later than 5:00 p.m. the next day after the conclusion of the hearing itself. The board shall file at the board office a written decision within the mandates of G.S. 163–182.10 (d) by 5:00 p.m. five business days after the oral decision is given to the person filing the protest. Such written decision shall be served by any means of actual delivery upon the protestor and any affected candidate or officeholder within 24 hours after being filed at the board office. Nothing herein shall discourage more prompt decisions and written orders.

(3) All election protest hearings before county boards shall be recorded by a court reporter. The hearing need not be transcribed unless the board's decision is appealed. Upon notice of appeal to the State Board of an election protest, the county board shall cause the record of the hearing to be transcribed and delivered to the State Board, at the county board's expense, within seven business days of the notice of appeal. A county board may cause hearings, that on their face do not present merit to be recorded by mechanical means and not by court reporter only with prior permission of the Executive Director of the State Board of Elections. Any non-transcripted record of the county hearings may be destroyed 60 days after the date of hearing if not appealed, or 60 days after the entry of any final order or decision in an appealed hearing. Transcripts of hearings shall be kept for two years after their creation.

(4) If the State Board sets an appeal for hearing, it shall designate who shall appear on behalf of the county board.

History Note

Authority G.S. 163–22; 163–182–10; Temporary Adoption Eff. April 15, 2002; Eff. August 1, 2004.

.0111 ELECTION PROTEST FORM

All persons filing election protests with a county board of election shall use the following form:

ELECTION PROTEST

(Use of this form is required by G.S. 163–182.9(c))

This form must be filed with the county board of elections within the timeframes set out in G.S. 163–182.9 (b)(4). Please print or type your answers. Feel free to use and attach additional sheets if needed to fully answer the questions below. You may also attach relevant exhibits and documents. Please number the pages of such additional sheets and attachments.

1. Full name and mailing address of person filing the protest.

_____
_____

2. Home and business phone number, fax number, and e-mail address.

_____
_____
_____

3. Are you either a candidate or registered voter eligible to vote in the protested election. If a candidate, for what office?

_____
_____

4. List the date, location, and exact nature of the election protested. Name all candidates in the election and the number of votes each received. Note the winning candidate(s) elected or nominated.

_____
_____
_____
_____
_____
_____
_____

5. Does this protest involve an alleged error in vote count or tabulation? _____ If so, please explain in detail.

_____
_____
_____
_____

6. Does this protest involve an irregularity or misconduct not described in number 5 above? _____ If so, please give a detailed description of such misconduct or irregularity and name those who committed such action.

_____
_____
_____
_____
_____
_____

7. Please set out all election laws or regulations that you allege were violated in your responses to 5 or 6 above. State how each violation occurred. Please provide the names, addresses, and phone numbers of those who you allege committed such violations.

_____
_____
_____
_____
_____
_____

8. Please provide the names, addresses, and phone numbers of any witnesses to any misconduct alleged by you in this protest, and specify what each witness listed saw or knows.

_____
_____
_____
_____
_____
_____
_____

9. What action do you desire the county board of elections to take in this matter?

_____
_____
_____
_____

10. Do you contend the allegations set out by you are sufficient to have affected or cast doubt upon the results of the protested election? _____ If your answer is yes, please state the factual basis for your opinion.

_____
_____
_____
_____

11. Have you read and reviewed the North Carolina law pertaining to election protests as set out in G.S. 163–182.9 through G.S. 163–182.14 and current North Carolina State Board of Elections regulations pertaining to election protests?

_____
_____

12. How many pages of additional answer are attached to this protest? _____ How many pages of attachments are attached? _____

_____
Signature of Protestor

Date/Time Filed with County Board

_____

(to be filled out by the county board)

NOTE: The county board must provide the State Board with a complete copy of a filed protest within one business day after it is filed. In addition, the county board shall provide a copy of the election audit with this copy of the protest.

Please direct any questions to your county board of elections or the North Carolina State Board of Elections, PO Box 27255, Raleigh, NC 27611–7255, (919) 733–7173.

History Note

Authority G.S. 163–22; 163–182.9; Temporary Adoption Eff. April 15, 2002; Eff. August 1, 2004.

.0112 APPEAL TO THE STATE BOARD OF ELECTIONS

All appeals of a county board of election protest decision must use the following form:

APPEAL OF ELECTION PROTEST TO STATE BOARD OF ELECTIONS

(Use of this form is required by G. S. 163–182.11 (a))

A copy of this appeal must be given to the county board of elections within 24 hours (weekends and holidays excluded) after the county board files its written decision at its office. This same appeal must be filed with or mailed to the State Board of Elections by the end of the second day following the county board decision if the protest involves a first primary. As to a protest of any other election, this appeal must be filed or deposited in the mail by the end of the fifth day following the county board decision. See G.S. 163–182.11 (a). A copy of the original election protest form with attachments must be filed with this appeal. A copy of the county board decision must be filed with this appeal. The county board will provide the record on appeal. As many additional sheets as are necessary to answer the questions below may be attached, but they must be numbered. Please print or type your answers.

1. Full name, mailing address, home and business phone, fax number, and e-mail address of undersigned.

   _____

   _____

   _____

2. Are you the person who filed the original protest, a candidate or office holder adversely affected by the county decision, or someone else whose interest has been adversely affected by the county decision?

_____
_____

3. State the date, place, kind of election, and results of the election protested (if different from the information on the election and its results as set out in the attached original protest form).

_____
_____
_____
_____
_____
_____

4. State the name, mailing address, home phone, and business phone of all candidates involved in the protested election.

_____
_____
_____
_____
_____
_____

5. State the date of the county board hearing

_____
_____

6. State the legal and factual basis for your appeal.

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

7. Is there any material submitted with this appeal that was not presented to and considered by the county board? Is so, please identify and state why it was not presented to the county board. Why do you think the State Board of Elections should consider it?

_____
_____
_____
_____

8. Normally the State Board will make its decision in an appeal based upon the record from the county board. If you desire the record in this matter to be supplemented, additional evidence to be considered, or a completely new hearing, please state such desire and why it should be allowed in this appeal. See G.S. 163–182.11 (b).

_____
_____
_____
_____
_____
_____
_____

9. What relief do you seek? Why?

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

10. Have you read and reviewed G.S. 163–182.11 through G.S. 163–182.14 and the current North Carolina State Board of Elections regulations on appeals of election protests?

_____

11. Besides a copy of the original protest and the county board decisions, this appeal includes _____ pages of additional answers and _____ pages of exhibits and documents not included in the original protest and decision.

_____ _____
Signature of Person Appealing Date Appeal Signed

Date appeal received by State Board of Elections

_____

(To be entered by the State Board of Elections staff)

Send your appeal to, or it you have questions contact:
North Carolina State Board of Elections,
P.O. Box 27255,
Raleigh, NC 27611–7255,
(919) 733–7173.

History Note

Authority G.S.163–22; 163–182.11; Eff. August 1, 2004.
Temporary Adoption Eff. April 15, 2002;

.0113 NEW ELECTIONS ORDERED BY STATE BOARD OF ELECTIONS

(a) Eligibility to vote in a new election shall be determined by the voter's eligibility and circumstances at the time of the new election.

(b) Eligibility to register to vote and to vote in a new election shall be governed by G.S. 163–82.6.

(c) The date of any new non-municipal election, in which absentee ballots are to be required or allowed, shall be set by the State Board no earlier than 75 days after the date of the order for a new election. In the case of a municipal election where absentee ballots are allowed, a new election shall not be set earlier than 55 days after the date of the order for a new election. This is required in order to provide sufficient time for absentee ballots to be prepared, printed and made available and for ''one-stop'' voting to be provided within the mandates set out in G.S. 163, Article 20.

(d) The date of any new election ordered in a county covered by the preclearance requirements of Section 5 of the Voting Rights Act of 1965 shall be set no earlier than 75 days from the date of the new election order in order to prepare, submit, and obtain preclearance approval.

(e) If a new primary is ordered by the State Board, no person who voted in the initial primary of one party shall be allowed to vote in the new primary of another party. County board documentation of the voter's participation in the initial primary shall be prima facie evidence sufficient to disallow the voter from participating in the primary of another party in the new election.

History Note

Authority G.S. 163–22; 163–182.13(c); Eff. August 1, 2004.
Temporary Adoption Eff. April 15, 2002;

CHAPTER 3. CHARGES AGAINST COUNTY ELECTION OFFICIALS

SECTION .0100. MEMBERS OF COUNTY BOARD OF ELECTIONS

Rule
.0101 Voter Complaints.
.0102 Charges.
.0103 Hearing.
.0104 Rights.
.0105 Scope.
.0106 Witnesses.

SECTION .0200. PRECINCT ELECTION OFFICIALS

.0201 Filing Charges: Adoption of Procedures.
.0202 Hearing Date and Disposition.

SECTION .0300. INVESTIGATION AND REPORTS OF CRIMINAL VIOLATION

.0301 Summary Investigation.
.0302 Reports of Evidence of Criminal Violation.

SECTION .0100. MEMBERS OF COUNTY BOARD OF ELECTIONS

.0101 VOTER COMPLAINTS

Any elector desiring to prefer charges with the State Board of Elections against a member of any county board of elections may do so by filing with the board a statement, in writing, verified by the oath of the elector, which statement must contain:

(1) the name and post office address of the official against whom the charges are preferred;

(2) a brief, intelligent statement of the facts constituting the official misconduct alleged, with a reference to the date and place of such misconduct;

(3) the names and addresses, so far as may be known to the persons filing the charges, of persons who have knowledge or information of the matters referred to in the charges as filed.

History Note

Statutory Authority G.S. 163–22;
Eff. March 12, 1976.

.0102 CHARGES

If the charges thus filed show prima facie a violation of the election law, a breach of official duty, a participation in intentional irregularities, incapacity or incompetency to discharge the duties of the office, the State Board of Elections will cause notice thereof

to be given to the official against whom the charges are preferred, by mail or by such other methods as the board may adopt, of such charges and name a day and place for the hearing thereof.

History Note

Statutory Authority G.S. 163–22;
Eff. March 12, 1976.

.0103 HEARING

At such hearing the persons preferring such charges shall appear, and by affidavits, unless otherwise ordered or permitted by the board, present the evidence tending to support the charges. Such affidavits must be served on the official against whom such charges have been filed, by the person filing the charges, at least three days before the time set for the hearing thereof.

History Note

Statutory Authority G.S. 163–22;
Eff. March 12, 1976.

.0104 RIGHTS

The official against whom charges are preferred shall have the right to be heard by affidavit, or otherwise as the board may direct, in denial, rebuttal, explanation, or extenuation of the charges.

History Note

Statutory Authority G.S. 163–22;
Eff. March 12, 1976.

.0105 SCOPE

The inquiry shall be confined to the charges as filed, but the board, as a matter of course, may of its own motion investigate any matter coming to its attention or notice as the result of hearing said charges.

History Note

Statutory Authority G.S. 163–22;
Eff. March 12, 1976.

.0106 WITNESSES

Either party may make application to the chairman of the board for subpoenas for witnesses to be heard orally at such hearing; but such application, in addition to listing the names of the witnesses, shall contain a brief statement of what is expected to be proved by each witness and the reason for not obtaining the affidavit of such witness or witnesses. If, upon such application for subpoenas, a majority of the board is of the opinion that the oral evidence of

such witnesses will be helpful to the board, subpoena will be issued for the personal appearance of the witnesses, and if required by the subpoena, the witness shall produce such books, papers, or records as may be called for in said subpoena.

History Note

Statutory Authority G.S. 163–22;
Eff. March 12, 1976.

SECTION .0200. PRECINCT ELECTION OFFICIALS

.0201 FILING CHARGES: ADOPTION OF PROCEDURES

Any elector may file with the chairman of any county board of elections charges against any precinct election official, appointed pursuant to G.S. 163–41, and the county board of elections shall, in the hearing of such charges, adopt the same procedure as is prescribed in Section .0100 of this Chapter for hearing of charges filed with the State Board of Elections against a member of the county board of elections.

History Note

Statutory Authority G.S. 163–22;
Eff. March 12, 1976.

.0202 HEARING DATE AND DISPOSITION

Upon the filing of such charges with the county board of elections, the chairman of such board shall forthwith set the date for the hearing of such charges and immediately transmit to the State Board of Elections a copy of such charges, advising this board of the date set for the hearing, and at once, after the hearing, advise the state board of disposition made by the county board of the charges thus heard.

From the decision of the county board the petitioning elector, or responding official, may appeal to the State Board of Elections, where the matter may be heard ''de novo,'' or, in the judgment of the board may be dismissed, remanded to the county or heard on petition and affidavit by the State Board of Elections.

History Note

Statutory Authority G.S. 163–22;
Eff. March 12, 1976.

SECTION .0300. INVESTIGATION AND REPORTS OF CRIMINAL VIOLATION

.0301 SUMMARY INVESTIGATION

The State Board of Elections may, whenever the circumstances of any matter pending before it may indicate the necessity there-

for, suspend these rules and proceed in a summary manner or make any inquiry or investigation which in its judgment may be necessary or desirable for the prompt and efficient enforcement of the laws pertaining to elections, and the proper performance of their duties by election officials.

History Note

Statutory Authority G.S. 163–22;
Eff. March 12, 1976.

.0302 REPORTS OF EVIDENCE OF CRIMINAL VIOLATION

The State Board of Elections and every county board of elections, upon the completion of any hearing with respect to the violation of the election laws, shall report in writing to the appropriate prosecuting officer a resume or summary of all evidence heard by such board which tends to show that any person or persons probably have been guilty of one or more violations of the election laws, the violation of which is made a crime by law. A record shall be kept by such board of all such reports to such prosecuting officers. Upon request by any prosecuting officer, the written evidence heard by either board shall be made available for his examination and official use.

History Note

Statutory Authority G.S. 163–22;
Eff. March 12, 1976.

CHAPTER 4. VOTING EQUIPMENT

SECTION .0100. USE OF MECHANICAL VOTING MACHINES

Rule
.0101 Type of Voting Machines Allowed [Repealed].
.0102 Custody of Voting Machines [Repealed].
.0103 Instructing Precinct Officials on the Use of Voting Machines [Repealed].
.0104 Ballot Labels for Use on Voting Machines [Repealed].
.0105 Arrangement of Polling Place Where Voting Machines Are Used [Repealed].
.0106 Delivery and Inspection of Voting Machines [Repealed].
.0107 Directions for Voting When Machines Are Used [Repealed].
.0108 Counting of Votes and Preparing Returns; Absentee Votes [Repealed].
.0109 Collection of Voting Machines and Keys After Election [Repealed].

SECTION .0200. USE OF PUNCH–CARD VOTING EQUIPMENT

.0201 Definitions [Repealed].
.0202 Authority to Purchase and Lease Equipment [Repealed].
.0203 Vote Recorders: Tabulating: Counting Devices [Repealed].
.0204 Ballot Labels: Identifications [Repealed].
.0205 Preparation for Elections: Precinct Election Officers [Repealed].
.0206 Procedure at the Polling Place [Repealed].
.0207 Collection of Voting Equipment After Election [Repealed].
.0208 Manufacturers Required to Present Rules [Repealed].

SECTION .0300. APPROVAL AND OPERATION OF VOTING SYSTEMS

.0301 Requirements of Voting Systems.
.0302 Approval of Voting Systems.
.0303 Official Ballot(s) to Be Used on Voting System.
.0304 Operation and Matter of Voting on Voting Systems.
.0305 Instruction of Precinct Officials and Voters in the Use of Voting Systems.
.0306 Duties of Custodians of Voting Systems.
.0307 Testing of Voting System Before Use in an Election.

SECTION .0100. USE OF MECHANICAL VOTING MACHINES

.0101 TYPE OF VOTING MACHINES ALLOWED [REPEALED]

History Note

Authority G.S. 163–160; 163–161;
Eff. March 12, 1976;
Temporary Repeal Eff. April 15, 2002;
Repealed Eff. August 1, 2004.

.0102 CUSTODY OF VOTING MACHINES [REPEALED]

.0103 INSTRUCTING PRECINCT OFFICIALS ON THE USE OF VOTING MACHINES [REPEALED]

.0104 BALLOT LABELS FOR USE ON VOTING MACHINES [REPEALED]

.0105 ARRANGEMENT OF POLLING PLACE WHERE VOTING MACHINES ARE USED [REPEALED]

.0106 DELIVERY AND INSPECTION OF VOTING MACHINES [REPEALED]

.0107 DIRECTIONS FOR VOTING WHEN MACHINES ARE USED [REPEALED]

.0108 COUNTING OF VOTES AND PREPARING RETURNS; ABSENTEE VOTES [REPEALED]

.0109 COLLECTION OF VOTING MACHINES AND KEYS AFTER ELECTION [REPEALED]

History Note

Authority G.S. 163–160;
Eff. March 12, 1976;
Temporary Repeal Eff. April 15, 2002;
Repealed Eff. August 1, 2004.

SECTION .0200. USE OF PUNCH–CARD VOTING EQUIPMENT

.0201 DEFINITIONS [REPEALED]

History Note

Authority G.S. 163–160;
Eff. March 12, 1976;
Temporary Repeal Eff. April 15, 2002;
Repealed Eff. August 1, 2004.

.0202 AUTHORITY TO PURCHASE AND LEASE EQUIPMENT [REPEALED]

History Note

Authority G.S. 163–160; 163–161;
Eff. March 12, 1976;
Temporary Repeal Eff. April 15, 2002;
Repealed Eff. August 1, 2004.

.0203 VOTE RECORDERS: TABULATING: COUNTING DEVICES [REPEALED]

.0204 BALLOT LABELS: IDENTIFICATIONS [REPEALED]

.0205 PREPARATION FOR ELECTIONS: PRECINCT ELECTION OFFICERS [REPEALED]

.0206 PROCEDURE AT THE POLLING PLACE [REPEALED]

.0207 COLLECTION OF VOTING EQUIPMENT AFTER ELECTION [REPEALED]

.0208 MANUFACTURERS REQUIRED TO PRESENT RULES [REPEALED]

History Note

Authority G.S. 163–160;
Eff. March 12, 1976;

Temporary Repeal Eff. April 15, 2002;
Repealed Eff. August 1, 2004.

SECTION .0300. APPROVAL AND OPERATION OF VOTING SYSTEMS

.0301 REQUIREMENTS OF VOTING SYSTEMS

Any voting system used in any election in North Carolina shall be constructed to fulfill the following requirements:

(1) It shall be designed to reasonably secure secrecy of the voter in the act of voting;

(2) It shall enable the voter to vote a straight party ticket in a general election;

(3) It shall require the voter to vote for the candidates for president and vice-president separately from the straight party vote;

(4) It shall provide capacity for listing of all nominees of all recognized political parties and other lawful candidates;

(5) It shall, except in primary elections, permit the voter to vote for all the candidates of one party, or in part for the candidates of one or more other parties;

(6) It shall permit the voter to vote for only as many persons for an office as the voter chooses and is lawfully entitled to vote for;

(7) It shall prevent the voter from voting for the same persons more than once for the same office;

(8) It shall permit the voter to vote for or against only the question(s) the voter may have the right to vote;

(9) It shall permit each voter in a general election but not in a primary, to write in the name of persons for whom he desires to vote, whose names do not appear upon the ballot, except where prohibited by G.S. 163–123 or other statutes;

(10) It shall be equipped for use in primary elections so that the voter may vote only in the primary election to which the voter is entitled to vote;

(11) When properly operated, it shall correctly register or record, and accurately count all votes cast for all ballot items;

(12) It shall contain a visible public counter that shall show at all times during an election the number of persons who have voted;

(13) It shall clearly indicate to the voter during the act of voting the ballot items the voter has selected;

(14) Vote totals for each ballot item shall be contained by a method that is locked and concealed at all times during the time the polls are open;

(15) It shall meet current Federal Voting System Standards or other applicable Federal Standards;

(16) It shall be suitably designed and durably constructed for the conduct of elections; and

(17) It shall be equipped to provide retrievable ballots during absentee voting where an absentee voter's ballot is linked to that voter for possible retrieval if it becomes necessary to take action as to that cast ballot.

History Note

Authority G.S. 163–22; 163–165.7; Temporary Adoption Eff. April 15, 2002; Eff. August 1, 2004.

.0302 APPROVAL OF VOTING SYSTEMS

(a) Before approving a voting system for use in North Carolina, the State Board of Elections shall do all of the following:

(1) Obtain a current financial statement from the proposed vendor and manufacturer's contact information (mail address, telephone and fax numbers, email address);

(2) Cause staff to review and appraise the voting system;

(3) Witness a demonstration of the voting system by the proposed vendor;

(4) Obtain a copy of Independent Testing Authority certification as authorized by National Association of State Elections Directors or Federal Agency;

(5) Ensure that a copy of the system's source code is held in escrow by a third party approved by the State Board of Elections for the purpose of taking custody of all source codes, including all revisions or modifications of source codes. Proprietary information is not subject to North Carolina Public Records laws;

(6) Any discussion of proprietary information by the State Board of Elections shall take place in Closed Session as authorized by the Open Meetings requirements of North Carolina law;

(7) Ensure performance of system complies with North Carolina laws and rules related to voting systems;

(8) Obtain a copy of the manufacturer's instructions and maintenance manual;

(9) Obtain a list of all jurisdictions currently using the voting system; and

(10) Review any other information made available to the Board.

(b) Modifications or Enhancement of Voting Systems. A change to any voting system or unit, including software and hardware modification, shall be submitted in writing for the review of the Executive Director of the State Board of Elections. Following the review, the Executive Director shall determine whether the change is a modification of the voting system as certified by the State Board of Elections. If it is determined to be a modification, the voting system as modified shall be submitted to the State Board of Elections for approval. If the Executive Director shall determine the change is an enhancement that does not substantially alter the voting system as certified by the State Board of Elections, the Executive Director may approve the enhancement and the review of the State Board of Elections shall not be required.

(c) Disapproval of Voting System. The State Board of Elections shall have the right to hear and act on complaints arising by petition or otherwise, on the failure or neglect of a voting system or vendor marketing a system to comply with any part of the election laws of the State of North Carolina or for any other satisfactory cause, including but not limited to, performance of the system in an election setting. Before exercising this power, the State Board of Elections shall notify the voting system vendor and/or county boards of elections affected and give opportunity to be heard at a hearing to be set by the State Board of Elections.

History Note

Authority G.S. 163–22; 163–165.7; Temporary Adoption Eff. April 15, 2002; Eff. August 1, 2004.

.0303 OFFICIAL BALLOT(S) TO BE USED ON VOTING SYSTEM

(a) In Primary Elections:

(1) All voting system ballots for use in any county shall be printed and furnished by the chairman of the county board of elections.

(2) The chairman shall print or cause to be printed on the official ballots for use in the county all ballot items. This shall include the name of each candidate who is to be voted for in that county, as contained on the list of candidates received from the State Board of Elections and from the notices of candidacy filed with the county board of elections.

(3) The names of all of the candidates for each office for each political party shall be printed in the exact order as determined and provided to each county board of elections by the State Board of Elections.

(4) The responsible board of elections shall prepare ballots in a number equal to 100% of the number of registered voters in the primary and shall furnish each precinct voting place with each kind of ballot to be voted in the primary in a number equal to at least 70% of the number of persons registered to vote in the primary or in the precinct, keeping the balance in reserve in such a manner that is secured yet accessible if needed. If a second primary or runoff election is necessary, the responsible board of elections shall prepare and fully distribute, without a reservation, ballots in a number equal to at least twice the number of ballots issued for that particular race in the first primary.

(b) In General Elections:

(1) All voting system ballots for use in any county shall be printed and furnished by the chairman of the county board of elections.

(2) The chairman shall print or cause to be printed on the official ballots for use in the county. This shall include but not be limited to the names of each candidate who is to be voted for in that county, as contained on the list of nominees received from the State Board of Elections and from the notices of candidacy filed with the county board of elections.

(3) The names of all of the nominees for each office shall be printed in the exact order as determined and provided to each county board of elections by the State Board of Elections.

(4) The responsible board of elections shall prepare ballots in a number equal to 100% of the number of registered voters in the election and shall furnish each precinct voting place with each kind of ballot to be voted in the election in a number equal to at least 70% of the number of persons registered to vote in the election or in the precinct, keeping the balance in reserve in such a manner that is secured yet accessible if needed. If a runoff election is necessary, the responsible board of elections shall prepare and fully distribute, without a reservation, ballots in a number equal to at least twice the number of ballots issued for that particular race in the first election.

(c) In Other Elections:

(1) All voting system ballots for use in any county shall be printed and furnished by the chairman of the county board of elections.

(2) The chairman shall print or cause to be printed on the official ballots for use in the county, the questions, issues, or propositions which are to be voted on in that county, as contained on the list of statewide items received from the State Board of Elections, or from petitions or action of local governmental entities.

(3) Any review of any special election ballot containing questions, issues, or propositions by the State Board of Elections office or a county board of elections shall not be considered a certification or opinion that the items on the ballot are lawfully upon the ballot and lawfully authorized to be voted upon at the time and place so indicated. It shall be the responsibility of the political entities authorizing the placing of the questions, issues, or propositions for a vote to determine the legality of items to be presented. Upon the request of a county board of elections, the State Board of Elections may present any issue as to the legality of any ballot item in a special election to the North Carolina Attorney General for a legal opinion.

(4) The responsible board of elections shall prepare ballots in a number equal to 100% of the number of registered voters in the election and shall furnish each precinct voting place with each kind of ballot to be voted in the election in a number equal to at least 70% of the number of persons registered to vote in the election or in the precinct, keeping the balance in reserve in such a manner that is secured yet easily accessible if needed. If a runoff election is necessary, the responsible board of elections shall prepare and fully distribute, without a reservation, ballots in a number equal to at least twice the number of ballots issued for that particular race in the first election.

(d) The State Board shall review for accuracy the ballot content, arrangement and instructions to voters and certify all ballots to be used in each official election. The primary responsibility for proofing the ballot lies with the county board of elections. Ballots are to be submitted to the State Board as soon as practicable but not later than five days following the certification of ballot items. When related litigation is pending and delays certification of ballot information, the State Board shall certify ballot information in as timely a manner as possible.

History Note

Authority G.S. 163–22; 163–165.6; Temporary Adoption Eff. April 15, 2002; Eff. August 1, 2004.

.0304 OPERATION AND MATTER OF VOTING ON VOTING SYSTEMS

(a) Prior to the opening of the polls, the precinct officials shall open the voting system and examine the ballot for accuracy and examine the counters or other method to determine there is a zero balance. Any persons interested in viewing this procedure may observe but shall not interfere or impede the process. If the system prints a zero tape or other paper document, the document shall be maintained and secured in the manner prescribed by the manufacturer and the county board of elections.

(b) The voter shall follow the instructions contained on the voting system. Only properly voted official ballots shall be introduced into the voting system. If a voter improperly marks or damages a ballot, it shall be returned to the precinct official, marked as spoiled and maintained as specified by the county board of elections. The voter may not receive a replacement ballot until the spoiled or damaged ballot is returned to the precinct official. The voter shall not be given more than three replacement ballots.

(c) Except as provided for curbside voting, official ballots shall not leave the voting enclosure during the time that voting is being conducted there.

History Note

Authority G.S. 163–22; 163–165.7; Eff. August 1, 2004.
Temporary Adoption Eff. April 15, 2002;

.0305 INSTRUCTION OF PRECINCT OFFICIALS AND VOTERS IN THE USE OF VOTING SYSTEMS

(a) The chairman of the county board of elections in a county where a voting system is used shall conduct an instructional meeting before any primary or election to instruct the precinct officials in the use of the voting system. The chairman may use any persons deemed knowledgeable or useful to the instruction of the precinct officials. The instructions on the use and operation of the voting system shall be according to manufacturer's instructions furnished with the voting system, whether the system is purchased or leased by the county board of elections. The precinct officials shall be qualified to instruct the voters on the use of the voting system.

(b) The chairman of the county board of elections shall not permit a voting system to be used in any precinct in any election unless the chairman shall be satisfied that the precinct officials of the precinct have learned the proper use and operation of the system. Such additional instruction as determined by the county board of elections to be needed shall be provided.

(c) A voter may request instruction for the proper use of the voting system from a precinct official. The precinct official shall provide such technical instruction to the voter but shall not seek to influence or intimidate the voter in any manner.

History Note

Authority G.S. 163–22; 163–165.7; Eff. August 1, 2004.
Temporary Adoption Eff. April 15, 2002;

.0306 DUTIES OF CUSTODIANS OF VOTING SYSTEMS

(a) The chairman of the county board of elections shall be responsible for the safekeeping, storage, maintenance and care of the voting system. The voting system shall be properly stored in a safe, appropriate and secure location so that the system cannot be tampered with when not in use on election day. The county board of elections may appoint as many persons as determined necessary for the maintenance, storage and care of the voting system and for the proper preparation and testing of the voting system and delivery to the voting precincts preceding a primary or an election. Persons employed for this purpose shall be compensated for their services as authorized by the county board of elections.

(b) On election day when the system is used for voting purposes and until the county board chairman collects the system, the voting system shall be under the direct supervision and control of the chief judge unless provision for its custody is otherwise authorized.

History Note

Authority G.S. 163–23; 163–165.7; Eff. August 1, 2004.
Temporary Adoption Eff. April 15, 2002;

.0307 TESTING OF VOTING SYSTEM BEFORE USE IN AN ELECTION

The county board of elections shall test or cause to be tested each voting system or unit that will be used in the election to ensure that the system is operating properly and has been programmed to count votes accurately. There shall be a record maintained along with the voted and unvoted ballots at the county board of elections office that shall include at a minimum the dates, times and method of testing used, the results of the test, and the persons conducting the test. Any interested person may observe the testing of the voting system but shall not interfere or impede the process. For the purpose of testing a voting system prior to the purchase or lease of the system, testing at a one-stop absentee voting site shall fulfill the requirement to test the voting system in a precinct within the county.

History Note

Authority G.S. 163–22; 163–165.7; Eff. August 1, 2004.
Temporary Adoption Eff. April 15, 2002;

CHAPTER 5. MODIFIED FULL TIME REGISTRATION SYSTEM

Rule

.0001 Plans of Registration.
.0002 Deadline for Adoption.
.0003 Exception: Modified Plans.
.0004 Adoption of Plan a or Plan B Required.
.0005 Adoption of Full–Time Registration Required.
.0006 Plan A.
.0007 Plan B.
.0008 Plan C.
.0009 Plan D.
.0010 Notification of Plan Adoption.

.0001 PLANS OF REGISTRATION

The State Board of Elections, pursuant to the authority and direction in Chapter 750, Session Laws of 1969 (codified as G.S. 163–67) hereby adopts and prescribes the following plans of modified full-time registration procedures for counties which have less than 14,001 registered voters as reflected by the certified ''Statistical Report'' dated November 10, 1969.

History Note

Statutory Authority G.S. 163–67(a), (b);
Eff. March 12, 1976.

.0002 DEADLINE FOR ADOPTION

Prior to January 1, 1971, the county board of elections of each county having total registered voters in excess of 6,500 but less than 14,001, shall adopt, by resolution, either ''Plan A'' or ''Plan B'' as prescribed herein. Those counties having total registered voters less than 6,500 shall adopt either ''Plan C'' or ''Plan D'' as prescribed herein. Provided, however, that nothing herein shall prohibit counties having a total registration of less than 6,500 from adopting either ''Plan A'' or ''Plan B.''

History Note

Statutory Authority G.S. 163–67(a), (b);
Eff. March 12, 1976.

.0003 EXCEPTION: MODIFIED PLANS

Registration commissioners shall not be permitted in counties adopting a modified full-time registration system. However, the duly appointed executive secretary may, at the option of the county board of elections, be dispatched to localities within the county for the purpose of receiving applications to register to vote, provided, public notice is generally circulated in advance.

History Note

Statutory Authority G.S. 163–67(a), (b);
Eff. March 12, 1976.

.0004 ADOPTION OF PLAN A OR PLAN B REQUIRED

Any county qualified to operate under ''Plan C'' or ''Plan D'' shall, upon exceeding 6,500 registered voters, as reflected by any subsequent certified ''Statistical Report,'' immediately, by resolution, move to adopt either ''Plan A'' or ''Plan B.'' The State Board of Elections shall be immediately notified of such change, in writing.

History Note

Statutory Authority G.S. 163–67(a), (b);
Eff. March 12, 1976.

.0005 ADOPTION OF FULL–TIME REGISTRATION REQUIRED

Any county qualified to operate under either ''Plan A'' or ''Plan B'' shall, upon exceeding 14,000 registered voters, as reflected by any subsequent certified ''Statistical Report,'' immediately move, by resolution, to adopt a full-time system of registration consistent with the operation of other county offices to the end that a daily operation is observed during hours which are considered regular business hours in the county. The State Board of Elections shall be immediately notified of such change, in writing.

History Note

Statutory Authority G.S. 163–67(a), (b);
Eff. March 12, 1976.

.0006 PLAN A

The county board of elections may adopt ''Plan A'' provided the county board resolves to operate its office at the seat of government in a location agreed upon by the county board of elections and the board of county commissioners. Under this plan, the executive secretary, appointed by the county board of elections, shall be in attendance to the prescribed duties between the hours of 9:00 a.m. and 5:00 p.m. (or the same hours observed by other county offices) on Monday, Wednesday and Friday of each week. Legal holidays, observed by other county offices, and falling on one of the above prescribed days may be observed at the discretion of the county board of elections.

History Note

Statutory Authority G.S. 163–67(a), (b);
Eff. March 12, 1976.

.0007 PLAN B

The county board of elections may adopt ''Plan B'' provided the county board resolves to operate its office at the seat of government in a location agreed upon by the county board of elections and the board of county commissioners. Under this plan, the executive secretary, appointed by the county board of elections, shall be in attendance to the prescribed duties between the hours of 9:00 a.m and 5:00 p.m. (or the same hours observed by other county offices) on Tuesday, Thursday and Saturday of each week. Legal holidays, observed by other county offices, and falling on one of the above prescribed days may be observed at the discretion of the county board of elections.

History Note

Statutory Authority G.S. 163–67(a), (b);
Eff. March 12, 1976.

.0008 PLAN C

The county board of elections may adopt ''Plan C'' provided the county board resolves to operate its office at the seat of government in a location agreed upon by the county board of elections and the board of county commissioners. Under this plan, the executive secretary, appointed by the county board of elections, shall be in attendance to the prescribed duties between the hours of 9:00 a.m. and 1:00 p.m. three days each week. Stipulated days must be Monday, Wednesday and Friday of each week. Legal holidays, observed by other county offices, and falling on one of the above prescribed days may be observed at the discretion of the county board of elections. This plan shall not be used in counties having in excess of 6,500 registered voters.

History Note

Statutory Authority G.S. 163–67(a), (b);
Eff. March 12, 1976.

.0009 PLAN D

The county board of elections may adopt ''Plan D'' provided the county board resolves to operate its office at the seat of government in a location agreed upon by the county board of elections and the board of county commissioners. Under this plan, the executive secretary, appointed by the county board of elections, shall be in attendance to the prescribed duties between the hours

of 9:00 a.m. and 1:00 p.m. three days each week. Stipulated days must be Tuesday, Thursday and Saturday of each week. Legal holidays, observed by other county offices, and falling on one of the above prescribed days may be observed at the discretion of the county board of elections. This plan shall not be used in counties having in excess of 6,500 registered voters.

History Note

Statutory Authority G.S. 163–67(a), (b);
Eff. March 12, 1976.

.0010 NOTIFICATION OF PLAN ADOPTION

Each county authorized to adopt one of the modified plans outlined in .0006 to .0009 of this Chapter must, upon adoption by the respective county board of elections, notify the State Board of Elections by submitting, in writing, the plan adopted for use in said county. Such notification must be made to the State Board of Elections immediately after approval by the county board and must also be entered in the official minutes of the county board. Each county board shall install a telephone in its designated office and effect a listing in the directory so that the general public will be able to make telephone inquiries. Notification shall also be made to the chairman of each political party within the county and publication made by advertisement in a newspaper having general circulation in the county and by any other means deemed helpful to the citizenry.

History Note

Statutory Authority G.S. 163–67(a), (b);
Eff. March 12, 1976.

CHAPTER 6. PARTISAN ELECTIONS

Rule
.0001 Split Ticket [Repealed].
.0002 Marking Party Circle and Cross Over Write–Ins [Repealed].
.0003 Multi–Candidate Offices [Repealed].

SUBCHAPTER 6B. BALLOTS

.0101 General Ballot Guidelines.
.0102 Use of Paper Ballots Where Voting Systems Are Used.
.0103 Arrangement of Official Ballots.
.0104 Late Changes in Ballots.
.0105 Counting of Official Ballots.

.0001 SPLIT TICKET [REPEALED]

.0002 MARKING PARTY CIRCLE AND CROSS OVER WRITE–INS [REPEALED]

.0003 MULTI–CANDIDATE OFFICES [REPEALED]

History Note

Filed as a Temporary Rule Eff. July 31, 1984, for a Period of 120 Days to Expire on November 28, 1984;
Statutory Authority G.S. 1099, Session Laws of 1983 (Regular Session, 1984);
Eff. November 1, 1984;
Repealed Eff. June 1, 1988.

SUBCHAPTER 6B. BALLOTS

.0101 GENERAL BALLOT GUIDELINES

(a) All ballots cast in elections, primaries, and referenda shall be printed and distributed at the public expense of the county or local jurisdiction for which the election is conducted.

(b) Ballots shall be arranged in the order certified to the county board of elections by the State Board of Elections.

(c) Ballots shall be printed in plain clear type, of such size and arrangement as to fit the construction of the voting system or size of the ballot.

(d) The ballot shall be printed with contrasting type and background so that it can be easily viewed by the voter and material of different colors to identify different ballots may be used. In primary elections, ballots of different colors may be used to distinguish a political party's ballot if practicable. Composition and color of ballots shall be subject to approval by the Executive Director of the State Board of Elections.

(e) The State Board of Elections shall review for accuracy the ballot content, arrangement and instructions to voters and approve all ballots to be used in each official election. The primary responsibility for proofing the ballot lies with the county board of elections. Ballots are to be submitted to the State Board of Elections as soon as practicable but not later than five days following the certification of ballot items. When related litigation is pending that delays certification of ballot information, the State Board of Elections shall certify ballot information in as timely a manner as possible.

(f) The responsible board of elections shall prepare ballots in a number equal to 100% of the number of registered voters in the primary or election and shall furnish each precinct voting place with each kind of ballot to be voted in the primary or election in a number equal to at least 70% of the number of persons registered to vote in the primary or election in the precinct, keeping the balance in reserve in such a manner that is secured yet easily accessible if needed. If a second primary or runoff election is necessary, the responsible board of elections shall prepare and fully distribute, without a reservation, ballots in a number equal to at least twice the number of ballots issued for that particular race in the first primary or election but in no case more than a number equal to 100% of the number of registered voters in the primary or election.

History Note

Authority G.S. 163–22; 163–165.3; 163–165.4;
Temporary Adoption Eff. April 15, 2002;
Eff. August 1, 2004.

.0102 USE OF PAPER BALLOTS WHERE VOTING SYSTEMS ARE USED

The county board of elections shall have authority to furnish paper ballots of each kind to precincts using voting systems for use by:

(1) Persons who have been challenged and the challenge has been overruled or sustained;

(2) Persons who vote using the curbside voting provisions;

(3) Persons who vote a provisional ballot; and

(4) In extraordinary circumstances if written approval is issued by the State Board of Elections. Such circumstances shall include an inability to use another system, unavailability of another system, economic factors, existence of contested races, size of potential electorate, and integrity needs.

History Note

Authority G.S. 163–22; 163–165.3; 163–165.4;
Temporary Adoption Eff. April 15, 2002;
Eff. August 1, 2004.

.0103 ARRANGEMENT OF OFFICIAL BALLOTS

(a) As soon as practicable after the close of the filing period, the State Board of Elections shall certify to the county boards of elections the order of the offices and candidate names to be voted on the official ballot. The State Board of Elections shall provide the text and arrangement of referenda to be voted on the official ballot.

(b) Generally, the order of precedence for candidate ballot items shall be as follows:

(1) Federal Offices;

(2) State Offices in the order certified by the State Board of Elections;

(3) District and local offices;

(4) Non-partisan offices; and

(5) Referenda, unless the voting system design requires referenda to be before candidate ballot items.

Ballot items for full terms of an office shall be listed before ballot items for partial terms of the same office. The term of the unexpired office only shall be listed as part of the title of the office.

(c) Names of candidates shall be printed in the exact form either certified by the State Board of Elections for those candidates who are required to file the Notice of Candidacy with the State Board of Elections, by convention or by petition. Candidates for all offices shall provide their name exactly as it is to appear on the ballot. Candidates may request in writing a change in the manner that their name is to appear on the ballot during the time the filing period is open.

History Note

Authority G.S. 163–22; 163–165.6;
Temporary Adoption Eff. April 15, 2002;
Eff. August 1, 2004.

.0104 LATE CHANGES IN BALLOTS

After the official ballots for a general or special election have been printed and the absentee voting period has begun, the death, resignation, or disqualification of a candidate whose name appears on the official ballots shall not require that the ballots be reprinted. If the vacancy occurs before the absentee voting period begins, the responsible board of elections may determine whether

it is practical to have the ballots reprinted with the name of the replacement nominee as authorized by G.S. 163–114. If the ballots are not reprinted, a vote cast for the candidate whose name is printed on the ballot shall be counted as a vote for the replacement nominee.

History Note

Authority G.S. 163–22; 163–165.3; Temporary Adoption Eff. April 15, 2002; Eff. August 1, 2004.

.0105 COUNTING OF OFFICIAL BALLOTS

(a) Following the close of the polls the official ballots shall be counted. Precinct officials shall follow the procedures specified by the voting system manufacturer and in compliance with G.S. 163–182.1 and 163–182.2. The counting of the ballots shall be completed in the presence of the precinct election officials, observers, and any persons desiring to observe the count. All official ballots shall be counted at the precinct unless authorized by legislative local act and approved by the State Board of Elections.

(b) The counting of the ballots at the precinct shall be continuous until completed. From the time the counting of the ballots is begun until the votes are counted and the requisite documentation is signed, certified as required, and delivered to the chief judge or judge chosen to deliver the documentation to the county board of elections, the precinct chief judge and judges shall not separate, nor shall any of them leave the voting place except for unavoidable necessity.

(c) In the cases where the precinct officials must interpret the voter's choice, the following shall apply:

(1) When it is impossible to determine a voter's choice for an office, the ballot shall not be counted for that office but shall be counted for all other offices;

(2) If a ballot is marked for more names than there are positions to be filled, it shall not be counted for that office but shall be counted for all other offices;

(3) If a ballot has been defaced or torn by a voter so that it is impossible to determine that voter's choice for one or more offices, it shall not be counted for such offices but shall be counted for all offices for which the voter's choice can be determined; and

(4) If a voter has done anything to a ballot other than mark it properly, it shall be counted unless such action by the voter makes it impossible to determine the voter's choice.

(d) When the counting is completed the chief judge or his or her designee shall announce the results at the precinct. The an-

nouncement of the results shall clearly state the results are unofficial. The unofficial results shall be transmitted to the county board of elections in the manner determined by the county board of elections and the voting system. This report shall be unofficial and shall have no binding effect upon the official county canvass to follow. As soon as the precinct reports are received, the chairman, secretary or designee shall publish the unofficial reports to the news media.

(e) Provisional official ballots shall be counted by the county board of elections before the canvass. If the county board finds that an individual voting a provisional official ballot is not eligible to vote in one or more ballot items on the official ballot, the board shall not count the official ballot in those ballot items, but shall count the official ballot in any ballot items for which the individual is eligible to vote.

History Note

Authority G.S. 163–22; 163–182.1; 163–182.2;
Temporary Adoption Eff. April 15, 2002;
Eff. August 1, 2004.

CHAPTER 7. FILING OF NOTICE OF CANDIDACY FOR OFFICE OF SUPERIOR COURT JUDGE

Rule
.0001 Filings Accepted [Repealed].
.0002 Filings Deferred [Repealed].
.0003 Filings in Certain Districts [Expired].
.0004 Method of Filing [Expired].
.0005 Determining Nomination [Expired].
.0006 Method of Nomination and Election [Expired].
SUBCHAPTER 7B. SUBMITTING AND ACCEPTING VOTER INFORMATION BY FAX
.0101 Submitting Voter Registration and Changes of Party Affiliation.
.0102 Accepting Voter Registration Applications.

.0001 FILINGS ACCEPTED [REPEALED]
.0002 FILINGS DEFERRED [REPEALED]

History Note

Filed as a Temporary Repeal Eff. May 1, 1986 for a Period of 120 Days to Expire on August 29, 1986 subject to preclearance pursuant to 42 U.S.C. Sec. 1973c.;
Filed as a Temporary Rule Eff. January 6, 1986, for a Period of 107 Days, to Expire on April 22, 1986;
Statutory Authority G.S. 163–22(a); 163–22.2;
Eff. April 1, 1986;
Repealed Eff. June 1, 1988.

.0003 FILINGS IN CERTAIN DISTRICTS [EXPIRED]

History Note

Filed as a Temporary Rule Eff. May 1, 1986 for a Period of 120 Days, to Expire on August 29, 1986; subject to preclearance pursuant to 42 U.S.C.§1973c;
Statutory Authority G.S. 163–22(a); 163–22.2;
Expired Eff. August 29, 1986.

.0004 METHOD OF FILING [EXPIRED]

History Note

Filed as a Temporary Rule Eff. May 1, 1986 for a Period of 120 Days, to Expire on August 29, 1986; subject to preclearance pursuant to 42 U.S.C.§1973c;
Statutory Authority G.S. 163–22(a); 163–22.2;
Expired Eff. August 29, 1986.

.0005 DETERMINING NOMINATION [EXPIRED]

History Note

Filed as a Temporary Rule Eff. May 1, 1986 for a Period of 120 Days, to Expire on August 29, 1986; subject to preclearance pursuant to 42 U.S.C.§1973c;

Statutory Authority G.S. 163–22(a); 163–22.2;
Expired Eff. August 29, 1986.

.0006 METHOD OF NOMINATION AND ELECTION [EXPIRED]

History Note

Filed as a Temporary Rule Eff. May 1, 1986 for a Period of 120 Days, to Expire on August 29, 1986; subject to preclearance pursuant to 42 U.S.C.§1973c;
Statutory Authority G.S. 163–22(a); 163–22.2;
Expired Eff. August 29, 1986.

SUBCHAPTER 7B. SUBMITTING AND ACCEPTING VOTER INFORMATION BY FAX

.0101 SUBMITTING VOTER REGISTRATION AND CHANGES OF PARTY AFFILIATION

(a) An applicant may submit any form outlined in G.S. 163–82.3 by fax to the county board of elections fax number. There are no other numbers to which faxed voter registration applications may be sent. Note that faxed voter registration applications must be received by the county board of elections by 5:00 p.m. on the 25th day before the election. Applicants are encouraged to retain the fax transmission sheet in case the timeliness of their faxed application is called into question.

(b) The applicant, after transmitting an original application for voter registration or a change of party affiliation by fax, must mail or have placed in delivery the original and signed voter registration application to the county board of elections office in the county in which the applicant is applying no later than 20 days before the election.

(c) Changes of name or address submitted by registered voters by fax may be made in form of any written notice signed by the registrant that includes the registrant's full name, date of birth, former residence address, new residence address, and date of moving from the old to the new address. Changes of name or address submitted by fax must be received by 5:00 p.m. on the 25th day before the election. Original documents that show changes of name or address do not have to be delivered to the board of elections.

History Note

Authority G.S. 163–22; 163–82.6; 163–82.15;
Temporary Adoption Eff. April 15, 2002;
Eff. August 1, 2004.

.0102 ACCEPTING VOTER REGISTRATION APPLICATIONS

(a) County boards of elections must ensure that fax machines are in good working order. County boards shall also ensure that their fax numbers are made available throughout the county and to the State Board of Elections.

(b) The State Board of Elections shall maintain all current fax numbers for county boards of elections on its Website at www.sboe.state.nc.us and shall provide telephone assistance to those seeking the proper fax number.

(c) The county board of elections shall, as much as possible, ensure the quality and security of its fax machine. A log of any problems or times in which the fax machine was not operational shall be maintained.

(d) The county board shall develop a plan for checking the fax machine for voter registration documents and shall ensure their delivery to a secure location to await processing.

(e) The following shall apply to new registrations and changes of information submitted by fax:

(1) New registrations and changes of party affiliation submitted by fax must be completed on a form outlined in G.S. 163–82.3 and must be followed by the original application with the original signature of the voter; and

(2) Changes of name or address submitted by registered voters by fax may be made in form of any written notice signed by the registrant that includes the registrant's full name, date of birth, former residence address, new residence address, and date of moving from the old to the new address. Changes of name or address submitted by fax must be received by 5:00 p.m. on the 25th day before the election. Original documents do not have to be delivered to the board of elections prior to processing for changes of address or names.

(f) When a faxed voter registration document is received by a county board of elections office, staff must determine whether or not the document is a new registration within the county or a change of information within the county. New registrations and changes of party affiliation shall be separated from changes of name or address received by fax.

(g) Faxed original applications and changes of party affiliation may be held in queue until the original application is received by mail or other delivery. Upon receipt of the original application, the application may be processed as timely if transmitted by the 20–day deadline.

(h) Faxed changes of name or address may be processed immediately.

(i) New applications and changes of information submitted by fax shall be maintained in the same manner as all other registration/change of information documents.

History Note

Authority G.S. 163–22; 163–82.6; 163–82.15;
Temporary Adoption Eff. April 15, 2002;
Eff. August 1, 2004.

CHAPTER 8. COMPLIANCE WITH FEDERAL P.L. 98–435: THE VOTING ACCESSIBILITY FOR THE ELDERLY AND HANDICAPPED ACT

Rule
.0001 Handicapped Transfer.
.0002 Notarization Regarding Absentee Voting by Handicapped.
.0003 Curbside Voting Hours Extended.
.0004 Handicapped Transfer Prior to Election Day.

.0001 HANDICAPPED TRANSFER

Any person who is entitled to vote outside a voting enclosure as prescribed in G.S. 163–155 may, in lieu of doing so, request to be allowed to vote at the office of the appropriate county board of elections under the following procedure:

(1) On the day of the primary or election, the voter must go to the polling place for the precinct at which the voter is registered and announce at curbside his or her request to be transferred to an accessible polling place.

(2) Upon determining that the voter is registered in that precinct, the precinct registrar or judge shall issue to the voter a certificate of removal on the following form:

''NOTICE OF HANDICAPPED TRANSFER

On this day _____
(name/voter/address as appears/registration records)
who is registered in _____ precinct, appeared before the undersigned precinct official. This person has not voted this date in this precinct and hereby requests that he or she be permitted to vote after executing the required handicapped certificate. The polling place for _____ precinct has not been made accessible to the elderly and handicapped.

_____
Registrar or Judge

_____
Name and number of precinct

_____
Signature of voter

TAKE THIS CERTIFICATE TO THE COUNTY BOARD OF ELECTIONS''.

(3) Upon issuance of the certificate to the voter, the precinct official shall mark the voter's registration record with an ''HT'' in the appropriate voting square to indicate that the voter has transferred.

(4) The voter shall take the certificate of removal to the precinct transfer assistant at the county board of elections office. Upon determining that the voter is physically disabled and is

qualified to vote in the election, the precinct transfer assistant shall provide the voter with the proper ballots for the precinct.

(5) After marking the ballots in a booth or separate room or table provided for that purpose, the voter shall place the ballots in an envelope provided by the precinct transfer assistant. That envelope shall have printed or stamped on it the following:

Handicapped Transfer Ballot No.

Registered in precinct.

The precinct transfer assistant shall write the proper information in the blanks before giving the envelope to the voter.

(6) The precinct transfer assistant shall enter in a book provided by the Board of Elections the name of each voter permitted to vote under this Rule, the number assigned to the voter's ballot and envelope, and the precinct in which the voter resides.

(7) Envelopes containing ballots voted under this Rule shall be retained to be opened and the ballots counted after the polls close on election day. Ballots shall be counted by board members or assistants appointed by the board. All envelopes shall be opened and all ballots deposited in the appropriate boxes before any ballots are counted, and the results of the counting shall be entered on duplicate transfer report forms signed by the officials responsible for the counting.

(8) A person voting under this Rule shall be entitled to the same assistance as provided in G.S. 163–152.

(9) The precinct officials and precinct transfer assistants may require a person to show identification, if needed, to establish that the person is entitled to vote.

History Note

Statutory Authority P.L. 98–435; S.L. 1985, c. 4, (Extra Session 1986); Eff. March 24, 1986.

.0002 NOTARIZATION REGARDING ABSENTEE VOTING BY HANDICAPPED

(a) No notarization or medical certification shall be required with respect to an application for an absentee ballot or an absentee ballot itself when the reason for the issuance of said ballot is sickness or physical disability occurring before 5:00 p.m. on the Tuesday prior to the date of election.

(b) Voters to whom absentee ballots are issued due to sickness or physical disability, as provided in (a) of this Rule, shall be advised in writing that no notarization is required.

History Note

Statutory Authority P.L. 98–435; S.L. 1985, c. 4, (Extra Session 1986); Eff. March 24, 1986.

.0003 CURBSIDE VOTING HOURS EXTENDED

In any primary or election, any qualified voter who is able to travel to the voting place, but, because of age or physical disability and physical barriers encountered at the voting place, is unable to enter the voting place or enclosure to vote in person, shall be allowed, at all times during which the voting place is open, to vote in the vehicle conveying such person to the voting place or in the immediate proximity of the voting place under the procedures set forth in G.S. 163–155.

History Note

Statutory Authority P.L. 98–435; S.L. 1985, c. 4, (Extra Session 1986); Eff. April 9, 1986.

.0004 HANDICAPPED TRANSFER PRIOR TO ELECTION DAY

At any time during the period of absentee voting in any primary, general or special election, a handicapped or elderly voter registered in a precinct wherein there exists no polling place accessible to the elderly and handicapped may request in advance to be transferred from that precinct to the office of the county board of elections for the purpose of voting at the county board of elections on election day under the following procedure:

(1) An application to be transferred in advance to the county board of elections for the purpose of voting on election day shall be made and signed only by the voter or the voter's near relative, as defined in G.S. 163–227(c)(4), or legal guardian and shall be valid only when transmitted to the chairman or supervisor of elections of the county board of elections by mail or delivered in person by the voter or his near relative or legal guardian.

(2) Upon receipt of a written request for transfer, the county board of elections, after determining the validity of such request, shall enter the voter's name and precinct into the book referred to in Rule .0001(a)(6) of this Chapter and shall place the designation ''HT'' beside the voter's name as it appears on registration records sent to that voter's precinct for use on election day.

(3) No voter who has requested advance transfer shall be allowed to vote on election day at that voter's precinct if the designation ''HT'' appears on the records of that precinct, but instead shall be directed to the offices of the county board of elections.

(4) On election day, the precinct transfer assistant at the county board of elections, when the elderly or handicapped voter appears and indicates that advance request for transfer was made, shall verify such fact by reference to the book referred to in Rule .0001(a)(6) and, having determined that such request was made, shall provide the voter with the proper ballots and follow the procedures set forth in Rule .0001 (a)(5)–(9).

History Note

Filed as a Temporary Rule
Eff. April 18, 1988 for a Period of 136 Days to Expire on August 31, 1988;
Statutory Authority G.S. 163–69.2;
ARRC Objection May 19, l988;
Eff. October 1, 1988.

CHAPTER 9. CONDUCT OF VOTE RECOUNTS BY COUNTY BOARDS OF ELECTIONS

Rule

.0101 Recounts to Follow Customary Procedures [Repealed].
.0102 Locations of Recounts [Repealed].
.0103 Notice of Recount [Repealed].
.0104 Officials Conducting Recount [Repealed].
.0105 Challenge of Recount Procedures [Repealed].
.0106 General Guidelines.
.0107 Recount of Opitical Scan/Marksense/Punchcard Ballots.
.0108 Direct Record Electronic and Lever (Direct Record Mechanical) Voting Machines.
.0109 Manual Hand to Eye Recounts.

.0101 RECOUNTS TO FOLLOW CUSTOMARY PROCEDURES [REPEALED]

.0102 LOCATIONS OF RECOUNTS [REPEALED]

.0103 NOTICE OF RECOUNT [REPEALED]

.0104 OFFICIALS CONDUCTING RECOUNT [REPEALED]

.0105 CHALLENGE OF RECOUNT PROCEDURES [REPEALED]

History Note

Authority G.S. 163–179.1; 163–192.1;
ARRC Objection May 19, 1988;
Temporary Rule Eff. April 18, 1988 for a period of 136 days to expire on August 31, 1988;
Expired Eff. August 31, 1988;
Eff. October 1, 1988;
Temporary Repeal Eff. April 15, 2002;
Repealed Eff. August 1, 2004.

.0106 GENERAL GUIDELINES

(a) Prior to each recount, the board of elections shall confer with affected parties and candidates and describe to them the process of conducting recounts.

(b) In the case of tie votes, the winner shall be determined by lot only in the case set out in G.S. 163–182.8(2). Where there are 5,000 or fewer votes cast, there shall be only one determination by lot for each tied election. There shall be no determination by lot until the time has expired for the affected candidate(s) to request a recount, unless all of the affected candidate(s) waive their right in writing to request a recount.

(c) During the conduct of recounts, in the cases where the board of elections must interpret the voter's choice, the following shall apply:

(1) When it is impossible to determine a voter's choice for an office, the ballot shall not be counted for that office but shall be counted for all other offices;

(2) If a ballot is marked for more names than there are positions to be filled, it shall not be counted for that office but shall be counted for all other offices;

(3) If a ballot has been defaced or torn by a voter so that it is impossible to determine that voter's choice for one or more offices, it shall not be counted for such offices but shall be counted for all offices for which the voter's choice can be determined; and

(4) If a voter has done anything to a ballot other than mark it properly with pen or pencil, it shall be counted unless such action by the voter makes it impossible to determine the voter's choice.

(d) The following shall apply in counting punch card ballots:

(1) All of the candidates for whom the voter has indicated a preference shall be counted if the corresponding chad is completely punched out or hanging by one corner (showing that three of the four corners have been punched out); and

(2) If the chad has not been punched out or is not hanging by one corner, then the determination must be made if the voter has shown consistency in marking the ballot. If the voter has shown consistency in marking choices on the ballot—all of the candidates for whom the voter has indicated a preference shall be counted.

(e) In conducting recounts of lever, direct record electronic, and any other types of voting machines that require a county board member or designated official to reprint tapes and to read the totals and another board member to record the totals for each candidate such recount shall be conducted by a bi-partisan team of four: two officials (one from each of the two parties having the largest number of registered voters in the state) reading and confirming the totals per machine and two officials (one from each of the two parties having the largest number of registered voters in the state) recording the results simultaneously.

(f) In conducting hand to eye recounts or recounts of paper ballots, a bi-partisan team of four shall be used: two officials (one from each of the two parties in the State with the largest number of registered voters) to relay the results of each ballot with one person reading the ballot and the other official observing the ballot and the person reading the results of the ballot, and two officials (one from each of the two parties in the State with the largest number of registered voters) recording the tally of votes for each candidate on paper while stating aloud after each choice is read on the fifth tally for a particular candidate, the word ''tally.''

(g) The county board of elections shall conduct recounts in two circumstances. In the first circumstance, the recount is mandatory under G.S. 163–182.7(b). In the second circumstance, the recount

is not mandatory but the county board of elections or the State Board of Elections determines, using its authority in G.S. 163–182.7(a), that in order to complete the canvass a recount is necessary.

(h) A candidate shall have the right to call for a hand-eye recount, as to elections conducted by optical scan marksense or punchcard systems, within 24 hours after a mandatory or discretionary recount or by noon on the next business day of the county board office, whichever is later, if the apparent winner is the apparent loser after the first recount, unless human error resulted in the vote count change.

(i) Any candidate shall have the right to file an election protest within 24 hours after a recount or by noon of the next business day of the county board office, whichever is later.

History Note

Authority G.S. 163–22; 163–182.7; Eff. August 1, 2004.
Temporary Adoption Eff. April 15, 2002;

.0107 RECOUNT OF OPITICAL SCAN/MARK-SENSE/PUNCHCARD BALLOTS

(a) How to conduct the first recount. In the first recount, all ballots that were originally counted by the optical scan equipment are to be counted again by the optical scan equipment producing another machine count. A ''machine count'' total is a ballot count produced by a voting system that uses machines. All ballots that were rejected for tabulation purposes by the machines—commonly called ''outstacked'' or center bin ballots—are to be recounted by hand and eye using the team of four guidelines outlined in 8 NCAC 9 .0106.

(b) The steps after the first recount. When the first recount, including absentee and provisional ballot recount totals, has been completed, the board of elections shall follow these steps:

(1) The county board must determine whether the first recount produces a change in the winner;

(2) If the apparent winner after the initial balloting is the apparent loser after the first recount, that candidate shall be entitled to demand a second recount, by hand and eye, of all ballots;

(3) If the apparent winner after the initial balloting remains the apparent winner after the first recount, Subparagraph (4) of this Rule must be considered;

(4) The county board must determine whether there is a discrepancy in the machine totals between the initial balloting and the first recount;

(5) If the machine totals from the initial balloting and the first recount are the same, no second recount is necessary;

(6) If the machine totals from the initial balloting and the first recount are not the same, Subparagraph (b)(7) of this Rule must be considered;

(7) The county board must determine whether the discrepancy in the machine total can be reconciled;

(8) The county board shall determine if the discrepancy in the machine total between the initial balloting and the first recount can be explained. The county board shall examine the outstack/center bin ballots from the first recount, determine how they should be counted, and reconcile the count with the machine count on the initial balloting. If this reconciliation produces the same machine total for the first recount as the machine total in the initial balloting, no second recount is necessary; and

(9) If the reconciliation produces a different machine total for the first recount than the machine total in the initial balloting, the losing candidate is entitled to demand a second recount, by hand and eye, of all ballots.

History Note

Authority G.S. 163–22; 163–182.7; Temporary Adoption Eff. April 15, 2002; Eff. August 1, 2004.

.0108 DIRECT RECORD ELECTRONIC AND LEVER (DIRECT RECORD MECHANICAL) VOTING MACHINES

(a) In the first recount, all votes cast on each unit shall be retabulated and results provided. The results provided shall be reread using the team of four rules outlined in Section I of these Rules.

(b) When the first recount has been completed, the board of elections shall follow these steps:

(1) The county board must determine whether the first recount produces a change in the winner;

(2) If the apparent winner after the initial balloting is the apparent loser after the first recount, that candidate shall be entitled to demand a second recount;

(3) If the apparent winner after the initial balloting remains the apparent winner after the first recount, Subparagraph (b)(4) of this Rule must be considered;

(4) The county board must determine whether there is a discrepancy in the machine totals between the initial balloting and the first recount;

(5) If the unit totals from the initial balloting and the first recount are the same, no second recount is necessary;

(6) If the unit totals from the initial balloting and the first recount are not the same, Subparagraph (b)(7) of this Rule must be considered;

(7) The county board must determine whether the discrepancy in the machine total can be reconciled;

(8) The county board shall determine if the discrepancy in the unit totals between the initial balloting and the first recount can be explained. (Possible acceptable explanations may include problems with the setup of the ballot, problems with the software or other unit malfunction); and

(9) If the reconciliation produces a different unit total for the first recount than the unit total in the initial balloting, the losing candidate is entitled to demand a second recount provided by the county board of elections.

(c) A manual recount, by hand and eye, of ballots is not possible whenever a lever machine or direct record electronic voting machine error occurs.

(d) The State Board of Elections shall hear any appeals of recount protests.

History Note

Authority G.S. 163–22; 163–182.7; Temporary Adoption Eff. April 15, 2002; Eff. August 1, 2004.

.0109 MANUAL HAND TO EYE RECOUNTS

Mandatory recounts, as set out in G.S. 163–182.7, by hand-eye optical scan/marksense/punchcard voting shall be conducted as follows: If a sample of the precincts of the voting units in question were recounted by hand-eye and produced results with that of the mandatory recount in those precincts such that one could reliably assume that any problems with scanning equipment was confined to those precincts in which there was a difference that could not be reconciled in the totals between the original count and the mandatory recount, then:

(1) The mandatory recount by hand-eye initially shall occur in only 10 percent of the voting jurisdiction's precincts.

(2) Those precincts shall include all those precincts in which a different total was produced by the machine-read count of ballots for the first count, including the outstacked/center bin, and the mandatory recount, as well as a sufficient number of additional precincts to constitute a total of at least 10 percent of the precincts of the voting jurisdiction.

(3) However, in any event, at least five percent of the voting jurisdiction's precincts included in the sample shall have experienced the same count for machine-read ballots, including the outstacked/center bin, in the original count, and in the mandatory recount.

(4) The precincts included in the sample which had the same machine-read count in the original and mandatory recount shall be chosen by random draw by lot from a container held by the Chair of the county board of elections, with all precincts which did not experience a difference in count by number being placed into the container, with the candidate whom appears to have been the loser after the mandatory recount drawing said lots.

(5) If the hand-eye recount of those precincts which did not experience a difference in count from the original count and the mandatory recount results in a different total from that produced on the previous counts, in any precinct, then upon request of the apparent losing candidate, all precincts for that race shall be recounted by hand-eye.

(6) After two machine count of votes (including the initial election or primary night count), any recount conducted in cases involving optical scan marksense and punchcard voting equipment shall be a manual hand-eye recount.

History Note

Authority G.S. 163–22; 163–182.7; Temporary Adoption Eff. April 15, 2002; Eff. August 1, 2004.

CHAPTER 10. BALLOT ROTATION RULES FOR PRIMARY ELECTION BALLOTS

SECTION .0100. GENERAL BALLOT ROTATION RULES FOR PRIMARY ELECTION BALLOTS

Rule
.0101 Requirements for Equipment Vendors [Repealed].
.0102 List of Qualified Voting Systems [Repealed].
.0103 Candidate Names to Be Rotated for Paper Ballots and Some Voting Systems [Repealed].
.0104 Rotation Not Required for Mail–in Absentee Ballots [Repealed].
.0105 Replacement Voting Systems Must Permit Candidate Name Rotation [Repealed].
.0106 Significant Additional Expense [Repealed].

SUBCHAPTER 10B. VOTING, VOTING PLACES AND PRECINCT OFFICIALS' DUTIES AND TASKS

.0101 Tasks and Duties of Precinct Officials at Voting Places.
.0102 Setting Up Polling Place Prior to Voting.
.0103 Voting Procedures.
.0104 Leaving the Voting Enclosure, Spoiled or Incomplete Ballots.
.0105 Procedures at the Close of Voting.
.0106 Election Supplies Return.
.0107 Assistance to Voters in Primaries and General Elections.
.0108 Curbside Voting.

SECTION .0100. GENERAL BALLOT ROTATION RULES FOR PRIMARY ELECTION BALLOTS

.0101 REQUIREMENTS FOR EQUIPMENT VENDORS [REPEALED]

.0102 LIST OF QUALIFIED VOTING SYSTEMS [REPEALED]

.0103 CANDIDATE NAMES TO BE ROTATED FOR PAPER BALLOTS AND SOME VOTING SYSTEMS [REPEALED]

.0104 ROTATION NOT REQUIRED FOR MAIL–IN ABSENTEE BALLOTS [REPEALED]

.0105 REPLACEMENT VOTING SYSTEMS MUST PERMIT CANDIDATE NAME ROTATION [REPEALED]

.0106 SIGNIFICANT ADDITIONAL EXPENSE [REPEALED]

History Note

Authority G.S. 163–22; 163–140(c)(3); 163–160; 163–160.1;
Temporary Adoption Eff. May 1, 2000;
Temporary Adoption Expired on December 10, 2000.

SUBCHAPTER 10B. VOTING, VOTING PLACES AND PRECINCT OFFICIALS' DUTIES AND TASKS

.0101 TASKS AND DUTIES OF PRECINCT OFFICIALS AT VOTING PLACES

(a) This Rule a Summary—The provisions of this Section provide a nonexclusive summary of the tasks and duties given to officials under G.S. 163. The legal duty is contained, not in this Rule, but in G.S. 163. For purposes of this Chapter, unless otherwise noted, the term ''precinct officials'' shall mean chief judge, precinct judge, assistants, emergency election-day assistants, and ballot counters. Observers are not precinct officials and shall not act or presume to act on behalf of a county board of elections. Observers shall only be allowed in partisan or ABC elections and are not legally authorized in any non-partisan election involving either candidates or issues.

(b) Tasks of Precinct Chief Judge—Precinct Chief Judges, in accordance with election statutes, within the Rules of the State Board of Elections, and under the supervision of the county board of elections, shall have the following tasks to perform as to each primary or election. Where the precinct chief judge does not have the exclusive statutory mandate to perform a task or duty, a precinct judge may be designated to perform such task or duty.

(1) Attend an instructional meeting presented by the county board of elections prior to each primary or election as required by G.S. 163–46.

(2) Upon learning that any parent, spouse, child, or sibling has filed for elective office, to inform the county board of elections so that the provisions of the law prohibiting a precinct official from serving in an election with a close relative as a candidates can be followed.

(3) Inform the county board of elections if any blood relative of kinship of first cousin or nearer or a parent in-law, child in-law or sibling in-law is a precinct official/worker serving with you in the same precinct, and not to serve with that relative in the same precinct. Also inform the county board of elections of any relationship, as described in the previous sentence, that you may have with an emergency election-day assistant and not serve with that person in the same precinct.

(4) Prior to day of the primary or election, receive and review from the county board the precinct observer list and promptly make any objection for good cause to the county board as provided in G.S. 163–45.

(5) Receive, prior to the election or primary, sample ballots from the county board of elections, and to post a sample ballot

at the voting place prior to opening on the primary or election day as set out in G.S. 163–165.2.

(6) Promptly notify the county board of elections of any sickness, emergency, or other circumstances that will or might prevent the person from performing as precinct chief judge on a primary or election day.

(7) Receive, prior to the day of the primary or election, from the county board of elections any security keys or codes as to any voting systems or units that are to be operated at the precinct.

(8) Prior to the opening of the polls, administer to any precinct official, not previously sworn, the oath of office as set out in G.S. 163–41.

(9) Prior to the opening of the polls, to ensure there is open means of phone/radio communication between the voting place and the county board of elections office or director.

(10) If at the time of opening the voting place, a judge has not appeared, to appoint another person to act as precinct judge, until the chairman of the county board of elections appoints a replacement as set out in G.S. 163–41, or ratifies the selection of the chief judge.

(11) Be present at the voting place at 6:00 a.m., and ensure the prompt opening of the polls at 6:30 a.m. as mandated by G.S. 163–166 and any Rules promulgated under that statute.

(12) Respond to any voter's request to have assistance to vote as set out in the provisions of G.S. 163–166.8(b).

(13) Ensure the continued arrangement of the voting enclosure as required in G.S. 163–166.2.

(14) Supervise the orderly closing of the voting place at 7:30 p.m. in compliance with procedures set out in G.S. 163–166.10 and any rules promulgated under that statute.

(15) Handle challenges made on election or primary day in accordance with G.S. 163–87, and to conduct the hearing upon said challenge in accordance with G.S. 163–88.

(16) Be responsible, as mandated by G.S. 163–182.3, for adherence to all rules pertaining to counting, reporting, and transmitting official ballots.

(17) Be responsible for the maintenance of and appearance of efficient, impartial, and honest election administration at the precinct as required by G.S. 163–166.5(3).

(18) Be responsible for the maintenance of the voting place buffer zone, and ensure compliance with the same.

(19) Ensure peace and good order at the voting place as required by G.S. 163–48.

(20) Ensure that voters are able to cast their votes in dignity, good order, impartiality, convenience, and privacy as required in G.S. 163–166.7(c) and any rules promulgated under that statute.

(21) If needed, to check or assist in checking the registration of voters at the voting place.

(22) If ballot counters are needed, receive the list of counters from the county board, or appoint counters if authorized to do so by the county board. Swear in any ballot counters prior to their county votes. Report to the county board of elections the names and addresses of any ballot counters to the county board at the county canvass as set out in G.S. 163–163–43.

(23) Perform the required legal duties of chief precinct judge/judge or face criminal consequences as set out in G.S. 163–274 (1).

(24) Not accept money from candidates, commit fraud, false statements, or false writings in performing election duties, or face the criminal consequences set out in G.S. 163–275(3)(8)(9) and (12).

(c) Tasks of Precinct Judge-Precinct Judges, in accordance with election statutes, within rules of the State Board of Elections, and under the supervision of the county board of elections, shall have the following tasks to perform as to each primary or election. A precinct judge may be designated to perform tasks and duties of a chief precinct judge, where those duties are not statutorily made exclusive to the chief precinct judge.

(1) Attend an instructional meeting presented by the county board of elections prior to each primary or election as required by G.S. 163–46.

(2) Upon learning that any parent, spouse, child, or sibling has filed for elective office, to inform the county board of elections so that the provisions of the law prohibiting a precinct official from serving in an election with a close relative as a candidates can be followed.

(3) Inform the county board of elections if any blood relative of kinship of first cousin or nearer or a parent in-law, child in-law or sibling in-law is a precinct official/worker serving with you in the same precinct, and not to serve with that relative in the same precinct. Also inform the county board of elections of any relationship, as described in the previous sentence, that you may have with an emergency election-day assistant and not serve with that person in the same precinct.

(4) If the chief judge fails to appear at the opening of poll, to appoint, with the other precinct judge, a person to act as chief judge until the chairman of the county board appoints a new chief judge as per G.S. 163–41.

(5) Promptly notify the county board of elections of any sickness, emergency, or other circumstances that will or might prevent the person from performing as precinct chief judge on a primary or election day.

(6) Be present at the voting place at 6:00 a.m., and ensure the prompt opening of the polls at 6:30 a.m. as mandated by G.S. 163–166 and any rules promulgated under that statute.

(7) Perform the required legal duties of chief precinct judge/judge or face criminal consequences as set out in G.S. 163–274 (1).

(8) Not accept money from candidates, commit fraud, false statements, or false writings in performing election duties, or face the criminal consequences set out in G.S. 163–275(3)(8)(9) and (12).

(9) To aid and cooperate with the precinct chief judge, as requested or needed, as to those duties noted in Subparagraphs (12) through (21) of Paragraph (b) of this Rule.

(d) Tasks of Election Assistants-Election Assistants, in accordance with election statutes, within the rules of the State Board of Elections, and under the supervision of the county board of elections, shall have the following tasks to perform as to each primary or election: Aid the chief judge and other precinct judges in the performances of their tasks and duties as needed or directed.

(1) Check the registration of voters at the voting place as per G.S. 163–166.7(a).

(2) Guide voters to voting units or provide voters ballots as per G.S. 163–166.7(b).

(3) Prior to performing duties and tasks after being duly appointed, take the oath required by G.S. 163–41.

(4) Promptly notify the county board of elections of any sickness, emergency, or other circumstances that will or might prevent the person from performing as an election assistant on a primary or election day.

(5) Upon learning that any parent, spouse, child, or sibling has filed for elective office, to inform the county board of elections so that the provisions of the law prohibiting a precinct official from serving in an election with a close relative as a candidates can be followed.

(6) Inform the county board of elections if any blood relative of kinship of first cousin or nearer or a parent in-law, child in-law or sibling in-law is a precinct official/worker serving with you in the same precinct, and not to serve with that relative in the same precinct. Also inform the county board of elections of any relationship, as described in the previous sentence, that you

may have with an emergency election-day assistant and not serve with that person in the same precinct.

(e) Tasks of Emergency Election–Day Assistant–Emergency Election–Day Assistants, in accordance with election statutes, within the rules of the State Board of Elections, and under the supervision of the county board of elections, shall have the following tasks to perform as to each primary or election:

(1) To be prepared prior to and on the day of a primary or election to serve, on short notice given by the county board of elections, to travel to and work at any voting place within the county.

(2) Perform all the tasks and duties of an election assistant as set out in Paragraph (d) of this Rule.

(3) Promptly notify the county board of elections of any sickness, emergency, or other circumstances that will or might prevent the person from performing as an election assistant on a primary or election day.

(4) Upon learning that any parent, spouse, child, or sibling has filed for elective office, to inform the county board of elections so that the provisions of the law prohibiting a precinct official from serving in an election with a close relative as a candidates can be followed.

(5) Inform the county board of elections if any blood relative of kinship of first cousin or nearer or a parent in-law, child in-law or sibling in-law is a precinct official/worker serving with you in the same precinct, and not to serve with that relative in the same precinct. Also inform the county board of elections of any relationship, as described in the previous sentence, that you may have with an emergency election-day assistant and not serve with that person in the same precinct.

(f) Tasks of Ballot Counters—All ballot counters, in accordance with election statutes, with the rules of the State Board of Elections and under supervision of the county board of elections, shall perform all the following. There is no requirement to have ballot counters appointed or used by a county board of elections unless they are needed.

(1) After appointment, to appear at the poll immediately at close of the polls and to be prepared to count ballots under the direction and control of the chief and other precinct judges.

(2) To be sworn into office, by the precinct chief judge prior to starting counting.

(3) Upon learning that any parent, spouse, child, or sibling has filed for elective office, to inform the county board of elections so that the provisions of the law prohibiting a precinct official from serving in an election with a close relative as a candidates can be followed.

(4) Inform the county board of elections if any blood relative of kinship of first cousin or nearer or a parent in-law, child in-law or sibling in-law is a precinct official/worker serving with you in the same precinct, and not to serve with that relative in the same precinct. Also inform the county board of elections of any relationship, as described in the previous sentence, that you may have with an emergency election-day assistant and not serve with that person in the same precinct.

(g) General duties of all Precinct Officials—All precinct officials, in accordance with election statutes, with the rules of the State Board of Elections and under the supervision of the county board of elections, shall perform all of the following:

(1) Count votes when votes are required to be counted at the voting place, G.S. 163–182.2;

(2) Make an unofficial report of returns to the county board of elections, G.S. 163–182.2;

(3) Certify the integrity of the vote and the security of the official ballots at the voting place, G.S. 163–182.2;

(4) Return official ballots and equipment to the county board of elections, G.S. 163–182.2;

(5) Ensure that the voting system remains secure throughout the period voting is being conducted;

(6) Ensure that only properly voted official ballots are introduced into the voting system;

(7) Ensure that, except as provided by G.S. 163–166.9, no official ballots leave the voting enclosure during the time voting is being conducted there;

(8) Ensure that all improperly voted official ballots are returned to the precinct officials and marked as spoiled;

(9) Ensure that voters leave the voting place promptly after voting;

(10) Ensure that voters not clearly eligible to vote in the precinct but who seek to vote there are given proper assistance in voting a provisional official ballot or guidance to another voting place where they are eligible to vote;

(11) Ensure that information gleaned through the voting process that would be helpful to the accurate maintenance of the voter registration records is recorded and delivered to the county board of elections;

(12) Ensure that registration records are kept secure;

(13) Ensure that party observers are given access as provided by G.S. 163–45 to current information about which voters have voted;

(14) Aid any voter, as needed, in curbside voting as provided for in G.S. 163–166.9;

(15) Provide Spanish ballot instructions as needed to voters, when such instructions are required to be available by law. Direct all language needs which can not be handled at the precinct to the county board office;

(16) Register and help, at the voting place, those persons eligible to register and vote on election day as allowed by G.S. 163–254 and G.S. 163–82.6(d);

(17) Promptly report to the county board of elections, any physical or mental ailment, impairment, or deterioration that may adversely affect the performance of an election related task or duty. Report any such conditions known in any other precinct officials to the county board;

(18) Promptly report any violation of election laws or regulations to the chief judge, or to the county board of elections if the chief precinct judge is involved in the violation;

(19) Provide any person who requests it any information on how to contact the county director of elections, the county board of elections, or the office of the State Board of Elections; and

(20) Work and stay at the voting place, at all times during the voting day, until closure. By prior agreement with the county board of elections and pursuant to G.S. 163–42, election assistants and emergency election-day assistants may work less than the entire voting day.

History Note

Authority G.S. 163–22; 163–166.6; Temporary Adoption Eff. April 15, 2002; Eff. August 1, 2004.

.0102 SETTING UP POLLING PLACE PRIOR TO VOTING

(a) The Chief Judge, Judges, and Assistants shall arrive at the voting place no later than 6:00 a.m. on the day of the election.

(b) The Chief Judge shall administer the oath to Judges and Assistants who have not taken the oath.

(c) The Chief Judge shall assign tasks regarding the set up of the polling place to ensure the participation of judges and assistants of each represented party. The tasks and duties assigned shall adhere to the rules and orders promulgated by the State Board of Elections. At least one official shall be directed by the Chief Judge to manage curbside voting and facilitate the process for voters with special needs.

(d) The Chief Judge or designated official shall ensure that the telephone or other approved communications device is working.

(e) The members of the County Board of Elections shall ensure that each voting system is delivered to the voting place and placed in the custody of the Chief Judge or designated official within three days before the election with the ballot labels or other necessary identifiers already in place on each unit. Keys and other security devices necessary for the operation of the voting system shall be delivered to the Chief Judge in a sealed container. Together, a board member or agent of the County Board of Elections and the Chief Judge or designated official shall inspect the contents of the sealed container to ensure that all necessary mechanisms are provided to the Chief Judge. All numbers stamped on the keys and security devices should correspond to the number of the voting units. Together they shall also ensure that the ballots are correctly in position and that no votes have been cast or recorded on any unit, and that the units are in good working order. Voting tabulating units should be locked and sealed (or otherwise secured in the manner recommended by the manufacturer) and should remain that way until the polls are closed.

(f) The Chief Judge, with the cooperation of at least one official of the other major political party shall verify the delivery of all election supplies, records and equipment necessary for the conduct of the election.

(g) The Chief Judge shall ensure that all applicable instructions, signs, and sample ballots are posted around the polling place, including signs designating the voting place, the buffer zone, temporary and/or permanent accessible parking, and the curbside voting area.

(h) The Chief Judge shall ensure that the polling place is arranged to provide private spaces so voters may cast votes unobserved. The Chief Judge shall also ensure that there is continual adequate space and furniture for separate areas for voter registration records, ballot distribution, and private discussions with voters concerning irregular situations. The voting enclosure must be set up so that all equipment and furniture can be generally seen. The exterior of the voting units and every part of the voting enclosure shall be in plain view of the Chief Judge and Judges.

(i) The door to the voting place/enclosure should be sufficiently wide to accommodate voters in wheelchairs. The door width, hardware, and thresholds shall comply with the Americans with Disabilities Act Accessibility Guidelines (ADAAG) or shall be made to comply on election day. The County Board of Elections must approve any plan that would cause a deviation in the set up and arrangement of the voting enclosure. For example, generally the door into the voting place/enclosure should be the same door used to exit the voting place/enclosure. However, if by doing so the flow of voters is disturbed, a separate door may be used to exit the

voting place/enclosure. If a separate door is used, it should be in plain view of the Chief Judge, Judges, and Assistants so that no unauthorized persons may enter the voting enclosure through the exit door.

(j) The Chief Judge shall assign a Judge or Assistant to provide demonstrations to voters, upon request, in the proper use of the voting system.

(k) At the Chief Judge's request at 6:30 a.m. (according to the official timepiece used by the Chief Judge), one of the Judges shall announce that the polls are open and shall state the hour at which they will be closed.

History Note

Authority G.S. 163–22; 163–165.5; Temporary Adoption Eff. April 15, 2002; Eff. August 1, 2004.

.0103 VOTING PROCEDURES

(a) From the time the polls are opened until the precinct count has been completed, the returns signed, and the results declared, no person shall take or remove from the voting enclosure election supplies and materials, including official ballots, containers of official ballots, provisional official ballots, spoiled ballots, the pollbook or voter authorization slip(s), the registration record(s) or any voting units or devices that are part of the voting system, except as authorized by law to accommodate curbside voters. Provisions for secure removal of election supplies and materials at any time would be permissible under the emergency management plan of a county board of elections in the cases of natural or man-made emergencies.

(b) A person seeking to vote shall enter the voting enclosure at the voting place through the designated entrance and shall clearly communicate the person's name and place of residence to one of the judges of election. In some cases, the precinct judge may prompt the voter to provide this information. In a primary election, the voter shall also state the political party with which the voter affiliates and in whose primary the voter desires to vote, or if the voter is an unaffiliated voter permitted to vote in the primary of a particular party, the voter shall state the name of the authorizing political party in whose primary the voter wishes to vote. This information, including the political party's primary in which the voter elected to participate, provided by the voter shall be recorded in the precinct pollbook or on the voter authorization slip. The judge or assistant to whom the voter gives this information shall announce the name and residence of the voter so that the information may be heard by the necessary officials and observers. After examining the precinct registration records, the judge or assistant

shall state whether the person seeking to vote is registered. The precinct judge or assistant shall not presume the identity/name, address, or party affiliation of any person seeking to vote.

(c) If the person is found to be registered and is not challenged, or if the challenge is overruled, the responsible judge of election shall provide the voter with each official ballot the voter is entitled to vote. In a primary election the voter shall be allowed to vote the political party ballot(s) the voter is entitled to vote and no others, except non-partisan ballots. Unaffiliated voters may choose to participate in only one party's primary and no others on the same day. In the case of a second primary, unaffiliated voters who participated in a party's primary in the first primary may only vote that party's ballot in the second primary. However, if an unaffiliated voter did not participate in the first primary, the voter may choose which party's primary to participate in during the second primary. Note that unaffiliated voter participation in party primaries is subject to authorization by the respective state party executive committees. Unaffiliated voters who are otherwise qualified may always participate in non-partisan primaries.

(d) If the person is found to not be registered to vote in the precinct, the responsible judge of election shall inform the person of the fail-safe voting process. First, based on information provided by the person the responsible judge shall determine whether or not the person may be eligible to vote an official provisional ballot. The person is eligible to vote an official provisional ballot if the person resides in the precinct and either:

(1) is a registered voter in the county and has moved into the precinct 30 days or more prior to the election and has not reported the change to the board of elections; or

(2) claims to have applied for voter registration in the county but there is no record of the person's name on the registration records; or

(3) was removed from the list, but the person maintains continuous eligibility within the county; or

(4) disputes the voting districts (and ballots) to which the person has been assigned.

(e) If the person is found to not be registered to vote in the precinct and the responsible judge of election learns from the person that the person resides in a different precinct, the responsible judge shall provide the person with adequate information in order to direct the person to the proper voting place.

(f) It is the duty of the chief judge and judges to gather any voter information regarding changes of name and address in order to assist the county board of elections in updating voter records. If the county board of elections has identified a voter's record pursu-

ant to law to gather additional information, the responsible judge shall require the voter to update the information.

(g) It is the duty of the chief judge and judges to give any voter any technical information the voter desires in regard to ballot items. In response to questions asked by the voter, the chief judge and judges shall communicate to the voter only technical information necessary to enable the voter to vote the ballot.

(h) The Chief Judge shall assign two precinct officials, one from each political party if possible, to keep the pollbook or other voting record and to keep the registration list. The names of all persons voting shall be checked on the registration record and entered on the pollbook or other voting record. In an election where observers may be appointed each voter's party affiliation shall be entered in the proper column of the pollbook or other approved record opposite the voter's name. The designated official shall make each entry at the time the ballots are handed to the voter. The information about the voter's political party registration shall be obtained from the registration record and not from the voter.

(i) The chief judge, judges, and assistants must ensure that registration records are kept secure and do not leave the voting enclosure for any purpose. Properly designated observers are entitled to obtain a list of the persons who have voted in the precinct so far in that election day at least at the following times: 10 a.m., 2 p.m. and 4 p.m. Counties using authorization to vote documents as opposed to traditional pollbooks may comply with the requirement by permitting each observer to inspect election records so that the observer may create a list of persons who have voted in the precinct. A party may designate more than two observers for each precinct, but only two may serve in the voting place at the same time. Observers may serve in shifts, as long as the shifts are at least four hours long and the persons serving in the shifts have been properly appointed as observers.

History Note

Authority G.S. 163–22; 163–166.7; 163–119;
Temporary Adoption Eff. April 15, 2002;
Eff. August 1, 2004.

Appellate Decisions Cited

James v. Bartlett, 607 S.E.2d 638 (N.C. Feb. 04, 2005).

.0104 LEAVING THE VOTING ENCLOSURE, SPOILED OR INCOMPLETE BALLOTS

(a) When the voter has been presented with the official ballots by the judge, the voter shall be deemed to have begun the act of voting, and the voter shall not leave the voting enclosure until the voter has finalized the act of voting by performing whatever action

is necessary to cause the act of voting to be finalized. On receiving the ballots, the voter shall immediately retire alone to one of the voting booths unless the voter is entitled to assistance and without any undue delay, the voter shall mark the ballots. The voter shall return any unvoted ballot(s) to the precinct officials.

(b) If a voter spoils or damages a ballot, the voter may obtain another upon returning the spoiled or damaged ballot to the chief judge or other designated official. A voter shall not be given a replacement ballot until the voter has returned the spoiled or damaged ballot. The voter shall not be permitted to receive more than three replacement ballots. The chief judge shall deposit each spoiled or damaged ballot in the container provided for that purpose.

(c) When the voter has marked the ballot the voter shall ensure the ballot(s) are cast. If the voter has been challenged and the challenge has been overruled, before casting the ballot(s), the voter shall write the voter's name on each of the ballot so they may be identified in the event the voter's right to vote is again questioned. After casting the ballots in the proper manner, the voter shall immediately leave the voting enclosure unless the voter is one of the persons authorized by law to remain within the enclosure for purposes other than voting.

(d) No voter shall be permitted to occupy a voting booth already occupied by another voter, provided, however, husbands and wives may occupy the same voting booth if both wish to do so. Excluded from this prohibition are persons lawfully providing assistance.

(e) When the voter leaves the voting enclosure, whether or not the voter has finalized voting, the voter shall not be permitted to enter the voting enclosure again for the purpose of voting.

(f) If a voter leaves the voting enclosure and is found not to have finalized the act of voting by pressing the appropriate button or touching the screen in the appropriate space in the case of Direct Record Electronic Voting Machines, by feeding their ballot into the appropriate tabulator in the case of Optical Scan/Marksense and Punchcard Voting Equipment, by pulling the appropriate lever in the case of Lever Voting Machines, or by depositing the paper ballot into the ballot box, the chief judge or judges of election may find, by unanimous vote, that the votes marked by the voter had not been disturbed by any other person and may execute the ballot for the voter who has vacated the voting enclosure. If the Chief Judge and Judges of election cannot unanimously confirm that the ballot marked by the voter has not been disturbed, the ballot must be marked as spoiled and placed with other spoiled ballots (or in the case of direct record electronic and lever machines, the ballot must be cleared according to the voting system specifications). The fact that a ballot is only partially and not fully marked shall

have no bearing on the decision of the Chief Judge and Judges. In each instance where this type of incident occurs, the Chief Judge and Judges must document the circumstances and make the information known to the county board of elections.

History Note

Authority G.S. 163–22; 163–166.7; Eff. August 1, 2004.
Temporary Adoption Eff. April 15, 2002;

.0105 PROCEDURES AT THE CLOSE OF VOTING

(a) Before each primary and election, the chairman of the county board of elections shall furnish each chief judge written instructions on how ballots shall be marked and counted. Before starting the counting of ballots in the precinct, the chief judge shall instruct all of the judges, assistants, and ballot counters in how differently marked ballots shall be counted and tallied.

(b) The Chief Judge shall announce or have it announced that the polls are closed at 7:30 p.m. unless the time has been extended until 8:30 p.m. Time shall be determined by the same timepiece used to determine the opening of the polls.

(c) Any person who is in line at the close of polls shall be afforded an opportunity to vote. A list shall be made, starting at the end of the line and moving forward, of everyone standing in line at the close of polls and anyone whose name is on that list shall be permitted to vote. No person entering the voting enclosure after the close of polls has been announced, other than those whose names are on the list, shall be permitted to vote under any circumstance.

(d) The Chief Judge and Judges must subscribe their names to each pollbook.

(e) Only official ballots shall be voted and counted. No official ballot shall be rejected because of technical errors in marking it, unless it is impossible to determine the voter's choice under the rules for counting ballots. Such determination shall be made by the county board of elections if the chief judge and judges are unable to determine the voter's choice, or whether a particular ballot should be counted.

(f) No person shall purposely deface or tear an official ballot in any manner, and no person, other than the voter, shall purposely erase any name or mark written on a ballot by a voter.

(g) The Chief Judge, along with a Judge of another political party, shall ''close the polls'' on each voting unit. The results sheet from each unit shall be placed in an ''Official Precinct Returns Envelope.'' As soon as the polls are closed the chief judge

and judges shall, without adjournment or postponement, count the ballots. The counting of ballots at the precinct shall be continuous until completed. More than one voting unit may be counted at the same time by the precinct officials, assistants, and ballot counters, but the chief judge and judges shall supervise the counting of all units and shall be responsible for them. From the time the first unit is read or opened and the count of votes begun until the votes are counted and the statement of returns made out, signed, certified and provided to the chief judge or judge responsible for delivering them to the county board office, the precinct chief judge and judges shall not separate, nor shall any one of them leave the voting place except in case of unavoidable necessity as determined by the Chief Judge.

(h) The counting of the ballots shall be made in the presence of the precinct election officials and witnesses and observers who are present and desire to observe the count. Observers shall not interfere with the orderly counting of the ballots. As soon as the votes have been counted and the precinct returns certified, the chief judge, or one of the judges selected by the chief judge, shall report the total precinct vote for each ballot item to the witnesses and observers who are present and also by telephone or other electronic means to the county board of elections. This report shall be unofficial and shall have no binding effect upon the official county canvass to follow.

(i) The Chief Judge and Judges shall sign the consolidation and accounting sheets and statement of returns and shall place them in the ''official precinct returns'' envelope or container.

The Chief Judge shall place or cause to be placed by an authorized person under the Chief Judges direction and control: voter registration documents and information, provisional ballot envelope, payroll information, county board communication devices, unit keys and security devices and the official returns envelope. The container should be sealed with non-transparent tape of sufficient size to contain signatures. It shall be signed by the Chief Judge and two Judges.

(k) Consolidation sheets, including the statement of returns for all voted official ballots, shall be completed by adding curbside votes to the totals. In any precinct using direct record electronic voting equipment, the county board of elections, with the approval of the State Board of Elections, may provide for any paper ballots to be transported upon closing of the polls to the office of the county board of elections for counting. An accounting form shall be completed that accounts for every used and unused ballot—providing the number of blank ballots received from the board of

elections, the number of regular voted ballots, provisional voted ballots, and spoiled ballots.

(*l*) Voted provisional ballots must be placed in a sealed envelope or container and the seal must be signed by the Chief Judge and Judges.

(m) The Chief Judge shall bring (or have delivered by secure means) the results cartridge (or reading) from each unit to the board of elections office.

(n) All supplies must be collected for return to the board of elections office. Any items brought into the polling place facility shall be removed upon vacating the polling place. Precinct Judges shall ensure that the facility is left in the same condition in which it was received for voting purposes.

(*o*) Under no circumstance shall voting items be left in the polling place facility out of the custody of the Chief Judge or other designee.

History Note

Authority G.S. 163–22; 163–166.10; Temporary Adoption Eff. April 15, 2002; Eff. August 1, 2004.

.0106 ELECTION SUPPLIES RETURN

(a) After an election or primary, all election supplies shall be immediately taken to the county board of elections office.

(b) Election materials and supplies, used or unused, shall not remain in the custody of the Chief Judge, Judges, or any other person in unsecured locations overnight. However, if it is not possible for a county board of elections to have all precincts return materials and supplies on the night of the election, the county board of elections must submit a security plan to the Executive Director of the State Board of Elections 30 days prior to the election. The Executive Director will provide either approval or required modifications to the plan in writing no later than 15 days prior to the election. The board of elections shall have an emergency backup plan that will enable board of elections employees or other authorized persons to retrieve the items from the custody of the Chief Judge and Judges and transport them to the board of elections office. A county board must have an alternative security plan approved by the Executive Director in order to use it.

(c) All materials shall be transported with a ''chain of custody'' form that includes the signatures and times in which the supplies are in the custody of each official. All supplies, once received at the board of elections, will be verified and signed for by a board of elections representative.

History Note

Authority G.S. 163–22; 163–166.10; Temporary Adoption Eff. April 15, 2002; Eff. August 1, 2004.

.0107 ASSISTANCE TO VOTERS IN PRIMARIES AND GENERAL ELECTIONS

(a) In any primary or election, including one-stop absentee voting, a registered voter qualified to vote in the primary or election shall be entitled to assistance in getting to and from the voting booth, entering and exiting the voting booth, and in preparing their ballots in accordance with the following:

(1) Any assistance rendered must be performed in person, and shall not be allowed by electronic, paper, or mechanical means of communication with a person outside the voting booth, except in circumstances of disabled voters with special needs. The use of electronic, paper, or mechanical devices by the voter, while alone in the voting booth and not in contact with another person outside the voting booth, shall not be considered voting assistance;

(2) Any voter shall be entitled to assistance from a near relative, as defined in G.S. 163–166.8(a)(1), of his choice. Under no circumstances shall any other relative, friend, guardian, person holding a power of attorney, or any other person be allowed to render assistance except as allowed under G.S. 163–166.8(a)(2) and in Paragraph (b) of this Rule; and

(3) The person rendering assistance shall not in any manner seek to persuade or induce any voter to cast any vote in any particular way.

(b) Any voter in any of the following four categories shall be entitled to assistance from any person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union:

(1) One who, on account of physical disability, is unable to enter the voting booth without assistance;

(2) One who, on account of physical disability, is unable to mark his or her ballot without assistance;

(3) One who, on account of illiteracy, is unable to mark his or her ballot without assistance;

(4) One who, on account of visual impairment, is unable to enter the voting booth or mark the ballot without assistance.

No precinct official may refuse the voter's choice of the person to assist him, unless the person so named is legally excluded, does not appear at the voting place to assist the voter prior to the close of the polls, or refuses to assist the voter. If the voter's choice of the assisting person cannot be met on the ground(s) set out herein,

the voter shall be allowed to make an additional choice until a willing assisting person is available to assist the voter. There shall be no limitation on the number of voters a person can assist, as long as the assisting person is properly chosen by each voter to assist.

(c) A person seeking assistance in any election shall, upon arriving at the voting place, first request the chief judge to permit him to have assistance, communicating the reasons. If the chief judge determines that the voter is entitled to assistance, the chief judge shall ask the voter to identify the person the voter desires to provide assistance. If that person is not present, the voter is entitled to contact the person and to wait for the person at the voting place, but outside the voting enclosure. When that person is available to assist or is already present to assist, the voter, along with that person, shall present themselves to the chief judge. The chief judge shall thereupon request the person indicated to render the requested aid. In the case of assistance requested at a one-stop voting site, the assistance may be requested and received from any election official available at such site.

(d) Any chief judge, judge, or assistant shall provide assistance to a voter if so requested, except for good cause, unless the election official is prohibited from doing so by his status as the voter's employer, official of the voter's union, or agent of the voter's employer or union. Under no circumstances shall any precinct official or person be assigned to assist a voter who was not specified by the voter.

(e) Conduct of Persons Rendering Assistance.—Anyone rendering assistance to a voter shall be admitted to the voting booth with the person being assisted and shall be governed by G.S. 163–166.8(c). The assisting person shall not do the following:

(1) Give, present, or display within the vision of the voter, any list of preferred candidates, a marked sample ballot, or any other type of document, item, or display that conveys a choice of candidate(s) unless it was brought to the voting booth by the voter. An assisting person may respond to an inquiry of a hearing impaired voter in writing if needed, as long as a ballot choice is not communicated to the voter;

(2) Speak or play within the hearing or vision of the voter, any conversation, communication, or recording that conveys a choice of candidate(s);

(3) Operate a phone, radio, computer, or any other means of communication while in the voting booth with the voter;

(4) Communicate to others how the voter voted, unless ordered by a court, or make a memorandum of anything that occurred in the voting booth; and

(5) Violate any election law set out in G.S. 163 or violate any election rule set out in Title 8 of the NC Administrative Code.

(f) It shall be presumed that the operation by a voter of any means of communication capable of being received by a voter in the voting booth shall constitute an attempt to receive unlawful voting assistance, except in cases of a disabled voter with special needs. Upon having reasonable grounds to suspect such communication or operation by the voter, a precinct official may make inquiry and investigate the alleged operation of the communication equipment. The voter shall be informed of this presumption of unlawful assistance, and the prohibitions contained within G.S. 163–166.8 as to voter assistance. Regardless, any voter suspected of such conduct shall be allowed to vote and cast his or her ballot.

History Note

Authority G.S. 163–22; G.S. 163–166.8;
Temporary Adoption Eff. April 15. 2002;
Eff. August 1, 2004.

.0108 CURBSIDE VOTING

In any primary or election any qualified voter who is able to travel to the voting place, but because of age, or physical disability and physical barriers encountered at the voting place is unable to enter the voting place or enclosure to vote in person without physical assistance, shall be allowed to vote either in the vehicle conveying such person to the voting place or in the immediate proximity of the voting place under the following restrictions.

(1) The county board of elections shall have printed and numbered a sufficient supply of affidavits to be distributed to each precinct chief judge which shall be in the following form:

Affidavit of Person Voting Outside Voting Place or Enclosure

State of North Carolina

County of _____

I do solemnly swear (or affirm) that I am a registered voter in _____ precinct. That because of age or physical disability I am unable to enter the voting place to vote in person without physical assistance. That I desire to vote outside the voting place and enclosure. I understand that a false statement as to my condition will be in violation of North Carolina law.

Date	Signature of Voter
	Address
	Signature of precinct election official who administered oath.

(2) The chief judge or a judge may designate one of the assistants to attend the voter, or assist the voter himself or herself. Upon arrival outside the voting place, the voter shall execute the affidavit after being sworn by a precinct election official. The ballot(s) shall then be delivered to the voter who shall mark the ballot(s) and hand them to the assisting precinct election official. The ballot(s) shall then be delivered to one of the judges of elections who shall deposit the ballot(s) in the proper boxes. The affidavit shall be delivered to a different judge of election;

(3) The voter and any assisting person shall be entitled to the same assistance and subject to the same restrictions in marking the ballot as is authorized by G.S. 163–166.8 and 8 NCAC 10B .0107; and

(4) The affidavit executed by the voter shall be retained by the county board of elections for a period of six months. In those precincts using voting machines, the county board of elections shall furnish paper ballots of each kind for use by persons authorized to vote outside the voting place by this section. In any precinct using direct record electronic voting equipment, the county board of elections, with the approval of the State Board of Elections, may provide for all such paper ballots to be transported upon closing of the polls to the office of the county board of elections for counting. Those ballots may be transported only by the chief judge, judge, or assistant. Upon receipt by the county board of elections, these ballots shall be counted and canvassed in the same manner as one-stop ballots cast under G.S. 163–227.2, except that the count shall commence when the board has received from each precinct either that precinct's ballots or notification that no such ballots were cast. The total for ballots counted by the county board of elections under this subdivision shall be canvassed as if it were a separate precinct.

History Note

Authority G.S. 163–22;
Temporary Adoption Eff. April 15, 2002;
Eff. August 1, 2004.

CHAPTER 11. PROCEDURE FOR WITHDRAWAL OF APPROVAL OF VOTING SYSTEM

SECTION .0100. PROCEDURE FOR WITHDRAWAL OF APPROVAL OF VOTING SYSTEM

Rule
.0101 Withdrawal of Voting System Approval Upon Good Cause Shown [Repealed].
.0102 Good Cause Includes Failure of Voting System to Meet Requirements [Repealed].
.0103 Notice Required [Repealed].
.0104 Evidence of Alleged Failure of Voting System [Repealed].
.0105 Final Decision [Repealed].
.0106 Order Withdrawing Approval May Be Appealed [Repealed].

SECTION .0100. PROCEDURE FOR WITHDRAWAL OF APPROVAL OF VOTING SYSTEM

.0101 WITHDRAWAL OF VOTING SYSTEM APPROVAL UPON GOOD CAUSE SHOWN [REPEALED]

.0102 GOOD CAUSE INCLUDES FAILURE OF VOTING SYSTEM TO MEET REQUIREMENTS [REPEALED]

.0103 NOTICE REQUIRED [REPEALED]

.0104 EVIDENCE OF ALLEGED FAILURE OF VOTING SYSTEM [REPEALED]

.0105 FINAL DECISION [REPEALED]

.0106 ORDER WITHDRAWING APPROVAL MAY BE APPEALED [REPEALED]

History Note

Authority G.S. 163–22; 163–160; 163–160.1;
Temporary Adoption Eff. May 1, 2000;
Temporary Adoption Expired on December 10, 2000.

CHAPTER 12. RULES FOR MILITARY AND OVERSEAS CITIZENS ABSENTEE VOTING PROCEDURES

Rule

.0101 Definitions.
.0102 Electronic Mail (E–Mail).
.0103 Applications/Requests.
.0104 Instructions and Notice; Delivery.
.0105 General Guidelines.
.0106 Processes by Mail.
.0107 Processes by Fax.
.0108 Absentee Voting by Facsimile (Fax) Transmission.
.0109 Receiving Facsimile (Fax) Transmissions.
.0110 Ballot Verification and Security.
.0111 Other Provisions.

.0101 DEFINITIONS

In this Chapter:

(1) ''director'' means the county director of elections;

(2) ''board'' means the county board of elections;

(3) ''facsimile (fax) transmission'' means transmission by a telefacsimile machine (FAX) or any other form of facsimile (fax) transmission device which transports an authentic copy of a document from one user of the device to the other;

(4) ''electronic mail (email)'' means transmission via the World Wide Web using a software application such as Microsoft Outlook, Outlook Express, Pegasus, and others to enable transmission from one email address to another email address;

(5) ''transmission statement'' means the printout from the sender's fax machine or device that indicates the status of the transmission by fax. The transmission statement shall either confirm that the fax transmitted successfully or indicate that it was not received; and

(6) Any reference to deadlines should be assumed to represent Eastern Standard Time.

History Note

Authority G.S. 163–22; 163–257; Temporary Adoption Eff. April 15, 2002; Eff. August 1, 2004.

.0102 ELECTRONIC MAIL (E–MAIL)

The following requests may be transmitted via e-mail:

(1) Requests for absentee ballot applications;

(2) Requests for voter registration forms;

(3) Voter registration mailing address changes; and

(4) Ballot mailing address changes.

History Note

Authority G.S. 163–22; 163–257; Temporary Adoption Eff. April 15, 2002; Eff. August 1, 2004.

.0103 APPLICATIONS/REQUESTS

(a) Voters under G.S. 163, Article 21, which deals with military and overseas citizens absentee voting, may use the Federal Post Card Application (FPCA) to register to vote and to apply for an absentee ballot. The applicant may send the application by air mail or have it placed in delivery or send it by fax to the State Board of Elections secure fax line and may request that the ballot be sent by air mail, placed in delivery or transmitted by fax.

(b) Upon receipt of an application for an absentee ballot under G.S. 163, Article 21, it shall be determined at the county level whether the applicant is qualified to vote. A list shall be made of those applications approved and disapproved (which list shall be open to inspection by election officials and the public) and an absentee ballot shall be forwarded to each person whose application is approved.

(c) When the county board receives an application request by fax or other delivery from a voter under G.S. 163, Article 21, and that voter requests to have the ballot sent to him/her by fax, the county board shall verify the voter's eligibility to vote. If the voter is eligible to vote, the county board shall send the ballot to the voter as soon as practicable by fax using the telephone number supplied by the voter for that purpose or the number specified by the Department of Defense's Federal Voting Assistance Program. If the voter is not eligible to vote in the State or county, notice of non-eligibility shall be provided to the voter by fax as soon as practicable after the receipt of the request. All transmission statements shall be retained with the corresponding voter's records.

History Note

Authority G.S. 163–22; 163–257; Temporary Adoption Eff. April 15, 2002; Eff. August 1, 2004.

.0104 INSTRUCTIONS AND NOTICE; DELIVERY

(a) Each county board shall send by airmail or have placed in delivery, for each absentee voter under G.S. 163, Article 21, appropriate printed instructions for its completion and return, together with a container-return envelope.

(b) Each county board shall send to each absentee voter under G.S. 163, Article 21 who requests that a ballot be sent to him/her by fax all appropriate printed instructions for its completion and return. The printed instructions sent to each such voter shall include the same information provided for other absentee voters.

(c) An absentee ballot that is completed and returned by the voter by facsimile transmission must:

(1) Contain the following statement: ''I understand that by using facsimile transmission to return my marked ballot, I am voluntarily waiving a portion of the secrecy of my ballot to the extent necessary to process my ballot, but expect that my vote will be held as confidential as possible. At the same time, I pledge to place the original voted ballot in a secure envelope, together with any other required materials and send the documents immediately by air mail or place them in delivery to the appropriate county board of elections.'' This must be followed by the voter's signature and date of signature; and

(2) Be witnessed by two other persons who are at least 18 years of age, and who are not disqualified by G.S. 163–226.3(a)(4) or 163–237(b1).

History Note

Authority G.S. 163–22; 163–257; Temporary Adoption Eff. April 15, 2002; Eff. August 1, 2004.

.0105 GENERAL GUIDELINES

(a) A qualified voter under G.S. 163–245 may apply by mail or by facsimile (fax) transmission to the board of elections office for an absentee ballot. The application must include the address or, if the applicant requests delivery of an absentee ballot by facsimile (fax) transmission, the telephone facsimile (fax) transmission number, to which the absentee ballot is to be returned, the applicant's full North Carolina residence address, date of birth, and the applicant's signature.

(b) For the purposes of these Rules, requests should be made on the Federal Post Card Application (FPCA). Note that an absentee ballot application submitted under this Section must permit the person to register to vote and to request an absentee ballot for each state election held within that calendar year for which the voter is eligible to vote.

(c) An application requesting delivery of an absentee ballot by mail may be made to the board at any time. Also, an application for an absentee ballot for a state election from a qualified voter requesting delivery of an absentee ballot by facsimile (fax) transmission may made to the county board of elections at any time before the election for which the absentee ballot is sought.

(d) After receipt of an application, the county board of elections shall send the absentee ballot and other absentee voting material to the applicant by the most expeditious delivery service. However, if the applicant requests that an absentee ballot be sent by facsimile (fax) transmission, the board of elections office shall send the absentee ballot and other absentee voting material to the applicant by facsimile (fax) transmission utilizing the methods recommended by the Federal Voting Assistance Program (FVAP).

History Note

Authority G.S. 163–22; 163–247(1); 163–257;
Temporary Adoption Eff. April 15, 2002;
Eff. August 1, 2004.

.0106 PROCESSES BY MAIL

(a) The absentee ballot number and other absentee voting information shall be entered into the register of absentee requests, applications, and ballots issued. Upon receiving the request to receive voting materials by mail, the board shall cause to be mailed to the voter in a single package:

(1) the official ballots the voter is entitled to vote;

(2) a container-return envelope for the ballots, printed in accordance with G.S. 163–229; and

(3) An instruction sheet.

(b) If the absentee ballot and other absentee voting materials are mailed to the applicant, the container return envelope sent with the ballot and other materials shall be addressed to the election director of the county in which the voter is domiciled and registered.

(c) Upon receipt of an absentee ballot by mail, the voter, in the presence of two other persons who are at least 18 years of age, and who are not disqualified, shall:

(1) Mark the ballots, or cause them to be marked by one of such persons in the voter's presence according to the voter's instruction;

(2) Fold each ballot separately, or cause each of them to be folded in the voter's presence;

(3) Place the folded ballots in the container-return envelope and securely seal it, or have this done in the voter's presence; and

(4) Make the certificate printed on the container-return envelope according to the provisions of G.S. 163–248(c).

(d) The sealed container-return envelope in which executed absentee ballots have been placed shall be transmitted to the board who issued them as follows: All ballots issued under the provisions

of G.S. 163, Articles 20 and 21 shall be delivered not later than 5:00 p.m. on the day before the primary, special or general election.

History Note

Authority G.S. 163–22; 163–257; Eff. August 1, 2004.
Temporary Adoption Eff. April 15, 2002;

.0107 PROCESSES BY FAX

(a) Faxed ballots must be received by 5:00 p.m. on the day before the primary, special or general election and that the original voted ballots for faxed ballots must be mailed or placed in delivery to serve as a fail-safe mechanism and serve as part of the election audit trail.

(b) The board shall maintain a record of the name of each voter to whom an absentee ballot is sent under G.S. 163, Articles 20 and 21 which deal with absentee voting. The record must list the date on which the ballot is mailed or provided by facsimile (fax) transmission and the date on which the ballot is received by the board of elections office and the dates on which the ballot was executed and postmarked.

History Note

Authority G.S. 163–22; 163–257; Eff. August 1, 2004.
Temporary Adoption Eff. April 15, 2002;

.0108 ABSENTEE VOTING BY FACSIMILE (FAX) TRANSMISSION

(a) An application for an absentee ballot shall indicate that the absentee ballot returned by facsimile (fax) transmission will be accepted if received by the board no later than 5:00 p.m. the day before an election. The application shall also indicate that the original ballot must be mailed or placed in delivery. The application must include the voter's name, North Carolina residence address, ballot mailing address or telephone number of the facsimile machine to which the ballot is to be sent, date of birth and signature.

(b) An application for an absentee ballot received by facsimile (fax) transmission shall indicate that the absentee ballot returned by mail will be accepted by the board subject to the provisions of G.S. 163, Article 21.

(c) An application for an absentee ballot received by facsimile (fax) transmission will be treated in the same manner as an application for an absentee ballot received by mail, except that a

notation will be made on the absentee ballot application log when an application is received by facsimile (fax) transmission.

(d) If an absentee ballot is sent to a voter by facsimile (fax) transmission, the ballot will include:

(1) a transmittal form that fulfills all transmission information requirements;

(2) instructions to the voter with procedures for returning the completed ballot by facsimile (fax) transmission or by mail, including a telephone number for the State Board of Elections dedicated fax line to which all ballots returned by facsimile (fax) transmission are to be transmitted, and the address of the appropriate office to which the ballot must be mailed; and

(3) the statements required with places for the voter and witnesses to sign.

(e) The instructions sent to the voter will include a description of the procedures that a voter returning the ballot must follow. The instructions will also inform the voter that if the voter follows these instructions, the ballot will be counted, unless it is sent in violation of G.S. 163, Articles 20 or 21 or is otherwise ineligible. The instructions will also inform the voter that the voter assumes the risk that faulty facsimile (fax) transmission may occur.

History Note

Authority G.S. 163–22; 163–257; Temporary Adoption Eff. April 15, 2002; Eff. August 1, 2004.

.0109 RECEIVING FACSIMILE (FAX) TRANSMISSIONS

(a) When a completed absentee ballot is received by facsimile (fax) transmission, the board of elections will note the date of receipt on the absentee ballot application log and, if the ballot is received on the day before election day, the time of receipt. The board of elections will then remove the ballot portion of the transmission from the portion that identifies the voter; place the ballot portion in a container-return envelope of the type used for absentee ballots returned by mail; seal the envelope; and maintain the voted ballot and envelope in a secure location for county board of elections consideration.

(b) A county board of elections may not accept multiple transmissions of a voted ballot or any other voting material submitted by the voter. The earliest date and timed version of a voted ballot or any other voting material received by the board of elections will be accepted. All other versions of a voted ballot or any other voting material will be rejected, except in the following circumstances: an incomplete fax transmission occurs and calls for a new complete fax transmission, and/or the original voted ballot which will be retained for audit purposes or used as a fail-safe mechanism.

(c) An absentee ballot that is returned by facsimile (fax) transmission must be received by the board of elections no later than 5:00 p.m., Eastern Standard Time, on the day before election day in order to be counted. Faxed ballots will not be accepted after that time, except votes for President and Vice–President of the United States may be received by fax or other delivery by the close of polls on election day. The original voted ballots transmitted by airmail or placed in delivery should be received, however, failure to receive the original voted ballot does not disqualify the faxed ballot. All approved absentee ballots returned by facsimile (fax) transmission will be hand-counted.

(d) Procedures for handling mail-in ballots that were sent to the voter electronically shall be the same as for other mail-in absentee ballots.

(1) An absentee ballot that was sent to a voter by facsimile (fax) transmission and was returned by mail will not be counted if the envelope in which the ballot is returned contains the ballot of more than one voter.

(2) Immediately after a copy of the voted ballot has been faxed to the county board, the voter shall place the original voted ballot in a secure envelope, together with a certificate as provided for in these Rules, and send the documents by air mail or place them in delivery to the county board office.

(3) All copies of voted ballots received by fax shall be approved, disapproved, processed, and counted, and disputes in connection therewith shall be handled in the same manner as applicable to other absentee ballots. Transmission problems that result in failure of the faxed ballot to be received by the board will result in the original voted ballot (hard copy) serving as a fail-safe ballot, treated as a regular absentee ballot, that must be received by the deadlines for counting absentee ballots under G.S. 163, Article 21 to be counted. Original voted ballots will be used as part of the audit process and as part of the election record in any election protest(s).

History Note

Authority G.S. 163–22; 163–257; Temporary Adoption Eff. April 15, 2002; Eff. August 1, 2004.

.0110 BALLOT VERIFICATION AND SECURITY

(a) The county board shall take all necessary precautions to preserve the security of the ballot materials and specifically shall ensure that the vote cast by a voter using a faxed ballot is not revealed, except to the extent necessary by law or judicial determination. Upon the completion of all inspections of a faxed ballot required by law, the board or any employee thereof acting under

its direction shall promptly separate the waiver from the faxed ballot. Any person handling a faxed ballot shall not identify the votes cast by any voter, except upon judicial determination.

(b) Prior to certification of the results of the election, the county board shall:

(1) Compare the information on the faxed copy of each voted ballot with the same on the original voted ballot sent by air mail or placed in delivery by the voter who faxed to the county board a copy of the voted ballot, and the signature on the statement received by fax with the signature on the certificate received by air mail or delivery; and

(2) Ascertain whether an original voted ballot has been received for each faxed copy of a voted ballot received and counted. Note that failure to receive an original voted ballot by the deadline shall not result in the faxed ballot being disqualified.

(c) Whenever the particulars of the faxed copy of a voted ballot of a voter do not conform exactly with the particulars of the original voted ballot sent by air mail or delivery to the county board afterwards by that voter and whenever an original voted ballot has not been received which corresponds to a faxed copy of a voted ballot which has been received, those ballots and all other pertinent documents and information relative to those ballots shall be turned over to the investigative staff of the State Board of Elections for further investigation.

(d) Within 30 days after the election, the county board shall gather and keep together the faxed copy of the voted ballot, the certified statement and the original voted ballot sent by air mail or delivery of each voter who transmitted a copy of a voted ballot by fax. Those ballots needed for an investigation conducted by the investigative staff of the State Board of Elections or by law enforcement officials may be obtained by such investigators but shall be returned to the county board as soon as practicable after the conclusion of the investigation. All ballots and documents relative to a faxed copy of a voted ballot received by the county board shall be retained by it for the period required by law for retention of other materials relevant to the election.

History Note

Authority G.S. 163–22; 163–257; Temporary Adoption Eff. April 15, 2002; Eff. August 1, 2004.

.0111 OTHER PROVISIONS

(a) The State Board of Elections agrees, unless the State Board of Election directs otherwise, to participate in any pilot projects sponsored by the Department of Defense to assist in improving

processes for faxing or emailing voting information and materials. Should the State Board of Elections participate in a project, a full report shall be written by the staff regarding the pilot project for State Board consideration.

(b) Transmission details including preferred transmission times to county boards will be ascertained according to local needs. General procedures will be developed to accommodate for this part of the process.

(c) All county boards of elections plans for sending and receiving voting information and materials via electronic transmission must be submitted and approved by the State Board of Elections. Plans must include information regarding the type of equipment being used—type of fax machine, serial number, location of equipment, and security measures employed.

History Note

Authority G.S. 163–22; 163–257;
Temporary Adoption Eff. April 15, 2002;
Eff. August 1, 2004.

CHAPTER 13. INTERIM RULES

SECTION .0100. INTERIM RULES

Rule

.0101 In the Matter of the May 7, 2002 Primaries.

SECTION .0100. INTERIM RULES

.0101 IN THE MATTER OF THE MAY 7, 2002 PRIMARIES

Codifier's Note: This Chapter is created to codify rules adopted pursuant to G.S. 163.22

History Note

Authority G.S. 163–22.2;
Temporary Adoption Eff. March 14, 2002, and will become null and void 60 days after the convening of the next regular session of the General Assembly;
Temporary Adoption Expired on July 27, 2002.

CHAPTER 14. WRITTEN OPINIONS

STATE BOARD OF ELECTIONS

6400 Mail Service Center • Raleigh, NC 27699–6400

GARY O. BARTLETT
Director

Mailing Address:
PO Box 2169
Raleigh, NC 27602–2169
(919) 733–7173
Fax (919) 715–0135

October 8, 1998

Mr.George E. Wilson, Treasurer

Sampson County Republican Party

PO Box 1325

Clinton, NC 28328

Re: Advisory Ruling issued under G.S. 163–278.23

Dear Mr. Wilson:

In your letter dated September 29, 1998, you state that the Sampson County Republican Party is in the process of totally renovating the headquarters it owns. New bathrooms, kitchen area, heat & air conditioning, new lighting, store front, ceiling, carpet, walls, and other items have been built and paid for from the Building Fund. The request for a ruling is to determine is whether or not building fun money can be used to purchase appliances, desks, chairs, telephone system, and etc.

An October 7, 1994 opinion on ''Political Party Building Funds'' permitted State political parties to accept contributions from business entities, including corporations into a separate segregated building fund. Provided district and county executive committees strictly adhere to the provisions, district and county executive committee building funds may accept business contributions. The provisions are as follows:

1. Business contributions solicited and accepted are designated for the building fund.

2. Potential business contributors are advised that all business contributions will be exclusively for the building fund.

3. A separate segregated bank account in which only business contributions designated for the building fund will be deposited is established.

4. The funds deposited in that separate account will be expended only to purchase or construct, or in payment of the mortgage, for a headquarters, or to refund contributions if a facility is not acquired.

5. No business funds received will be used for the purpose of influencing Federal, State, or local elections.

6. No limit, other than on a voluntary basis, is placed on the amount of the business contributions, individual or collectively, to the building fund.

7. The building fund contributions and expenditures shall be disclosed to the public in an annual report filed at the Campaign Reporting Office, no later than the last Friday in January of the following year.

The opinion gave particular attention to the fact that the building fund ruling does not allow either monetary or in-kind contributions from any business entity for headquarters rent and utilities, either as a part of a building fund or into any political party fund or bank account.

After careful review, and considering that the opinion provides for a building fund to receive business contributions only to purchase or construct or in payment of the mortgage for a headquarters, or to refund contributions if a facility is not acquired, the response must be no. The Building Fund cannot be used to purchase equipment and furnishings for headquarters and should refund any business contributions that remain after reconstruction is complete and any mortgage is paid.

I am sorry this ruling is unfavorable. However, the Sampson County Republican Party may certainly pay for equipment and furnishings from its treasury account holding funds contributed by individuals from their personal funds.

Very truly yours,

Gary O. Bartlett
Executive Secretary–Director

STATE BOARD OF ELECTIONS

133 Fayetteville Street Mail
Suite 100
Raleigh, North Carolina 27601

GARY O. BARTLETT
Executive Secretary–Director

Mailing Address:
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February 17, 2000

Mr. Ray C. Tutterow,
Advertising Director
Davie County Enterprise Record

Post Office Box 99

Mocksville, North Carolina 27028

Re: Campaign Advertising

Dear Mr. Tutterow:

Your letter asks several questions about disclosure for the media advertisement portion of the 1999 Campaign Reform Act. You seek an opinion pursuant to G.S. 163–278.23 because you are a candidate for Davie County Register of Deeds.

After careful review by staff and counsel with the General Assembly and the Office of the Attorney General, the undersigned officer offers the following answers to your questions and provides the attached opinion.

The answer to your first question is yes. All advertisements in the print media require disclosure in the form of a ''legend'' or the statement: ''Paid for by _____(Name of candidate, candidate campaign committee, political party organization, political action committee, referendum committee, individual, or other sponsor).'' The legend must be 5% of the height of the printed space of the advertisement, but can be no smaller than 12 point type (This is 12 point type).

The second question has several parts. In answer to the first part: small ''business'' or ''pahn'' cards require a legend if the card includes support or opposition to clearly identified candidates or the candidates of a clearly identified political party. A card of any size that expressly advocates the election or defeat of a candidate must have a legend that is 5% of the height of the card, but no smaller than 12 point type.

The final part of the second question asks about posters displayed in yards and in windows. Yard signs and window signs (approximately 14 x 22 inches), and barn signs (3 x 5 foot or similarly sized, posters used on the sides of buildings, on walls, etc., generally without paying rental costs) are not considered media advertisements and do not require a legend.

Campaign paraphernalia such as balloons, bumper stickers, shopping bags, and nail files, etc., imprinted with a campaign message are not considered media advertisements and do not require a legend.

I trust these answers and the opinion provide the information you are seeking. Do not hesitate to contact this office any time you have questions.

Sincerely,

Gary O. Bartlett
Executive Secretary–Director

STATE BOARD OF ELECTIONS
133 Fayetteville Street Mall
Suite 100
Raleigh, North Carolina 27601

GARY O. BARTLETT
Executive Secretary–Director

Mailing Address:
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April 12, 2000

Representative Julia C. Howard

1023 Legislative Building

Raleigh, NC 27601–1096

Dear Representative Howard:

We are in receipt of your request for an opinion pursuant to N.C.G.S.163–278–23 concerning your involvement in a golf event sponsored by the Cooleemee Historical Society and others. On March 22, 2000, our office provided you with an oral opinion, and this letter serves as our response to your request for a written opinion pursuant to N.C.G.S.163–278–23.

It is our understanding that you have been asked to lend your name and support to a golf tournament in which you will be honored for your service to citizens of Davie and Davidson Counties. All fees, donations and proceeds will be payable to the Cooleemee Historical Society. The event is not a campaign event and no proceeds will be payable to, deposited in, or used by your campaign account.

It is our opinion that your support of the charitable event and the use of your name does not constitute election activity that would be subject to the election laws of North Carolina, and therefore, would not need to be reported in any way as a campaign activity.

If we can be of further assistance, please do not hesitate to contact us.

Sincerely,

Gary O. Bartlett
Executive Secretary–Director

STATE BOARD OF ELECTIONS
6400 Mail Service Center, Raleigh, NC 27699–6400

GARY O. BARTLETT
Director

Mailing Address:
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October 2, 2000

Mr. Thomas A. Farr

Maupin Taylor & Ellis, P.A.

P.O. Box 12646

Research Triangle Park, NC 27709–2646

Re: Request for Opinion Pursuant to G.S. 163–278.23

Dear Tom:

In your letter of October 2, 2000, you request an opinion pursuant to G.S. 163–278.23 on two requirements for political campaign advertisements recently added to the North Carolina Campaign Reporting Act.

The first question is relative to the requirement in G.S. 163–278.39(a)(5) that print media sponsored by a political party must state in the legend whether or not the mailing is authorized by a candidate. You state that some NCGOP candidates may be generally aware that the NCGOP is planning to conduct mailings into certain state legislative districts and that some have given their positions on issues. It is further state that beyond that, no Republican candidate has had any input into producing the mailings.

Considering the information submitted it is my opinion that the candidates have not authorized the mailings described above. Provided no further coordination occurs between the NCGOP and the Republican candidates it is appropriate for the NCGOP legend on these mailings to state:

''Paid for by the North Carolina Republican Party
Not authorized by a candidate''

G.S. 163–278.39(a)(6) requires the name of the candidate who benefits to be listed if the mailings are coordinated with the benefiting candidates. It is not necessary for the legend to include the names of the candidates who are intended to benefit from the mailing because there had been no consultation with them.

The second question is whether or not the requirement for disclosure as an in-kind contribution in G.S. 163–278.11(b) applies to these mailings. The first part of the requirement that ''a political party executive committee that makes an expenditure that benefits a candidate or group of candidates shall report the expenditure, including the date, amount, and purpose of the expenditure and the name of and office sought by the candidate or candidates on whose behalf the expenditure was made'' must be fulfilled.

The second part that ''a candidate who benefits from the expenditure shall report the expenditure or the proportionate share of the expenditure from which the candidate benefited as an in-kind

contribution if the candidate or the candidate's committee has coordinated with the political party executive committee concerning the expenditure'' is not required with the mailings. The reporting requirement is based on whether or not the mailings were coordinated.

Please feel free to contact me if you need assistance.

Sincerely,

Gary O. Bartlett
Executive Secretary–Director

STATE BOARD OF ELECTIONS

6400 Mail Service Center • Raleigh, NC 27699–6400

GARY O. BARTLETT
Director

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November 22, 2000

Ms. Libby Anderson

North Carolina Academy of Family Physicians, Inc.

P.O. Box 10278

Raleigh, NC 27605

RE: Request under G.S. 163–278.23 for an opinion

Dear Ms. Anderson:

This is a response to your inquiry for the North Carolina Academy of Family Physicians Inc.'s political action committee, FAMPAC.

When a PAC is formed by a professional organization, unless it's statement of organization differs; the PAC's membership is limited to the members of the professional association. In that situation, since only members could contribute to the PAC, any gifts to FAMPAC by non-members would be unlawful. We are assuming that your continuing education courses are open to non-members. If they are, and you decide to solicit funds for FAMPAC, it would be advisable to note in the solicitation that only members of the North Carolina Academy of Family Physicians could lawfully contribute.

Assuming that the political action committee FAMPAC was properly formed and has continued to comply with the election laws of North Carolina, a solicitation on your continuing education forms for this PAC, as set out in your letter of November 13, 2000, would appear not to violate the election law if:

1. CONTRIBUTIONS WERE ONLY RECEIVED FROM YOUR MEMBERSHIP AND NOT FROM NON–MEMBERS.

2. THE SOLICITATIONS FOR SUCH CONTRIBUTIONS WERE GIVEN ONLY TO YOUR MEMBERS AND NOT ANY NON–MEMBER.

This would mean that if your solicitation was printed on the registration form, you would need to make sure that particular type of registration form would not be sent to non-members. It might be simpler to give a separate solicitation sheet to your members as they check-in at the registration table.

This is an opinion tendered under the provisions of G.S. 163–278.23.

Sincerely,

Gary O. Bartlett

STATE BOARD OF ELECTIONS

6400 Mail Service Center • Raleigh, NC 27699–6400

GARY O. BARTLETT
Director

Mailing Address:
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February 28, 2001

Mr. Ferrell Blount

Southern Republican Leadership Conference 2002

PO Box 12949

Raleigh, NC 27605

Re: Southern Republican Leadership Conference 2002

Dear Mr. Blount,

Your letter dated February 22, 2001 details the plans for the Southern Republican Leadership Conference 2002 (SRLC) and requests a ruling pursuant to G. S. 163–278.23.

Contingent upon all the assurances and performances set out in your letter, SRLC will not be required to file a report disclosing the finances of the conference. The more important assurances given are as follow:

- The SRLC will be an independent business entity with separate accounts from the North Carolina Republican Party.
- All funds raised from corporations will be solicited by SRLC and spent on the actual conference.

- The North Carolina Republican Party will collect registration fees and will not solicit or accept any registration fees from any business entity.
- Any potential revenue derived by the North Carolina Republican Party will come totally from individual participants.

The November 1, 1989 letter of this office from Executive Secretary–Director Alex K. Brock to Mr. R. Jack Hawke and the October 31, 1989 letter of Mr. Hawke to this office, are attached and are incorporated into this opinion by reference.

If any of the circumstances of the 2002 SRLC conference set out in your recent letter change, please contact this office.

Sincerely,

Gary O. Bartlett
Executive Secretary–Director

Attachments: Your letter of February 22, 2001
Letter of Mr. Jack Hawke of October 31, 1989
This office's letter of November 1, 1989

cc: North Carolina Republican Party

STATE BOARD OF ELECTIONS

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GARY O. BARTLETT
Director

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April 18, 2001

Mr. Duane Royal

Treasurer Sampson County Republican Party

PO Box 1325

Clinton, NC 28328

RE: Donation Use as to Party Headquarters

Dear Mr. Royal,

Your letter of March 29, 2001 requests guidance for political party building fund donation use and a ruling pursuant to GS 163–278.23. We welcome your request in order to have the opportunity to provide more detail to all parties as to this issue.

GS 163–278.19B controls the issue of donations to political party headquarters building funds. Please note (4) of that statute that specifically prohibits the use of building funds to pay utilities or to purchase equipment other than fixtures. Only expenditures author-

ized by GS 63–278.19B(4) may be made from the building fund. As such, the building fund can not be used to:

(1) Pay utilities

(2) Purchase furniture unless it becomes a fixture

(3) Purchase computers or related information technology items unless they become fixtures

A display case affixed to the building would be a fixture, which could be paid for out of the building fund. A fixture is an item attached to realty to which an expectation attaches that it will stay on or in the real estate. This would include light fixtures, sinks, bathtubs, commodes, heating and air conditioning systems, built-in kitchen appliances, wallpaper or paint, installed carpet or flooring, widow dressings, and other similar type items.

Since furniture and computers are not fixtures, they are not allowed to be paid under the provisions of GS 63–278.19(B). Thus the prohibition against contributions from corporations and business entities would come into play to make in-kind donations, of these types and from the list above, from businesses unlawful. In-kind donations by businesses of items and services allowed to be paid from a political party building fund would be lawful.

This office would interpret the ''renovation'' language found in the statute to allow repairs and maintenance to the building and fixtures (both as to the cost of materials and labor) to be paid for out of a political party building fund. Maintenance would also include pest control, lawn-care, and landscaping for the headquarters. Business entities would be able to provide funds or in-kind donations for these maintenance and repair needs as per the provisions of GS 163–278.19A.

This office would interpret that maintenance of the building would also include the costs of maintaining property insurance upon it and fixtures, but would exclude liability coverage and personal property coverage on non-fixture contents. Thus it may be necessary that the insurance premium on the party headquarters be unbundled so as to determine the actual cost of property coverage to the building and fixtures.

The payment of property tax upon the building and its fixtures from the building fund will be allowed by this office, based upon the fact that the payment of such taxes are necessary to maintain the building ownership in the political party, and that tax payments are often covered in escrow accounts paid into jointly with the allowable mortgage payment. Since items of personal property can not be bought with building fund monies, the tax on personal property can not be paid from the building fund.

Based upon a review of building fund reports filed with this office, it appears that disbursements from building funds for personal property have been made. Notice is hereby given that this office

will not review building fund reports for enforcement purposes for a period until July 1, 2001 to allow political party organizations to amend their building fund reports to reflect corrected disbursements. The parties are allowed, as well, to amend their reports to reflect additional retroactive disbursements from building funds based upon any allowance of the same contained in this opinion. I would also ask the state parties headquarters staff to share this information with counties that have or plan to have county headquarters.

Sincerely,

Gary O. Bartlett
Executive Secretary–Director

cc: North Carolina Democratic Party

cc: North Carolina Republican Party

cc: North Carolina Libertarian Party

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July 25, 2001

Attorney Steven B. Long

Maupin, Taylor, and Ellis

PO Box 19764

Raleigh, NC 27619–9764

RE: Your Letter of July 16, 2001

Dear Mr. Long:

This letter contains an opinion of this office being reported as per GS 163–278.23.

There is no legal requirement under GS 163–278.7A or any other North Carolina election law or regulation that requires a separate bank account to support only the North Carolina activities of an FEC-registered PAC. The conclusion in your July 16, 2001 letter is correct under the current law.

If any of the circumstances set out in your recent letter changes, please contact this office.

Sincerely,

Gary O. Bartlett
Executive Secretary–Director

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July 26, 2001

Ms. Glenda Clendenin, Director

Moore County Board of Elections

PO Box 787

Carthage, NC 28327

Re: Your July 3, 2001 request for an opinion

Dear Ms. Clendenin:

This letter contains an opinion of this office pursuant to GS 163–278.23.

The answer to your first question is that it is permissible for a PAC to organize for the sole purpose of supporting a candidate. The fact that there is a candidate's committee already formed is not relevant.

A PAC can only contribute up to $4000 per election to a candidate. An election is considered as a primary, second primary (if on the ballot), a run-off election, and an election to fill a vacancy, and a general election. (See GS 163.278.6(8)) So it is possible to give up to $12,000 to a candidate goes through a primary, second primary, and a general election.

As to your question about possible in-kind contributions when a PAC makes expenditures for a candidate, the expenditure aren't treated as in-kind if they are independent expenditures. However if the expenditures were coordinated, those expenditures from a PAC, even one controlled by a candidate or a group of candidates, must be shown in-kind on the one or more of candidate's committee report. A coordinated expenditure benefiting more than one candidate will have to reported in-kind on each benefited candidate's report and properly noted in the PAC report.

It is permissible for a candidate to allow a PAC to handle campaign activities as long as the contributions and expenditures are fully reported. However, the $4,000 contribution limitation would apply.

If expenditures and other campaign efforts by a PAC, group, or individuals benefit a candidate, and are performed in coordination with that candidate's campaign, then those expenditures will be counted toward the $4,000 contribution limit. In other words, a

person or PAC could not spend $3,000 on a coordinated mailing for a candidate and then contribute $4,000 on top of that. The later contribution would be limited to $1,000 the remaining balance of the $4,000 contribution limits after the $3,000 coordinated mailing. If the PAC makes an expenditure that benefits more than one candidate, then the coordinated expenditure is offset against the $4,000 contribution limitation of each candidate benefited. So if the mailing referred to above supports three candidates, then $3000 is offset against the $4,000 limit that the PAC may give each of the three candidates. Again, the reporting requirements will mandate that each of the candidates reports must show this as a contribution and the PAC report must show it as an expenditure benefiting more than one candidate.

Expenditures by PACs, groups, or persons that may benefit a candidate, but are not done in coordination with that candidate's campaign are independent expenditures and not subject to the $4,000 contribution limit. However, GS 163–278.12 requires the reporting of independent expenditures in excess of $100. The general prohibition against campaign contributions by corporations and business entities would apply to coordinated expenditures and independent expenditures.

Who determines what is coordinated or independent? The elections office in which the campaign must file its reports determines the issue, and this issue must be studied on a case by case basis. As a general rule, in order to find coordinated expenditures, there must have been some prior communication between the provider of the expenditure and the candidate. For instance, a citizen sends a candidate a print ad he plans to run to a candidate, asking for the candidate's review of the ad. The candidate makes a change in the ad, and sends it back. That has become a coordinated expenditure. But if the candidate received the unsolicited ad for review and does nothing, then if the ad is run, it continues to be an independent expenditure. If a county office has questions or concerns on these type issues, the State Board of Elections office will offer advice upon request.

Based upon recent court decisions involving our office, it appears that groups that deal with issue advocacy and do not expressly ask voters to or not to ''vote'' or ''support'' a candidate, are not considered PACs and do not have to file as a PAC or report their activities. Again, this office would be more than happy to consider any situation that might present itself to your office.

Sincerely,

Gary O. Bartlett
Executive Secretary–Director

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GARY O. BARLETT
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July 26, 2001

Ms. Becki Gray

House Minority Leader's Office

NC House of Representatives

Raleigh, NC

RE: GS 163–278.13B

Dear Ms. Gray:

This letter contains an opinion of this office being reported as per GS 163–278.23. The prohibition against fund-raising during the General Assembly session is found in GS 163–278.13B, parts of which are set below.

163–278.13B. Limitation on fund-raising during legislative session.

(a) Definitions.–For purposes of this section:

(1) ''Limited contributor'' means a lobbyist registered pursuant to Article 9A of Chapter 120 of the General Statutes, that lobbyist's agent, that lobbyist's principal as defined in G.S. 120–47.1(7), or a political committee that employs or contracts with or whose parent entity employs or contracts with a lobbyist registered pursuant to Article 9A of Chapter 120 of the General Statutes.

(2) ''Limited contributee'' means a member of or candidate for the Council of State, a member of or candidate for the General Assembly.

(3) The General Assembly is in ''regular session'' from the date set by law or resolution that the General Assembly convenes until the General Assembly either adjourns sine die or recesses or adjourns for more than 10 days.

(4) A contribution is ''made'' during regular session if the check or other instrument is dated during the session, or if the check or other instrument is delivered to the limited contributee during session, or if the limited contributor pledges during the session to deliver the check or other instrument at a later time.

(5) A contribution is ''accepted'' during regular session if the check or other instrument is dated during the session, or if the limited contributee receives the check or other instrument dur-

ing session and does not return it within 10 days, or agrees during session to receive the check or other instrument at a later time.

(b) Prohibited Solicitations.–While the General Assembly is in regular session, no limited contributee or the real or purported agent of a limited contributee shall:

(1) Solicit a contribution from a limited contributor to be made to that limited contributee or to be made to any other candidate, officeholder, or political committee; or

(2) Solicit a third party, requesting or directing that the third party directly or indirectly solicit a contribution from a limited contributor or relay to the limited contributor the limited contributee's solicitation of a contribution. It shall not be deemed a violation of this section for a limited contributee to serve on a board or committee of an organization that makes a solicitation of a limited contributor as long as that limited contributee does not directly participate in the solicitation and that limited contributee does not directly benefit from the solicitation.

(c) Prohibited Contributions.–While the General Assembly is in regular session:

(1) No limited contributor shall make or offer to make a contribution to a limited contributee.

(2) No limited contributor shall make a contribution to any candidate, officeholder, or political committee, directing or requesting that the contribution be made in turn to a limited contributee.

(3) No limited contributor shall transfer any amount of money or anything of value to any entity, directing or requesting that the entity use what was transferred to contribute to a limited contributee.

(4) No limited contributee or the real or purported agent of a limited contributee prohibited from solicitation by subsection (b) of this section shall accept a contribution from a limited contributor.

(5) No limited contributor shall solicit a contribution from any individual or political committee on behalf of a limited contributee . . . . . .

It is important to note the definition of ''limited contributor'' and ''limited contributee'' which restricts the article's prohibition of giving to a registered lobbyist, that lobbyist's agent, the lobbyist's principal (who the lobbyists represents), or a political committee that employs or contracts with or whose parent entity employs or contracts with a registered lobbyist. A political committee of a legislator can not solicit funds, during a session, from a registered lobbyist or anyone that works for or has a registered lobbyist. A fundraiser that involves individuals, who are not lobbyists or work

for or have hired lobbyists, during the current session, is allowable under the law.

Sincerely,

Gary O. Bartlett
Executive Secretary–Director

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January 10, 2002

Mr. Bill James

2010 Draymore Lane

Matthews, NC 28105

Dear Mr. James:

In a letter dated October 11, 2000, Susan Nichols of the Office of the Attorney General determined that certain personal gifts made to Mr. Arthur Griffin, an elected member of the Charlotte–Mecklenburg Board of Education, were not ''contributions'' governed by and reportable under the campaign finance reporting laws of North Carolina.

By a series of emails beginning in November 2001, and continuing most recently on January 2, 2002, you report that you have received a check for $100 from an entity called ''Kearns and Company,'' which you have not cashed. You state that you are aware that you may not receive political contributions from business entities, but, citing Ms. Nichols's letter, you state further your intention to cash the check and treat it as a personal gift, not a campaign contribution. In that connection, you ask several questions which I will attempt to answer in this opinion.

Because analysis of your questions may be applicable to other potential candidates, I am responding pursuant to the paragraph in N. C. Gen. Stat. 163–278.23 which authorizes the Executive Director of the State Board of Elections to issue opinions to candidates and others. As required by this statute, this opinion will be filed with the Codifier of Rules to be published unedited in the North Carolina Register. This opinion will also be posted on the web page for the State Board of Elections (*www.sboe.state.nc.us)*.

Your series of e-mails beginning in November 2001, present several questions. First, you ask whether your may accept a contribution of $100 from ''Kearns and Company'' with a residence listed as the business address. You believe the company is owned by a husband and wife and has not been incorporated. Under N. C. Gen. Stat. 163–278.6(6) a contribution is defined as

> ''any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, to a candidate to support or oppose the nomination or election of one or more clearly identified candidates, to a political committee, to a political party, or to a referendum committee, whether or not made in an election year. . . .''

Since you characterize the check from Kearns and Company as a contribution, it must have been given in support of your future candidacy or towards a debt still extent from a previous candidacy.

Your specific concern is whether the campaign finance statutes permit you to accept corporate or other business contributions. Pursuant to N. C. Gen. Stat. 163–278.19, a ''corporation, business entity, labor union, professional association or insurance company'' is prohibited from making contributions to a candidate. Exceptions to this prohibition include when a corporation forms a political committee and makes contributions through it or the donor is an entity that meets the criteria of N. C. Gen. Stat. 163–278.19(f). The case which you reference, *N. C. Right to Life, Inc. v. Bartlett*, 168 F.3d 705 (4th Cir. 1999), caused the General Assembly to legislate the exception set forth in 163–278.19(f) but did not otherwise remove the prohibition against business entities making contributions to candidates.

The campaign reporting staff will assume that any report listing a contribution by ''Kearns and Company'' is a business contribution, even when the address for the company is a residence, unless your obtain assurances from the contributor that he or she is making the contribution from personal funds maintained in a partnership account. Without documentation such as a letter so stating, you should not accept the contribution and if you have deposited it, you should return the contribution.

Your second question is when you are considered a ''candidate'' for campaign reporting purposes. A ''candidate'' is defined for the campaign reporting article in N. C. Gen. Stat. 163–278.6(4) as follows:

> ''The term 'candidate' means any individual who, with respect to a public office. . .has filed a notice of candidacy or a petition requesting to be a candidate, or has been certified as a nominee of a political party for a vacancy or has otherwise

> qualified as a candidate in a manner authorized by law, or has received funds or made payments or has given the consent for anyone else to receive funds or transfer anything of value for the purpose of exploring or bringing about that individual's nomination or election to office. . . . Status as a candidate for the purpose of this Article continues if the individual is receiving contributions to repay loans or cover a deficit or is making expenditures to satisfy obligations from an election already held.''

You state in your initial e-mail that you have an open campaign account. The Kearns and Company contribution was apparently intended for it. Your question about the permissibility of accepting a corporate contribution indicates the donation was a political contribution and not a personal gift. The intent of the person or persons making a donation at the time it is given, and the context in which the donation is made, is very important in determining whether it is a political contribution or a personal gift. Now you would like to characterize the contribution from Kearns and Company as a personal gift rather than a campaign contribution. To do so would be inconsistent with the apparent intent of the original contribution. You initially characterized it as a contribution and your e-mail gave no indication that it was a gift to you individually. This is the key distinction between the facts you have posed and those underlying the dinner honoring Arthur Griffin. All the evidence in that situation was that funds in excess of the expenses for the dinner honoring Mr. Griffin might be given to him as a personal gift. The donors of those funds did not intend for them to be used to support or oppose his candidacy for elective office or his duties in office and they were not solicited for that purpose.

You are correct that it is possible for a candidate to undermine the campaign reporting system by accepting gifts from individuals, loaning his or her campaign the same amount of money as the gift, and then maintaining it was never intended to be a political contribution. Quite frankly, the campaign reporting system is dependent on the honesty, integrity, and desire of candidates and their supporters to comply with applicable statutes. It is the intent of the law to regulate and provide disclosure of contributions made to candidates or to elected officials in support ''of their duties and activities while in an elected office.'' N. C. Gen. Stat. 163–278.346. It is not the intent of the campaign reporting statues to regulate personal gifts made to candidates or elected officials by friends and family members for the recipient's personal use. Thus, I appreciate your stated desire to comply with applicable statutes and your forthrightness in characterizing the check you received from Kearns and Company as a contribution and not as a gift. You may not, however, now change its character as a contribution by choosing to ''accept'' it as a personal gift.

Finally, there are motions pending in the case of *N. C. Right to Life, Inc. v. Leake* (E.D.N.C. No. 5:99–CV–798–BO(3)). There is no date by which the court must rule on these motions. If the decision on the motions has some bearing on this opinion then I will so inform you. Until you receive notification that this opinion is no longer in effect, you may rely on it as to the facts on which it is based.

Sincerely,

Gary O. Bartlett
Executive Secretary

cc: State Board of Elections Members
Kim Westbrook, Deputy Director Campaign Reporting
Peter S. Gilchrist, III, District Attorney for the 26th Prosecutorial District
Molly Masich, Director of APA Services, N. C. Register
Susan K. Nichols, Special Deputy Attorney General
Robert Joyce, Institute of Government
Dot Presser, Former State Board of Elections Member

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May 8, 2003

Senator Virginia Foxx

11468 Highway 105

Banner Elk, N.C. 28604

RE: Request for formal opinion as to GS § 163–278.5 and GS § 163–278.13B

Dear Senator Foxx,

This letter contains an opinion of this office being reported as per GS § 163–278.23.

You have requested if it is possible for your active Congressional political committee to continue to solicit and accept political contributions during the course of your campaign for Congress. The North Carolina State Board of Elections can only answer that question from the perspective of North Carolina campaign reporting laws. This office can not give you an opinion that such operation would or would not violate Federal election laws. The Federal Election Commission is the entity that is empowered to render such an opinion in the context of Federal election law.

Under North Carolina law, the concurrent operation of the two political committees would be acceptable as long as the various contributions to the different committees are clearly designated as required by GS § 163–278.20, and the contributions to your State Senate committee comply with the other legal restrictions contained in Chapter 163 of the General Statutes. This conclusion is based upon a reading of GS § 163–278.5, which clearly precludes the application of Article 22A of Chapter 163 of the General Statutes to elections for federal office.

You have also made inquiry as to whether the provisions of GS § 163–278.13B prevents the solicitation and acceptance of campaign contributions for your Congressional campaign during the prohibited time periods and from the prohibited contributors. It appears that GS § 163–278.5 would again prevent the application of this state statute to your campaign for the Federal office of U.S. Congresswoman.

The opinion of this office that GS § 163–278.13B would not apply to a Federal race has been shared with the Honorable Colon Willoughby, the District Attorney for Wake County, and he concurs in this opinion. This opinion is limited as to issues of North Carolina law, and does not and can reflect the position, if any, of the Federal Election Commission on the issue in question. If the North Carolina State Board of Elections can be of further help to you on issues of North Carolina election law, please contact us.

Sincerely,

Gary O. Bartlett
Executive Director

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May 8, 2003
Via Hand Delivery

Mr. John B. McMillan

Manning Fulton & Skinner PA

PO Box 20389

Raleigh, NC 27619–0389

Re: North Carolina Association of Realtors (NCAR) and its Affiliated Political Committee; Request for Advisory Opinion Pursuant to N.C. Gen. Stat. § 163–278.23

Dear Mr. McMillan:

You have requested a written opinion pursuant to the final paragraph of N.C. Gen. Stat. § 163–278.23 on the compliance of the political committee of the North Carolina Association of Realtors (NCAR) with the requirements of Article 22A of Chapter 163 of the North Carolina General Statutes. The affiliated political committee of the NCAR is the North Carolina Realtors Political Action Committee (''RPAC'').

NCAR has more than 25,000 members from throughout North Carolina. RPAC is a separate segregated fund affiliated with NCAR and organized by its officials and members as a political committee pursuant to N.C. Gen. Stat. § 163–278.19(b). Under this statute, members of a professional association may establish and contribute to such a political committee so long as the contributions are voluntary and the source of any contribution is not dues or other fees required as a condition of membership in the NCAR and do not derive from ''any commercial transaction whatsoever.'' NCAR proposes that each NCAR affiliate that collects RPAC contributions create a ''Transmittal Account,'' such as is used pursuant to the regulations of the Federal Election Commission. *See* 11 C.F.R. 102.6(c)(4)(ii)(A). The NCAR local affiliates will serve as the collecting agents for RPAC, and will establish transmittal accounts to which they will deposit checks from members of NCAR. NCAR affiliates will then be responsible for disbursing the checks according to the directions of the member of NCAR. The amounts directed to be contributed to RPAC must be deposited into its separate segregated fund directly from the transmittal accounts and should not be deposited into any NCAR operating accounts. All contributions to RPAC must be reported as such according to the requirements of Article 22A of Chapter 163 and are subject to the limitations of that Article.

The record-keeping, reporting and transmittal requirements will be significant for handling these contributions. The NCAR and RPAC must take great care to assure there is a ''paper trail'' for each contribution received by RPAC that shows the amount of the contribution, the source of the contribution, that the contribution came from funds of the NCAR member, and that the contribution was voluntarily given. Except for deposit and disbursement from the transmittal accounts, the monies originating as contributions to RPAC must be kept segregated from the dues and other funds of the NCAR. So long as the transmittal accounts will be maintained in this manner, with the necessary record keeping and reporting, it is my opinion that the transmittal accounts are an appropriate mechanism for the safeguarding and tracing of voluntary contributions to RPAC. Transmittal accounts meeting these requirements will not be deemed a political committee subject to the requirements of Article 22A of Chapter 163 of the General Statutes.

This opinion is based upon the facts as stated in your letter dated April 28, 2003. If those facts should change, you should evaluate whether this opinion is still applicable and binding. Finally, this opinion will be filed with the Codifier of Rules to be published unedited in the North Carolina Register and the North Carolina Administrative Code.

Sincerely,

Gary O. Bartlett
Executive Director

cc: Julian Mann III, Codifier of Rules

STATE BOARD OF ELECTIONS

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June 21, 2004

Mr. John R. Wallace

Wallace, Creech & Sarda, LLP

P.O. Box 12065

Raleigh, NC 27605

Re: North Carolina Democratic Party's Request for Advisory Opinion pursuant to N.C. Gen. Stat. § 163–278.23 on Use of Private Aircraft

Dear Mr. Wallace:

You have requested a written opinion pursuant to N.C. Gen. Stat. 163-278.23 on the application of the reporting requirements and contribution limits of Article 22A of Chapter 163 of the North Carolina General Statutes to the use of private aircraft by the North Carolina Democratic Party and its nominees. You anticipate that representatives and nominees of the Party, particularly statewide candidates, will travel extensively this election year and may use private aircraft at times. Private individuals have on occasion offered to the Party's representatives, including nominees, the use of private aircraft in which they have an ownership interest. You request guidance on several specific questions that may arise with the respect to the use of private aircraft.

There are several means by which a candidate or party political committee may obtain the use of aircraft. A political committee may purchase a ticket on commercial aircraft or may contract

with a charter airline service in an arms-length transaction. In both instance, the actual expenditure for the ticket or the charter service should be reported.

Contributions may not exceed $4,000 per primary or election and must be made by an individual. G.S. 163-278.13. Aircraft may be owned by an individual or may be owned by a corporation or other business entity. If the aircraft is individually owned and its use is donated to a candidate or political committee, the fair market value of the donated use should be reported as an in-kind contribution by the recipient committee under G. S. 163-278.6(6) and 278.8.

The use of an aircraft owned by a corporation or business entity, however, may not be donated to a candidate, party or political committee. G.S. 163-278.19(a). However, in the instance in which a corporate executive is allotted a certain and finite use of a corporate aircraft in compensation for and in consideration of employment, the individual may upon prior approval of the campaign reporting office, donate his or her right to use such aircraft. In the event such donation is intended, the prospective donee must advise the State Board Campaign Reporting Office five (5) business days prior to the intended use of the corporate aircraft providing the State Board of the following matters: (1) a description of the plane to be used including manufacturer, model number and weight; (2) the intended flight path and distance; (3) whether the crew members are volunteers or are to be provided by the corporation along with the use of the aircraft; (4) expected terminal and related charges; and (5) whether the executive is provided with unlimited or limited usage of the corporate aircraft and if limited, the number of hours or miles such use which are granted per anum.

Upon review of the submission, the State Board may determine that the proposed usage is acceptable and upon such determination, such usage shall constitute an in-kind contribution by the individual donor, the value of which shall be established in accordance with the subsequent paragraphs of the instant advisory opinion. However, the State Board of Elections Campaign Reporting Office may determine that the proposed flight will constitute a contribution by a corporation or business entity not otherwise permitted to contribute and may decline to approve the contribution. In any event, with respect to any approved flight, usage of the aircraft may only be approved where the access and usage to the aircraft is part of an employee's compensation package and is reported to state and federal tax and other regulatory authorities. Furthermore, the employee may only donate the use of his or her share of such aircraft to a candidate or committee in an amount not to exceed $4000.00 per primary or general election.

A more difficult question is how to value fairly the donation of the use of aircraft. I have been unable to locate any established, controlling legal or accounting standard ascertaining the value of the use of a donated aircraft; however, there is information publicly available that should permit political committees to ascertain a fair valuation of donated aircraft and crew. David Roy Blackwell, a licensed pilot and Special Deputy Attorney General in the Attorney General's Office, has identified multiple, publicly available sources for assessing the costs of owning and operation private aircraft. See Memorandum from D. Blackwell to G. Bartlett (6 May 2004) (copy attached).

In calculating the donated use, or in evaluating how much compensation is owed for the use of a private aircraft that is not donated, the first step is to determine the average cost per flight hour of the make and model aircraft. The average cost per flight hour may be determined from one of the web sites listed in Mr. Blackwell's letter. Once the average cost per flight hour is determined, it should be multiplied by the number of flight hours fairly attributable to the political committee's use. These hours would include flight time necessary to reposition the aircraft.

Some of the average cost per hour data includes the average cost of the appropriate crew for the aircraft. If so, you do not need to separately determine the crew costs per flight hour. If the crew costs are not included, you must first determine if the pilot is a volunteer. Sometimes pilots who own their own aircraft will volunteer flight time to a candidate or political committee. Volunteer services are not included in the definition of a contribution. G.S. 163-278.6(6). If the pilot or pilots services are not voluntarily given, them Mr. Blackwell has surveyed the current costs and they range per hour from $30 per flight hour for a single engine pilot with a three-hour minimum to $90 per flight hour with a $300 per day minimum for a turboprop or light jet twin-engine aircraft. Any time associated with the trip that the pilot or crew must spend in addition to actual flight time, and travel expenses they charge in addition to their other compensation, should be added to the estimated value of the contribution if it is paid by someone other than the committee. If the pilot costs are paid by the committee, then they would be reported as expenditures.

In sum, if a political committee wishes to accept the donated use of an aircraft or its crew, it is essential that the committee report that use as an in-kind contribution. Information is available by which a committee may assign a reasonable value to the donation. In auditing reports listing contributions or expenditures for the use of aircraft, this office will use the above principles and information to evaluate the reasonableness of the value assigned. The committee should specifically disclose the type of aircraft used, the number of hours it was used, and the number of crew members who

were compensated for the use. The committee should be prepared to explain the assumptions it used in calculating the costs associated with committee's use of the aircraft. Finally, the total contributions of an individual donor should not exceed $4,000. This office will be happy to answer any questions that may arise as a committee determines the value of a particular contribution of the use of an aircraft.

This opinion is based upon the facts as stated in your letter dated February 19, 2004. If those facts should change, you should evaluate whether this opinion is still applicable and binding. In addition, changes in statutes or case law may affect this opinion and you should evaluate their applicability. This opinion will be filed with the Codifier of Rules to be published unedited in the North Carolina Register and the North Carolina Administrative Code.

Sincerely,

Gary O. Bartlett
Executive Director

cc: Julian Mann III, Codifier of Rules

Kelly L. Loving, Robinson Bradshaw & Hinson

STATE BOARD OF ELECTIONS

6400 Mail Service Center • Raleigh, NC 27699–6400

GARY O. BARTLETT
Director

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(919) 733–7173
Fax (919) 715–0135

October 1, 2004

Mr. J. David James

Smith, James Rowlett & Cohen, L.L.P.

Post Office Box 990

Greensboro, North Carolina 27402–0990

Re: Request for Advisory Opinion pursuant to N.C. Gen. Stat. § 163–278.23 on Questions Related to the Scope of Articles 22E and 22F of Chapter 163 of the N.C. General Statutes

Dear Mr. James:

You have requested on behalf of Teamsters Local 391 and the political committee ''Carolina Drive'' a written opinion pursuant to N.C. Gen. Stat. 163–278.23 on the scope of certain statutory requirements of Articles 22E and/or 22F of Chapter 163 of the North Carolina General Statutes.

You ask several questions with respect to the permissible source of funds for electioneering communications and the reporting of any funds spent on electioneering communications. First, you ask whether ''only new funds raised and maintained in separate and segregate accounts, comprising only funds directly contributed by individuals'' may be used for ''the purchase or provision of electioneering communications pursuant to Articles 22E and 22F.'' With limited exceptions, only an ''individual, committee, association, or any other organization or group of individuals'' may make disbursements for electioneering communications. The source of the funds used for the disbursements must be individuals and the entity making the disbursement must be able to clearly document that all funds originated from individuals.

If an entity has maintained an account that has only funds originating from individuals, those funds do not have to be ''new'' in the sense that they have been raised since the passage of Article 22E and 22F. General Statutes 163–278.81 and –278.91 recognize in subdivision (b)(5) that disbursements for electioneering communications may originate from a ''segregated bank account that consists of funds contributed solely by individuals directly to that account for electioneering communications.'' In addition, a corporation exempt from taxation under section 501(c)(4) of the Internal Revenue Code of 1986 or a political organization defined by section 527(e)(1) of the Code may make expenditures for communications paid for exclusively from funds provided by individuals and maintained in a segregated bank account without their being deemed ''electioneering communications.'' G.S. 163–278.82(a) & –278.92(a). But not all disbursements for electioneering communications have to originate from segregated funds. Subdivisions (b)(6) of G.S. 163–278.82(a) and –278.92(a) contemplate that there may be disbursements from funds other than segregated bank accounts, presumably by entities meeting all the criteria set forth in G.S. 163-278.19(f). Thus, when Articles 22 E and F are read as a whole, they dictate that no funds for electioneering communications may be from an account in which funds from corporations, labor unions or other prohibited sources were commingled with funds from individuals unless the entity making the disbursement for the electioneering communication fits within the narrow statutory exception for entities meeting all the criteria of G.S. 163-278.19(f).

You next ask whether the accounts in which the funds used for electioneering communications are deposited must be maintained in North Carolina. Neither Article 22E nor Article 22F imposes a requirement that the accounts be maintained in this State. In providing disclosure of disbursements for electioneering communications, the entity making the disclosure is asked to provide the name of the individual who controls the accounts for the entity making the disbursement and that individual's mailing address,

telephone number, their principal place of business or employer's name, and their occupation. This information is requested so that the State Board has the information necessary to contact the appropriate representative of the entity making the disclosure if it has questions about the reports the entity has filed. The State Board has promulgated a reporting form for electioneering communications and it is available in editable pdf format on the State Board's web page (www.sboe.state.nc.us/index_cfrs.html). A copy of the form and instructions is attached.

Next you ask whether ''the State Board intends to apply 'consultation and coordination standards' drawn from the Federal Election Campaign Act as is more fully addressed in the administrative scheme promulgated by the Federal Election Commission.'' As you are undoubtedly aware, on September 18, 2004, the United States District Court for the District of Columbia rejected the coordination regulations adopted by the Federal Elections Commission (''FEC'') implementing the Bipartisan Campaign Reform Act of 2002 (''BCRA'') in the case of Shays v. FEC (No. 02-1984(CKK)). The FEC announced on September 28 that it had voted to appeal the decision but it had ''not yet determined whether it will ask the court of appeals to review all, or only some, of the rules remanded to the Commission by the district court.'' (www.fec.gov) The State Board may review the evolving case law on the validity of the FEC regulations, as well as developments with respect to the statutes or regulations of other jurisdictions dealing with consultation and coordination, in order to better understand and apply North Carolina's statutes; however, the State Board does not consider regulations adopted by another jurisdiction to be in any way binding on it.

Rather, in interpreting North Carolina's statutes, the State Board will rely on ordinary principles of statutory construction. A fundamental principle on which it will rely is that words used in a statute will be given their common or ordinary meaning unless the General Assembly has specifically defined them. Food Town Stores, Inc. v. City of Salisbury, 300 N.C. 21, 265 S.E.2d 123 (1980). In addition, ''in the absence of a contextual definition, [the State Board] may look to dictionaries to determine the ordinary meaning of words within a statute.'' Perkins v. Ark. Trucking Servs, Inc., 351 N.C. 634, 638, 528, S.E.2d 902, 904 (2000).

The term ''independent expenditure'' is defined in N.C. Gen. Stat. 163-278.6(9a) in pertinent part to mean ''an expenditure to support or oppose the nomination or election of one or more clearly identified candidates that is made without consultation or coordination with a candidate or agent of a candidate whose nomination or election the expenditure supports or whose nomination or election the expenditure opposes.'' (Emphasis supplied.) The State Board will apply the common understanding of the words

used in this definition to determine whether an expenditure is independent. If there is any doubt about the meaning of a word used in the definition, then the State Board may rely on a dictionary to determine the meaning of a word. In addition, if a word has been construed by a North Carolina court in an analogous context, then the meaning given the word by the court will be significant.

The purpose of an advisory opinion under N.C. Gen. Stat. 163–278.23 is to provide an opinion to candidates, committees and others regarding compliance with the campaign reporting statutes. It is a vehicle for providing guidance on the application of the statutes to a set of facts. Whether an expenditure is ''made without consultation or coordination'' will of necessity be made on a case-by-case basis considering the pertinent facts under the principles set forth herein. Since your letter presents no facts to which the statutes may be applied, I am unable to provide any more definitive guidance at this time. You are encouraged in the future to request an opinion with respect to a given set of facts if you are uncertain of the application of the campaign reporting statutes to those facts.

Changes in statutes or case law may affect this opinion and you should evaluate their applicability in relying on it. This opinion will be filed with the Codifier of Rules to be published unedited in the North Carolina Register and the North Carolina Administrative Code.

Sincerely,

Gary O. Bartlett
Executive Director

cc: Julian Mann III, Codifier of Rules

STATE BOARD OF ELECTIONS

6400 Mail Service Center • Raleigh, NC 27699–6400

GARY O. BARTLETT

Mailing Address:
PO Box 27255
Raleigh, NC 27611–7255

September 22, 2005

Mr. Dennis E. McCollum

Chairman, Union County Republican Party

1431 Helms Shortcut Road

Monroe, NC 28112

Dear Mr. McCollum:

This letter contains an opinion of the Executive Director of the State Board of Elections pursuant to N.C. Gen. Stat. 163-278.23.

In your request, you seek an opinion as to whether an individual obtaining a credit card that earns ''reward dollars'' could direct such dollars be sent ''to their named political party.'' Further, you have inquired about the requirements of any such credit card agreement and a statement as to whether this method of contributing would be deemed a corporate contribution.

It is my opinion that this method of contributing is permissible and would not be deemed a corporate or business contribution as long as the individual, the political party committee, and the credit card company each comply with requirements to ensure compliance with Article 22A of Chapter 163 of the North Carolina General Statutes. Based on the scenario you have provided, if an individual is able to obtain documentation from the credit card company that the ''reward dollars'' are in fact earned by the individual and would be directed to the individual, and that the credit card company will direct only the amount earned by the individual to the political party committee, then the individual can direct such contribution to the political party committee. Additionally, the individual would be required to provide a letter to the political party committee setting forth their intention to contribute their ''reward dollars'' to the political party committee, along with all required disclosure information. The political party committee must be able to obtain from the credit card company detailed information regarding each contribution made by an individual and the specific date of each contribution. If the credit card company is unable to provide this information to the political party committee within seven days of the financial transaction, the contribution may not be received by the political party committee.

Proper documentation by all parties must be maintained and available for inspection upon request. If any party involved in the financial transaction fails to provide the aforementioned documentation, the contribution(s) would not be allowed.

This opinion is based upon the information provided in your letter dated August 8, 2005. If the facts should change, you should evaluate whether this opinion is still applicable and binding. In addition, changes in statutes or case law may affect this opinion and you should evaluate their applicability. This opinion will be filed with the Codifier of Rules to be published unedited in the North Carolina Register and the North Carolina Administrative Code.

Please feel free to contact Kim Strach, Deputy Director-Campaign Finance, with any questions you may have concerning this or any other campaign finance matter. Your interest in complying with the campaign finance regulations is greatly appreciated.

Sincerely,

Gary O. Bartlett
Executive Director

cc: Julian Mann III, Codifier of Rules

STATE BOARD OF ELECTIONS

6400 Mail Service Center • Raleigh, NC 27699–6400

GARY O. BARTLETT
Executive Director

Mailing Address:
PO Box 27255
Raleigh, NC 27611–7255

August 24, 2006

The Honorable Bill Daughtridge

340B Legislative Office Building

Raleigh, NC 27603-5925

Dear Representative Daughtridge:

This is to formalize our conversation yesterday in which you requested an advisory opinion pursuant to G.S. 163-278.23 regarding permissible uses of campaign funds from a candidate's campaign committee. You want to ensure that your committee complies with current law as well as changes in the law which become effective October 1, 2006.

It is my understanding that your committee would like to make expenditures to a charitable organization. More specifically, your committee would like to purchase a gas grill and donate it to a non-profit organization which would use it for fund raising purposes.

This is a legitimate use of campaign funds under our current campaign finance laws. Under Session Law 2006-161, which becomes effective October 1, 2006, the law is more specific about permissible committee expenditures. Campaign committees may make ''(c)ontributions to an organization described in section 170(c) of the Internal Revenue Code of 1986 (26 U.S.C. 170(c)), provided that the candidate or the candidate's spouse, children, parents, brothers, or organizations will be permitted subject to the restriction that the candidate or the candidate's listed family members may not be employed by the organization.'' Under both current law and Session Law 2006-161, any expenditures by a campaign committee would need to be disclosed on campaign finance reports filed with this office.

This opinion is based upon the facts as stated in our conversation on August 23 2006. If those facts should change, you should evaluate whether this opinion is still applicable and binding. Finally, this opinion will be filed with the Codifier of Rules to be

published unedited in the North Carolina Register and the North Carolina Administrative code.

Sincerely,

Gary O. Bartlett
Executive Director

cc: Julian Mann III, Codifier of Rules

STATE BOARD OF ELECTIONS

GARY O. BARTLETT
Executive Director

Mailing Address:
P.O. Box 27255
Raleigh, NC 27611-7255

October 19, 2006

Senator Charlie Albertson

North Carolina General Assembly

525 Legislative Office Building

Raleigh, NC 27603-5925

Dear Senator Albertson:

This is to memorialize our conversation and your communication dated October 16, 2006, in which you have requested an advisory opinion pursuant to G.S. 163-278.23 regarding permissible uses of campaign funds from a candidate's campaign committee. You also asked whether there are restrictions on one candidate's ability to volunteer in his brother's campaign for another office.

It is my understanding that your brother, Arliss Albertson, is a candidate for re-election in a County Commission District that is incorporated within the North Carolina Senate District where you are a candidate. You want to help your brother, but at the same time wish to make sure you are compliant with campaign finance laws.

Your committee is eligible to make a contribution (direct or in-kind) not to exceed $4,000 per election. You may contribute to your brother's campaign amounts funds from your personal funds that exceed the $4,000 limit. Contributions to a candidate by his siblings are not limited. Below is the pertinent part of the governing statute:

§ 163-278.13. Limitation on contributions.

(a) No individual, political committee, or other entity shall contribute to any candidate or other political committee any money or make any other contribution in any election in excess of four thousand dollars ($4,000) for that election.

(b) No candidate or political committee shall accept or solicit any contribution from any individual, other political committee, or other entity of any money or any other contribution in any election in excess of four thousand dollars ($4,000) for that election.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, it shall be lawful for a candidate or a candidate's spouse, parents, brothers and sisters to make a contribution to the candidate or to the candidate's treasurer of any amount of money or to make any other contribution in any election in excess of four thousand dollars ($4,000) for that election.

(d) For the purposes of this section, the term 'an election' means any primary, second primary, or general election in which the candidate or political committee may be involved, without regard to whether the candidate is opposed or unopposed in the election, except that where a candidate is not on the ballot in a second primary, that second primary is not 'an election' with respect to that candidate.

Though you are a candidate, there is no prohibition against your serving as a volunteer in your brother's campaign. Below is the definition of contribution set forth in our campaign finance laws. The bold portion is the pertinent portion.

163 278.6. Definitions.

(6)The terms 'contribute' or 'contribution' mean any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, to a candidate to support or oppose the nomination or election of one or more clearly identified candidates, to a political committee, to a political party, or to a referendum committee, whether or not made in an election year, and any contract, agreement, promise or other obligation, whether or not legally enforceable, to make a contribution. These terms include, without limitation, such contributions as labor or personal services, postage, publication of campaign literature or materials, in kind transfers, loans or use of any supplies, office machinery, vehicles, aircraft, office space, or similar or related services, goods, or personal or real property. These terms also include, without limitation, the proceeds of sale of services, campaign literature and materials, wearing apparel, tickets or admission prices to campaign events such as rallies or dinners, and the proceeds of sale of any campaign related services or goods. Notwithstanding the foregoing meanings of 'contribution,' the word shall not be construed to include services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate, political committee, or referendum committee. The term 'contribution' does not include an 'independent expenditure.' If:

a. Any individual, person, committee, association, or any other organization or group of individuals, including but not limited to, a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986) makes, or contracts to make, any disbursement for any electioneering communication, as defined in G.S. 163 278.80(2) and (3) and G.S. 163 278.90(2) and (3); and

b. That disbursement is coordinated with a candidate, an authorized political committee of that candidate, a State or local political party or committee of that party, or an agent or official of any such candidate, party, or committee that disbursement or contracting shall be treated as a contribution to the candidate supported by the electioneering communication or that candidate's party and as an expenditure by that candidate or that candidate's party.

This opinion is based upon the facts as stated in our conversation on August 23, 2006. If those facts should change, you should evaluate whether this opinion is still applicable and binding. Finally, this opinion will be filed with the Codifier of Rules to be published unedited in the North Carolina Register and the North Carolina Administrative Code.

Sincerely,
Gary O. Bartlett
Executive Director

STATE BOARD OF ELECTIONS

6400 Mail Service Center • Raleigh, NC 27699-6400

GARY O. BARTLETT
Executive Director

MAILING ADDRESS:
P.O. BOX 27255
RALEIGH, NC 27611-7255

December 11, 2006

The Honorable Charles W. Albertson

525 Legislative Office Building

Raleigh, N.C. 27603-5925

Dear Senator Albertson:

This is to formalize our conversation on December 4, 2006, in which you have requested an advisory opinion pursuant to G.S. 163-278.23 regarding permissible uses of campaign funds from a candidate's campaign committee. Specifically, you want to ensure that you comply with changes in S.L. 2006-161 that became effective on October 1, 2006.

It is my understanding that your committee would like to make expenditures to reward campaign contributors, volunteers, office staff members or persons with whom you interact as part of

running for and holding public office. These expenditures may be tickets purchased from a University or a museum, a thank you dinner, a gift or a charitable contribution made in the honor of such persons. These are legitimate uses of campaign funds under our current Campaign Finance laws and Session Law 2006-161. Below is the statute that governs these expenditures.

163 278.16B. Use of contributions for certain purposes.

(a) A candidate or candidate campaign committee may use contributions only for the following purposes:

(1) Expenditures resulting from the campaign for public office by the candidate or candidate's campaign committee.

(4) Contributions to a national, State, or district or county committee of a political party or a caucus of the political party.

(5) Contributions to another candidate or candidate's campaign committee.

(6) To return all or a portion of a contribution to the contributor.

(7) Payment of any penalties against the candidate or candidate's campaign committee for violation of this Article imposed by a board of elections or a court of competent jurisdiction.

(8) Payment to the Escheat Fund established by Chapter 116B of the General Statutes.

To ensure full compliance with Campaign Finance disclosure laws, the committee must document for its records the relationship of those who benefit from any expenditure and their ties to the committee's campaign or the elected official's public office. Then any expenditure must be accurately stated on Campaign Finance reports.

Please be aware that Session Law 2006-161 prohibits a contribution to a charitable organization if the candidate's spouse, children, parents, brothers or sisters are employed by the organization or on any board governing the organization.

Another option available to you is the use of a booster fund. In short, this fund is governed by all contribution and expenditure laws, is used for support of an elected official's duties and activities while in elective office, and requiring that the elected official must make semi-annual reports in January or July. Below is the language contained in G.S. 163-278.36:

The purpose of S.L 2006-161 is to limit the wide discretion candidates and political committees previously were allowed in how campaign funds were spent. That purpose should be kept in mind by all committees. Whenever a committee is in doubt about whether an expenditure is proper, it should, as has been done here, request an opinion pursuant to G.S. 163-278.23.

This opinion is based upon the facts as stated in our conversation December 4, 2006. If those facts should change, you should evaluate whether this opinion is still applicable and binding. Finally, this opinion will be filed with the Codifier of Rules to be published unedited in the North Carolina Register and the North Carolina Administrative Code.

Sincerely,

Gary O. Bartlett

STATE BOARD OF ELECTIONS

6400 Mail Service Center • Raleigh, NC 27699-6400

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Executive Director

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RALEIGH, NC 27611-7255

February 16, 2007

Mr. John R. Wallace

Wallace, Nordan & Sarda, L.L.P.

P. O. Box 12065

Raleigh, N.C. 27605

Re: Advisory Opinion Pursuant to N.C.G.S. 163-278.23; Use of Political Committee Funds for Legal Fees and Expenses

Dear Mr. Wallace:

You have asked for an opinion pursuant to N.C.G.S. 163-278.23 on whether, under Article 22A of Chapter 163 of the General Statutes, the funds of the Jim Black Committee may be spent for the legal expenses of the Committee, its Treasurer Virginia Kelly and other campaign staff, Speaker Black, and Speaker Black's legislative staff. Effective October 1, 2006, '[a] candidate or candidate campaign committee may use contributions only for the following purposes' as set forth in N.C.G.S. 163-278.16B:

(1) Expenditures resulting from the campaign for public office by the candidate or candidate's campaign committee.

(2) Expenditures resulting from holding public office.

(3) Contributions to an organization described in section 170(c) of the Internal Revenue Code of 1986 (26 U.S.C. 170(c)), provided that the candidate or the candidate's spouse, children, parents, brothers, or sisters are not employed by the organization.

(4) Contributions to a national, State, or district or county committee of a political party or a caucus of the political party.

(5) Contributions to another candidate or candidate's campaign committee.

(6) To return all or a portion of a contribution to the contributor.

(7) Payment of any penalties against the candidate or candidate's campaign committee for violation of this Article imposed by a board of elections or a court of competent jurisdiction.

Legal fees and expenses have been incurred because of investigations into the fund raising activities of the Jim Black Committee, its treasurer and others, including the Speaker himself, and investigations related to his tenure in legislative office. These legal expenses arising from investigations into his campaigns or service in office appear to fall under the statute's authorized purposed in that they are '[e]xpenditures resulting from the campaign for public office by the candidate or candidate's campaign committee' or '[e]xpenditures resulting from holding public office. Thus, they are permitted expenditures under Article 22A of Chapter 163 of the General Statutes.

It could be argued that legal fees incurred because of activities which are ultimately deemed to be illegal are not proper expenditures under the statute. Such a ruling would be inconsistent, however, with the legislature's determination in subsection (7) of N.C.G.S. 163-278.16B that any penalties assessed against 'the candidate or candidate's campaign committee for violation' of Article 22A of Chapter 163 of the General Statutes may be paid from the committee's funds. If a penalty resulting from an investigation into a campaign finance violation is a permissible expenditure, then it is reasonable to infer that the legislature intended that it is also a permissible expenditure for a candidate's committee to pay any legal fees incurred in the course of the investigation that led to the penalty.

For your information, a study committee of the Senate has been appointed to study the issue of legal assistance funds for candidates and elected officials. Any legislation adopted by the General Assembly on this issue may impact this opinion.

This opinion is based upon the facts as stated in your letter of December 21, 2006. If those facts should change, you should evaluate whether this opinion is still applicable and binding. Finally, this opinion is made pursuant to N.C. Gen. Stat. 163-278.23 and will be filed with the Codifier of Rules to be published unedited in the North Carolina Register and the North Carolina Administrative Code.

Sincerely,
Gary O. Bartlett
cc: Julian Mann, III Codifier of Rules

STATE BOARD OF ELECTIONS

6400 Mail Service Center • Raleigh, NC 27699-6400

GARY O. BARTLETT
Executive Director

MAILING ADDRESS:
P.O. BOX 27255
RALEIGH, NC 27611-7255

June 14, 2007

Mr. John Wallace

3605 Glenwood Avenue, Suite 240

Raleigh, N.C. 27612

Re: Request of the Bev Perdue Committee Pursuant to N.C.G.S. § 163–278.23

Dear Mr. Wallace:

I am in receipt of your letter dated June 13, 2007, in which you request an advisory opinion pursuant to N.C.G.S. § 163–278.23 as to whether an executive officer of a principal may contribute to and sponsor a fundraising event for the Bev Perdue Committee during the Session.

As you provide in your letter, the Bev Perdue Committee is a political committee as defined in N.C.G.S. § 163–278.6(14), and is therefore subject to the provisions and regulations of Chapter 163, Article 22A of the North Carolina General Statutes. N.C.G.S. § 163–278.13B provides limitations on fundraising during a regular session of the North Carolina General Assembly. The Bev Perdue Committee would be considered a ''limited contributee'' as defined in this statute and therefore would be prohibited from receiving contributions from ''limited contributors'' during the Session. ''Limited contributors'' have been defined as North Carolina lobbyists, the agent of the lobbyist, the principal of the lobbyist and political committees that employ a lobbyist. Additional provisions contained in the ethics and lobbying statutes provide prohibitions on contributions from lobbyists at other times as well. However, the jurisdiction of the State Board of Elections is to administer Chapter 163, which only speaks to contributions by ''limited contributors'' during regular sessions of the North Carolina General Assembly.

Given that the executive officer is not a North Carolina lobbyist or the agent of the lobbyist and is not defined as the principal as provided in N.C.G.S. § 120C–100(11), there would be no prohibition on this individual contributing to the Bev Perdue Committee during the Session. As you have noted, the contributor and Committee would be subject to the contribution limitations of N.C.G.S. § 163–278.13.

This opinion is based upon the facts as stated in your letter of June 13, 2007. If those facts should change, you should evaluate wheth-

er this opinion is still applicable and binding. You may wish to contact the ethics and lobbying divisions to ensure they do not have any rulings that would conflict with this opinion. Finally, this opinion will be filed with the Codifier of Rules to be published unedited in the North Carolina Register and the North Carolina Administrative Code.

Sincerely,
Gary O. Bartlett
cc: Julian Mann, III Codifier of Rules

STATE BOARD OF ELECTIONS

6400 Mail Service Center • Raleigh, NC 27699-6400

GARY O. BARTLETT
Executive Director

MAILING ADDRESS:
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RALEIGH, NC 27611-7255

June 15, 2007

Mr. Jay Reiff

The Richard Moore Committee

Post Office Box 749

Raleigh, N.C. 27602

Re: Request of The Richard Moore Committee Pursuant to N.C.G.S. § 163–278.23

Dear Mr. Reiff:

I am in receipt of your letter dated June 1, 2007, in which you request an advisory opinion pursuant to N.C.G.S. § 163–278.23 as to whether the hourly reimbursement rates you have submitted for the future use of aircraft by The Richard Moore Committee are acceptable.

Based on the information provided in your letter as to the type, make, model and year of each of the aircraft you may use for campaign travel, we find the proposed hourly rates to be acceptable. In arriving at this conclusion, our staff researched the information provided and compared operating costs for similar aircraft.

This opinion is based upon the information provided in your letter of June 1, 2007. If the information should change, you should evaluate whether this opinion is still applicable and binding. Finally, this opinion will be filed with the Codifier of Rules to be published unedited in the North Carolina Register and the North Carolina Administrative Code.

Sincerely,
Gary O. Bartlett
cc: Julian Mann, III Codifier of Rules

STATE BOARD OF ELECTIONS

6400 Mail Service Center • Raleigh, NC 27699-6400

GARY O. BARTLETT
Executive Director

MAILING ADDRESS:
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RALEIGH, NC 27611-7255

July 16, 2007

Mr. John Wallace

Wallace, Nordan & Sarda, L.L.P.

Post Office Box 12065

Raleigh, N.C. 27605

Re: Request of the Hewett for Sheriff Committee Pursuant to N.C.G.S. § 163–278.23

Dear Mr. Wallace:

I am in receipt of your letter dated June 29, 2007, in which you request an advisory opinion in behalf of your client, the Committee to Elect Ronald E. Hewett, and Deborah Isenhour, Treasurer. According to your letter, Sheriff Hewett would like to use his Committee funds to make expenditures for legal counsel and related costs in connection with inquiries made by the United States Attorney of the Eastern District of North Carolina. You indicate that these inquiries are related to Sheriff Hewett's candidacy and matters arising from his holding of public office.

Effective October 1, 2006, candidates must comply with the provisions of N.C.G.S. § 163–278.16B, when making campaign expenditures. Specifically, the statute provides eight permissible purposes for which a candidate or the candidate campaign committee can use contributions. The first two purposes provide for expenditures resulting from the campaign for public office by the candidate or candidates's campaign committee and expenditures resulting from holding public office. Based on the information provided in your letter, the expenditures for legal counsel and related costs are either a result of campaigning for public office or as a result of holding public office. Therefore, expenditures from the campaign would be permissible for these purposes. If the inquiries are not a result of activities related to Sheriff Hewett's candidacy for public office or his holding of public office, the expenditures would not be permitted.

This opinion is based upon the information provided in your letter of June 29, 2007. If the information should change, you should evaluate whether this opinion is still applicable and binding. Finally, this opinion will be filed with the Codifier of Rules to be published unedited in the North Carolina Register and the North Carolina Administrative Code.

Sincerely,
Gary O. Bartlett
cc: Julian Mann, III Codifier of Rules

STATE BOARD OF ELECTIONS

6400 Mail Service Center • Raleigh, NC 27699-6400

GARY O. BARTLETT
Executive Director

MAILING ADDRESS:
P.O. BOX 27255
RALEIGH, NC 27611-7255

November 13, 2007

Frank W. Folger

Helms, Mulliss & Wicker, PLLC

2600 Two Hannover Square

Raleigh, N.C. 27601

Re: Advisory Opinion on Campaign Fundraising Questions pursurant N.C.Gen. Stat. § 163–278.23

Dear Mr. Folger:

By letter dated October 17, 2007, you requested an advisory opinion. The questions you posed and my responses to them are as follows:

Without violating N.C.G.S. § 163–278.13C, or other North Carolina campaign finance laws, can a registered lobbyist employed by a corporation make a contribution to that corporation's political action committee (''PAC'') knowing that the PAC plans to issue checks to State legislative and public servant candidates:

a. If the lobbyist does not have a vote or chooses not to vote on where the funds are to be distributed and does not make any recommendations as to which State candidates the PAC funds should be distributed?

Yes. N.C. Gen. Stat. § 163–278.13C (a) prohibits lobbyists from making contributions ''to a candidate or candidate campaign committee'' when the candidate is a legislator or a public servant. It does not prohibit contributions by the lobbyist to other types of political committees, including the corporation's PAC, unless the facts are such as are discussed in ''c'' or ''d'' below.

b. If the lobbyist does not have a vote or chooses not to vote on where the funds are to be distributed but does make a recommendation to the PAC and/or the corporation as to which State candidates the funds should be distributed?

Yes..

b. If the lobbyist has a vote and exercises the vote on where the funds are to be distributed but does not unilaterally

decide to which State candidates the funds should be distributed?

Possibly. This question is ambiguous and until we are given specific facts we cannot render a binding opinion. The lobbyist should avoid being the decision maker either by acting unilaterally or by casting a determinative vote on which candidates receive the PAC's contributions. If the lobbyist is the effective decision maker on which State candidates are to receive the contributions from the PAC and the lobbyist makes a contribution to the PAC, then the lobbyist's contribution could be doing indirectly what N.C. Gen. Stat. § 163–278.13C prohibits being done directly.

a. If the lobbyist solely decides to which State candidates the funds should be distributed?

No. N.C. Gen. Stat. § 163–278.13C prohibits the lobbyist from contributing to a legislator or public servant who is a candidate with the knowledge that he or she will make all decisions on which candidates will receive contributions from the PAC. In addition, giving in this manner would violate the prohibition against giving in the name of another set forth in N.C. Gen. Stat. § 163–278.14.

2. Without violating N.C.G.S. 163–278.13C or other North Carolina campaign finance laws, can a registered lobbyist employed by a corporation who does not make a contribution to the corporation's PAC:

a. Make a recommendation to the PAC and/or the corporation as to which State candidates the PAC funds should be distributed if the lobbyist does not have a vote or chooses not to vote on which State candidates are to receive the funds?

Yes. The actions prohibited by N.C.G.S. 163–278.13C include making contributions to certain candidates and bundling and delivering contributions to those candidates. The facts you have posted in this question do not present either of these situations.

b. Vote on where the PAC funds are to be distributed if the lobbyist does not unilaterally decide to which State candidates the funds should be distributed?

Possibly. This question is ambiguous and until we are given specific facts we cannot render a binding opinion. The lobbyist would be prudent, however, to avoid being the person who effectively decides to make a contribution from a corporation's PAC to a candidate who is a legislator or public servant as those

terms are defined. This is true even if the lobbyist does not act unilaterally and even if the lobbyist does not make a contribution to the corporation's PAC because a contribution made by the corporation's PAC when the lobbyist was the decision maker could be viewed as doing indirectly what the lobbyist can not do directly.

c. Solely decide to which State candidates the funds should be distributed?

See response to 2b above.

Without violating N.C.G.S. 163–278.13C or other North Carolina campaign finance laws, can a registered lobbyist contribute to a PAC if the PAC does not have a process, procedure, or policy established for earmarking monies to be distributed in this State?

N.C.G.S. 163–278.14 prohibits making contributions in the name of another, *i.e.*, earmarking of contributions. No contribution should be made to a political committee if it is in fact earmarked, nor should any political committee have a process, procedure or policy permitting earmarking of monies to be distributed in this State. Absent concerns about giving in the name of another, however, a lobbyist may make a contribution to a political committee that is not a candidate committee of a legislator or a public servant as those terms are defined by the applicable statutes.

If you should have any questions about any of the above responses, please do not hesitate to contact me or Kim Strach, Deputy Director–Campaign Finance. As required by law, this opinion will be published unedited in the North Carolina Register by the Codifier of Rules.

Sincerely,
Gary O. Bartlett
cc: Julian Mann, III Codifier of Rules

STATE BOARD OF ELECTIONS

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April 21, 2008

Ms. Susan Valauri, President

North Carolina Professional Lobbyists Association

Post Office Box 905

Raleigh, N.C. 27602

Re: Advisory Opinion Concerning Lobbyist Involvement in Campaigns pursuant to N.C. Gen. Stat. § 163–278.23

Dear Ms. Valauri:

I am in receipt of your letter dated February 28, 2008, in which you request an opinion on behalf of the North Carolina Professional Lobbyists Association (''NCPLA''). As stated in your letter, the 2007 North Carolina General Assembly recodified the restrictions on lobbyist campaign contributions as N.C. Gen. Stat. § 163-278.13C. In order to provide guidance to members of your association on the scope of these restrictions, you have posted several questions for consideration. The questions you posted and my responses to them are as follows:

1. May a lobbyist make recommendations to a third party regarding contributions to a legislative or executive branch candidate or candidate political committee? And, if ''yes'' may such a recommendation include a specific recommended contribution amount?

N.C. Gen. Stat. § 163.278.13C provides that a lobbyist may not make contributions ''to a candidate or candidate campaign committee'' when the candidate is a legislator or a public servant. Additionally, it provides that a lobbyist may not collect and/or deliver multiple contributions to candidates on their committees for those candidates defined in (a)(1) and (2). There are no provisions that restrict a lobbyist from making recommendations to third parties about possible contributions and the amounts of those contributions. However, N.C. Gen. Stat. § 163-278.13B provides additional restrictions while the North Carolina General Assembly ('General Assembly') is in regular session. During regular sessions of the General Assembly, a lobbyist may not solicit a contribution from any individual or political committee on behalf of a limited contributee, which for purposes of this statute includes a member or candidate for the Council of State or a member or candidate for the General Assembly. Therefore, it is our opinion that a lobbyist could make recommendations to a third party regarding contributions including specific amounts, but the lobbyist could not solicit a third party on behalf of the candidate during a regular session of the General Assembly. As the terms ''recommend'' and ''solicit'' are not defined by statute, in order to provide clarity, I have defined them, by drawing on dictionary definitions, as follows:

- **''recommend'' - Upon being asked, provide another with a suggestion about possible recipients and amounts of contributions.**
- **''solicit'' - To request a contribution.**

So long as a lobbyist does not physically collect contributions from multiple contributors, take possession of such contributions, or physically transfer or deliver the collected contributions, does N.C. Gen. Stat. § 163-278.13C(b) allow a lobbyist to make recommendations to multiple third parties regarding contributions to a particular legislative or executive branch candidate or candidate committee?

For the reasons outlined in question one, the answer is ''yes'' with the same restrictions during regular sessions of the General Assembly.

2(A). If ''yes'', may the lobbyist attend a fundraising event for a legislative or executive branch candidate in which more than one of the above third parties contributes to the candidate (again assuming the lobbyist does not physically collect contributions from the contributors, take physically possession of such contributions, or physically transfer or deliver such contributions)?

The lobbyist could attend a fundraising event as long as the lobbyist did not make a monetary contribution or give anything of value. This would include payment of admission to the event.

3. So long as a lobbyist does not physically collect contributions from multiple contributors, take possession of such contributions, or physically transfer or deliver the collected contributions, does N.C. Gen. Stat. § 163-278.13C(b) allow a lobbyist to solicit multiple third parties to make contributions to a particular legislative or executive branch candidate or candidate committee.

Except when the General Assembly is in regular session, a lobbyist is not prohibited from soliciting multiple third parties to make contributions to a particular legislative or executive branch candidate or candidate committee. Under the statute the lobbyist could not collect contributions from multiple contributors and transfer or deliver the collected contributions. While the General Assembly is in regular session, lobbyists are prohibited from soliciting third parties to make contributions on behalf of legislative or executive branch candidates.

4. When a principal is associated with a PAC, may a lobbyist employed by that principal communicate to a candidate or campaign committee that the PAC has decided to contribute to the candidate and the amount of the contribution? Does it matter to the answer whether the PAC checks are cut and mailed from a location separate from the lobbyist directly to the candidate or committee (i.e. the lobbyist never takes possession)?

N.C. Gen. Stat. § 163-278.13C does not prohibit a lobbyist from communicating with a candidate or campaign committee on any subject. Therefore, a lobbyist would be permitted to communicate to a candidate that the PAC they are associated with intends to make a contribution to the candidate's campaign. As long as the

lobbyist doesn't take possession of multiple checks and deliver them to the candidate or campaign committee, the location where the checks were cut or mailed from would not be relevant. As has been stated above, there are prohibitions on soliciting contributions from individuals and other political committees on behalf of legislative and executive branch candidates while the General Assembly is in regular session.

5. Does N.C. Gen. Stat. § 163-278.13C allow a lobbyist or employees of a principal to host or organize a fundraiser for a candidate?

N.C. Gen. Stat. § 163-278.13C does not address the activities of a lobbyist's principal or an employee of a principal. It only addresses a registered lobbyist as defined by Chapter 120C of the General Statutes. While the General Assembly is in regular session, a lobbyist's principal is included in the definition of "limited contributor" and is subject to the same limitations as a lobbyist. At times when the General Assembly is not in regular session, a lobbyist is prohibited from making contributions to legislative and executive branch candidates who meet the definitions referenced in N.C. Gen. Stat. § 163-278.13(C)(1) & (2). The definition of "contribution" includes "anything of value whatsoever" given to a candidate in support of their nomination or election. Therefore, a lobbyist could not spend any of their own funds in organizing or hosting a fundraiser. This would include but not be limited to invitations, catering expenses, entertainment, or anything purchased for the event. If there were any rental expenses associated with the location of the event, the lobbyist could not provide payment to anyone for those costs.

Often fundraisers are held at the homes of a host. It has been the position of this office not to place a fair market value on a home if that home is not rented for similar events. It is difficult, however, to host an event and not incur any expenses for that event. If a lobbyist were to pay for anything it would be considered an in-kind contribution which would violate N.C. Gen. Stat. § 163-278.13C.

Can a lobbyist or employee of a principal set up a meeting with a third party and a candidate for the purposes of that third party giving the candidate a contribution? Can the lobbyist or employee of a principal attend the meeting? If so, can the lobbyist or employee of a principal do so with multiple but separate third parties?

While the General Assembly is in regular session, a lobbyist is prohibited from making and bundling contributions. Activities outside of those two prohibitions are not addressed by N.C. Gen. Stat. § 163-278.13C and are therefore not subject to regulation by the State Board of Elections. Planning and attending meetings (while the General Assembly is not in regular session) between

potential contributors and candidates is not prohibited. Therefore, the number of meetings organized or third parties involved would not be relevant.

How do the statutes limit campaign involvement by lobbyist or employee of a principal? Can the lobbyist or employee of a principal serve as campaign manager or county chair for a candidate? Can the lobbyist or employee of a principal volunteer to make calls or put a yard sign up for a candidate? give strategic advice to the candidate?

Lobbyists may not make contributions, therefore any activities that would involve giving anything of value to a legislative or executive branch candidate or their committee as defined by N.C. Gen. Stat. § 163-278.13C(a)(1) & (2) would not be allowed. Providing volunteer services to a candidate is not considered a contribution under N.C. Gen. Stat. § 163-278.6(6) and would be allowed. Volunteer services could include making calls (if expenses were not incurred) and putting up yard signs for a candidate. As long as the lobbyist does not normally charge candidates for strategic advice, such advice could be given without violating any statute in Chapter 163 of the General Statutes.

This opinion is based upon the information provided in your letter of February 28, 2007. If the information should change, you should evaluate whether this opinion is still applicable and binding. Finally, this opinion will be filed with the Codifier of Rules to be published unedited in the North Carolina Register and the North Carolina Administrative Code.

Sincerely,
Gary O. Bartlett
cc: Julian Mann, III Codifier of Rules

STATE BOARD OF ELECTIONS

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April 21, 2008

The Honorable Joe Hackney, Co-Chair

The Honorable Linda Garrou, Co-Chair

The Honorable Julia Howard, Co-Chair

Host State Committee, 2009 Annual Conference of the Southern Legislative Conference

North Carolina General Assembly

16 West Jones Street

Raleigh, N.C. 27603-5925

Re: Request for Advisory Opinion Pursuant to N.C. Gen. Stat. § 163–278.23 on Applicability of Campaign Finance Laws to Fundraising for the 2009 Annual Conference of the Southern Legislative Conference in Winston-Salem

Dear Speaker Hackney, Senator Garrou and Representative Howard:

By memorandum dated March 10, 2008, you requested an advisory opinion on the applicability of the campaign finance laws to the work of the Host Committee for the 2009 Southern Legislative Conference Annual Meeting scheduled for August 15-19, 2009, in Winston-Salem. Your letter provides the detailed history of the Southern Legislative Conference(''SLC''). It is one of four regional branches of the Council of State Governments (''CGS''), which is a nonpartisan 'joint governmental agency of this State.' N.C. Gen. Stat. § 143-186. You indicate the CSG is also a nonprofit corporation that has 501(c)(3) tax exempt status.

The SLC holds an annual meeting in late summer for legislators, legislative staff, and their families with as many as 1800 individuals in attendance. Responsibility for hosting the annual meeting is rotated among the 16 member States of the SLC. These responsibilities include:

- Providing social and recreational activities for attendees and their families.
- Sponsoring a social event at the annual meeting to be held in Oklahoma City in July 2008 to promote the 2009 annual meeting.
- Providing printed materials such as souvenir programs, menus, and informational booklets.
- Transporting attendees, speakers, and VIPs.
- Providing onsite administrative support such a office space at the conference location, staff to assist the SLC staff, staff to conduct activities such as registration, and office equipment such as copiers and computers for the meeting.
- Providing gift bags for attendees (recommended but not required).
- Assisting with registration costs of attendees, including complimentary registration for contributors at designated contribution levels.
- Fundraising to cover or defray the costs of all of the above and providing accounting services for the annual meeting.

It is apparent from your letter that the host State is charged not only with making the meeting as productive and pleasant as possible for those attending from other States, but also with

obtaining through cash or in-kind contributions funds to reduce the cost of the meeting for the SLC and those in attendance. The General Assembly has appointed a committee of legislators from both the Senate and the House to serve as the Host State Committee and delegated to it the above duties. Legislative staff will be providing support to the Host State Committee and the smaller committees it has formed to accomplish these tasks. One of those subcommittees is the Private Sector and Fund Raising Committee which plans to solicit cash and in-kind donations from private parties, including lobbyists and lobbyists' principals, to assist with the financing of the activities listed above. In the past, SLC host committees from other States have raised between $1,000,000 and $1,500,000 to cover meeting costs.

Your letter indicates that cash contributions will be made to the CSG or the SC and will be deposited in an account designated for the 2009 Annual Conference. The Host Committee or the Legislative Services Commission will contract for the services needed for the meeting, and as those services are rendered will approve payment for them and forward invoices to the CSG. Providers of the services will be paid by the CSG using the funds raised by the Host Committee. Undoubtedly, registration fees will be collected from attendees and will also be deposited in the designated account for use in paying meeting expenses.

The question you present is:

With respect to election laws, are there any issues with or prohibitions on a member, or group of members, of the General Assembly, or other individuals at their direction, soliciting and receiving donations from individuals, businesses and other entities while the General Assembly is in regular session, or while the General Assembly is not in regular session?

The election laws potentially applicable to this issue are N.C. Gen. Stat. §§ 163-278.13B, 163-278.13C, and 163-278.16B in Article 22A of Chapter 163.

Limitations on the solicitation and acceptance of contributions by legislators and others during legislative sessions are set forth in N.C. Gen. Stat. § 163-278.13B. the word ''contribution'' is a defined term in Article 22A and

N.C. Gen. Stat. § 163-278.6(6). Even though the members and staff for the Host Committee will be soliciting donations for the 2009 Annual Meeting of the SLC, your letter makes clear that these donations will not be used to support or oppose any candidate, political party or political committee. They will be used by a nonpartisan organization for an event unrelated to any given legislator's election or reelection. Thus, N.C. Gen. Stat. § 163-278.13B does not bar the fundraising activities for the 2009 Annual Meeting of the SLC.

Similarly, N.C. Gen. Stat. § 163-278.13C is applicable only to contributions as defined in N.C. Gen. Stat. § 163-278.6(6). Section 163-278.13C, among other things, prohibits lobbyists from making contributions to legislators who are candidates for reelection and from collecting contributions from others for legislators who are candidates. However, the funds to be raised by the Host Committee are not ''contributions'' as defined in N.C. Gen. Stat. § 163-278.6(6), thus the limitations in N.C. Gen. Stat. § 163-278.13C do not apply.

Your letter presumes that in-kind contributions will be made to the General Assembly. Under the campaign finance laws, in-kind contributions are just one type of contribution. As explained above, donations to the SLC or the CSG for the 2009 Annual Conference are no contributions within the meaning of the campaign finance statutes. However, this assumes that any in-kind contributions to the General Assembly for the 2009 Annual Conference are used for that Conference. No in-kind donations should be given, either directly or indirectly, to a candidate or candidate committee or other kind of political committee. Such donations would then constitute contributions under the campaign finance laws and subject to the statutes governing the source, reporting, and amount of contributions. In other words, in-kind contributions to the General Assembly for the 2009 Annual Conference would be treated as contributions if transferred to candidates or political committees for use in campaigns. An individual legislator or other State official or candidate for legislative or other State office attending the 2009 Annual Conference, however, could accept a complimentary gift offered to every attendee without it constituting a contribution under the campaign finance statutes.

Finally, N.C. Gen. Stat. § 163-278.16B specifies the use of contributions accepted by candidates or candidate campaign committees. If a legislator were to wish to donate from his or her campaign account to the SLC or CSG for the 2009 Annual Conference, then the question arises whether such expenditure would comply with this statute. A donation by a candidate committee would appear to result from the legislator's holding of public office since the Annual Conference of the SLC is designated to promote sharing of ideas and foster working relationships among legislators of member States. Thus, it would be a permissible expenditure under N.C. Gen. Stat. § 163-278.16B(a)(2).

This letter addresses the election laws that most appear to be applicable to the question you presented. It does not address other types of laws, such as ethics provisions outside of Chapter 163. The agencies charged with administering any other laws should be consulted about whether the activities of the Host Committee are covered by those laws.

If you should have any questions about this response, please do not hesitate to contact me or Kim Strach, Deputy Director-Campaign Finance. This analysis is based on the statutes as they currently exist and the facts as recited herein. If the facts should change, or if the General Assembly should change the statutes discussed as it is certainly free to do, then the issues addressed may need to be revisited. As required by law, this opinion will be published unedited in the North Carolina Register by the Codifier of Rules.

Sincerely,
Gary O. Bartlett
cc: Julian Mann, III Codifier of Rules

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August 19, 2008

Mr. Marshall Hurley

2400 Freeman Mill Road

Greensboro, NC 27406

Dear Mr. Hurley:

In your letters of June 18, 2008 and July 30, 2008, you asked several questions on behalf of your client, Bob Crumley, a candidate for statewide office in the November 2008 elections. The questions concern the applicability of statutes concerning 'electioneering communications' and candidate–specific communications' to expenditures made by a law firm, Crumley & Associates, with which Bob Crumley is associated, for television advertisements, many of which include the name 'Bob Crumley' or his image or both.

You ask, whether the advertisements, if they were aired within 60 days of the election, would constitute 'electioneering communications' within the meaning of G.S. 163–278.80(2). That statute provides:

> The term 'electioneering communication' means any broadcast, cable. or satellite communication that has all the following characteristics:
>
> a. Refers to a clearly identified candidate for a statewide office or the General Assembly.
>
> b. Is made within one of the following time periods:

1. 60 days before a general or special election for the office sought by the candidate, or

2. 30 days before a primary election or a convention of a political party that has authority to nominate a candidate for the office sought by the candidate.

c. Is targeted to the relevant electorate.

Specifically, you ask whether the appearance of Mr. Crumley in the advertisements constitutes a reference 'to clearly identified candidate' within the meaning of the statute.

The answer to this question is Yes. Mr. Crumley is a candidate for statewide office and he is clearly identified in the advertisements. If, on the other hand, the advertisements named only the business entity and contained neither the name of the candidate nor his picture, they might be thought not to refer to a clearly identified candidate and not to meet the definition of 'electioneering communication.'

You ask, second, whether the advertisements, if they were aired within 60 days of the election, would be prohibited by G.S. 163–278.82. That statute prohibits certain entities from providing the resources to cover the costs of electioneering communications. Among the entities prohibited are professional associations, such as Crumley & Associates. The statute, as amended by the 2008 session of the General Assembly, provides an exception to the prohibition, however, in new paragraph (d). By new paragraph (d), the prohibition does not apply 'unless the electioneering communication at issue is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate'. Almost all of the advertisements that you submitted contain solicitations for legal services and thus appear to qualify for the exception under new paragraph (d). Therefore, the answer to your second question, with respect to such advertisements, is No, the advertisements, although constituting electioneering communications, would not be prohibited by G.S. 163–278.82.

You must take notice, however, that the advertisements may, although not prohibited by G.S. 163–278.82, constitute unlawful contributions under G.S. 63–278.15, which prohibits candidates from accepting contributions from professional associations. G.S. 163–278.6(6) provides that the term 'contribution' includes disbursements for electioneering communications that are coordinated with a candidate. Given Mr. Crumley's role in the law firm, it may be that disbursements for the communication are coordinated with Mr. Crumley, and, if so, the advertisements would constitute unlawful contributions by the firm.

You refer, third, to G.S. 163–278.100, a statute in the set of statutes governing 'candidate–specific communications' has exactly the same meaning as the term 'electioneering communication,'

except that a candidate–specific communication occurs more than 60 days before a general election. You posit that the application of these statutes to the advertisements at issue might impermissibly burden and chill the constitutional rights of Mr. Crumley and his law firm with respect to commercial speech. it is not within the province or power of this agency to make such a judgment with respect to statutes enacted by the General Assembly. It is out task only to interpret the application of the statutes to particular conduct.

You note, finally, the reporting requirements of G.S. 163–278.101(b)(5) with respect to candidate–specific communications. That statute requires the disclosure of:

> The identity of every provider of funds or anything of value whatsoever to the entity, providing an amount in excess of one thousand dollars ($1,000). If the provider is an individual, the statement shall also contain the principal occupation of the provider. The 'principal occupation of the provider' shall mean the same as the 'principal occupation of the contributor' in G.S. 163–278.11.

You ask whether, as applied to a law firm, this statute would require the disclosure of the identifies of all clients of the law firm who have provided payment of the law firm of $1,000 or more.

The answer to this final question is No. For guidance, we look to interpretation by the Federal Election Commission (FEC) of the electioneering communication provisions of the Federal Election Campaign Act of 1971 and its subsequent amendments, provisions substantially similar to our North Carolina provisions. In its interpretation published in the Federal Register, Vol. 72, No. 246, December 26, 2007, at pages 72910 and 72911, the FEC decided to require the disclosure only of 'persons who made donations for the purpose of funding [electioneering communications], ' not sources of funds that make up the 'general treasury funds' of the entity paying for electioneering communications. In the case of Crumley & Associates, it would appear that clients have not paid funds into the firm for the purpose of funding candidate–specific communications, and therefore their identities need not be disclosed.

This opinion is based upon the information provided in your letters of June 18, 2008. if the information should change, you should evaluate whether this opinion is still applicable and binding. Finally, this opinion will be filed with the Codifier of Rules to be published unedited in the North Carolina Register and the North Carolina Administrative Code.

Sincerely,
Gary O. Bartlett
cc: Julian Mann, III Codifier of Rules

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October 28, 2008

Mr. Graham Long

Pittenger for Lt. Governor

Post Office Box 20875

Raleigh, NC 27619

Re: Request of Pittenger for Lt. Governor Pursuant to N.C.G.S. 163–278.23

Dear Mr. Long:

I am in receipt of your letter dated October 8, 2008, in which you request an advisory opinion pursuant to N.C.G.S. § 163–278.23 as to whether the hourly reimbursement rate you have submitted for aircraft use is acceptable.

Based on the information provided in your letter as to the type, make, model and year of the aircraft, we find the proposed hourly rate to be acceptable. In arriving at this conclusion, our staff researched the information provided and compared operating costs for similar aircraft.

This opinion is based upon the information provided in your letter of October 8, 2008. If the information should change, you should evaluate whether this opinion is still applicable and binding. Finally, this opinion will be filed with the Codifier of Rules to be published unedited in the North Carolina Register and the North Carolina Administrative Code.

Sincerely,
Gary O. Bartlett
cc: Julian Mann, III Codifier of Rules

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January 5, 2009

Mr. Edward Hay

Post Office Box 1544

Asheville, NC 28802

Dear Mr. Hay:

Re: June 5, 2008 Advisory Opinion to Jerry Meek, Chairman NC Democratic Party

As you likely aware, on June 5, 2008, I issued an advisory opinion at the request of Jerry Meek. In his request, he asked two questions concerning political party building funds. These questions were based on a 'Factual Overview' that provided information that an unnamed county Democratic Party had purchased a headquarters building and established a building fund pursuant to N.C. Gen. Stat. 163–278.19B. The facts provided that this county Democratic Party then 'gratuitously conveyed' the building to a non-profit corporation, which has allowed the county Democratic Party to use the property for purposes of a headquarters. No other information was provided as to the ndentity or purpose of the non-profit corporation. Mr. Meek asked if the established building fund could make payments to the non-profit corporation for the use of the headquarters and also pay property taxes for the building.

Based on these facts and N.C. Gen. Stat. § 163–278.19B, Mr. Meek was advised that the county Democratic Party could not use the building funds to make payments to the non–profit corporation or pay property taxes for the building. N.C. Gen. Stat. § 163–278.19B(4) provides that donations deposited into a building funds account cannot be used for headquarters rent, utilities, or equipment other than fixtures. The fact that the building funds would be used to make payments to the non-profit corporation that owns the building for use of the building would constitute rental payments and would therefore be prohibited by statute.

After this opinion was rendered, additional information was provided to our office about the specific county Democratic Party and the non-profit corporation. These additional facts provided that at some point after the Buncombe County Democratic Party purchased a building to be used as a headquarters, the bank required individuals to extend the note that was due to be paid. The bank did not want to extend the note without individual guarantors. Therefore, several individuals formed a corporation in order to extend the note so that the building could be maintained for the Buncombe County Democratic Party. The name of the corporation is Buncombe County Democratic Headquarters, Inc. The corporation has nine named Trustees that have taken on the responsibility to solicit donations for the building fund in order to make the mortgage payments. The building fund account to which these donations are directly deposited in the same building fund account that was originally established by the Buncombe County Democratic Party. The Trustees of the Corporation do not deposit

any funds into any bank account. They collect contributions and provide those contributions to you, as Treasurer for the Buncombe County Democratic Party. From this account, all mortgage payments are made, just in the same way they were made prior to the extension of the note.

This new information provides that the building fund is not making payments to the non-profit corporation. In fact, the payments are being made to the Bank of Asheville just i the same way they were made previous to the note extension. Therefore, the payments are not rental payments but in fact mortgage payments.

As long as the Trustees continue to provide the contributions directly to you for deposit into the building fund account and all activities of this account are continued to be reported in accordance with N.C. Gen. Stat. 163–278.9, then the building fund can make mortgage payments to the Bank of Asheville and property tax payments for the building.

This opinion is based upon the information in this letter. If the information is incorrect or should change, you should evaluate whether this opinion is still applicable and binding. Finally, this opinion will be filed with the Codifier of Rules to be published unedited in the North Carolina Register and the North Carolina Administrative Code.

Sincerely,
Gary O. Bartlett
cc: Julian Mann, III Codifier of Rules
Jerry Meek, Chairman, North Carolina Democratic Party
Robert Christy, Trustee, Buncombe County Democratic Headquarters, Inc.

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March 27, 2009

Mr. John Wallace

Wallace and Nordan L.L.P.

Post Office Box 12065

Raleigh, NC 27612

Re: Request pursuant to N.C. Gen. Stat. § 163-278.23; campaign finance laws applicable to candidate political committees after elected official leaves office

Dear Mr. Wallace:

An advisory opinion is requested to provide guidance to a political committee of an elected official when that elected official completes their term of office and will no longer be serving as an elected official. More specifically, do campaign finance laws governing political committees change when an elected official leaves office, but continues to maintain an active political committee?

In accordance with N.C. Gen. Stat. § 163-278.6(14), an entity that qualifies as a political committee continues to be a political committee if it receives contributions or makes expenditures or maintains assets or liabilities. It is not until a political committee ''winds up its operations, disposes of its assets, and files a final report'' that it ceases to exist.

Contributors making contributions to candidate political committees in order to pay outstanding loans or retire campaign debt are subject to the contribution limitations described in N.C. Gen.Stat. § 163-278.13(a). As provided by statute, the contribution limitations are per election. In the case of a candidate who does not intend to be a candidate in the next election, the time period would still be from the day after the date of the last election for the office that candidate had been seeking until the day of the next primary or election for that same office. Is it not necessary for the candidate to actually be on the ballot for that next election.

With respect to reporting requirements, a candidate political committee may not be required to report as often as they were when actively seeking public office. For candidate political committees not established for a municipal office, N.C.Gen Stat. § 163-278.9 provides that during even-numbered years during which there is an election for that candidate or in which the candidate committee is supporting or opposing a candidate, the treasurer shall file on the quarterly reporting schedule. However, if there is not an election for that candidate and their political committee is not supporting or opposing any other candidate during that year, then the candidate committee would only be required to file semi-annually.

Is is also important to note the regulations regarding expenditures as provided in N.C. Gen.Stat. § 163-278.16B. Candidate political committee is not supporting or opposing any other candidate during that year, then the candidate committee would only be required to file semi-annually.

1. Expenditures resulting from the campaign for public office by the candidate or the candidate's campaign committee.

2. Expenditures resulting from holding public office.

3. Contributions to an organization described in section 170(c) of the Internal Revenue Code of 1986 (26 U.S.C. § 170(c)), provided that the candidate or the candidate's spouse,

children, parents, brothers, or sisters are not employed by the organization.

4. Contributions to a national, State, or district or county committee or a political party or a caucus of the political party.

5. Contributions to another candidate or candidate's campaign committee.

6. To return all or a portion of a contribution to the contributor.

7. Payment of any penalties against the candidate or candidate's campaign committee for violation of this Article imposed by a board of elections or a court of competent jurisdiction.

8. Payment to the Escheats Fund established by Chapter 116B of the General Statutes.

One question that may arise is whether candidate political committee funds can be used to explore running for office in the future. That would appear to ben an appropriate expenditure under number one above.

Other questions may arise as a result of holding public office. Expenditures for staff, travel and correspondence with the public necessitated by an individual's service in public office would appear to be appropriate under number two.

Before making an expenditure, the committee should satisfy itself that the expenditure is for one of the above permissible purposes. If specific guidance is needed on the permissibility of a particular expenditure, this office is available to provide that guidance.

The guidance provided in this opinion is written in accordance with N.C. Gen.Stat. 163-278.23. This opinion will be filed with the Codifier of Rules to be published unedited in the North Carolina Register and the North Carolina Administrative Code.

Sincerely,
Gary O. Bartlett
cc: Julian Mann, III Codifier of Rules

STATE BOARD OF ELECTIONS

6400 Mail Service Center • Raleigh, NC 27699–6400

GARY O. BARTLETT
Director

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April 2, 2009

The Honorable John Snow

105 Van Horn Street

Murphy, NC 28906

Re: Advisory Opinion

Dear Senator Snow:

You request guidance as to whether it would be permissable to use your campaign funds to help a constituent launch a website to provide public information regarding children with disabilities. The opinion expressed in this letter is provided pursuant to N.C.Gen. Stat. 163-278.23 and is based on the information you have provided to me.

As you are aware, prior to October 1, 2006, a candidate could spend their campaign funds for any purpose. Effective October 1, 2006, legislation provided only eight allowable purposes for campaign expenditures by candidate campaign committees. If the purpose of an expenditure by a candidate campaign committee is not one of the eight allowed by N.C. Gen.Stat. 163-278.16B(a), then the expenditure is prohibited. The permissible purposes are as follows:

1. Expenditures resulting from the campaign for public office by the candidate or the candidate's campaign committee.

2. Expenditures resulting from holding public office.

3. Contributions to an organization described in section 170(c) of the Internal Revenue Code of 1986 (26 U.S.C. § 170(c)), provided that the candidate or the candidate's spouse, children, parents, brothers, or sisters are not employed by the organization.

4. Contributions to a national, State, or district or county committee or a political party or a caucus of the political party.

5. Contributions to another candidate or candidate's campaign committee.

6. To return all or a portion of a contribution to the contributor.

7. Payment of any penalties against the candidate or candidate's campaign committee for violation of this Article imposed by a board of elections or a court of competent jurisdiction.

8. Payment to the Escheats Fund established by Chapter 116B of the General Statutes.

Based on the information you have provided, the expenditure you wish to make does not appear to fall within seven of the eight permissible purposes. Contributions to charitable organizations are a permitted purpose as long as the organization is one that is described in section 170(c) of the Internal Revenue Code and no family members are employees of the organization. From our conversation, I don't believe you have information to suggest that the constituent has created such an organization. However, the second purpose allows expenditures resulting from holding public

office. In order to determine if your expenditure meets this purpose, we ask the question ''would you have this expense or make this expenditure if you were not holding public office? In order to determine if your expenditure meets this purpose, we ask the question ''would you have this expense or make this expenditure if you were not holding public office?'' If the answer to that question is ''no'' and the expenditure directly results from holding public office then your expenditure would be permissible. N.C.Gen.Stat. 163-278.23 provides a safe harbor for candidates and political committees that comply with the advice of advisory opinions, even if the advice is ultimately determined to be in error. Because this opinion is based solely on the facts provided in your communication, the opinion would not be binding if the facts or purpose changed. Therefore, if at any time the scope of your purpose should change, you will need to contact our office so that we could re-evaluate whether the expenditure would continue to be permissible.

If you should have any questions, please do not hesitate to contact me or Kim Strach, Deputy Director-Campaign Finance. As required by law, this opinion will be published unedited in the North Carolina Register by the Codifier of Rules.

Sincerely,
Gary O. Bartlett
cc: Julian Mann, III Codifier of Rules

STATE BOARD OF ELECTIONS

6400 Mail Service Center • Raleigh, NC 27699–6400

GARY O. BARTLETT
Executive Director

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July 20, 2009

The Honorable Garland E. Pierce

House of Representatives

North Carolina General Assembly

21981 Buie Street

Wagram, NC 28396

Re: Advisory Opinion Pursuant to N.C.G.S. § 163-278.23: Use of Political Committee Funds for Expenses Related to Service in Office

Dear Rep. Pierce:

You asked for an opinion pursuant to N.C.G.S. § on whether, under Article 22A of Chapter 163 of the General Statutes, the

funds of your political committee may be spent for purchases of school supplies for children in your district. Effective October 1, 2006, ''[a] candidate or candidate campaign committee may use contributions only for the following purposes'' as set forth in N.C.G.S. § 163-278.16B:

1. Expenditures resulting from the campaign for public office by the candidate or the candidate's campaign committee.

2. Expenditures resulting from holding public office.

3. Contributions to an organization described in section 170(c) of the Internal Revenue Code of 1986 (26 U.S.C. § 170(c)), provided that the candidate or the candidate's spouse, children, parents, brothers, or sisters are not employed by the organization.

4. Contributions to a national, State, or district or county committee or a political party or a caucus of the political party.

5. Contributions to another candidate or candidate's campaign committee.

6. To return all or a portion of a contribution to the contributor.

7. Payment of any penalties against the candidate or candidate's campaign committee for violation of this Article imposed by a board of elections or a court of competent jurisdiction.

8. Payment to the Escheats Fund established by Chapter 116B of the General Statutes.

In our conversation after you delivered your written request for an opinion, you indicated that you had been approached by educational leaders in your district requesting that you provide funds for the purchase of school supplies for children in the public school system. You do not believe you would have been approached but for your elected office as it has not been your practice to provide school supplies in the past. Based on these assertions, this expenditure appears to fall under the statute's authorized purpose in that it is an ''expenditure resulting from holding public office;'' thus, it is a permitted expenditure for your political committee under Article 22A of Chapter 163 of the General Statutes. As you are aware, any expenditure made by a political committee must be reported in accordance with the requirements of Article 22A.

This opinion is based upon the facts as stated in your letter of July 15, 2009, as elaborated upon in our subsequent conversation. If these facts change, you should evaluate whether this opinion is still applicable and binding. Finally, this opinion addresses only compliance with campaign finance statutes, particularly N.C.G.S. § 163-278.23. It will be filed with the Codifier of Rules to be published unedited in the North Carolina Register and the North Carolina Administrative Code.

Sincerely,
Gary O. Bartlett
cc: Julian Mann, III Codifier of Rules

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CONSTITUTION OF NORTH CAROLINA

Article

I. DECLARATION OF RIGHTS.
II. LEGISLATIVE.
III. EXECUTIVE.
IV. JUDICIAL.
V. FINANCE.
VI. SUFFRAGE AND ELIGIBILITY TO OFFICE.
VII. LOCAL GOVERNMENT.
VIII. CORPORATIONS.
IX. EDUCATION.
X. HOMESTEADS AND EXEMPTIONS.
XI. PUNISHMENTS, CORRECTIONS, AND CHARITIES.
XII. MILITARY FORCES.
XIII. CONVENTIONS; CONSTITUTIONAL AMENDMENT AND REVISION.
XIV. MISCELLANEOUS.

Adoption of the Constitution of 1970

A complete revision to the North Carolina Constitution of 1868 was proposed in Laws 1969, c. 1258 for submission to the voters at the general election of 1970. The revision was adopted by the electorate at the election of November 3, 1970 to take effect on July 1, 1971. In addition to this revision, amendments separately submitted at the November, 1970, were also adopted and are incorporated in the 1970 Constitution.

PREAMBLE

We, the people of the State of North Carolina, grateful to Almighty God, the Sovereign Ruler of Nations, for the preservation of the American Union and the existence of our civil, political and religious liberties, and acknowledging our dependence upon Him for the continuance of those blessings to us and our posterity, do, for the more certain security thereof and for the better government of this State, ordain and establish this Constitution.

Historical and Statutory Notes

The provisions comprising the Preamble are similar to the Preamble of North Carolina Constitution of 1868.

ARTICLE I

DECLARATION OF RIGHTS

Section

Declaration of Rights.
1. The equality and rights of persons.
2. Sovereignty of the people.
3. Internal government of the State.
4. Secession prohibited.
5. Allegiance to the United States.
6. Separation of powers.
7. Suspending laws.
8. Representation and taxation.
9. Frequent elections.
10. Free elections.
11. Property qualifications.
12. Right of assembly and petition.
13. Religious liberty.
14. Freedom of speech and press.
15. Education.
16. Ex post facto laws.
17. Slavery and involuntary servitude.
18. Courts shall be open.
19. Law of the land; equal protection of the laws.
20. General warrants.
21. Inquiry into restraints on liberty.
22. Modes of prosecution.
23. Rights of accused.
24. Right of jury trial in criminal cases.
25. Right of jury trial in civil cases.
26. Jury service.
27. Bail, fines, and punishments.
28. Imprisonment for debt.
29. Treason against the State.
30. Militia and the right to bear arms.
31. Quartering of soldiers.
32. Exclusive emoluments.
33. Hereditary emoluments and honors.
34. Perpetuities and monopolies.
35. Recurrence to fundamental principles.
36. Other rights of the people.
37. Rights of victims of crime.

Declaration of Rights

That the great, general, and essential principles of liberty and free government may be recognized and established, and that the relations of this State to the Union and government of the United States and those of the people of this State to the rest of the American people may be defined and affirmed, we do declare that:

Section 1. The equality and rights of persons

We hold it to be self-evident that all persons are created equal; that they are endowed by their Creator with certain inalienable

rights; that among these are life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 1, § 1.

Sec. 2. Sovereignty of the people

All political power is vested in and derived from the people; all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 1, § 2.

Sec. 3. Internal government of the State

The people of this State have the inherent, sole, and exclusive right of regulating the internal government and police thereof, and of altering or abolishing their Constitution and form of government whenever it may be necessary to their safety and happiness; but every such right shall be exercised in pursuance of law and consistently with the Constitution of the United States.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 1, § 3.

Sec. 4. Secession prohibited

This State shall ever remain a member of the American Union; the people thereof are part of the American Nation; there is no right on the part of this State to secede; and all attempts, from whatever source or upon whatever pretext, to dissolve this Union or to sever this Nation, shall be resisted with the whole power of the State.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 1, § 4.

Sec. 5. Allegiance to the United States

Every citizen of this State owes paramount allegiance to the Constitution and government of the United States, and no law or ordinance of the State in contravention or subversion thereof can have any binding force.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 1, § 5.

Sec. 6. Separation of powers

The legislative, executive, and supreme judicial powers of the State government shall be forever separate and distinct from each other.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 1, § 8.

Sec. 7. Suspending laws

All power of suspending laws or the execution of laws by any authority, without the consent of the representatives of the people, is injurious to their rights and shall not be exercised.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 1, § 9.

Sec. 8. Representation and taxation

The people of this State shall not be taxed or made subject to the payment of any impost or duty without the consent of themselves or their representatives in the General Assembly, freely given.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 1, § 23.

Sec. 9. Frequent elections

For redress of grievances and for amending and strengthening the laws, elections shall be often held.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 1, § 28.

Notes of Decisions

In general 1

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1. In general

One-time delay in certain judicial elections created by statute postponing election of certain superior court judges so as to eliminate staggered terms did not violate right of citizens to vote guaranteed by State Constitution. State ex rel. Martin v. Preston, 1989, 385 S.E.2d 473, 325 N.C. 438. Elections ⚷ 10.5; Judges ⚷ 3

Sec. 10. Free elections

All elections shall be free.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 1, § 10.

Notes of Decisions

In general 1

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1. In general

North Carolina statute requiring unaffiliated candidate for county commissioner to file petition signed by ten percent of registered voters in county infringes on candidate's rights to associate for advancement of political beliefs and to cast votes effectively, violates state and federal equal protection clauses, and violates state constitutional right to free elections. Obie v. North Carolina State Bd. of Elections, 1991, 762 F.Supp. 119. Constitutional Law ⚷ 82(8); Constitutional Law ⚷ 91; Constitutional Law ⚷ 225.2(3.1); Counties ⚷ 41

Court could not order state to provide public financing for political campaigns, as issue was for the legislature; state constitution did not require public financing, and court could not read requirement into constitution. Royal v. State, 2002, 153 N.C.App. 495, 570 S.E.2d 738, appeal dismissed, review denied 356 N.C. 677, 576 S.E.2d 111. Constitutional Law ⚷ 45; Constitutional Law ⚷ 70.1(7.1); Elections ⚷ 317.2

The statute requiring, as a condition of party transfer, that voter make oath that he will support the nominees of party to which he is transferring "in the next general election and the said party nominees thereafter until I shall, in good faith, change my party affiliation in the manner provided by law" is invalid as violating principle of freedom of conscience and denying a free ballot. Clark v. Meyland, 1964, 134 S.E.2d 168, 261 N.C. 140. Elections ⚷ 21

Supreme Court would dismiss appeal by plaintiff from judgment refusing to issue writ of mandamus requiring defendant election officials to permit filing by plaintiff as candidate for nomination of Republican Party for representative in lower house of General Assembly, where election had been held. Ratcliff v. Rodman, 1962, 127 S.E.2d 788, 258 N.C. 60. Appeal And Error ⚷ 781(4)

Candidate was not in position to call for determination of constitutionality of charter amendment providing that no ballot for Commissioners shall be valid unless as many candidates shall be voted for as there are vacancies where, even if credited with all rejected ballots, candidate would not have had enough votes to change results. Watkins v. City of Wilson, 1961, 121 S.E.2d 861, 255 N.C. 510, appeal dismissed, certiorari denied 82 S.Ct. 1166, 370 U.S. 46, 8 L.Ed.2d 398. Constitutional Law ⚷ 42.3(3)

Sec. 11. Property qualifications

As political rights and privileges are not dependent upon or modified by property, no property qualification shall affect the right to vote or hold office.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 1, § 22.

Notes of Decisions

In general 1

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1. In general

Court could not order state to provide public financing for political campaigns, as issue was for the legislature; state constitution did not require public financing, and court could not read requirement into constitution. Royal v. State, 2002, 153 N.C.App. 495, 570 S.E.2d 738, appeal dismissed, review denied 356 N.C. 677, 576 S.E.2d 111. Constitutional Law ⚷ 45; Constitutional Law ⚷ 70.1(7.1); Elections ⚷ 317.2

Corporate lessee had no fundamental right to vote in municipal annexation referendum since corporations are limited artificial entities, designed primarily for purpose of managing economic resources, since single corporation could multiply its voting power merely by creating property-owning subsidiaries in area proposed for annexation, and since primary interests that corporate lessee had at stake were property interests. Texfi Industries, Inc. v. City of Fayetteville, 1979, 261 S.E.2d 21, 44 N.C.App. 268, review denied 267 S.E.2d 671, 299 N.C. 741, review allowed 267 S.E.2d 671, 299 N.C. 741, affirmed 269 S.E.2d 142, 301 N.C. 1. Elections ⚷ 15

Sec. 12. Right of assembly and petition

The people have a right to assemble together to consult for their common good, to instruct their representatives, and to apply to the General Assembly for redress of grievances; but secret political societies are dangerous to the liberties of a free people and shall not be tolerated.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 1, § 25.

Sec. 13. Religious liberty

All persons have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences, and no human authority shall, in any case whatever, control or interfere with the rights of conscience.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 1, § 26.

Sec. 14. Freedom of speech and press

Freedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained, but every person shall be held responsible for their abuse.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 1, § 20.

Sec. 15. Education

The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 1, § 27.

Sec. 16. Ex post facto laws

Retrospective laws, punishing acts committed before the existence of such laws and by them only declared criminal, are oppressive, unjust, and incompatible with liberty, and therefore no ex post facto law shall be enacted. No law taxing retrospectively sales, purchases, or other acts previously done shall be enacted.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 1, § 32.

Sec. 17. Slavery and involuntary servitude

Slavery is forever prohibited. Involuntary servitude, except as a punishment for crime whereof the parties have been adjudged guilty, is forever prohibited.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 1, § 33.

Sec. 18. Courts shall be open

All courts shall be open; every person for an injury done him in his lands, goods, person, or reputation shall have remedy by due course of law; and right and justice shall be administered without favor, denial, or delay.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 1, § 35.

Sec. 19. Law of the land; equal protection of the laws

No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land. No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 1, § 17.

Sec. 20. General warrants

General warrants, whereby any officer or other person may be commanded to search suspected places without evidence of the act committed, or to seize any person or persons not named, whose offense is not particularly described and supported by evidence, are dangerous to liberty and shall not be granted.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 1, § 15.

Sec. 21. Inquiry into restraints on liberty

Every person restrained of his liberty is entitled to a remedy to inquire into the lawfulness thereof, and to remove the restraint if unlawful, and that remedy shall not be denied or delayed. The privilege of the writ of habeas corpus shall not be suspended.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 1, §§ 18 and 21.

Sec. 22. Modes of prosecution

Except in misdemeanor cases initiated in the District Court Division, no person shall be put to answer any criminal charge but by indictment, presentment, or impeachment. But any person, when represented by counsel, may, under such regulations as the General Assembly shall prescribe, waive indictment in noncapital cases.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 1, § 12.

Sec. 23. Rights of accused

In all criminal prosecutions, every person charged with crime has the right to be informed of the accusation and to confront the accusers and witnesses with other testimony, and to have counsel for defense, and not be compelled to give self-incriminating evidence, or to pay costs, jail fees, or necessary witness fees of the defense, unless found guilty.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 1, § 11.

Sec. 24. Right of jury trial in criminal cases

No person shall be convicted of any crime but by the unanimous verdict of a jury in open court. The General Assembly may, however, provide for other means of trial for misdemeanors, with the right of appeal for trial de novo.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 1, § 13.

Sec. 25. Right of jury trial in civil cases

In all controversies at law respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people, and shall remain sacred and inviolable.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 1, § 19 in part.

Sec. 26. Jury service

No person shall be excluded from jury service on account of sex, race, color, religion, or national origin.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 1, § 19 in part.

Sec. 27. Bail, fines, and punishments

Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 1, § 14.

Sec. 28. Imprisonment for debt

There shall be no imprisonment for debt in this State, except in cases of fraud.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 1, § 16.

Sec. 29. Treason against the State

Treason against the State shall consist only of levying war against it or adhering to its enemies by giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court. No conviction of treason or attainder shall work corruption of blood or forfeiture.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 1, § 37.

Sec. 30. Militia and the right to bear arms

A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed; and, as standing armies in time of peace are dangerous to liberty, they shall not be maintained, and the military shall be kept under strict subordination to, and governed by, the civil power. Nothing herein shall justify the practice of carrying concealed weapons, or prevent the General Assembly from enacting penal statutes against that practice.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 1, § 24.

Sec. 31. Quartering of soldiers

No soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war but in a manner prescribed by law.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 1, § 36.

Sec. 32. Exclusive emoluments

No person or set of persons is entitled to exclusive or separate emoluments or privileges from the community but in consideration of public services.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 1, § 7.

Sec. 33. Hereditary emoluments and honors

No hereditary emoluments, privileges, or honors shall be granted or conferred in this State.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 1, § 30.

Sec. 34. Perpetuities and monopolies

Perpetuities and monopolies are contrary to the genius of a free state and shall not be allowed.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 1, § 31.

Sec. 35. Recurrence to fundamental principles

A frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 1, § 29.

Sec. 36. Other rights of the people

The enumeration of rights in this Article shall not be construed to impair or deny others retained by the people.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 1, § 38.

Sec. 37. Rights of victims of crime

(1) Basic rights. Victims of crime, as prescribed by law, shall be entitled to the following basic rights:

(a) The right as prescribed by law to be informed of and to be present at court proceedings of the accused.

(b) The right to be heard at sentencing of the accused in a manner prescribed by law, and at other times as prescribed by law or deemed appropriate by the court.

(c) The right as prescribed by law to receive restitution.

(d) The right as prescribed by law to be given information about the crime, how the criminal justice system works, the rights of victims, and the availability of services for victims.

(e) The right as prescribed by law to receive information about the conviction or final disposition and sentence of the accused.

(f) The right as prescribed by law to receive notification of escape, release, proposed parole or pardon of the accused, or notice of a reprieve or commutation of the accused's sentence.

(g) The right as prescribed by law to present their views and concerns to the Governor or agency considering any action that could result in the release of the accused, prior to such action becoming effective.

(h) The right as prescribed by law to confer with the prosecution.

(2) No money damages; other enforcement. Nothing in this section shall be construed as creating a claim for money damages against the State, a county, a municipality, or any of the agencies, instrumentalities, or employees thereof. The General Assembly may provide for other remedies to ensure adequate enforcement of this section.

(3) No ground for relief in criminal case. The failure or inability of any person to provide a right or service provided under this section may not be used by a defendant in a criminal case, an inmate, or any other accused as a ground for relief in any trial, appeal, postconviction litigation, habeas corpus, civil action, or any similar criminal or civil proceeding.

Added by Laws 1995, c. 438, § 1.

Historical and Statutory Notes

Laws 1995, c. 438, §§ 2, 3, provide:

''Sec. 2. The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at the general election to be held in November 1996, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

'' '[ ] FOR [ ] AGAINST

Constitutional amendment adding Victims' Rights Amendment, giving crime victims basic rights to participate in the justice system'.

''Sec. 3. If a majority of the votes cast on the question are in favor of the amendment set out in Section 1 of this act, the State Board of Elections shall certify the amendment to the Secretary of State. The amendment becomes effective upon this certification. The Secretary of State shall enroll the amendment so certified among the permanent records of that office.''

Laws 1995, c. 438, was ratified July 17, 1995.

The constitutional amendment proposed by Laws 1994, c. 438, § 1, was approved at the 1996 general election, and certified Nov. 26, 1996.

ARTICLE II

LEGISLATIVE

Section

1. Legislative power.
2. Number of Senators.
3. Senate districts; apportionment of Senators.
4. Number of Representatives.
5. Representative districts; apportionment of Representatives.
6. Qualifications for Senator.
7. Qualifications for Representative.
8. Elections.
9. Term of office.
10. Vacancies.
11. Sessions.
12. Oath of members.
13. President of the Senate.
14. Other officers of the Senate.
15. Officers of the House of Representatives.
16. Compensation and allowances.
17. Journals.
18. Protests.
19. Record votes.
20. Powers of the General Assembly.
21. Style of the acts.
22. Action on bills.
23. Revenue bills.
24. Limitations on local, private, and special legislation.

Section 1. Legislative power

The legislative power of the State shall be vested in the General Assembly, which shall consist of a Senate and a House of Representatives.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 2, § 1.

Sec. 2. Number of Senators

The Senate shall be composed of 50 Senators, biennially chosen by ballot.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 2, § 3.

Sec. 3. Senate districts; apportionment of Senators

The Senators shall be elected from districts. The General Assembly, at the first regular session convening after the return of every decennial census of population taken by order of Congress, shall revise the senate districts and the apportionment of Senators among those districts, subject to the following requirements:

(1) Each Senator shall represent, as nearly as may be, an equal number of inhabitants, the number of inhabitants that each Senator represents being determined for this purpose by dividing the population of the district that he represents by the number of Senators apportioned to that district;

(2) Each senate district shall at all times consist of contiguous territory;

(3) No county shall be divided in the formation of a senate district;

(4) When established, the senate districts and the apportionment of Senators shall remain unaltered until the return of another decennial census of population taken by order of Congress.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 2, § 4.

Notes of Decisions

In general 1

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1. In general

Challenge to United States Attorney General's implicit determination that 1968 amendments to North Carolina Constitution prohibiting general assembly from splitting counties and apportioning legislative districts constituted voting changes required preclearance under Voting Rights Act could be brought only in the District Court for the District of Columbia and determination could not be challenged in action in North Carolina federal district court involving issue whether the constitutional provisions had effect in those counties where preclearance was not required.

Cavanagh v. Brock, 1983, 577 F.Supp. 176. Federal Courts ⚷ 74

Original federal question jurisdiction did not lie in action seeking declaration of invalidity of North Carolina legislative reapportionment plan as violative of state constitutional ban on splitting counties as plaintiffs advanced solely a state constitutional claim and any federal questions put in issue were matters of defense, i.e., that compliance with the state Constitution was foreclosed by the supremacy clause. Cavanagh v. Brock, 1983, 577 F.Supp. 176. Federal Courts ⚷ 172

The 1968 amendments to North Carolina Constitution prohibiting general assembly from splitting counties in apportioning state senate and house districts had no force or effect state-wide once United States Attorney General interposed objection to their application to forty counties subject to preclearance requirements under Voting Rights Act, and the amendments were not effective in remaining 60 counties not subject to preclearance, i.e., were not severable as to the latter counties, regardless of whether matter was characterized as a ''suspension'' or ''voiding.'' Voting Rights Act of 1965, §§ 2 et seq., 5, 42 U.S.C.A. §§ 1973 et seq., 1973c; N.C. Const. Art. 2, §§ 3, 3(3), 5, 5(3). Cavanagh v. Brock, 1983, 577 F.Supp. 176. Constitutional Law ⚷ 49

Where minimum controlling percentage of state's population residing in least populous districts capable of electing majority of state Senate was 47.1% and population variance ratio between most and least populous district was 2.3 to 1, apportionment of Senate in view of malapportionment of House of Representatives was not sufficiently grounded on population to be constitutionally sustainable and accordingly statute apportioning Senators among districts of state was null and void. Drum v. Seawell, 1965, 249 F.Supp. 877, affirmed 86 S.Ct. 1237, 383 U.S. 831, 16 L.Ed.2d 298. States ⚷ 27(6)

State constitutional Whole County Provision (WCP) forbids the division of a county in the formation of a legislative district, except to the extent the WCP conflicts with the Voting Rights Act and ''one-person, one-vote'' principles. Pender County v. Bartlett, 2007, 361 N.C. 491, 649 S.E.2d 364, certiorari granted 128 S.Ct. 1648, 170 L.Ed.2d 352, affirmed 129 S.Ct. 1231, 173 L.Ed.2d 173. Constitutional Law ⚷ 3658(7); States ⚷ 27(7)

State constitutional Whole County Provision (WCP), limiting legislative redistricting, cannot be applied in isolation or in a manner that fails to comport with other requirements of the state constitution. Pender County v. Bartlett, 2007, 361 N.C. 491, 649 S.E.2d 364, certiorari granted 128 S.Ct. 1648, 170 L.Ed.2d 352, affirmed 129 S.Ct. 1231, 173 L.Ed.2d 173. States ⚷ 27(7)

Although federal law is supreme, when the primary purpose of the state constitutional Whole County Provision (WCP) can be effected to a large degree without conflict with federal law, it should be adhered to by the General Assembly to the maximum extent possible. Pender County v. Bartlett, 2007, 361 N.C. 491, 649 S.E.2d 364, certiorari granted 128 S.Ct. 1648, 170 L.Ed.2d 352, affirmed 129 S.Ct. 1231, 173 L.Ed.2d 173. States ⚷ 27(7)

General Assembly's revised legislative redistricting plans failed to strictly comply with the whole-county provisions of the state constitution, where plans grouped portions of counties to structure individual county groups, and the districts were not compact. Stephenson v. Bartlett, 2003, 357 N.C. 301, 582 S.E.2d 247, rehearing denied 357 N.C. 470, 587 S.E.2d 342. States ⚷ 27(7)

Sec. 4. Number of Representatives

The House of Representatives shall be composed of 120 Representatives, biennially chosen by ballot.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 2, § 5.

Notes of Decisions

In general 1

1. In general

Where population variance ratio between most and least populous district of state was 18.2 to 1 and minimum controlling percentage of state's population residing in least populous districts capable of electing majority of the state House of Representatives was 27.1%, constitutional provisions requiring that each county be afforded at least one representative regardless of its population and implementing statute were null and void as violative of equal protection provisions. Drum v. Seawell, 1965, 249 F.Supp. 877, affirmed 86 S.Ct. 1237, 383 U.S. 831, 16 L.Ed.2d 298. Constitutional Law ⚷ 225.3(7)

Sec. 5. Representative districts; apportionment of Representatives

The Representatives shall be elected from districts. The General Assembly, at the first regular session convening after the return of every decennial census of population taken by order of Congress, shall revise the representative districts and the apportionment of Representatives among those districts, subject to the following requirements:

(1) Each Representative shall represent, as nearly as may be, an equal number of inhabitants, the number of inhabitants that each Representative represents being determined for this purpose by dividing the population of the district that he represents by the number of Representatives apportioned to that district;

(2) Each representative district shall at all times consist of contiguous territory;

(3) No county shall be divided in the formation of a representative district;

(4) When established, the representative districts and the apportionment of Representatives shall remain unaltered until the return of another decennial census of population taken by order of Congress.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 2, § 6.

Notes of Decisions

In general 1

1. In general

The 1968 amendments to North Carolina Constitution prohibiting general assembly from splitting counties in apportioning state senate and house districts had no force or effect state-wide once United States Attorney General interposed objection to their application to forty counties subject to preclearance requirements under Voting Rights Act, and the amendments were not effective in remaining 60 counties not subject to preclearance, i.e., were not severable as to the latter counties, regardless of whether matter was characterized as a "suspension" or "voiding." Voting Rights Act of 1965, §§ 2 et seq., 5, 42 U.S.C.A. §§ 1973 et seq., 1973c; N.C. Const. Art. 2, §§ 3, 3(3), 5, 5(3). Cav-

anagh v. Brock, 1983, 577 F.Supp. 176. Constitutional Law ⚷ 49

Challenge to United States Attorney General's implicit determination that 1968 amendments to North Carolina Constitution prohibiting general assembly from splitting counties and apportioning legislative districts constituted voting changes required preclearance under Voting Rights Act could be brought only in the District Court for the District of Columbia and determination could not be challenged in action in North Carolina federal district court involving issue whether the constitutional provisions had effect in those counties where preclearance was not required. Cavanagh v. Brock, 1983, 577 F.Supp. 176. Federal Courts ⚷ 74

Action by registered voters seeking declaratory and injunctive relief restraining implementation of reapportionment plan for North Carolina legislature as violative of state constitutional amendments banning splitting of counties was properly removed to federal court by defendant state election officials where defense was that the action challenged was compelled by the Voting Rights Act and equal protection clause and removal was proper even though decision might ultimately rest exclusively on a state law defense. Cavanagh v. Brock, 1983, 577 F.Supp. 176. Removal Of Cases ⚷ 19(1)

Where population variance ratio between most and least populous district of state was 18.2 to 1 and minimum controlling percentage of state's population residing in least populous districts capable of electing majority of the state House of Representatives was 27.1%, constitutional provisions requiring that each county be afforded at least one representative regardless of its population and implementing statute were null and void as violative of equal protection provisions. Drum v. Seawell, 1965, 249 F.Supp. 877, affirmed 86 S.Ct. 1237, 383 U.S. 831, 16 L.Ed.2d 298. Constitutional Law ⚷ 225.3(7)

State constitutional Whole County Provision (WCP) forbids the division of a county in the formation of a legislative district, except to the extent the WCP conflicts with the Voting Rights Act and "one-person, one-vote" principles. Pender County v. Bartlett, 2007, 361 N.C. 491, 649 S.E.2d 364, certiorari granted 128 S.Ct. 1648, 170 L.Ed.2d 352, affirmed 129 S.Ct. 1231, 173 L.Ed.2d 173. Constitutional Law ⚷ 3658(7); States ⚷ 27(7)

General Assembly's revised legislative redistricting plans failed to strictly comply with the whole-county provisions of the state constitution, where plans grouped portions of counties to structure individual county groups, and the districts were not compact. Stephenson v. Bartlett, 2003, 357 N.C. 301, 582 S.E.2d 247, rehearing denied 357 N.C. 470, 587 S.E.2d 342. States ⚷ 27(7)

Sec. 6. Qualifications for Senator

Each Senator, at the time of his election, shall be not less than 25 years of age, shall be a qualified voter of the State, and shall have resided in the State as a citizen for two years and in the district for which he is chosen for one year immediately preceding his election.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 2, § 7.

Notes of Decisions

Campaign financing 1

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1. Campaign financing

Court could not order state to provide public financing for political campaigns, as issue was for the legislature; state constitution did not require public financing, and court could not read requirement into constitution. Royal v. State, 2002, 153 N.C.App. 495, 570 S.E.2d 738, appeal dismissed, review denied 356 N.C. 677, 576 S.E.2d 111.

Constitutional Law ⚷ 45; Constitutional Law ⚷ 70.1(7.1); Elections ⚷ 317.2

Sec. 7. Qualifications for Representative

Each Representative, at the time of his election, shall be a qualified voter of the State, and shall have resided in the district for which he is chosen for one year immediately preceding his election.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 2, § 6.

Notes of Decisions

Campaign financing 1

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1. Campaign financing

Court could not order state to provide public financing for political campaigns, as issue was for the legislature; state constitution did not require public financing, and court could not read requirement into constitution. Royal v. State, 2002, 153 N.C.App. 495, 570 S.E.2d 738, appeal dismissed, review denied 356 N.C. 677, 576 S.E.2d 111. Constitutional Law ⚷ 45; Constitutional Law ⚷ 70.1(7.1); Elections ⚷ 317.2

Sec. 8. Elections

The election for members of the General Assembly shall be held for the respective districts in 1972 and every two years thereafter, at the places and on the day prescribed by law.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 2, § 27.

Sec. 9. Term of office

The term of office of Senators and Representatives shall commence on the first day of January next after their election.

Amended by Laws 1981, (Reg. Sess.), c. 1241, § 1.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 2, § 25.

Sec. 10. Vacancies

Every vacancy occurring in the membership of the General Assembly by reason of death, resignation, or other cause shall be filled in the manner prescribed by law.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 2, § 13.

Sec. 11. Sessions

(1) Regular sessions. The General Assembly shall meet in regular session in 1973 and every two years thereafter on the day prescribed by law. Neither house shall proceed upon public business unless a majority of all of its members are actually present.

(2) Extra sessions on legislative call. The President of the Senate and the Speaker of the House of Representatives shall convene the General Assembly in extra session by their joint proclamation upon receipt by the President of the Senate of written requests therefor signed by three-fifths of all the members of the Senate and upon receipt by the Speaker of the House of Representatives of written requests therefor signed by three-fifths of all the members of the House of Representatives.

Amended by Laws 1969, c. 1270, § 1.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 2, § 2.

Sec. 12. Oath of members

Each member of the General Assembly, before taking his seat, shall take an oath or affirmation that he will support the Constitution and laws of the United States and the Constitution of the State of North Carolina, and will faithfully discharge his duty as a member of the Senate or House of Representatives.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 2, § 24.

Sec. 13. President of the Senate

The Lieutenant Governor shall be President of the Senate and shall preside over the Senate, but shall have no vote unless the Senate is equally divided.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 2, § 19.

Sec. 14. Other officers of the Senate

(1) President Pro Tempore—succession to presidency. The Senate shall elect from its membership a President Pro Tempore, who shall become President of the Senate upon the failure of the Lieutenant Governor-elect to qualify, or upon succession by the Lieutenant Governor to the office of Governor, or upon the death, resignation, or removal from office of the President of the Senate, and who shall serve until the expiration of his term of office as Senator.

(2) President Pro Tempore—temporary succession. During the physical or mental incapacity of the President of the Senate to perform the duties of his office, or during the absence of the President of the Senate, the President Pro Tempore shall preside over the Senate.

(3) Other officers. The Senate shall elect its other officers.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 2, § 20.

Sec. 15. Officers of the House of Representatives

The House of Representatives shall elect its Speaker and other officers.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 2, § 18.

Sec. 16. Compensation and allowances

The members and officers of the General Assembly shall receive for their services the compensation and allowances prescribed by law. An increase in the compensation or allowances of members shall become effective at the beginning of the next regular session of the General Assembly following the session at which it was enacted.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 2, § 28.

Sec. 17. Journals

Each house shall keep a journal of its proceedings, which shall be printed and made public immediately after the adjournment of the General Assembly.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 2, § 16.

Sec. 18. Protests

Any member of either house may dissent from and protest against any act or resolve which he may think injurious to the public or to any individual, and have the reasons of his dissent entered on the journal.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 2, § 17.

Sec. 19. Record votes

Upon motion made in either house and seconded by one fifth of the members present, the yeas and nays upon any question shall be taken and entered upon the journal.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 2, § 26.

Sec. 20. Powers of the General Assembly

Each house shall be judge of the qualifications and elections of its own members, shall sit upon its own adjournment from day to day, and shall prepare bills to be enacted into laws. The two houses may jointly adjourn to any future day or other place. Either house may, of its own motion, adjourn for a period not in excess of three days.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 2, § 22.

Sec. 21. Style of the acts

The style of the acts shall be: ''The General Assembly of North Carolina enacts:''.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 2, § 21.

Sec. 22. Action on bills

(1) Bills subject to veto by Governor; override of veto. Except as provided by subsections (2) through (6) of this section, all bills shall be read three times in each house and shall be signed by the presiding officer of each house before being presented to the Governor. If the Governor approves, the Governor shall sign it and it shall become a law; but if not, the Governor shall return it with objections, together with a veto message stating the reasons for such objections, to that house in which it shall have originated, which shall enter the objections and veto message at large on its journal, and proceed to reconsider it. If after such reconsideration three-fifths of the members of that house present and voting shall agree to pass the bill, it shall be sent, together with the objections and veto message, to the other house, by which it shall likewise be reconsidered; and if approved by three-fifths of the members of that house present and voting, it shall become a law notwithstanding the objections of the Governor. In all such cases the votes of both houses shall be determined by yeas and nays, and the names of the members voting shall be entered on the journal of each house respectively.

(2) Amendments to Constitution of North Carolina. Every bill proposing a new or revised Constitution or an amendment or amendments to this Constitution or calling a convention of the people of this State, and containing no other matter, shall be submitted to the qualified voters of this State after it shall have been read three times in each house and signed by the presiding officers of both houses.

(3) Amendments to Constitution of the United States. Every bill approving an amendment to the Constitution of the United States, or applying for a convention to propose amendments to the Constitution of the United States, and containing no other matter, shall be read three times in each house before it becomes law, and shall be signed by the presiding officers of both houses.

(4) Joint resolutions. Every joint resolution shall be read three times in each house before it becomes effective and shall be signed by the presiding officers of both houses.

(5) Other exceptions. Every bill:

(a) In which the General Assembly makes an appointment or appointments to public office and which contains no other matter;

(b) Revising the senate districts and the apportionment of Senators among those districts and containing no other matter;

(c) Revising the representative districts and the apportionment of Representatives among those districts and containing no other matter; or

(d) Revising the districts for the election of members of the House of Representatives of the Congress of the United States and the apportionment of Representatives among those districts and containing no other matter,

shall be read three times in each house before it becomes law and shall be signed by the presiding officers of both houses.

(6) Local bills. Every bill that applies in fewer than 15 counties shall be read three times in each house before it becomes law and shall be signed by the presiding officers of both houses. The exemption from veto by the Governor provided in this subsection does not apply if the bill, at the time it is signed by the presiding officers:

(a) Would extend the application of a law signed by the presiding officers during that two year term of the General Assembly so that the law would apply in more than half the counties in the State, or

(b) Would enact a law identical in effect to another law or laws signed by the presiding officers during that two year term of the General Assembly that the result of those laws taken together would be a law applying in more than half the counties in the State.

Notwithstanding any other language in this subsection, the exemption from veto provided by this subsection does not apply to any bill to enact a general law classified by population or other criteria, or to any bill that contains an appropriation from the State treasury.

(7) Time for action by Governor; reconvening of session. If any bill shall not be returned by the Governor within 10 days after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the General Assembly shall have adjourned:

(a) For more than 30 days jointly as provided under Section 20 of Article II of this Constitution; or

(b) Sine die

in which case it shall become a law unless, within 30 days after such adjournment, it is returned by the Governor with objections and veto message to that house in which it shall have originated. When the General Assembly has adjourned sine die or for more than 30 days jointly as provided under Section 20 of Article II of this Constitution, the Governor shall reconvene that session as provided by Section 5(11) of Article III of this Constitution for reconsideration of the bill, and if the Governor does not reconvene the session, the bill shall become law on the fortieth day after such

adjournment. Notwithstanding the previous sentence, if the Governor prior to reconvening the session receives written requests dated no earlier than 30 days after such adjournment, signed by a majority of the members of each house that a reconvened session to reconsider vetoed legislation is unnecessary, the Governor shall not reconvene the session for that purpose and any legislation vetoed in accordance with this section after adjournment shall not become law.

(8) Return of bills after adjournment. For purposes of return of bills not approved by the Governor, each house shall designate an officer to receive returned bills during its adjournment.

Amended by Laws 1995, c. 5, § 1, eff. Jan. 1, 1997.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 2, § 23.

Laws 1995, c. 5, §§ 3, 4, provide:

''Sec. 3. The amendments set out in Sections 1 and 2 of this act shall be submitted to the qualified voters of the State at the general election in November of 1996, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

'' '[ ] FOR [ ] AGAINST

''Constitutional amendments granting veto power to the Governor'.

''Sec. 4. If a majority of votes cast on the question are in favor of the amendments set out in Sections 1 and 2 of this act, the State Board of Elections shall certify the amendments to the Secretary of State. The amendments become effective January 1, 1997. The Secretary of State shall enroll the amendments so certified among the permanent records of that office.''

Laws 1995, c. 5, was ratified March 8, 1995.

The constitutional amendments proposed by Laws 1995, c. 5, §§ 1 and 2, were approved at the 1996 general election, and were certified Nov. 26, 1996.

Sec. 23. Revenue bills

No law shall be enacted to raise money on the credit of the State, or to pledge the faith of the State directly or indirectly for the payment of any debt, or to impose any tax upon the people of the State, or to allow the counties, cities, or towns to do so, unless the bill for the purpose shall have been read three several times in each house of the General Assembly and passed three several readings, which readings shall have been on three different days, and shall have been agreed to by each house respectively, and unless the yeas and nays on the second and third readings of the bill shall have been entered on the journal.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 2, § 14.

Sec. 24. Limitations on local, private, and special legislation

(1) Prohibited subjects. The General Assembly shall not enact any local, private, or special act or resolution:

(a) Relating to health, sanitation, and the abatement of nuisances;

(b) Changing the names of cities, towns, and townships;

(c) Authorizing the laying out, opening, altering, maintaining, or discontinuing of highways, streets, or alleys;

(d) Relating to ferries or bridges;

(e) Relating to non-navigable streams;

(f) Relating to cemeteries;

(g) Relating to the pay of jurors;

(h) Erecting new townships, or changing township lines, or establishing or changing the lines of school districts;

(i) Remitting fines, penalties, and forfeitures, or refunding moneys legally paid into the public treasury;

(j) Regulating labor, trade, mining, or manufacturing;

(k) Extending the time for the levy or collection of taxes or otherwise relieving any collector of taxes from the due performance of his official duties or his sureties from liability;

(*l*) Giving effect to informal wills and deeds;

(m) Granting a divorce or securing alimony in any individual case;

(n) Altering the name of any person, or legitimating any person not born in lawful wedlock, or restoring to the rights of citizenship any person convicted of a felony.

(2) Repeals. Nor shall the General Assembly enact any such local, private, or special act by the partial repeal of a general law; but the General Assembly may at any time repeal local, private, or special laws enacted by it.

(3) Prohibited acts void. Any local, private, or special act or resolution enacted in violation of the provisions of this Section shall be void.

(4) General laws. The General Assembly may enact general laws regulating the matters set out in this Section.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 2, §§ 10, 11 and 29.

ARTICLE III

EXECUTIVE

Section

1. Executive power.
2. Governor and Lieutenant Governor: election, term, and qualifications.
3. Succession to office of Governor.
4. Oath of office for Governor.
5. Duties of Governor.
6. Duties of the Lieutenant Governor.
7. Other elective officers.
8. Council of State.
9. Compensation and allowances.
10. Seal of State.
11. Administrative departments.

Cross References

Appeal of a final decision to superior court; appeal to the General Assembly or a house thereof, see § 163–182.14.

Certificate of nomination or election, or certificate of the results of a referendum, see § 163–182.15.

Contested elections for Council of State offices, see § 163–182.13A.

Duration of boards and councils created by executive officials; extensions, see § 147–16.2.

Policy-making authority and administrative powers of Governor; delegation, see §§ 143A–4, 143B-4.

Section 1. Executive power

The executive power of the State shall be vested in the Governor.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 3, § 1 in part.

Notes of Decisions

Construction and application 1
Separation of powers 2
Succession in office 3

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1. Construction and application

The governor is the chief executive officer of the state and is head of the executive branch of government. Carrington v. Brown, 2000, 136 N.C.App. 554, 525 S.E.2d 230, review denied 352 N.C. 147, 543 S.E.2d 892. States ⚷ 41

Statutory and common-law duty of Attorney General to appear for and to defend state or its agencies in all actions in which state may be party or interested is not in derogation of or inconsistent with executive power vested by Constitution in governor. Martin v. Thornburg, 1987, 359 S.E.2d 472, 320 N.C. 533. Attorney General ⚷ 6

2. Separation of powers

Appointment of director of the Office of Administrative Hearing was not an exercise of executive power and thus it did not violate separation of powers provision of State Constitution for General Assembly to provide Chief Justice of Supreme Court with power to appoint director of Office of Administrative Hearings. (Per Webb, J., with two Justices concurring in result.) Const. Art. 3, §§ 1, 5(4, 8). State ex rel. Martin v. Melott, 1987, 359 S.E.2d 783, 320 N.C. 518. Constitutional Law ⚷ 58

Each of successively adopted State Constitutions explicitly embraced doc-

trine of separation of powers. Const. Art. 1, § 6. State ex rel. Wallace v. Bone, 1982, 286 S.E.2d 79, 304 N.C. 591. Constitutional Law ⚷ 50

Principle of separation of powers is cornerstone of state and federal governments. Const.Art. 1, § 6; U.S.C.A.Const.Art. 1, § 1; Art. 2, § 1; Art. 3, § 1. State ex rel. Wallace v. Bone, 1982, 286 S.E.2d 79, 304 N.C. 591. Constitutional Law ⚷ 50

3. Succession in office

The succession of governor and lieutenant-governor is fixed by the Constitution and a vacancy in the office of lieutenant-governor may not be filled at an election for any portion of unexpired term. Thomas v. State Bd. of Elections, 1962, 124 S.E.2d 164, 256 N.C. 401. States ⚷ 41; States ⚷ 42

Governor has no authority to appoint a successor to fill out vacancy existing by reason of death of lieutenant-governor. Thomas v. State Bd. of Elections, 1962, 124 S.E.2d 164, 256 N.C. 401. States ⚷ 42

When vacancy occurs in office of lieutenant-governor, the powers, duties and emoluments of such office devolve upon president of senate for unexpired portion of the lieutenant-governor's term. Thomas v. State Bd. of Elections, 1962, 124 S.E.2d 164, 256 N.C. 401. States ⚷ 42

Sec. 2. Governor and Lieutenant Governor: election, term, and qualifications

(1) Election and term. The Governor and Lieutenant Governor shall be elected by the qualified voters of the State in 1972 and every four years thereafter, at the same time and places as members of the General Assembly are elected. Their term of office shall be four years and shall commence on the first day of January next after their election and continue until their successors are elected and qualified.

(2) Qualifications. No person shall be eligible for election to the office of Governor or Lieutenant Governor unless, at the time of his election, he shall have attained the age of 30 years and shall have been a citizen of the United States for five years and a resident of this State for two years immediately preceding his election. No person elected to the office of Governor or Lieutenant Governor shall be eligible for election to more than two consecutive terms of the same office.

Amended by Laws 1977, c. 363, § 1.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 3, §§ 1 in part, and 2.

United States Code Annotated

Election of President, see U.S.C.A. Const. Art. 2, § 1.
Qualification of President, see U.S.C.A. Const. Art. 2, § 1.
Successive terms of office, President, see U.S.C.A. Const. Amend. 22.
Term of office, President, see U.S.C.A. Const. Amend. 20.

Notes of Decisions

Succession in office 1

1. Succession in office

The succession of governor and lieutenant-governor is fixed by the Constitution and a vacancy in the office of lieutenant-governor may not be filled at an election for any portion of unexpired term. Thomas v. State Bd. of Elections, 1962, 124 S.E.2d 164, 256 N.C. 401. States ⚷ 41; States ⚷ 42

Governor has no authority to appoint a successor to fill out vacancy existing by reason of death of lieutenant-governor. Thomas v. State Bd. of Elections, 1962, 124 S.E.2d 164, 256 N.C. 401. States ⚷ 42

When vacancy occurs in office of lieutenant-governor, the powers, duties and emoluments of such office devolve upon president of senate for unexpired portion of the lieutenant-governor's term. Thomas v. State Bd. of Elections, 1962, 124 S.E.2d 164, 256 N.C. 401. States ⚷ 42

Sec. 3. Succession to office of Governor

(1) Succession as Governor. The Lieutenant Governor-elect shall become Governor upon the failure of the Governor-elect to qualify. The Lieutenant Governor shall become Governor upon the death, resignation, or removal from office of the Governor. The further order of succession to the office of Governor shall be prescribed by law. A successor shall serve for the remainder of the term of the Governor whom he succeeds and until a new Governor is elected and qualified.

(2) Succession as Acting Governor. During the absence of the Governor from the State, or during the physical or mental incapacity of the Governor to perform the duties of his office, the Lieutenant Governor shall be Acting Governor. The further order of succession as Acting Governor shall be prescribed by law.

(3) Physical incapacity. The Governor may, by a written statement filed with the Attorney General, declare that he is physically incapable of performing the duties of his office, and may thereafter in the same manner declare that he is physically capable of performing the duties of his office.

(4) Mental incapacity. The mental incapacity of the Governor to perform the duties of his office shall be determined only by joint resolution adopted by a vote of two-thirds of all the members of each house of the General Assembly. Thereafter, the mental capacity of the Governor to perform the duties of his office shall be determined only by joint resolution adopted by a vote of a majority of all the members of each house of the General Assembly. In all cases, the General Assembly shall give the Governor such notice as it may deem proper and shall allow him an opportunity to be heard before a joint session of the General Assembly before it takes final action. When the General Assembly is not in session, the Council of State, a majority of its members concurring, may convene it in extra session for the purpose of proceeding under this paragraph.

(5) Impeachment. Removal of the Governor from office for any other cause shall be by impeachment.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 3, § 12.

Sec. 4. Oath of office for Governor

The Governor, before entering upon the duties of his office, shall, before any Justice of the Supreme Court, take an oath or affirmation that he will support the Constitution and laws of the United States and of the State of North Carolina, and that he will faithfully perform the duties pertaining to the office of Governor.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 3, § 4.

Sec. 5. Duties of Governor

(1) Residence. The Governor shall reside at the seat of government of this State.

(2) Information to General Assembly. The Governor shall from time to time give the General Assembly information of the affairs of the State and recommend to their consideration such measures as he shall deem expedient.

(3) Budget. The Governor shall prepare and recommend to the General Assembly a comprehensive budget of the anticipated revenue and proposed expenditures of the State for the ensuing fiscal period. The budget as enacted by the General Assembly shall be administered by the Governor.

The total expenditures of the State for the fiscal period covered by the budget shall not exceed the total of receipts during that fiscal period and the surplus remaining in the State Treasury at the beginning of the period. To insure that the State does not incur a deficit for any fiscal period, the Governor shall continually survey the collection of the revenue and shall effect the necessary economies in State expenditures, after first making adequate provision for the prompt payment of the principal of and interest on bonds and notes of the State according to their terms, whenever he determines that receipts during the fiscal period, when added to any surplus remaining in the State Treasury at the beginning of the period, will not be sufficient to meet budgeted expenditures. This section shall not be construed to impair the power of the State to issue its bonds and notes within the limitations imposed in Article

V of this Constitution, nor to impair the obligation of bonds and notes of the State now outstanding or issued hereafter.

(4) Execution of laws. The Governor shall take care that the laws be faithfully executed.

(5) Commander in Chief. The Governor shall be Commander in Chief of the military forces of the State except when they shall be called into the service of the United States.

(6) Clemency. The Governor may grant reprieves, commutations, and pardons, after conviction, for all offenses (except in cases of impeachment), upon such conditions as he may think proper, subject to regulations prescribed by law relative to the manner of applying for pardons. The terms reprieves, commutations, and pardons shall not include paroles.

(7) Extra sessions. The Governor may, on extraordinary occasions, by and with the advice of the Council of State, convene the General Assembly in extra session by his proclamation, stating therein the purpose or purposes for which they are thus convened.

(8) Appointments. The Governor shall nominate and by and with the advice and consent of a majority of the Senators appoint all officers whose appointments are not otherwise provided for.

(9) Information. The Governor may at any time require information in writing from the head of any administrative department or agency upon any subject relating to the duties of his office.

(10) Administrative reorganization. The General Assembly shall prescribe the functions, powers, and duties of the administrative departments and agencies of the State and may alter them from time to time, but the Governor may make such changes in the allocation of offices and agencies and in the allocation of those functions, powers, and duties as he considers necessary for efficient administration. If those changes affect existing law, they shall be set forth in executive orders, which shall be submitted to the General Assembly not later than the sixtieth calendar day of its session, and shall become effective and shall have the force of law upon adjournment sine die of the session, unless specifically disapproved by resolution of either house of the General Assembly or specifically modified by joint resolution of both houses of the General Assembly.

(11) Reconvened sessions. The Governor shall, when required by Section 22 of Article II of this Constitution, reconvene a session of the General Assembly. At such reconvened session, the General Assembly may only consider such bills as were returned by the Governor to that reconvened session for reconsideration. Such reconvened session shall begin on a date set by the Governor, but no later than 40 days after the General Assembly adjourned:

(a) For more than 30 days jointly as provided under Section 20 of Article II of this Constitution; or

(b) Sine die.

If the date of reconvening the session occurs after the expiration of the terms of office of the members of the General Assembly, then the members serving for the reconvened session shall be the members for the succeeding term.

Amended by Laws 1969, c. 932, § 1; Laws 1977, c. 690, § 1; Laws 1995, c. 5, § 2, eff. Jan. 1, 1997.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 3, §§ 5 to 10.

Laws 1995, c. 5, §§ 3, 4, provide:

''Sec. 3. The amendments set out in Sections 1 and 2 of this act shall be submitted to the qualified voters of the State at the general election in November of 1996, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

'' '[ ] FOR [ ] AGAINST

''Constitutional amendments granting veto power to the Governor'.

''Sec. 4. If a majority of votes cast on the question are in favor of the amendments set out in Sections 1 and 2 of this act, the State Board of Elections shall certify the amendments to the Secretary of State. The amendments become effective January 1, 1997. The Secretary of State shall enroll the amendments so certified among the permanent records of that office.''

Laws 1995, c. 5, was ratified March 8, 1995.

The constitutional amendments proposed by Laws 1995, c. 5, §§ 1 and 2, were approved at the 1996 general election, and were certified Nov. 26, 1996.

Sec. 6. Duties of the Lieutenant Governor

The Lieutenant Governor shall be President of the Senate, but shall have no vote unless the Senate is equally divided. He shall perform such additional duties as the General Assembly or the Governor may assign to him. He shall receive the compensation and allowances prescribed by law.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 3, § 11.

Sec. 7. Other elective officers

(1) Officers. A Secretary of State, an Auditor, a Treasurer, a Superintendent of Public Instruction, an Attorney General, a Commissioner of Agriculture, a Commissioner of Labor, and a Commissioner of Insurance shall be elected by the qualified voters of the State in 1972 and every four years thereafter, at the same time and places as members of the General Assembly are elected. Their term of office shall be four years and shall commence on the first day of January next after their election and continue until their successors are elected and qualified.

(2) Duties. Their respective duties shall be prescribed by law.

(3) Vacancies. If the office of any of these officers is vacated by death, resignation, or otherwise, it shall be the duty of the Governor to appoint another to serve until his successor is elected and qualified. Every such vacancy shall be filled by election at the first election for members of the General Assembly that occurs more than 60 days after the vacancy has taken place, and the person chosen shall hold the office for the remainder of the unexpired term fixed in this Section. When a vacancy occurs in the office of any of the officers named in this Section and the term expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill the vacancy for the unexpired term of the office.

(4) Interim officers. Upon the occurrence of a vacancy in the office of any one of these officers for any of the causes stated in the preceding paragraph, the Governor may appoint an interim officer to perform the duties of that office until a person is appointed or elected pursuant to this Section to fill the vacancy and is qualified.

(5) Acting officers. During the physical or mental incapacity of any one of these officers to perform the duties of his office, as determined pursuant to this Section, the duties of his office shall be performed by an acting officer who shall be appointed by the Governor.

(6) Determination of incapacity. The General Assembly shall by law prescribe with respect to those officers, other than the Governor, whose offices are created by this Article, procedures for determining the physical or mental incapacity of any officer to perform the duties of his office, and for determining whether an officer who has been temporarily incapacitated has sufficiently recovered his physical or mental capacity to perform the duties of his office. Removal of those officers from office for any other cause shall be by impeachment.

(7) Special Qualifications for Attorney General. Only persons duly authorized to practice law in the courts of this State shall be eligible for appointment or election as Attorney General.

Amended by Laws 1983, c. 298, § 1; Laws 1985(Reg. Sess. 1986), c. 920, § 1.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 3, §§ 1 in part and 13.

Sec. 8. Council of State

The Council of State shall consist of the officers whose offices are established by this Article.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 3, § 14.

Sec. 9. Compensation and allowances

The officers whose offices are established by this Article shall at stated periods receive the compensation and allowances prescribed by law, which shall not be diminished during the time for which they have been chosen.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 3, § 15.

Sec. 10. Seal of State

There shall be a seal of the State, which shall be kept by the Governor and used by him as occasion may require, and shall be called ''The Great Seal of the State of North Carolina''. All grants and commissions shall be issued in the name and by the authority of the State of North Carolina, sealed with ''The Great Seal of the State of North Carolina'', and signed by the Governor.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 3, § 16.

Sec. 11. Administrative departments

Not later than July 1, 1975, all administrative departments, agencies, and offices of the State and their respective functions, powers, and duties shall be allocated by law among and within not more than 25 principal administrative departments so as to group them as far as practicable according to major purposes. Regulatory, quasi-judicial, and temporary agencies may, but need not, be allocated within a principal department.

Amended by Laws 1969, c. 932, § 1.

Historical and Statutory Notes

This section was adopted by the electorate at the general election of November 3, 1970 and became effective July 1, 1971.

ARTICLE IV

JUDICIAL

Section

1. Judicial power.

Section

2. General Court of Justice.
3. Judicial powers of administrative agencies.
4. Court for the Trial of Impeachments.
5. Appellate division.
6. Supreme Court.
7. Court of Appeals.
8. Retirement of Justices and Judges.
9. Superior Courts.
10. District Courts.
11. Assignment of Judges.
12. Jurisdiction of the General Court of Justice.
13. Forms of action; rules of procedure.
14. Waiver of jury trial.
15. Administration.
16. Terms of office and election of Justices of the Supreme Court, Judges of the Court of Appeals, and Judges of the Superior Court.
17. Removal of Judges, Magistrates and Clerks.
18. District Attorney and prosecutorial districts.
19. Vacancies.
20. Revenues and expenses of the judicial department.
21. Fees, salaries, and emoluments.
22. Qualification of Justices and Judges.

Cross References

Cash management for the general court of justice, see § 147–86.14.
Cash management for the state, see § 147–86.11.
Creation of the office of juvenile justice, see § 147–33.30.
Principal departments, see § 143B–6.

Section 1. Judicial power

The judicial power of the State shall, except as provided in Section 3 of this Article, be vested in a Court for the Trial of Impeachments and in a General Court of Justice. The General Assembly shall have no power to deprive the judicial department of any power or jurisdiction that rightfully pertains to it as a coordinate department of the government, nor shall it establish or authorize any courts other than as permitted by this Article.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 4, § 1.

Sec. 2. General Court of Justice

The General Court of Justice shall constitute a unified judicial system for purposes of jurisdiction, operation, and administration, and shall consist of an Appellate Division, a Superior Court Division, and a District Court Division.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 4, § 2.

Sec. 3. Judicial powers of administrative agencies

The General Assembly may vest in administrative agencies established pursuant to law such judicial powers as may be reasonably necessary as an incident to the accomplishment of the purposes for which the agencies were created. Appeals from administrative agencies shall be to the General Court of Justice.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 4, § 3.

Sec. 4. Court for the Trial of Impeachments

The House of Representatives solely shall have the power of impeaching. The Court for the Trial of Impeachments shall be the Senate. When the Governor or Lieutenant Governor is impeached, the Chief Justice shall preside over the Court. A majority of the members shall be necessary to a quorum, and no person shall be convicted without the concurrence of two-thirds of the Senators present. Judgment upon conviction shall not extend beyond removal from and disqualification to hold office in this State, but the party shall be liable to indictment and punishment according to law.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 4, § 4.

Sec. 5. Appellate division

The Appellate Division of the General Court of Justice shall consist of the Supreme Court and the Court of Appeals.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 4, § 5.

Sec. 6. Supreme Court

(1) Membership. The Supreme Court shall consist of a Chief Justice and six Associate Justices, but the General Assembly may increase the number of Associate Justices to not more than eight. In the event the Chief Justice is unable, on account of absence or

temporary incapacity, to perform any of the duties placed upon him, the senior Associate Justice available may discharge those duties.

(2) Sessions of the Supreme Court. The sessions of the Supreme Court shall be held in the City of Raleigh unless otherwise provided by the General Assembly.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 4, § 6.

Sec. 7. Court of Appeals

The structure, organization, and composition of the Court of Appeals shall be determined by the General Assembly. The Court shall have not less than five members, and may be authorized to sit in divisions, or other than en banc. Sessions of the Court shall be held at such times and places as the General Assembly may prescribe.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 4, § 6A.

Sec. 8. Retirement of Justices and Judges

The General Assembly shall provide by general law for the retirement of Justices and Judges of the General Court of Justice, and may provide for the temporary recall of any retired Justice or Judge to serve on the court or courts of the division from which he was retired. The General Assembly shall also prescribe maximum age limits for service as a Justice or Judge.

Amended by Laws 19971, c. 451, § 1; Laws 1981, c. 513, § 1.

Historical and Statutory Notes

This section was adopted by the electorate at the general election of November 3, 1970 and became effective July 1, 1971.

Sec. 9. Superior Courts

(1) Superior Court districts. The General Assembly shall, from time to time, divide the State into a convenient number of Superior Court judicial districts and shall provide for the election of one or more Superior Court Judges for each district. Each regular Superior Court Judge shall reside in the district for which he is elected. The General Assembly may provide by general law for the selection or appointment of special or emergency Superior Court Judges not selected for a particular judicial district.

(2) Open at all times; sessions for trial of cases. The Superior Courts shall be open at all times for the transaction of all business except the trial of issues of fact requiring a jury. Regular trial sessions of the Superior Court shall be held at times fixed pursuant to a calendar of courts promulgated by the Supreme Court. At least two sessions for the trial of jury cases shall be held annually in each county.

(3) Clerks. A Clerk of the Superior Court for each county shall be elected for a term of four years by the qualified voters thereof, at the same time and places as members of the General Assembly are elected. If the office of Clerk of the Superior Court becomes vacant otherwise than by the expiration of the term, or if the people fail to elect, the senior regular resident Judge of the Superior Court serving the county shall appoint to fill the vacancy until an election can be regularly held.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 4, § 7.

Sec. 10. District Courts

The General Assembly shall, from time to time, divide the State into a convenient number of local court districts and shall prescribe where the District Courts shall sit, but a District Court must sit in at least one place in each county. District Judges shall be elected for each district for a term of four years, in a manner prescribed by law. When more than one District Judge is authorized and elected for a district, the Chief Justice of the Supreme Court shall designate one of the judges as Chief District Judge. Every District Judge shall reside in the district for which he is elected. For each county, the senior regular resident Judge of the Superior Court serving the county shall appoint from nominations submitted by the Clerk of the Superior Court of the county, one or more Magistrates who shall be officers of the District Court. The initial term of appointment for a magistrate shall be for two years and subsequent terms shall be for four years. The number of District Judges and Magistrates shall, from time to time, be determined by the General Assembly. Vacancies in the office of District Judge shall be filled for the unexpired term in a manner prescribed by law. Vacancies in the office of Magistrate shall be filled for the unexpired term in the manner provided for original appointment to the office, unless otherwise provided by the General Assembly.

Amended by S.L. 2004–128, § 16.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 4, § 8.

2004 Legislation

S.L. 2004–128, § 16, in the fifth sentence, deleted ''for a term of two years,'' following ''shall appoint'', inserted the sixth sentence, and in the ninth sentence, inserted '', unless otherwise provided by the General Assembly''.

S.L. 2004–128, §§ 17, 18, and 20, provide:

''Section 17. The amendment set out in Section 16 of this act shall be submitted to the qualified voters of the State at the general election in November 2004, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

''[ ] FOR [ ] AGAINST

''Constitutional amendment to provide for the first term of office for magistrates of the General Court of Justice to be two years and for subsequent terms to be four years.''

''Section 18. If a majority of the votes cast on the question are in favor of the amendment set out in Section 16 of this act, the State Board of Elections shall certify the amendment to the Secretary of State, who shall enroll the amendment so certified among the permanent records of that office. The amendment becomes effective January 1, 2005.''

''Section 20. Sections 1 and 6 of this act become effective October 1, 2004, and apply to actions filed on or after that date. Sections 7 through 15 of this act become effective December 1, 2004, and apply to offenses committed on or after that date. Sections 2, 3, 16, 17, 18, and 20 of this act are effective when they become law. Sections 4 and 5 of this act become effective October 1, 2004, and apply to orders entered on or after that date. Section 19 of this act becomes effective only upon approval by the voters of the constitutional amendment proposed in Section 16 of this act. If the constitutional amendment proposed in Section 16 is approved by the voters, Section 19 of this act becomes effective January 1, 2005, and applies to appointments that take effect after that date.''

The constitutional amendment proposed by S.L. 2004–128, § 16, was approved at the 2004 general election and was certified Nov. 23, 2004.

Sec. 11. Assignment of Judges

The Chief Justice of the Supreme Court, acting in accordance with rules of the Supreme Court, shall make assignments of Judges of the Superior Court and may transfer District Judges from one district to another for temporary or specialized duty. The principle of rotating Superior Court Judges among the various districts of a division is a salutary one and shall be observed. For this purpose the General Assembly may divide the State into a number of judicial divisions. Subject to the general supervision of the Chief Justice of the Supreme Court, assignment of District Judges within each local court district shall be made by the Chief District Judge.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 4, § 9.

Sec. 12. Jurisdiction of the General Court of Justice

(1) Supreme Court. The Supreme Court shall have jurisdiction to review upon appeal any decision of the courts below, upon any

matter of law or legal inference. The jurisdiction of the Supreme Court over ''issues of fact'' and ''questions of fact'' shall be the same exercised by it prior to the adoption of this Article, and the Court may issue any remedial writs necessary to give it general supervision and control over the proceedings of the other courts. The Supreme Court also has jurisdiction to review, when authorized by law, direct appeals from a final order or decision of the North Carolina Utilities Commission.

(2) Court of Appeals. The Court of Appeals shall have such appellate jurisdiction as the General Assembly may prescribe.

(3) Superior Court. Except as otherwise provided by the General Assembly, the Superior Court shall have original general jurisdiction throughout the State. The Clerks of the Superior Court shall have such jurisdiction and powers as the General Assembly shall prescribe by general law uniformly applicable in every county of the State.

(4) District Courts; Magistrates. The General Assembly shall, by general law uniformly applicable in every local court district of the State, prescribe the jurisdiction and powers of the District Courts and Magistrates.

(5) Waiver. The General Assembly may by general law provide that the jurisdictional limits may be waived in civil cases.

(6) Appeals. The General Assembly shall by general law provide a proper system of appeals. Appeals from Magistrates shall be heard de novo, with the right of trial by jury as defined in this Constitution and the laws of this State.

Amended by Laws 1981, c. 803, § 1.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 4, § 10.

Sec. 13. Forms of action; rules of procedure

(1) Forms of Action. There shall be in this State but one form of action for the enforcement or protection of private rights or the redress of private wrongs, which shall be denominated a civil action, and in which there shall be a right to have issues of fact tried before a jury. Every action prosecuted by the people of the State as a party against a person charged with a public offense, for the punishment thereof, shall be termed a criminal action.

(2) Rules of Procedure. The Supreme Court shall have exclusive authority to make rules of procedure and practice for the Appellate Division. The General Assembly may make rules of procedure and practice for the Superior Court and District Court Divisions, and the General Assembly may delegate this authority to

the Supreme Court. No rule of procedure or practice shall abridge substantive rights or abrogate or limit the right of trial by jury. If the General Assembly should delegate to the Supreme Court the rule-making power, the General Assembly may, nevertheless, alter, amend, or repeal any rule of procedure or practice adopted by the Supreme Court for the Superior Court or District Court Divisions.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 4, § 11.

Sec. 14. Waiver of jury trial

In all issues of fact joined in any court, the parties in any civil case may waive the right to have the issues determined by a jury, in which case the finding of the judge upon the facts shall have the force and effect of a verdict by a jury.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 4, § 12.

Sec. 15. Administration

The General Assembly shall provide for an administrative office of the courts to carry out the provisions of this Article.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 4, § 13.

Sec. 16. Terms of office and election of Justices of the Supreme Court, Judges of the Court of Appeals, and Judges of the Superior Court

Justices of the Supreme Court, Judges of the Court of Appeals, and regular Judges of the Superior Court shall be elected by the qualified voters and shall hold office for terms of eight years and until their successors are elected and qualified. Justices of the Supreme Court and Judges of the Court of Appeals shall be elected by the qualified voters of the State. Regular Judges of the Superior Court may be elected by the qualified voters of the State or by the voters of their respective districts, as the General Assembly may prescribe.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 4, § 14.

Notes of Decisions

Construction with federal constitution 1
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1. Construction with federal constitution

State could by her Constitution provide for appointment of all state judges without violating any provision of Federal Constitution. Holshouser v. Scott, 1971, 335 F.Supp. 928, affirmed 93 S.Ct. 43, 409 U.S. 807, 34 L.Ed.2d 68. Judges ⚷ 3

2. Validity of related provisions

Statute prescribing that regular judges be nominated in primary election conducted in their respective districts but elected in general election by statewide vote was valid. Holshouser v. Scott, 1971, 335 F.Supp. 928, affirmed 93 S.Ct. 43, 409 U.S. 807, 34 L.Ed.2d 68. Judges ⚷ 3

State constitutional provisions requiring election of judges by districts or statewide as prescribed by legislature, or that state be divided into divisions and districts and judges rotate among districts, or that judges reside in their respective districts are valid. Holshouser v. Scott, 1971, 335 F.Supp. 928, affirmed 93 S.Ct. 43, 409 U.S. 807, 34 L.Ed.2d 68. Judges ⚷ 3

General Assembly's creation of three additional Court of Appeals judgeships, effective upon appointment by governor, with initial appointive terms of approximately four years, exceeded limitations of state constitutional provisions that required judicial appointees to run at next general election for members of General Assembly, and that judges serve eight-year terms following elections, even though creation of judgeships themselves was not unconstitutional, and legislature indicated that office of judge of Court of Appeals would not be created until appointment of judge so as to sidestep requirement that elections be held, given that office had to exist before it could be filled, and legislature could not delay effective date of judgeships so as to circumvent constitutional requirements. Pope v. Easley, 2001, 354 N.C. 544, 556 S.E.2d 265. Judges ⚷ 2; Judges ⚷ 7

Section of statute creating three additional judgeships on Court of Appeals was severable from unconstitutional section that delayed effective date of judgeships and failed to require elections as mandated by state constitution, given that legislature specifically stated that sections of statute were severable, which evinced clear intent to allow enforcement of section that created judgeships, even in absence of sections that dealt with appointments and terms. Pope v. Easley, 2001, 354 N.C. 544, 556 S.E.2d 265. Statutes ⚷ 64(3)

Statute providing that person elected to fill vacancy on superior court, Court of Appeals, or Supreme Court serves only unexpired portion of vacated term did not violate provision of North Carolina Constitution providing that judges "shall hold office for terms of eight years." G.S. § 163–9; Const. Art. 4, § 16. Brannon v. North Carolina State Bd. of Elections, 1992, 416 S.E.2d 390, 331 N.C. 335. Judges ⚷ 8

Statute which postponed election date for eight superior court judges for two years and for ninth judge for four years did not violate provision of Constitution stating that superior court judges shall hold office for term of eight years and until their successors are elected and qualified; legislature merely eliminated staggered terms within multi-seat judicial districts by creating one-time interim or hiatus between certain terms of office. State ex rel. Martin v. Preston, 1989, 385 S.E.2d 473, 325 N.C. 438. Judges ⚷ 7

One-time delay in certain judicial elections created by statute postponing election of certain superior court judges so as to eliminate staggered terms did not violate right of citizens to vote guaranteed by State Constitution. State ex rel. Martin v. Preston, 1989, 385 S.E.2d 473, 325 N.C. 438. Elections ⚷ 10.5; Judges ⚷ 3

Statute permitting county commissioners to appoint judge of county court and fix his term, if best interests of

county require, held authorized under constitutional provision for "election" of judges (Pub.Laws 1923, c. 216, § 2, as amended by Pub.Laws 1924 [Ex. Sess.] c. 85, § 1; Const. art. 4, §§ 2, 14, 30). Meador v. Thomas, 1933, 170 S.E. 110, 205 N.C. 142. Judges ⚷ 3

3. Methodology of election

Preliminary injunction modifying method of election for superior court judges whereby districtwide primary nominations were followed by statewide elections, was appropriate; plaintiffs raised serious questions as to whether challenged method of election denied plaintiffs equal protection by diluting voting franchise of Republican voters, harm to plaintiffs if preliminary relief was denied greatly outweighed likely harm to defendants upon issuing of injunction, and public interest demanded opportunity to choose from among most qualified candidates available for the office. Republican Party of North Carolina v. Hunt, 1994, 841 F.Supp. 722, affirmed as modified 27 F.3d 563. Injunction ⚷ 138.51

One man, one vote rule does not apply to state judiciary, and in absence of arbitrary or invidious action between citizens and voters, mere showing of disparity among voters or in population figures of district would not be sufficient to strike down election procedure. Holshouser v. Scott, 1971, 335 F.Supp. 928, affirmed 93 S.Ct. 43, 409 U.S. 807, 34 L.Ed.2d 68. Constitutional Law ⚷ 225.3(11); Judges ⚷ 3

Test of republican form of government cannot be made to turn on election of trial or appellate court judges. Holshouser v. Scott, 1971, 335 F.Supp. 928, affirmed 93 S.Ct. 43, 409 U.S. 807, 34 L.Ed.2d 68. States ⚷ 4.3

Election of state judges is not a necessary characteristic of republican form of government and is not required by Constitution. Holshouser v. Scott, 1971, 335 F.Supp. 928, affirmed 93 S.Ct. 43, 409 U.S. 807, 34 L.Ed.2d 68. States ⚷ 4.3

Right to vote per se is not fundamental right under State Constitution; rather, once right to vote is conferred, equal right to vote is fundamental right. State ex rel. Martin v. Preston, 1989, 385 S.E.2d 473, 325 N.C. 438. Constitutional Law ⚷ 225.3(1); Elections ⚷ 10.5

4. Holdover

Where terms of incumbent superior court judges end without successors having been elected and qualified, new terms of office have not begun, and Constitution's "hold over" provision operates and allows incumbents to continue serving interim; thus, by allowing nine judges to hold over in office beyond their terms' expiration, legislature did not unconstitutionally use authority of governor to make judicial appointments for vacancies in judicial offices. State ex rel. Martin v. Preston, 1989, 385 S.E.2d 473, 325 N.C. 438. Constitutional Law ⚷ 58

Sec. 17. Removal of Judges, Magistrates and Clerks

(1) Removal of Judges by the General Assembly. Any Justice or Judge of the General Court of Justice may be removed from office for mental or physical incapacity by joint resolution of two-thirds of all the members of each house of the General Assembly. Any Justice or Judge against whom the General Assembly may be about to proceed shall receive notice thereof, accompanied by a copy of the causes alleged for his removal, at least 20 days before the day on which either house of the General Assembly shall act thereon. Removal from office by the General Assembly for any other cause shall be by impeachment.

(2) Additional method of removal of Judges. The General Assembly shall prescribe a procedure, in addition to impeachment and address set forth in this section, for the removal of a Justice or Judge of the General Court of Justice for mental or physical incapacity interfering with the performance of his duties which is, or is likely to become, permanent, and for the censure and remov-

al of a Justice or Judge of the General Court of Justice for wilful misconduct in office, wilful and persistent failure to perform his duties, habitual intemperance, conviction of a crime involving moral turpitude, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

(3) Removal of Magistrates. The General Assembly shall provide by general law for the removal of Magistrates for misconduct or mental or physical incapacity.

(4) Removal of Clerks. Any Clerk of the Superior Court may be removed from office for misconduct or mental or physical incapacity by the senior regular resident Superior Court Judge serving the county. Any Clerk against whom proceedings are instituted shall receive written notice of the charges against him at least 10 days before the hearing upon the charges. Any Clerk so removed from office shall be entitled to an appeal as provided by law.

Amended by Laws 1971, c. 560, § 1.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 4, § 15.

Sec. 18. District Attorney and prosecutorial districts

(1) District Attorneys. The General Assembly shall, from time to time, divide the State into a convenient number of prosecutorial districts, for each of which a District Attorney shall be chosen for a term of four years by the qualified voters thereof, at the same time and places as members of the General Assembly are elected. Only persons duly authorized to practice law in the courts of this State shall be eligible for election or appointment as a District Attorney. The District Attorney shall advise the officers of justice in his district, be responsible for the prosecution on behalf of the State of all criminal actions in the Superior Courts of his district, perform such duties related to appeals therefrom as the Attorney General may require, and perform such other duties as the General Assembly may prescribe.

(2) Prosecution in District Court Division. Criminal actions in the District Court Division shall be prosecuted in such manner as the General Assembly may prescribe by general law uniformly applicable in every local court district of the State.

Amended by Laws 1973, c. 394, § 1; Laws 1983, c. 298, § 2.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 4, § 16.

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1. In general

Office of district attorney is created by State Constitution. Paul L. Whitfield, P.A. v. Gilchrist, 1997, 126 N.C.App. 241, 485 S.E.2d 61, review allowed 346 N.C. 556, 488 S.E.2d 807, reversed 348 N.C. 39, 497 S.E.2d 412. District And Prosecuting Attorneys ⚷ 1

2. Construction with other provisions

District attorney is constitutional officer, but not all of district attorney's duties are prescribed by State Constitution, other than those duties specifically enumerated, remainder of duties, including docketing of criminal cases, are derived from statutes promulgated by General Assembly pursuant to authority granted in Constitution. Simeon v. Hardin, 1994, 339 N.C. 358, 451 S.E.2d 858. District And Prosecuting Attorneys ⚷ 1

3. Validity of statutes

Statutory limitation on prosecutorial discretion to determine whether to try a defendant capitally or noncapitally for first-degree murder does not impermissibly conflict with the prosecutor's constitutional duty to prosecute criminal actions on behalf of the state. State v. Blakeney, 2000, 352 N.C. 287, 531 S.E.2d 799, certiorari denied 121 S.Ct. 868, 531 U.S. 1117, 148 L.Ed.2d 780, habeas corpus denied 2007 WL 1341456, certificate of appealability granted in part, denied in part 2007 WL 3112457, affirmed 314 Fed.Appx. 572, 2009 WL 550873. District And Prosecuting Attorneys ⚷ 8

Superior court is empowered to review the constitutionality of statutes which prescribe duties of the district attorney and to fashion appropriate remedy should such statutes violate the Constitution, and specifically has authority to consider challenge to district attorney's calendaring authority, even though district attorney is constitutional officer. Simeon v. Hardin, 1994, 339 N.C. 358, 451 S.E.2d 858. Constitutional Law ⚷ 45

State statutes which grant calendaring authority to district attorneys do not violate due process clause of United States Constitution, unconstitutionally vest an executive officer with judicial powers, or infringe upon superior court's inherent judicial power in violation of the separation of powers. Simeon v. Hardin, 1994, 339 N.C. 358, 451 S.E.2d 858. Constitutional Law ⚷ 55; Constitutional Law ⚷ 62(1); Constitutional Law ⚷ 268(1); Criminal Law ⚷ 632(2); District And Prosecuting Attorneys ⚷ 1

Magistrate did not have standing to raise claim that district attorney's presentation of state's case in support of removal of magistrate was unconstitutional because no statute authorized such action by district attorney, where different result would not have occurred had trial court, under its inherent authority, appointed independent counsel to present case against magistrate. Matter of Ezzell, 1994, 113 N.C.App. 388, 438 S.E.2d 482. Constitutional Law ⚷ 42.2(1)

4. Powers and duties of district attorney—In general

Constitution and statutes give district attorneys of state exclusive discretion and authority to determine whether to request, and thus permit, prosecution of any individual cases by special prosecution division. State v. Camacho, 1991, 406 S.E.2d 868, 329 N.C. 589. District And Prosecuting Attorneys ⚷ 8

5. —— Judicial supervision and interference, powers and duties of district attorney

Trial court exceeded its inherent authority to enforce the Rules of Practice by prohibiting state from seeking death penalty in first-degree murder prosecution, as sanction for state's failure to timely file petition for special pretrial conference; under capital sentencing statute, district attorney could not try defendant noncapitally if evidence of an aggravating circumstance existed, and thus trial court's order was potentially in conflict with mandate of General Assembly, the order also impermissibly impinged on district attorney's obligation under the state constitution to prosecute all criminal actions in the superior courts of his district, and the order impermissibly limited right of the people to have defendant, if permitted by evidence, prosecuted and punished to the full extent of the law. State v. Rorie, 1998, 348 N.C. 266, 500 S.E.2d 77. Constitutional Law ⚷ 70.1(10); Constitutional Law ⚷ 73; Sentencing And Punishment ⚷ 1739

6. —— Discretion, powers and duties of district attorney

Prosecutor's decision to prosecute defendant who failed to appear for trial after being released on secured and unsecured bonds for felony failure to appear, rather than criminal contempt of court, was appropriate exercise of charging discretion and did not implicate defendant's right to due process of law. State v. Dammons, 2003, 159 N.C.App. 284, 583 S.E.2d 606, review denied 357 N.C. 579, 589 S.E.2d 133, certiorari denied 124 S.Ct. 1691, 541 U.S. 951, 158 L.Ed.2d 382. Constitutional Law ⚷ 257.5; District And Prosecuting Attorneys ⚷ 8

The exercise of prosecutorial discretion to try a defendant for first-degree murder rather than a lesser homicide crime does not invalidate the death penalty. State v. Blakeney, 2000, 352 N.C. 287, 531 S.E.2d 799, certiorari denied 121 S.Ct. 868, 531 U.S. 1117, 148 L.Ed.2d 780, habeas corpus denied 2007 WL 1341456, certificate of appealability granted in part, denied in part 2007 WL 3112457, affirmed 314 Fed. Appx. 572, 2009 WL 550873. Sentencing And Punishment ⚷ 1610

Decision of whether to enter into plea agreement with defendant is in broad discretion of district attorney. State v. Roseborough, 1996, 344 N.C. 121, 472 S.E.2d 763. Criminal Law ⚷ 273.1(2)

District attorney has broad discretion to determine whether to try a defendant for first-degree murder, or to try defendant for lesser offense, or to accept plea to second-degree murder. State v. Roseborough, 1996, 344 N.C. 121, 472 S.E.2d 763. Criminal Law ⚷ 29(3); Criminal Law ⚷ 273.1(2)

7. —— Criminal prosecutions, powers and duties of district attorney

There may be selectivity in prosecutions, and the exercise of this prosecutorial prerogative does not reach constitutional proportion unless there is a showing that the selection was deliberately based upon an unjustifiable standard such as race, religion or other arbitrary classification. State v. Blyther, 2005, 175 N.C.App. 226, 623 S.E.2d 43,review denied 360 N.C. 365, 630 S.E.2d 189, certiorari denied 127 S.Ct. 121,166 L.Ed.2d 91. Criminal Law ⚷37.10(1)

District attorney did not abuse his prosecutorial discretion in deciding to seek indictment against defendant for attaining the status of an habitual felon; defendant pled guilty to attaining status of an habitual felon, and defendant failed to provide evidence to substantiate intentional discrimination on part of district attorney, based on district attorney's decision to prosecute all persons eligible for habitual felon status, but instead, defendant relied solely on statistics regarding the number of convictions in the two counties at issue. State v. Gibson, 2005, 175N.C.App. 223, 622 S.E.2d 729, review denied 360 N.C. 486, 631 S.E.2d 139,certiorari denied 127 S.Ct. 204, 166 L.Ed.2d 165. Sentencing and Punishment ⚷ 1368

In deciding who will and who will not be prosecuted, district attorneys must weigh many factors such as the likelihood of successful prosecution, the social value of obtaining a conviction as against the time and expense to the state, and his own sense of justice in the particular case. State v. Gibson, 2005, 175 N.C.App. 223, 622 S.E.2d 729, review denied 360 N.C.486, 631 S.E.2d 139, certiorari denied 127 S.Ct. 204, 166 L.Ed.2d165. District And Prosecuting Attorneys ⚷8

For a selective prosecution claim to prevail, defendant must show the prosecutorial system was motivated by a discriminatory purpose and had a discriminatory effect; to demonstrate such

intentional discrimination,defendant must allege that the selection was deliberately based upon an unjustifiable standard such as race, religion, or other arbitrary classification. State v. Gibson, 2005, 175 N.C.App. 223, 622 S.E.2d 729,review denied 360 N.C. 486, 631 S.E.2d 139, certiorari denied 127 S.Ct. 204,166 L.Ed.2d 165. Criminal Law ⚷37.10(1)

Ability to be selective in determining what cases to prosecute and what charges to bring against a particular defendant is ancillary to the district attorney's prosecutorial authority. State v. Ward, 2001, 354 N.C. 231, 555 S.E.2d 251. Criminal Law ⚷ 37.10(1)

Among the arbitrary classifications upon which the district attorney may not exercise his prosecutorial prerogative to be selective in determining what cases to prosecute and what charges to bring against a particular defendant is a defendant's decision to exercise his statutory or constitutional rights. State v. Ward, 2001, 354 N.C. 231, 555 S.E.2d 251. Criminal Law ⚷ 37.10(1)

In order to prevail on a claim of selective prosecution, a defendant must demonstrate that his prosecution was motivated by a discriminatory purpose and had a discriminatory effect. State v. Ward, 2001, 354 N.C. 231, 555 S.E.2d 251.

Clear mandate of state constitutional provision indicating that the district attorney shall be responsible for the prosecution on behalf of the state of all criminal actions in the superior courts of his district is that the responsibility and authority to prosecute all criminal actions is vested solely with the various elected district attorneys. State v. Wilson, 2000, 139 N.C.App. 544, 533 S.E.2d 865, appeal dismissed, review denied 546 S.E.2d 394. District And Prosecuting Attorneys ⚷ 8

There may be selectivity in prosecutions and the exercise of this prosecutorial prerogative does not reach constitutional proportion unless there be a showing that the selection was deliberately based upon an unjustifiable standard such as race, religion, or other arbitrary classification. State v. Wilson, 2000, 139 N.C.App. 544, 533 S.E.2d 865, appeal dismissed, review denied 546 S.E.2d 394. Criminal Law ⚷ 37.10(1)

To prevail on motion that Habitual Felon Act violated separation of powers provisions of state constitution by permitting prosecutor unfettered discretion to punish defendant under Structured Sentencing Act or seek enhanced sentence under Habitual Felon Act, defendant must have shown that prosecution of him under Habitual Felon Act was motivated by discriminatory purpose and had discriminatory effect. State v. Wilson, 2000, 139 N.C.App. 544, 533 S.E.2d 865, appeal dismissed, review denied 546 S.E.2d 394. Constitutional Law ⚷ 62(5.1); Criminal Law ⚷ 37.10(1)

Defendant did not argue, and evidence did not reflect, improper motive by prosecutor in decisions regarding charges upon which defendant was indicted and tried, and thus defendant was not entitled to dismissal of habitual felon charge, even though state had discretion in determining whether to charge defendant as such. State v. Wilson, 2000, 139 N.C.App. 544, 533 S.E.2d 865, appeal dismissed, review denied 546 S.E.2d 394. Criminal Law ⚷ 37.10(2)

Although a district attorney has broad discretion in a homicide case to determine whether to try a defendant for first-degree murder, second-degree murder, or manslaughter, he does not have the discretion to determine whether to try a defendant capitally or noncapitally for first-degree murder. State v. Blakeney, 2000, 352 N.C. 287, 531 S.E.2d 799, certiorari denied 121 S.Ct. 868, 531 U.S. 1117, 148 L.Ed.2d 780, habeas corpus denied 2007 WL 1341456, certificate of appealability granted in part, denied in part 2007 WL 3112457, affirmed 314 Fed.Appx. 572, 2009 WL 550873. District And Prosecuting Attorneys ⚷ 8

District attorneys are independent constitutional officers, expressly vested by Constitution and by statute with responsibility for prosecution of criminal actions and infractions in superior and district courts of their prosecutorial districts. Paul L. Whitfield, P.A. v. Gilchrist, 1997, 126 N.C.App. 241, 485 S.E.2d 61, review allowed 346 N.C. 556, 488 S.E.2d 807, reversed 348 N.C. 39, 497 S.E.2d 412. District And Prosecuting Attorneys ⚷ 8

District attorneys are independent constitutional officers expressly vested by State Constitution with sole and exclusive responsibility for prosecution on behalf of state of all criminal actions in superior courts. In re Spivey, 1997, 345 N.C. 404, 480 S.E.2d 693. District And Prosecuting Attorneys ⚷ 8

Authority to prosecute criminal actions is vested with district attorney. State v. Roseborough, 1996, 344 N.C. 121, 472 S.E.2d 763. District And Prosecuting Attorneys ⚷ 8

8. —— Forfeitures, powers and duties of district attorney

Town lacked authority to petition criminal division of county superior court for order of forfeiture; rather, district attorney alone could prosecute forfeiture proceedings. In re 1990 Red Cherokee Jeep, VIN 1J4FJ38L4LL146261, 1998, 131 N.C.App. 108, 505 S.E.2d 588. Forfeitures ⚷ 5

District attorneys alone may prosecute forfeiture proceedings. In re 1990 Red Cherokee Jeep, VIN 1J4FJ38L4LL146261, 1998, 131 N.C.App. 108, 505 S.E.2d 588. Forfeitures ⚷ 5

9. —— Capias, powers and duties of district attorney

Court cannot give solicitor discretion as to when capias should be issued. State v. McAfee, 1925, 127 S.E. 204, 189 N.C. 320. Sentencing And Punishment ⚷ 1940

10. Delegation or assumption of authority by others

Police officer was not agent of district attorney's office, able to bind office by his alleged commitment that state would not indict defendant as habitual felon if defendant made inculpatory statements regarding participation in break-ins; officer did not have actual authority to make such representations, as Constitution vested exclusive right to prosecute in prosecutor's office, and prosecutor's office had taken no actions to vest officer with apparent authority. State v. Sturgill, 1996, 121 N.C.App. 629, 469 S.E.2d 557. Criminal Law ⚷ 36.6; District And Prosecuting Attorneys ⚷ 8

In North Carolina, law enforcement officers have no independent authority to make prosecutorial decisions, which are vested in district attorney. State v. Sturgill, 1996, 121 N.C.App. 629, 469 S.E.2d 557. District And Prosecuting Attorneys ⚷ 8; Municipal Corporations ⚷ 188

The elected district attorney may, in his or her discretion and where otherwise permitted by law, delegate prosecutorial function to others and may permit private prosecutor to appear for State. State v. Camacho, 1991, 406 S.E.2d 868, 329 N.C. 589. Criminal Law ⚷ 640; District And Prosecuting Attorneys ⚷ 8

11. Disqualification or withdrawal from action or proceeding

Upon disqualification of district attorney and his staff from prosecution of defendant upon murder and burglary charges, trial court exceeded its authority and invaded province of independent constitutional officer when it ordered district attorney to request that Attorney General prosecute the defendant. State v. Camacho, 1991, 406 S.E.2d 868, 329 N.C. 589. Constitutional Law ⚷ 72

Order that district attorney's office withdraw from prosecution of defendant upon ground that there was possibility that conflict of interest might arise at some future time as result of a district attorney's former representation of defendant was error; prosecutor may not be disqualified unless actual conflict of interest exists such as where district attorney or member of his or her staff has previously represented defendant with regard to charges to be prosecuted and, as result of that former attorney-client relationship, prosecution has obtained confidential information which may be used to defendant's detriment at trial, and even then, any order of disqualification should be directed only to individual prosecutors who have been exposed to such information. State v. Camacho, 1991, 406 S.E.2d 868, 329 N.C. 589. Criminal Law ⚷ 639.1

Where a trial court has found actual conflict of interests arising from district attorney's having previously represented defendant, trial court may disqualify prosecutor having the conflict from participating in prosecution of defendant's case and order that prosecutor not to reveal information that might be harmful to the defendant. State v. Camacho, 1991, 406 S.E.2d 868, 329 N.C. 589. Criminal Law ⚷ 639.1; Criminal Law ⚷ 639.6

12. Assisting counsel

Whether prosecuting attorney may have assistance of private counsel rests in discretion of trial judge whose duty it is to prevent injustice and oppression, and only permit such assistance as fairness and justice require. State v. Carden, 1936, 183 S.E. 898, 209 N.C. 404, certiorari denied 56 S.Ct. 960, 298 U.S. 682, 80 L.Ed. 1402. Criminal Law ⚷ 640

Permission by trial court of assistant counsel to prosecuting attorney in murder prosecution, and denial of motion to require counsel to state by whom they were retained held not violative of rights guaranteed defendant. State v. Carden, 1936, 183 S.E. 898, 209 N.C. 404, certiorari denied 56 S.Ct. 960, 298 U.S. 682, 80 L.Ed. 1402. Criminal Law ⚷ 640

Where special counsel appears as an assistant to prosecuting attorney, the management of case remains with the official representative of state, in whose name special counsel appears. State v. Carden, 1936, 183 S.E. 898, 209 N.C. 404, certiorari denied 56 S.Ct. 960, 298 U.S. 682, 80 L.Ed. 1402. Criminal Law ⚷ 640

Where there was no finding of facts on which defendant's motion to require special counsel assisting prosecuting attorney to disclose who had retained them and no prejudice was shown by lack of such information, denial of motion held not abuse of discretion. State v. Carden, 1936, 183 S.E. 898, 209 N.C. 404, certiorari denied 56 S.Ct. 960, 298 U.S. 682, 80 L.Ed. 1402. Criminal Law ⚷ 640

13. Removal from office

General Assembly had power to create statutory means, not expressly provided for in State Constitution, by which superior court could remove district attorney from office. In re Spivey, 1997, 345 N.C. 404, 480 S.E.2d 693. District And Prosecuting Attorneys ⚷ 2(5)

Sec. 19. Vacancies

Unless otherwise provided in this Article, all vacancies occurring in the offices provided for by this Article shall be filled by appointment of the Governor, and the appointees shall hold their places until the next election for members of the General Assembly that is held more than 60 days after the vacancy occurs, when elections shall be held to fill the offices. When the unexpired term of any of the offices named in this Article of the Constitution in which a vacancy has occurred, and in which it is herein provided that the Governor shall fill the vacancy, expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill that vacancy for the unexpired term of the office. If any person elected or appointed to any of these offices shall fail to qualify, the office shall be appointed to, held, and filled as provided in case of vacancies occurring therein. All incumbents of these offices shall hold until their successors are qualified.

Amended by Laws 1985(Reg. Sess. 1986), c. 920, § 2.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 4, § 17.

Cross References

District attorneys and prosecutorial districts, see § 7A–60.

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1. Construction and application

The provision of Const. art. 4, § 25, that ''all incumbents of said offices shall hold until their successors are qualified,'' does not embrace the office of constable. King v. McLure, 1881, 84 N.C. 153. Sheriffs And Constables ⚷ 12

2. Construction with other provisions

Const. art. 3, § 10, providing that the governor shall nominate, and by and with the advice and consent of a majority of the senators appoint, all officers whose offices are established by the constitution or created by law, and whose appointments are not otherwise provided for, and no such officer shall be appointed or elected by the general assembly, empowers the governor, exercising the appointing power, to fill vacancies not otherwise provided for, without reference to whether the legislature is in session or not. Nichols v. McKee, 1873, 68 N.C. 429. Officers And Public Employees ⚷ 56

3. Validity of statutes

General Assembly's creation of three additional Court of Appeals judgeships, effective upon appointment by governor, with initial appointive terms of approximately four years, exceeded limitations of state constitutional provisions that required judicial appointees to run at next general election for members of General Assembly, and that judges serve eight-year terms following elections, even though creation of judgeships themselves was not unconstitutional, and legislature indicated that office of judge of Court of Appeals would not be created until appointment of judge so as to sidestep requirement that elections be held, given that office had to exist before it could be filled, and legislature could not delay effective date of judgeships so as to circumvent constitutional requirements. Pope v. Easley, 2001, 354 N.C. 544, 556 S.E.2d 265. Judges ⚷ 2; Judges ⚷ 7

Section of statute creating three additional judgeships on Court of Appeals was severable from unconstitutional section that delayed effective date of judgeships and failed to require elections as mandated by state constitution, given that legislature specifically stated that sections of statute were severable, which evinced clear intent to allow enforcement of section that created judgeships, even in absence of sections that dealt with appointments and terms. Pope v. Easley, 2001, 354 N.C. 544, 556 S.E.2d 265. Statutes ⚷ 64(3)

Statute providing that person elected to fill vacancy on superior court, Court of Appeals, or Supreme Court serves only unexpired portion of vacated term did not violate provision of North Carolina Constitution providing that judges ''shall hold office for terms of eight years.'' G.S. § 163–9; Const. Art. 4, § 16. Brannon v. North Carolina State Bd. of Elections, 1992, 416 S.E.2d 390, 331 N.C. 335. Judges ⚷ 8

Constitutional article providing that every qualified voter in state who is 21 years of age, except as disqualified in Constitution, shall be eligible for election by the people to office does not apply to appointed positions; therefore, statute requiring that candidates to fill unexpired term of district court judges be members of same political party as vacating judge does not violate Constitution. Baker v. Martin, 1991, 410 S.E.2d 887, 330 N.C. 331. Judges ⚷ 4; Officers And Public Employees ⚷ 19

Where terms of incumbent superior court judges end without successors having been elected and qualified, new terms of office have not begun, and Constitution's ''hold over'' provision operates and allows incumbents to continue serving interim; thus, by allowing nine judges to hold over in office beyond their terms' expiration, legislature did not unconstitutionally use authority of governor to make judicial appointments for vacancies in judicial offices. State ex rel. Martin v. Preston, 1989, 385 S.E.2d 473, 325 N.C. 438. Constitutional Law ⚷ 58

4. Resignations

Resignation of defendant from office of district court judge, after which there was no one legally entitled to hold office by virtue of election nor an incumbent with legal right to continue in office until a successor was elected or appointed, operated to create a legal as well as an actual vacancy in office which the governor had the right and the duty to fill. People ex rel. Duncan v. Beach, 1978, 242 S.E.2d 796, 294 N.C. 713. Judges ⚷ 8

5. Holding over

Plaintiff, having suffered defeat in general election for office of district court judge and having vacated and sur-

rendered office to defendant as candidate receiving majority of votes without contesting defendant's right to office, had no rights under statute or under case law to reassume office. People ex rel. Duncan v. Beach, 1978, 242 S.E.2d 796, 294 N.C. 713. Judges ⚷ 12

6. Term of office for appointee

Where a constable was elected in 1875 for two years, and no election was had in 1877, held, that a vacancy occurred which the county commissioners had the power to fill under Const. art. 4, § 24, authorizing them to fill a vacancy for an "unexpired term." King v. McLure, 1881, 84 N.C. 153. Sheriffs And Constables ⚷ 12

Const. art. 4, § 31, provides that all vacancies occurring in certain offices shall be filled by appointment by the governor; such appointees to hold their offices "until the next regular election." Held to mean until the next regular election for the office in which the vacancy occurred. Cloud v. Wilson, 1875, 72 N.C. 155. Officers And Public Employees ⚷ 59

7. Political affiliation of appointee

Fact that member of Republican Party was not considered for nomination to fill unexpired term of district court judge because of his political affiliation was showing of sufficient injury so that he had standing to bring action challenging constitutionality of statute which requires that candidates to fill unexpired terms of district court judges be members of same political party as vacating judge. Baker v. Martin, 1991, 410 S.E.2d 887, 330 N.C. 331. Constitutional Law ⚷ 42.1(1)

8. Clerk of court vacancies

Const. art. 4, §§ 16, 17, provide for the election of a clerk of the superior court for each county in the manner prescribed for members of the General Assembly, to hold office for four years. Section 29 provides that if the office of clerk becomes vacant during the term, and the people fail to elect, the judge of the superior court shall appoint someone to fill the vacancy until an election regularly held. The general scheme of the Constitution as to appointees to vacancies in office occurring during an official term, as evidenced by article 3, §§ 12, 13, and article 4, §§ 21, 23, 24, 25, 28, is that the appointee shall hold only until the next general election. Thus vacancies in offices the terms of which are two years are filled by appointment "for the unexpired term," and vacancies in offices the terms of which are four years are filled by appointment only until the "next general election." Held, that an appointee to fill a vacancy occurring during the term in the office of clerk of the superior court holds only until the next general election, and not for the unexpired term, if there is an intervening general election. Rodwell v. Rowland, 1905, 50 S.E. 319, 137 N.C. 617. Clerks Of Courts ⚷ 7

Sec. 20. Revenues and expenses of the judicial department

The General Assembly shall provide for the establishment of a schedule of court fees and costs which shall be uniform throughout the State within each division of the General Court of Justice. The operating expenses of the judicial department, other than compensation to process servers and other locally paid non-judicial officers, shall be paid from State funds.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 4, § 18.

Sec. 21. Fees, salaries, and emoluments

The General Assembly shall prescribe and regulate the fees, salaries, and emoluments of all officers provided for in this Article, but the salaries of Judges shall not be diminished during their

continuance in office. In no case shall the compensation of any Judge or Magistrate be dependent upon his decision or upon the collection of costs.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 4, § 19.

Sec. 22. Qualification of Justices and Judges

Only persons duly authorized to practice law in the courts of this State shall be eligible for election or appointment as a Justice of the Supreme Court, Judge of the Court of Appeals, Judge of the Superior Court, or Judge of District Court. This section shall not apply to persons elected to or serving in such capacities on or before January 1, 1981.

Added by Laws 1979, c. 638, § 1.

Historical and Statutory Notes

This section was adopted by the electorate at the general election of November 4, 1980 and became effective July 1, 1980.

Notes of Decisions

In general 1

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1. In general

A layman serving as a District Court Judge on and prior to January 1, 1981, may resign or not seek re-election and still be qualified as a candidate for Judge in a subsequent election under Section 22, Article IV of the North Carolina Constitution since the intent of Section 22 was to create a ''grandfather'' protection for those persons who were non-attorney judges on or before January 1, 1981. 50 Op.Atty.Gen. 107, Jones, April 14, 1981.

Where one served as a judge of the District Court prior to January 1, 1981, even though never licensed to practice law in North Carolina, Article IV, Sec. 22 of the North Carolina Constitution does not apply, and the person is eligible for appointment or election to the Office of Judge of the Superior Court. Op.Atty.Gen., Jones, June 23, 1998.

ARTICLE V

FINANCE

Section

1. No capitation tax to be levied.
2. State and local taxation.
3. Limitations upon the increase of State debt.
4. Limitations upon the increase of local government debt.
5. Acts levying taxes to state objects.
6. Inviolability of sinking funds and retirement funds.
7. Drawing public money.
8. Health care facilities.
9. Capital projects for industry.
10. Joint ownership of generation and transmission facilities.
11. Capital projects for agriculture.

Section

12. Higher education facilities.
13. Seaport and airport facilities.
14. Project development financing.

Revision of Article 5

A revision to Article 5 of the Constitution proposed by Laws 1969, c. 1200, § 1, was adopted at the general election of November 3, 1970, the same election at which the Constitution of 1970 was adopted. The revised article 5 took effect July 1, 1973.

Section 1. No capitation tax to be levied

No poll or capitation tax shall be levied by the General Assembly or by any county, city or town, or other taxing unit.

Added by Laws 1969, c. 1200, § 1.

Historical and Statutory Notes

The provisions comprising this section are based upon North Carolina Constitution of 1868, Article 5, § 1.

Sec. 2. State and local taxation

(1) Power of taxation. The power of taxation shall be exercised in a just and equitable manner, for public purposes only, and shall never be surrendered, suspended, or contracted away.

(2) Classification. Only the General Assembly shall have the power to classify property for taxation, which power shall be exercised only on a State-wide basis and shall not be delegated. No class of property shall be taxed except by uniform rule, and every classification shall be made by general law uniformly applicable in every county, city and town, and other unit of local government.

(3) Exemptions. Property belonging to the State, counties, and municipal corporations shall be exempt from taxation. The General Assembly may exempt cemeteries and property held for educational, scientific, literary, cultural, charitable, or religious purposes, and, to a value not exceeding $300, any personal property. The General Assembly may exempt from taxation not exceeding $1,000 in value of property held and used as the place of residence of the owner. Every exemption shall be on a State-wide basis and shall be made by general law uniformly applicable in every county, city and town, and other unit of local government. No taxing authority other than the General Assembly may grant exemptions, and the General Assembly shall not delegate the powers accorded to it by this subsection.

(4) Special tax areas. Subject to the limitations imposed by Section 4, the General Assembly may enact general laws authorizing the governing body of any county, city, or town to define territorial areas and to levy taxes within those areas, in addition to those levied throughout the county, city, or town, in order to finance, provide, or maintain services, facilities, and functions in addition to or to a greater extent than those financed, provided, or maintained for the entire county, city, or town.

(5) Purposes of property tax. The General Assembly shall not authorize any county, city or town, special district, or other unit of local government to levy taxes on property, except for purposes authorized by general law uniformly applicable throughout the State, unless the tax is approved by a majority of the qualified voters of the unit who vote thereon.

(6) Income tax. The rate of tax on incomes shall not in any case exceed ten percent, and there shall be allowed personal exemptions and deductions so that only net incomes are taxed.

(7) Contracts. The General Assembly may enact laws whereby the State, any county, city or town, and any other public corporation may contract with and appropriate money to any person, association, or corporation for the accomplishment of public purposes only.

Added by Laws 1969, c. 872, § 1. Amended by Laws 1969, c. 1200, § 1.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 5, §§ 3, 5.

Sec. 3. Limitations upon the increase of State debt

(1) Authorized purposes; two-thirds limitation. The General Assembly shall have no power to contract debts secured by a pledge of the faith and credit of the State, unless approved by a majority of the qualified voters of the State who vote thereon, except for the following purposes:

(a) to fund or refund a valid existing debt;

(b) to supply an unforeseen deficiency in the revenue;

(c) to borrow in anticipation of the collection of taxes due and payable within the current fiscal year to an amount not exceeding 50 per cent of such taxes;

(d) to suppress riots or insurrections, or to repel invasions;

(e) to meet emergencies immediately threatening the public health or safety, as conclusively determined in writing by the Governor;

(f) for any other lawful purpose, to the extent of two-thirds of the amount by which the State's outstanding indebtedness

shall have been reduced during the next preceding biennium.

(2) Gift or loan of credit regulated. The General Assembly shall have no power to give or lend the credit of the State in aid of any person, association, or corporation, except a corporation in which the State has a controlling interest, unless the subject is submitted to a direct vote of the people of the State, and is approved by a majority of the qualified voters who vote thereon.

(3) Definitions. A debt is incurred within the meaning of this Section when the State borrows money. A pledge of the faith and credit within the meaning of this Section is a pledge of the taxing power. A loan of credit within the meaning of this Section occurs when the State exchanges its obligations with or in any way guarantees the debts of an individual, association, or private corporation.

(4) Certain debts barred. The General Assembly shall never assume or pay any debt or obligation, express or implied, incurred in aid of insurrection or rebellion against the United States. Neither shall the General Assembly assume or pay any debt or bond incurred or issued by authority of the Convention of 1868, the special session of the General Assembly of 1868, or the General Assembly of 1868-69 and 1869-70, unless the subject is submitted to the people of the State and is approved by a majority of all the qualified voters at a referendum held for that sole purpose.

(5) Outstanding debt. Except as provided in subsection (4), nothing in this Section shall be construed to invalidate or impair the obligation of any bond, note, or other evidence of indebtedness outstanding or authorized for issue as of July 1, 1973.

Added by Laws 1969, c. 1200, § 1.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 1, § 6; Article 5, § 4.

Sec. 4. Limitations upon the increase of local government debt

(1) Regulation of borrowing and debt. The General Assembly shall enact general laws relating to the borrowing of money secured by a pledge of the faith and credit and the contracting of other debts by counties, cities and towns, special districts, and other units, authorities, and agencies of local government.

(2) Authorized purposes; two-thirds limitation. The General Assembly shall have no power to authorize any county, city or town, special district, or other unit of local government to contract debts secured by a pledge of its faith and credit unless approved by a majority of the qualified voters of the unit who vote thereon, except for the following purposes:

(a) to fund or refund a valid existing debt;
(b) to supply an unforeseen deficiency in the revenue;
(c) to borrow in anticipation of the collection of taxes due and payable within the current fiscal year to an amount not exceeding 50 per cent of such taxes;
(d) to suppress riots or insurrections;
(e) to meet emergencies immediately threatening the public health or safety, as conclusively determined in writing by the Governor;
(f) for purposes authorized by general laws uniformly applicable throughout the State, to the extent of two-thirds of the amount by which the unit's outstanding indebtedness shall have been reduced during the next preceding fiscal year.

(3) Gift or loan of credit regulated. No county, city or town, special district, or other unit of local government shall give or lend its credit in aid of any person, association, or corporation, except for public purposes as authorized by general law, and unless approved by a majority of the qualified voters of the unit who vote thereon.

(4) Certain debts barred. No county, city or town, or other unit of local government shall assume or pay any debt or the interest thereon contracted directly or indirectly in aid or support of rebellion or insurrection against the United States.

(5) Definitions. A debt is incurred within the meaning of this Section when a county, city or town, special district, or other unit, authority, or agency of local government borrows money. A pledge of faith and credit within the meaning of this Section is a pledge of the taxing power. A loan of credit within the meaning of this Section occurs when a county, city or town, special district, or other unit, authority, or agency of local government exchanges its obligations with or in any way guarantees the debts of an individual, association, or private corporation.

(6) Outstanding debt. Except as provided in subsection (4), nothing in this Section shall be construed to invalidate or impair the obligation of any bond, note, or other evidence of indebtedness outstanding or authorized for issue as of July 1, 1973.

Added by Laws 1969, c. 1200, § 1.

Historical and Statutory Notes

The provisions comprising this section are similar to provisions contained in North Carolina Constitution of 1868, Article 5, § 4; Article 7, §§ 6 in part, 7.

Sec. 5. Acts levying taxes to state objects

Every act of the General Assembly levying a tax shall state the special object to which it is to be applied, and it shall be applied to no other purpose.

Added by Laws 1969, c. 1200, § 1.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 5, § 8 as renumbered to Article 5, § 7.

Sec. 6. Inviolability of sinking funds and retirement funds

(1) Sinking funds. The General Assembly shall not use or authorize to be used any part of the amount of any sinking fund for any purpose other than the retirement of the bonds for which the sinking fund has been created, except that these funds may be invested as authorized by law.

(2) Retirement funds. Neither the General Assembly nor any public officer, employee, or agency shall use or authorize to be used any part of the funds of the Teachers' and State Employees' Retirement System or the Local Governmental Employees' Retirement System for any purpose other than retirement system benefits and purposes, administrative expenses, and refunds; except that retirement system funds may be invested as authorized by law, subject to the investment limitation that the funds of the Teachers' and State Employees' Retirement System and the Local Governmental Employees' Retirement System shall not be applied, diverted, loaned to, or used by the State, any State agency, State officer, public officer, or public employee.

Added by Laws 1969, c. 200, § 1.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 2, §§ 30, 31.

Sec. 7. Drawing public money

(1) State treasury. No money shall be drawn from the State treasury but in consequence of appropriations made by law, and an accurate account of the receipts and expenditures of State funds shall be published annually.

(2) Local treasury. No money shall be drawn from the treasury of any county, city or town, or other unit of local government except by authority of law.

Added by Laws 1969, c. 200, § 1.

Historical and Statutory Notes

The provisions comprising this section are similar to provisions contained in North Carolina Constitution of 1868, Article 7, § 7 and Article 14, § 3.

Sec. 8. Health care facilities

Notwithstanding any other provisions of this Constitution, the General Assembly may enact general laws to authorize the State, counties, cities or towns, and other State and local governmental

entities to issue revenue bonds to finance or refinance for any such governmental entity or any nonprofit private corporation, regardless of any church or religious relationship, the cost of acquiring, constructing, and financing health care facility projects to be operated to serve and benefit the public; provided, no cost incurred earlier than two years prior to the effective date of this section shall be refinanced. Such bonds shall be payable from the revenues, gross or net, of any such projects and any other health care facilities of any such governmental entity or nonprofit private corporation pledged therefor; shall not be secured by a pledge of the full faith and credit, or deemed to create an indebtedness requiring voter approval of any governmental entity; and may be secured by an agreement which may provide for the conveyance of title of, with or without consideration, any such project or facilities to the governmental entity or nonprofit private corporation. The power of eminent domain shall not be used pursuant hereto for nonprofit private corporations.

Added by Laws 1975, c. 641, § 1.

Historical and Statutory Notes

This section was adopted by the electorate at the election of March 23, 1976.

Sec. 9. Capital projects for industry

Notwithstanding any other provision of this Constitution, the General Assembly may enact general laws to authorize counties to create authorities to issue revenue bonds to finance, but not to refinance, the cost of capital projects consisting of industrial, manufacturing and pollution control facilities for industry and pollution control facilities for public utilities, and to refund such bonds.

In no event shall such revenue bonds be secured by or payable from any public moneys whatsoever, but such revenue bonds shall be secured by and payable only from revenues or property derived from private parties. All such capital projects and all transactions therefor shall be subject to taxation to the extent such projects and transactions would be subject to taxation if no public body were involved therewith; provided, however, that the General Assembly may provide that the interest on such revenue bonds shall be exempt from income taxes within the State.

The power of eminent domain shall not be exercised to provide any property for any such capital project.

Added by Laws 1975, c. 826, § 1.

Historical and Statutory Notes

This section was adopted by the electorate at the election of March 23, 1976.

Sec. 10. Joint ownership of generation and transmission facilities

In addition to other powers conferred upon them by law, municipalities owning or operating facilities for the generation, transmission or distribution of electric power and energy and joint agencies formed by such municipalities for the purpose of owning or operating facilities for the generation and transmission of electric power and energy (each, respectively, ''a unit of municipal government'') may jointly or severally own, operate and maintain works, plants and facilities, within or without the State, for the generation and transmission of electric power and energy, or both, with any person, firm, association or corporation, public or private, engaged in the generation, transmission or distribution of electric power and energy for resale (each, respectively, ''a co-owner'') within this State or any state contiguous to this State, and may enter into and carry out agreements with respect to such jointly owned facilities. For the purpose of financing its share of the cost of any such jointly owned electric generation or transmission facilities, a unit of municipal government may issue its revenue bonds in the manner prescribed by the General Assembly, payable as to both principal and interest solely from and secured by a lien and charge on all or any part of the revenue derived, or to be derived, by such unit of municipal government from the ownership and operation of its electric facilities; provided, however, that no unit of municipal government shall be liable, either jointly or severally, for any acts, omissions or obligations of any co-owner, nor shall any money or property of any unit of municipal government be credited or otherwise applied to the account of any co-owner or be charged with any debt, lien or mortgage as a result of any debt or obligation of any co-owner.

Added by Laws 1977, c. 528, § 1.

Historical and Statutory Notes

This section was adopted by the electorate at the general election of November 3, 1977.

Sec. 11. Capital projects for agriculture

Notwithstanding any other provision of the Constitution the General Assembly may enact general laws to authorize the creation of an agency to issue revenue bonds to finance the cost of capital projects consisting of agricultural facilities, and to refund such bonds.

In no event shall such revenue bonds be secured by or payable from any public moneys whatsoever, but such revenue bonds shall be secured by and payable only from revenues or property derived from private parties. All such capital projects and all transactions therefor shall be subject to taxation to the extent such projects and transactions would be subject to taxation if no public body were involved therewith; provided, however, that the General Assembly may provide that the interest on such revenue bonds shall be exempt from income taxes within the State.

The power of eminent domain shall not be exercised to provide any property for any such capital project.

Added by Laws 1983, c. 765, § 1.

Historical and Statutory Notes

This section was adopted by the electorate at the election of May 8, 1984.

Sec. 12. Higher education facilities

Notwithstanding any other provisions of this Constitution, the General Assembly may enact general laws to authorize the State or any State entity to issue revenue bonds to finance and refinance the cost of acquiring, constructing, and financing higher education facilities to be operated to serve and benefit the public for any nonprofit private corporation, regardless of any church or religious relationship provided no cost incurred earlier than five years prior to the effective date of this section shall be refinanced. Such bonds shall be payable from any revenues or assets of any such nonprofit private corporation pledged therefor, shall not be secured by a pledge of the full faith and credit of the State or such State entity or deemed to create an indebtedness requiring voter approval of the State or such entity, and, where the title to such facilities is vested in the State or any State entity, may be secured by an agreement which may provide for the conveyance of title to, with or without consideration, such facilities to the nonprofit private corporation. The power of eminent domain shall not be used pursuant hereto.

Added by Laws 1985(Reg. Sess., 1986), c. 814.

Historical and Statutory Notes

This section was adopted by the electorate at the general election of November 4, 1986 and became effective November 25, 1986.

Sec. 13. Seaport and airport facilities

(1) Notwithstanding any other provision of this Constitution, the General Assembly may enact general laws to grant to the State, counties, municipalities, and other State and local governmental

entities all powers useful in connection with the development of new and existing seaports and airports, and to authorize such public bodies:

(a) To acquire, construct, own, own jointly with public and private parties, lease as lessee, mortgage, sell, lease as lessor, or otherwise dispose of lands and facilities and improvements, including undivided interests therein;

(b) To finance and refinance for public and private parties seaport and airport facilities and improvements which relate to, develop or further waterborne or airborne commerce and cargo and passenger traffic, including commercial, industrial, manufacturing, processing, mining, transportation, distribution, storage, marine, aviation and environmental facilities and improvements; and

(c) To secure any such financing or refinancing by all or any portion of their revenues, income or assets or other available monies associated with any of their seaport or airport facilities and with the facilities and improvements to be financed or refinanced, and by foreclosable liens on all or any part of their properties associated with any of their seaport or airport facilities and with the facilities and improvements to be financed or refinanced, but in no event to create a debt secured by a pledge of the faith and credit of the State or any other public body in the State.

Added by Laws 1985(Reg. Sess., 1986), c. 933, § 1.

Historical and Statutory Notes

This section was adopted by the electorate at the general election of November 4, 1986 and became effective November 25, 1986.

Sec. 14. Project development financing

Notwithstanding Section 4 of this Article, the General Assembly may enact general laws authorizing any county, city, or town to define territorial areas in the county, city, or town and borrow money to be used to finance public improvements associated with private development projects within the territorial areas, as provided in this section. The General Assembly shall set forth by statute the method for determining the size of the territorial area and the issuing unit. This method is conclusive. When a territorial area is defined pursuant to this section, the county shall determine the current assessed value of taxable real and personal property in the territorial area. Thereafter, property in the territorial area continues to be subject to taxation to the same extent and in like manner as property not in the territorial area, but the net proceeds of taxes levied on the excess, if any, of the assessed value of taxable real and personal property in the territorial area at the time the taxes are levied over the assessed value of taxable real

and personal property in the territorial area at the time the territorial area was defined may be set aside. The instruments of indebtedness authorized by this section shall be secured by these set-aside proceeds. The General Assembly may authorize a county, city, or town issuing these instruments of indebtedness to pledge, as additional security, revenues available to the issuing unit from sources other than the issuing unit's exercise of its taxing power. As long as no revenues are pledged other than the set-aside proceeds authorized by this section and the revenues authorized in the preceding sentence, these instruments of indebtedness may be issued without approval by referendum. The county, city, or town may not pledge as security for these instruments of indebtedness any property tax revenues other than the set-aside proceeds authorized in this section, or in any other manner pledge its full faith and credit as security for these instruments of indebtedness unless a vote of the people is held as required by and in compliance with the requirements of Section 4 of this Article.

Notwithstanding the provisions of Section 2 of this Article, the General Assembly may enact general laws authorizing a county, city, or town that has defined a territorial area pursuant to this section to assess property within the territorial area at a minimum value if agreed to by the owner of the property, which agreed minimum value shall be binding on the current owner and any future owners as long as the defined territorial area is in effect. Added by S.L. 2003–403, § 1.

Historical and Statutory Notes

The amendment proposed by Laws 1993, c. 497, § 1, was rejected at the general election held Nov. 2, 1993, and failed to take effect.

2003 Legislation

S.L. 2003–403, §§ 24, 25, provide:

''Section 24. The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at the statewide general election in November 2004, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

''[ ] FOR [ ] AGAINST

''Constitutional amendment to promote local economic and community development projects by (i) permitting the General Assembly to enact general laws giving counties, cities, and towns the power to finance public improvements associated with qualified private economic and community improvements within development districts, as long as the financing is secured by the additional tax revenues resulting from the enhanced property value within the development district and is not secured by a pledge of the local government's faith and credit or general taxing authority, which financing is not subject to a referendum; and (ii) permitting the owners of property in the development district to agree to a minimum tax value for their property, which is binding on future owners as long as the development district is in existence.

''Section 25. If a majority of votes cast on the question are in favor of the amendment set out in Section 1 of this act, the State Board of Elections shall certify the amendment to the Secretary of State. The amendment set out in Section 1 of this act and the amendments set out in Sections 2 through 21 of this act become effective upon this certification. The Secretary of State

shall enroll the amendment so certified among the permanent records of that office. If a majority of votes cast on the question are not in favor of the amendment set out in Section 1 of this act, that amendment and the amendments set out in Sections 2 through 21 of this act do not go into effect.''

The constitutional amendment proposed by S.L. 2003–403, § 1, was approved at the 2004 general election and was certified Nov. 23, 2004.

ARTICLE VI

SUFFRAGE AND ELIGIBILITY TO OFFICE

Section

1. Who may vote.
2. Qualifications of voter.
3. Registration.
4. Qualification for registration.
5. Elections by people and General Assembly.
6. Eligibility to elective office.
7. Oath.
8. Disqualifications for office.
9. Dual office holding.
10. Continuation in office.

Cross References

Cities and towns; qualifications for elective office, see § 160A–59.

Section 1. Who may vote

Every person born in the United States and every person who has been naturalized, 18 years of age, and possessing the qualifications set out in this Article, shall be entitled to vote at any election by the people of the State, except as herein otherwise provided. Amended by Laws 1979, c. 201, § 1; Laws 1979, c. 1141, § 1.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 6, § 1.

Notes of Decisions

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1. Construction and application

Under constitutional provision that every person born in the United States and every person who has been naturalized, 21 years of age and ''possessing the qualifications set out in this article'' shall be entitled to vote, the quoted phrase was intended to mean, and was made certain by, the qualifications appearing upon the face of Article VI, and one of those qualifications was set forth in Section 4 of Article VI wherein it was required that ''every person presenting himself for registration shall be able to read and write, any section of the Constitution in the English language''. Lassiter v. Northampton County Bd. of Elections, 1958, 102 S.E.2d 853, 248 N.C. 102, probable jurisdiction noted 79 S.Ct. 294, 358 U.S. 916, 3 L.Ed.2d 236, affirmed 79 S.Ct. 985, 360 U.S. 45, 3 L.Ed.2d 1072. Elections ⚷ 60

2. Construction with federal constitution

While the right of suffrage is established and guaranteed by the federal Constitution, it is subject to the imposition of state standards which are not discriminatory and which do not contravene any restriction that Congress, acting pursuant to its constitutional powers, has imposed. U.S.C.A.Const. art. 1, s 2. Lassiter v. Northampton County Bd. of Elections, 1959, 79 S.Ct. 985, 360 U.S. 45, 3 L.Ed.2d 1072. Elections ⚷ 18

A literacy requirement may be set up as a prerequisite by a state to eligibility for voting without violation of the federal Constitution. Lassiter v. Northampton County Bd. of Elections, 1959, 79 S.Ct. 985, 360 U.S. 45, 3 L.Ed.2d 1072. Elections ⚷ 18

While the Fourteenth Amendment which provides for apportionment of representatives among the states according to their respective numbers counting the whole number of persons in each state, except Indians not taxed, speaks of the ''right to vote,'' the right protected refers to the right to vote as established by the laws and Constitution of the state. Lassiter v. Northampton County Bd. of Elections, 1959, 79 S.Ct. 985, 360 U.S. 45, 3 L.Ed.2d 1072. United States ⚷ 10

A literacy test as a prerequisite to eligibility for voting, even though fair on its face, may be employed to perpetuate discrimination which the Fifteenth Amendment was designed to uproot, and, also, a literacy test may be unconstitutional on its face where the legislative setting of the provision and the discretion vested in the registrar of voting make it clear that the requirement is merely a device to make racial discrimination easy. Lassiter v. Northampton County Bd. of Elections, 1959, 79 S.Ct. 985, 360 U.S. 45, 3 L.Ed.2d 1072. Elections ⚷ 12(5)

Requirement of North Carolina statute and Constitution that a person as a prerequisite to registration as a voter ''be able to read and write any section of the Constitution of North Carolina in the English language'' with such requirement applicable to members of all races, did not conflict with either the Fourteenth, Fifteenth or Seventeenth Amendments to the federal Constitution, and such requirements could not be condemned as unconstitutional on their face as a device unrelated to desire of the state to raise the standards for people of all races who cast the ballot. Lassiter v. Northampton County Bd. of Elections, 1959, 79 S.Ct. 985, 360 U.S. 45, 3 L.Ed.2d 1072. Constitutional Law ⚷ 215.3; Elections ⚷ 12(5)

3. Power to prescribe qualifications

The states have broad powers to determine the conditions under which the right of suffrage may be exercised, in the absence of discrimination condemned by the Constitution. Lassiter v. Northampton County Bd. of Elections, 1959, 79 S.Ct. 985, 360 U.S. 45, 3 L.Ed.2d 1072. Elections ⚷ 18

Residence requirements, age, and a previous criminal record are examples indicating factors which a state may take into consideration in determining qualification of voters. Lassiter v. Northampton County Bd. of Elections, 1959, 79 S.Ct. 985, 360 U.S. 45, 3 L.Ed.2d 1072. Elections ⚷ 18

The statute requiring a person as prerequisite to registration as voter to be able to read or write any section of the Constitution of the State, which applies alike to all persons who present themselves for registration to vote, without discrimination in favor of, or against any by reason of race, creed, or color, is not unconstitutional as in violation of Article VI, Section 1 of the Constitution of North Carolina or in violation of the 14th, 15th and 17th Amendments to the Constitution of the United States. Lassiter v. Northampton County Bd. of Elections, 1958, 102 S.E.2d 853, 248 N.C. 102, probable jurisdiction noted 79 S.Ct. 294, 358 U.S. 916, 3 L.Ed.2d 236, affirmed 79 S.Ct. 985, 360 U.S. 45, 3 L.Ed.2d 1072. Constitutional Law ⚷ 215.3; Elections ⚷ 18; United States ⚷ 11

Under Const. art. 6, §§ 1, 2, declaring that ''it shall be the duty of the general assembly to provide from time to time for the registration of all electors, and no person shall be allowed to vote without registration,'' the legislature had power to enact Laws 1889, c. 287, § 3, declaring that ''no registration shall be valid unless it specifies, as near as may be, the age, occupation, place of birth, place of residence of the elector, as well as the township or county from whence the elector has removed, in event of removal, and the full name by which the voter is known''; and the requirement is reasonable. State v. Scarboro, 1892, 14 S.E. 737, 110 N.C. 232. Elections ⚷ 95

4. Age qualification

The declaration of a voter that he was born in 1868 (which, if true, would have made him less than 21 years old at the date of registration), made to the registrar when first examined, is admissible to show that he was a minor, though he afterwards returned to the registrar with a stranger, who swore that he was over 21 years old. People v. Teague, 1890, 11 S.E. 665, 106 N.C. 576. Elections ⚷ 293(2)

5. Poll taxes under prior laws

Under Const. art. 6, §§ 1, 4, art. 5, § 1, voters at a school tax election on April 21, 1914, who had not paid their poll tax for the previous year, otherwise payable on the 1st day of May, 1914, were disqualified to vote. Ingram v. Johnson, 1916, 90 S.E. 805, 172 N.C. 676. Schools ⚷ 103(2)

Const. art. 6, §§ 1, 3, 4, provide the qualifications of voters and declare that every person shall be able to read and write, unless registered under another clause, before being entitled "to register," as required by section 3, and that before he shall be entitled to "vote" he shall have paid his poll tax for the previous year. Pace v. City of Raleigh, 1905, 52 S.E. 277, 140 N.C. 65. Intoxicating Liquors ⚷ 34(1)

6. Sex under prior laws

Under Const. art. 6, § 1, a woman is not a voter. Bickett v. Knight, 1915, 85 S.E. 418, 169 N.C. 333, Am.Ann.Cas. 1917D,517. Elections ⚷ 63

7. Felons

Provisions in state statute and constitutions which deny convicted felons right to vote and hold office do not violate the various rights guaranteed by the Constitution of the United States. Wilson v. Goodwyn, 1981, 522 F.Supp. 1214. Elections ⚷ 18; Elections ⚷ 21

Under North Carolina law, person adjudged guilty of felony at trial court level is ineligible to be elected to public office while his case is pending on appeal. Wilson v. Goodwyn, 1981, 522 F.Supp. 1214. Elections ⚷ 126(4)

The disqualification for office and the loss of the right of suffrage, imposed by Const. art. 6, § 1, upon persons convicted of infamous offenses, constitute no part of the punishment, but are mere consequences of the judgment. State v. Jones, 1880, 82 N.C. 685. Officers And Public Employees ⚷ 31

Sec. 2. Qualifications of voter

(1) Residence period for State elections. Any person who has resided in the State of North Carolina for one year and in the precinct, ward, or other election district for 30 days next preceding an election, and possesses the other qualifications set out in this Article, shall be entitled to vote at any election held in this State. Removal from one precinct, ward, or other election district to another in this State shall not operate to deprive any person of the right to vote in the precinct, ward, or other election district from which that person has removed until 30 days after the removal.

(2) Residence period for presidential elections. The General Assembly may reduce the time of residence for persons voting in presidential elections. A person made eligible by reason of a reduction in time of residence shall possess the other qualifications set out in this Article, shall only be entitled to vote for President and Vice President of the United States or for electors for President and Vice President, and shall not thereby become eligible to hold office in this State.

(3) Disqualification of felon. No person adjudged guilty of a felony against this State or the United States, or adjudged guilty of a felony in another state that also would be a felony if it had been

committed in this State, shall be permitted to vote unless that person shall be first restored to the rights of citizenship in the manner prescribed by law.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 6, § 2.

United States Code Annotated

Right to vote, deprivation on account of failure to pay poll or other tax, see U.S.C.A. Const. Amend. 24.
Right to vote, deprivation on account of race, color or prior servitude prohibited, see U.S.C.A. Const. Amend. 15.
Right to vote, deprivation on account of sex, see U.S.C.A. Const. Amend. 19.
Right to vote, persons eighteen or older, deprivation of right prohibited, see U.S.C.A. Const. Amend. 26.

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1. Validity of provision

Provision of North Carolina Constitution that a convicted felon, whose rights of citizenship have not been restored, shall not be permitted to vote and provisions of similar statute do not constitute cruel and unusual punishment. Fincher v. Scott, 1972, 352 F.Supp. 117, affirmed 93 S.Ct. 2151, 411 U.S. 961, 36 L.Ed.2d 681. Sentencing And Punishment ⚷ 1581

One-year residency requirement contained in North Carolina Constitution and statute was unconstitutional when applied to the right to vote in local elections. Andrews v. Cody, 1971, 327 F.Supp. 793, affirmed 92 S.Ct. 1306, 405 U.S. 1034, 31 L.Ed.2d 576. Elections ⚷ 18

2. Construction and application

Under constitutional provision that every person born in the United States and every person who has been naturalized, 21 years of age and "possessing the qualifications set out in this article" shall be entitled to vote, the quoted phrase was intended to mean, and was made certain by, the qualifications appearing upon the face of Article VI, and one of those qualifications was set forth in Section 4 of Article VI wherein it was required that "every person presenting himself for registration shall be able to read and write, any section of the Constitution in the English language". Lassiter v. Northampton County Bd. of Elections, 1958, 102 S.E.2d 853, 248 N.C. 102, probable jurisdiction noted 79 S.Ct. 294, 358 U.S. 916, 3 L.Ed.2d 236, affirmed 79 S.Ct. 985, 360 U.S. 45, 3 L.Ed.2d 1072. Elections ⚷ 60

The constitutional requirement of residence for voting purposes applies primarily to an incoming person and does not disfranchise North Carolina citizen temporarily going into another state with intention of returning. Owens v. Chaplin, 1948, 47 S.E.2d 12, 228 N.C. 705, rehearing denied 48 S.E.2d 37, 229 N.C. 797. Elections ⚷ 73

3. Construction with other provisions

Under Const. art. 7, § 7, declaring that "no municipal corporation shall contract any debt, pledge its faith, or loan its credit, nor shall any tax be levied or collected by any officers of the same, except for necessary expenses, unless by vote of the majority of the qualified voters therein," a majority of the voters whose names are registered as qualified voters as required by Const. art. 6, § 2, will be sufficient to warrant the issue of bonds to establish waterworks to supply with water a city that by the act of legislature is authorized only with the consent of a majority of the qualified registered voters to borrow money. Southerland v. Town of Goldsborough, 1887, 1 S.E. 760, 96 N.C. 49. Municipal Corporations ⚷ 918(1)

4. Validity of statutes, generally

Const. art. 6, §§ 2, 3, 4, provide that the Legislature may from time to time provide for the registration of voters, and that all elections by the people shall be by ballot, and that each voter is eligible to office. The suffrage amendment of 1900 to the Constitution fixed a new qualification for voters, but left the matter of registration to the Legislature as before. Held, that Laws 1907, p. 733, c. 493, providing for the issuance of county bonds on consent of the voters, and authorizing by section 4 (page 733) a new registration of voters, is not invalid under the Constitution, since the power to provide for the registration of voters is in the Legislature, and they may leave it to the local authorities. Cox v. Commissioners of Pitt County, 1908, 60 S.E. 516, 146 N.C. 584. Constitutional Law ⚷ 65

Under Const. art. 6, §§ 1, 2, declaring that "it shall be the duty of the general assembly to provide from time to time for the registration of all electors, and no person shall be allowed to vote without registration," the legislature had power to enact Laws 1889, c. 287, § 3, declaring that "no registration shall be valid unless it specifies, as near as may be, the age, occupation, place of birth, place of residence of the elector, as well as the township or county from whence the elector has removed, in event of removal, and the full name by which the voter is known"; and the requirement is reasonable. State v. Scarboro, 1892, 14 S.E. 737, 110 N.C. 232. Elections ⚷ 95

5. Residence—In general

"Residence" as defined by statute for voting purposes must be construed in harmony with Constitution in the sense of "domicile", denoting a permanent abode, as distinguished from a temporary dwelling place. Owens v. Chaplin, 1948, 48 S.E.2d 37, 229 N.C. 797. Elections ⚷ 72

The "residence" which Constitution requires of an elector is synonymous with "domicile", and denotes permanent dwelling place to which the elector, when absent, intends to return. Owens v. Chaplin, 1948, 47 S.E.2d 12, 228 N.C. 705, rehearing denied 48 S.E.2d 37, 229 N.C. 797. Elections ⚷ 72

"Residence," as used in Const. art. 6, § 1, defining political rights, is synonymous with "domicile," denoting a permanent, as distinguished from a temporary, dwelling place. State ex rel. Hannon v. Grizzard, 1883, 89 N.C. 115. Elections ⚷ 72

6. —— Domicile, residence

One's voting residence is at his domicile. Owens v. Chaplin, 1948, 48 S.E.2d 37, 229 N.C. 797. Elections ⚷ 72

Plaintiff was in the service of the government at Washington as watchman, but paid his poll tax and voted in North Carolina, where he had always resided previous to his appointment. Held, that his constitutional residence—i.e. domicile—was in North Carolina. State ex rel. Hannon v. Grizzard, 1883, 89 N.C. 115. Domicile ⚷ 5

7. —— Part-time residence

Where a voter has been in the habit of leaving his home in another county every summer, and coming to the county in which the election was held, for the purpose of working there, and returning to the other county after the season was over, and testifies that he considered the county in which the election was held his home, his true residence is a question for the jury. People v. Teague, 1890, 11 S.E. 665, 106 N.C. 576. Elections ⚷ 72

8. —— Public service employees, residence

School teachers voting for office of mayor must have established legal residence to be qualified electors (Const. art. 6, § 2). Gower v. Carter, 1928, 143 S.E. 513, 195 N.C. 697. Elections ⚷ 74

9. —— Students, residence

Finding that student had abandoned her former domicile and had acquired new one in place where she was attending college supported judgment that she was entitled to vote in such place. Hall v. Wake County Bd. of Elections, 1972, 187 S.E.2d 52, 280 N.C. 600. Elections ⚷ 112

10. —— Temporary absence, residence

Persons having legal and permanent residences in precinct when they registered but thereafter temporarily absent in other states or counties with intention of returning and without intention of making other states or counties their permanent homes "resided" in precinct so as to be entitled to vote therein. Owens v. Chaplin, 1948, 47 S.E.2d 12, 228 N.C. 705, rehearing denied 48 S.E.2d 37, 229 N.C. 797. Elections ⚷ 73

Const. art. 6, § 2, providing that a person must reside in state, county, and precinct "in which he offers to vote" a certain length of time, does not require the personal presence of the voter in order to cast his ballot, and hence Absentee Voters Law (Pub.Laws 1917, c. 23, as amended by Pub.Laws 1919, c. 322), permitting one absent from the state to vote, does not violate such section of the Constitution. Jenkins v. State Board of Elections of North Carolina, 1920, 104 S.E. 346, 180 N.C. 169, 14 A.L.R. 1247. Elections ⚷ 25

11. —— Change of precinct, residence

Code, § 2681, providing that, if an elector has previously registered in any precinct in the county in which he resides, he cannot again register in any other precinct in the county until he produces a certificate of the registrar of the former precinct that he has removed, and his name been stricken from the registration books, applies to bona fide residents who neglect to obtain such certificate. People v. Teague, 1890, 11 S.E. 665, 106 N.C. 576. Elections ⚷ 98

12. —— Local elections, residence

The general assembly has no power to change the qualifications of voters in state, county, township, city, or town elections. People ex rel. Van Bokkelen v. Canaday, 1875, 73 N.C. 198, 21 Am. Rep. 465. Elections ⚷ 18

Cities and towns, like counties and townships, are parts and parcels of the state, organized for the convenience of local self-government; and the qualifications of voters are the same, to wit, citizenship, 21 years of age, 12 months' residence in the state, and 30 days in the city or town. People ex rel. Van Bokkelen v. Canaday, 1875, 73 N.C. 198, 21 Am.Rep. 465. Elections ⚷ 59

13. —— Term of established residence

Individual must have resided in precinct for 30 days prior to general election in order to be registered to vote. Farnsworth v. Jones, 1994, 114 N.C.App. 182, 441 S.E.2d 597. Elections ⚷ 72

14. —— Evidence of residence

There was no substantial evidence to support finding of county board of elections that municipal election candidate for city council seat met residency requirement by establishing his domicile in ward 30 days prior to city council election, even though candidate acquired new residence in ward and expressed his intention to remain there permanently; candidate maintained his previous residence and spent approximately 50% of his time there, candidate did not change his address to that of new residence for any purpose, and candidate executed month-to-month lease for new residence because he wanted to see what would happen in election. Farnsworth v. Jones, 1994, 114 N.C.App. 182, 441 S.E.2d 597. Municipal Corporations ⚷ 138

Testimony of challenged elector, called as a witness by unsuccessful candidate for office of clerk of superior court, that at time he voted by absentee ballot he intended to return to county which he had always considered his home and that he returned to home of father and mother in that county upon being discharged from armed forces, established his right to vote in that county, notwithstanding his testimony that he had considered going elsewhere upon being discharged, depending upon where he could find work. Owens v.

Chaplin, 1948, 48 S.E.2d 37, 229 N.C. 797. Elections ⚷ 72

Testimony of challenged elector called as a witness by unsuccessful candidate for office of clerk of superior court that, if he was laid off, he would return to county in which challenged absentee ballot was cast, did not show loss of voting residence in that county in view of other testimony. Owens v. Chaplin, 1948, 48 S.E.2d 37, 229 N.C. 797. Elections ⚷ 72

The testimony of the tax collector of a precinct in which the election was held, who made it his duty to look up every resident of the precinct, that a certain voter was never there until a few months before the election, and never paid a tax there, that the day after the election he saw him buy a ticket for an adjoining state, and that he had never returned, is properly submitted to the jury as tending to show that such voter never acquired a residence in the precinct to entitle him to vote. People v. Teague, 1890, 11 S.E. 665, 106 N.C. 576. Elections ⚷ 293(2)

15. —— Questions of law and fact, residence

The meaning of term "residence" which constitution requires for voting purposes is a judicial question and is not a matter of legislative construction, and Legislature cannot prescribe voting qualifications different from those contained in Constitution. Owens v. Chaplin, 1948, 47 S.E.2d 12, 228 N.C. 705, rehearing denied 48 S.E.2d 37, 229 N.C. 797. Constitutional Law ⚷ 70.1(12)

16. —— Validity of statutes, residence

Since the general assembly has no power to change the qualifications of voters in state, county, township, city, or town elections, so much of the act amending the charter of the city of Wilmington, ratified on February 3, 1875, as requires of voters a residence of 90 days, instead of 30, is unconstitutional, and consequently void. People ex rel. Van Bokkelen v. Canaday, 1875, 73 N.C. 198, 21 Am.Rep. 465. Elections ⚷ 60

17. —— Validity of local ordinances, residence

The provision in special law conditionally creating town of Havelock, that any qualified elector who has resided in the area to be incorporated in the town for not less than one year immediately preceding the election shall be eligible to be nominated for mayor or a member of board of commissioners by petition of five electors of the area, was in conflict with constitutional provisions relating to qualification of voters and to eligibility to office, and the Legislature was without power to so limit the classes which would qualify for office. Starbuck v. Town of Havelock, 1960, 113 S.E.2d 278, 252 N.C. 176. Municipal Corporations ⚷ 124(3)

The provision in special law conditionally creating town of Havelock, concerning eligibility of persons to be nominated for mayor or member of board of commissioners, was independent and separable from the remainder of the law, and unconstitutionality of such provision did not impair validity of portions of act permitting the inhabitants to determine whether the area should or should not become a town. Starbuck v. Town of Havelock, 1960, 113 S.E.2d 278, 252 N.C. 176. Statutes ⚷ 64(4)

Provision of town charter limiting right of suffrage to town real estate owners held void under Constitution (Priv.Laws 1929, c. 78, § 2; Const. art. 6). Smith v. Town of Carolina Beach, 1934, 175 S.E. 313, 206 N.C. 834. Elections ⚷ 9

18. Felons—In general

A person is "adjudged guilty" under constitutional article, providing that no person adjudged guilty of a felony against state of North Carolina shall be permitted to vote unless he shall first be restored to the rights and citizenship in a manner prescribed by law, when his guilt has been determined by a jury, or a judge with judicial or quasi-judicial powers. Wilson v. Goodwyn, 1981, 522 F.Supp. 1214. Elections ⚷ 90

Under North Carolina law, person adjudged guilty of felony at trial court level is ineligible to be elected to public office while his case is pending on appeal. Wilson v. Goodwyn, 1981, 522 F.Supp. 1214. Elections ⚷ 126(4)

Since the offense of making or selling liquor in Polk county before January 1, 1909, was punishable by imprisonment in the county jail or penitentiary, a conviction under an indictment charging that offense, either with or without the allegation it was feloniously committed, disqualifies the vote under Const. art. 6, § 2, prohibiting any person who has been convicted of any crime which may be punished by imprisonment in the state prison from voting. Robertson v.

Jackson, 1922, 110 S.E. 593, 183 N.C. 695. Elections ⚷ 90

Under Revisal 1905, § 3292, defining as a felony a crime that may be punished by a penitentiary punishment, and Const. art. 6, § 2, providing that any one guilty of a felony shall forfeit his right to vote, punishment involving such consequences should not be imposed, except by express provision of law. State v. Smith, 1917, 93 S.E. 910, 174 N.C. 804. Elections ⚷ 90

19. —— Evidence of disqualification, felons

The record of the indictment and conviction of a voter of a crime, previous to an election, is admissible to show that he voted fraudulently. People v. Teague, 1890, 11 S.E. 665, 106 N.C. 576. Elections ⚷ 293(2)

20. Local elections

Qualifications for voting in municipal election are same as in general election (C.S. §§ 2654, 2655; Const. art. 6, §§ 2, 3). Gower v. Carter, 1927, 139 S.E. 604, 194 N.C. 293. Elections ⚷ 59

21. Validity of elections

Where all those voting in town election for water and sewer bonds possessed the qualifications prescribed by Constitution, validity of bonds voted by majority of the qualified electors of the town could not be successfully challenged on the ground that the election was void in that the provision in town charter permitting nonresident freeholders to vote in all municipal elections was in conflict with constitutional provision relating to qualification of voters. Wrenn v. Town of Kure Beach, 1952, 69 S.E.2d 492, 235 N.C. 292. Municipal Corporations ⚷ 918(5)

Sec. 3. Registration

Every person offering to vote shall be at the time legally registered as a voter as herein prescribed and in the manner provided by law. The General Assembly shall enact general laws governing the registration of voters.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 6, § 3.

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1. In general

Where voter has registered, but registration books show he had not complied with all minutiae of registration law, his vote will not be rejected as illegal. Woodall v. Western Wake Highway Commission, 1918, 97 S.E. 226, 176 N.C. 377. Elections ⚷ 116

2. Construction with other provisions

Const. art. 6, §§ 1, 3, 4, provide the qualifications of voters and declare that every person shall be able to read and write, unless registered under another clause, before being entitled "to register," as required by section 3, and that before he shall be entitled to "vote" he shall have paid his poll tax for the previous year. Pace v. City of Raleigh, 1905, 52 S.E. 277, 140 N.C. 65. Intoxicating Liquors ⚷ 34(1)

3. Local elections

Qualifications for voting in municipal election are same as in general election (C.S. §§ 2654, 2655; Const. art. 6, §§ 2, 3). Gower v. Carter, 1927, 139 S.E. 604, 194 N.C. 293. Elections ⚷ 59

4. Declaratory judgments

Constitutionality of act requiring prospective voter as requisite to registration to satisfy registrar of his ability to read and write any section of Constitution in English language could be tested in action under Uniform Declaratory Judgment Act. Allison v. Sharp, 1936,

184 S.E. 27, 209 N.C. 477. Declaratory Judgment ⚷ 124.1

5. Validity of statutes

Act requiring prospective voter as requisite to registration to satisfy registrar of his ability to read and write any section of Constitution in English language held constitutional (Code 1935, § 5939; Const. art. 6, §§ 3, 4). Allison v. Sharp, 1936, 184 S.E. 27, 209 N.C. 477. Elections ⚷ 9

In construing registration statute, the object of the law, a fair and full expression of the will of the qualified voters, must be kept in mind, and if that has been obtained, and no fraud appears, Supreme Court does not look for irregularities to defeat will of electorate. Woodall v. Western Wake Highway Commission, 1918, 97 S.E. 226, 176 N.C. 377. Elections ⚷ 227(1)

Const. art. 6, §§ 2, 3, 4, provide that the Legislature may from time to time provide for the registration of voters, and that all elections by the people shall be by ballot, and that each voter is eligible to office. The suffrage amendment of 1900 to the Constitution fixed a new qualification for voters, but left the matter of registration to the Legislature as before. Held, that Laws 1907, p. 733, c. 493, providing for the issuance of county bonds on consent of the voters, and authorizing by section 4 (page 733) a new registration of voters, is not invalid under the Constitution, since the power to provide for the registration of voters is in the Legislature, and they may leave it to the local authorities. Cox v. Commissioners of Pitt County, 1908, 60 S.E. 516, 146 N.C. 584. Constitutional Law ⚷ 65

6. Validity of election

The fact that the registration book had been lost does not invalidate an election, where it appears that all who voted had been duly registered, as required by law. Hampton v. Waldrop, 1889, 10 S.E. 694, 104 N.C. 453. Elections ⚷ 212

The fact that the registration book was not kept open for the prescribed time on the Saturday before the election cannot be allowed to vitiate the election, where it appears that the book was kept open until 2 o'clock p.m., and that no one was denied an opportunity to examine it, or sought it afterwards. State v. Nicholson, 1889, 9 S.E. 545, 102 N.C. 465. Elections ⚷ 116

A disregard of constitutional or statutory directions relating to the registration of electors, which does not affect the result as an expression of popular will, does not warrant a rejection of the vote cast. If none are incompetent to vote who are put on the list, the registration must be accepted as the act of a public officer, and entitles the electors to vote, notwithstanding irregularities as to administering the oath, the registrar's appointment, etc. State v. Nicholson, 1889, 9 S.E. 545, 102 N.C. 465. Elections ⚷ 116

An election is not invalidated by an irregularity which is not shown to have affected the result. State v. Nicholson, 1889, 9 S.E. 545, 102 N.C. 465. Elections ⚷ 227(1)

The fact that one of the officers of election absented himself from the voting place for a short time for dinner is not material, where it appears that no one voted while he was gone, and that there was no opportunity for tampering with the ballot boxes. State v. Nicholson, 1889, 9 S.E. 545, 102 N.C. 465. Elections ⚷ 227(4)

Sec. 4. Qualification for registration

Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 6, § 4.

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1. Construction and application

Under constitutional provision that every person born in the United States and every person who has been naturalized, 21 years of age and "possessing the qualifications set out in this article" shall be entitled to vote, the quoted phrase was intended to mean, and was made certain by, the qualifications appearing upon the face of Article VI, and one of those qualifications was set forth in Section 4 of Article VI wherein it was required that "every person presenting himself for registration shall be able to read and write, any section of the Constitution in the English language". Lassiter v. Northampton County Bd. of Elections, 1958, 102 S.E.2d 853, 248 N.C. 102, probable jurisdiction noted 79 S.Ct. 294, 358 U.S. 916, 3 L.Ed.2d 236, affirmed 79 S.Ct. 985, 360 U.S. 45, 3 L.Ed.2d 1072. Elections ⚷ 60

Const. art. 6, §§ 1, 3, 4, provide the qualifications of voters and declare that every person shall be able to read and write, unless registered under another clause, before being entitled "to register," as required by section 3, and that before he shall be entitled to "vote" he shall have paid his poll tax for the previous year. Pace v. City of Raleigh, 1905, 52 S.E. 277, 140 N.C. 65. Intoxicating Liquors ⚷ 34(1)

Under Const. art. 6, § 4, prescribing an educational qualification for voters, but providing that no male person who was, on or prior to January 1, 1867, entitled to vote in any state of the United States wherein he then resided and no lineal descendant of such person, shall be denied the right to register and vote at any election in this state by reason of his failure to possess the educational qualifications prescribed therein, and providing for a registration of all voters of the latter class and the making of a permanent roll of their names, persons so registered in the permanent roll are not thereby excused from registering at each election in the precinct where they are entitled to vote. Clark v. City of Statesville, 1905, 52 S.E. 52, 139 N.C. 490. Elections ⚷ 97

2. Construction with federal constitution

Requirement of North Carolina statute and Constitution that a person as a prerequisite to registration as a voter "be able to read and write any section of the Constitution of North Carolina in the English language" with such requirement applicable to members of all races, did not conflict with either the Fourteenth, Fifteenth or Seventeenth Amendments to the federal Constitution, and such requirements could not be condemned as unconstitutional on their face as a device unrelated to desire of the state to raise the standards for people of all races who cast the ballot. Lassiter v. Northampton County Bd. of Elections, 1959, 79 S.Ct. 985, 360 U.S. 45, 3 L.Ed.2d 1072. Constitutional Law ⚷ 215.3; Elections ⚷ 12(5)

3. Validity of statutes, generally

Const. art. 6, §§ 2, 3, 4, provide that the Legislature may from time to time provide for the registration of voters, and that all elections by the people shall be by ballot, and that each voter is eligible to office. The suffrage amendment of 1900 to the Constitution fixed a new qualification for voters, but left the matter of registration to the Legislature as before. Held, that Laws 1907, p. 733, c. 493, providing for the issuance of county bonds on consent of the voters, and authorizing by section 4 (page 733) a new registration of voters, is not invalid under the Constitution, since the power to provide for the registration of voters is in the Legislature, and they may leave it to the local authorities. Cox v. Commissioners of Pitt County, 1908, 60 S.E. 516, 146 N.C. 584. Constitutional Law ⚷ 65

4. Validity of literacy requirement

Act requiring prospective voter as requisite to registration to satisfy registrar of his ability to read and write any section of Constitution in English language held constitutional (Code 1935, § 5939; Const. art. 6, §§ 3, 4). Allison v. Sharp, 1936, 184 S.E. 27, 209 N.C. 477. Elections ⚷ 9

5. Declaratory judgments

Constitutionality of act requiring prospective voter as requisite to registration to satisfy registrar of his ability to read and write any section of Constitution in English language could be tested in action under Uniform Declaratory Judgment Act. Allison v. Sharp, 1936, 184 S.E. 27, 209 N.C. 477. Declaratory Judgment ⚷ 124.1

Proceeding under Declaratory Judgments Act for purpose of declaring un-

constitutional statute carrying into effect provisions of Constitution requiring every prospective voter to be able to read and write any section of the Constitution in the English language could have been dismissed as moot, where plaintiffs only challenged constitutionality of statute, sought no affirmative relief, and alleged no abuse of discretion by registrar (Code 1935, §§ 628(a) et seq., 5939; Const. art. 6, § 4). Allison v. Sharp, 1936, 184 S.E. 27, 209 N.C. 477. Declaratory Judgment ⚷ 362

Sec. 5. Elections by people and General Assembly

All elections by the people shall be by ballot, and all elections by the General Assembly shall be viva voce. A contested election for any office established by Article III of this Constitution shall be determined by joint ballot of both houses of the General Assembly in the manner prescribed by law.

Historical and Statutory Notes

The provisions comprising this section are similar to provisions contained in North Carolina Constitution of 1868, Article 2, § 9; Article 3, § 3, Article 6, § 6.

Cross References

Contested elections for Council of State offices, see § 163–182.13A.

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1. In general

Voter's exercise of franchise should be free from extraneous influences (Const. art. 6, § 6). Withers v. Board of Com'rs of Harnett County, 1929, 146 S.E. 225, 196 N.C. 535. Elections ⚷ 213

2. Absentee voting

Absentee Voters Law (Pub.Laws 1917, c. 23, as amended by Pub.Laws 1919, c. 322) does not conflict with Const. art. 6, § 6, declaring that all elections by the people shall be by ballot. Jenkins v. State Board of Elections of North Carolina, 1920, 104 S.E. 346, 180 N.C. 169, 14 A.L.R. 1247. Elections ⚷ 27

3. Secret ballot

Secrecy of voting is implied by provision for elections by ballot (Const. art. 6, § 6). Withers v. Board of Com'rs of Harnett County, 1929, 146 S.E. 225, 196 N.C. 535. Elections ⚷ 213

Voter does not waive constitutional right to secret ballot, unless he has knowledge of his rights and of surrounding facts enabling him to protect himself (Const. art. 6, § 6). Withers v. Board of Com'rs of Harnett County, 1929, 146 S.E. 225, 196 N.C. 535. Elections ⚷ 213

The privilege of voting a secret ballot, given by Const. art. 6, § 6, is entirely a personal one, and a secret ballot is not compulsory, so far as the voter is concerned, under Consol.St. § 5979. Jenkins v. State Board of Elections of North Carolina, 1920, 104 S.E. 346, 180 N.C. 169, 14 A.L.R. 1247. Elections ⚷ 213

While a voter is entitled to cast a secret ballot and has the right to keep the vote secret after it is cast so that the County Board of Elections is prohibited from disclosing any information that would identify the provisional voter, the board may release a copy of the voter''s application to vote provisionally if any information that could be used to identify the voter is removed. Op.Atty.Gen., Gheen, Nov. 6, 1997.

4. Ballot boxes

Maintenance of ballot box with separate slots labeled for and against tax held to render school district tax election void as depriving electorate of se-

crecy (Const. art. 6, § 6). Withers v. Board of Com'rs of Harnett County, 1929, 146 S.E. 225, 196 N.C. 535. Elections ⚷ 217

Voters at election at which ballot boxes were maintained with separate slots for and against tax held not to waive secrecy, where fact that all votes were counted irrespective of slot was not disclosed (Const. art. 6, § 6). Withers v. Board of Com'rs of Harnett County, 1929, 146 S.E. 225, 196 N.C. 535. Elections ⚷ 217

5. Jurisdiction

Supreme Court had jurisdiction to review orders of trial court issued in election protests, where section of state constitution granted Court authority to exercise appellate review of any decision of courts below, upon any matter of law or legal inference. James v. Bartlett, 2005, 359 N.C. 260, 607 S.E.2d 638, reconsideration denied 359 N.C. 633, 613 S.E.2d 691. Elections ⚷ 305(1)

Sec. 6. Eligibility to elective office

Every qualified voter in North Carolina who is 21 years of age, except as in this Constitution disqualified, shall be eligible for election by the people to office.

Amended by Laws 1971, c. 201, § 1; Laws 1971, c. 1141, § 1.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 6, § 7 in part.

Cross References

Election of local boards of education members, see § 115C–37.

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Construction and application 1
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1. Construction and application

State constitutional provision regarding eligibility to elective office expressly limited disqualification from office to grounds set forth in Constitution. Moore v. Knightdale Bd. of Elections, 1992, 413 S.E.2d 541, 331 N.C. 1. Officers And Public Employees ⚷ 19

Under Const. art. 6, §§ 7, 8, only voters are qualified to hold office. Bickett v. Knight, 1915, 85 S.E. 418, 169 N.C. 333, Am.Ann.Cas. 1917D,517. Officers And Public Employees ⚷ 19

In view of Revisal 1905, §§ 989, 2347, 2350, et seq., position of notary public held an office within Const. art. 6, § 7, as to eligibility to office. Bickett v. Knight, 1915, 85 S.E. 418, 169 N.C. 333, Am.Ann.Cas. 1917D,517. Notaries ⚷ 2

2. Election of unqualified candidate

Where the candidate for an office receiving the majority of the ballots cast was disqualified, the minority candidate is not elected, but the vacancy must be filled according to the provisions of the law. Spruill v. Bateman, 1913, 77 S.E. 768, 162 N.C. 588, Am.Ann.Cas. 1915B,515. Officers And Public Employees ⚷ 32

3. Age qualifications

In the absence of any statute making a deputy sheriff an officer, or making provisions as to his age, a minor may be appointed deputy, though Const. art. 6, §§ 4, 5, provide that an officer shall be 21 years old. Jamesville & W.R. Co. v. Fisher, 1891, 13 S.E. 698, 109 N.C. 1. Infants ⚷ 7

4. Women

A woman is now qualified to serve in the capacity of deputy clerk of the superior court, in view of the Nineteenth Amendment to the federal Constitution (Pub.Laws 1919, c. 129; Pub.Laws 1920 [Ex.Sess.] c. 93; Const. N.C. art. 6, § 4, effective Jan. 1921, and section

7). Preston v. Roberts, 1922, 110 S.E. 586, 183 N.C. 62. Clerks Of Courts ⚷ 6

A woman is now qualified to serve in the capacity of notary public or deputy clerk of the superior court, in view of the Nineteenth Amendment to the federal Constitution (Pub.Laws 1919, c. 129; Pub.Laws 1920 [Ex.Sess.] c. 93; Const. N.C. art. 6, § 4, effective Jan. 1921, and section 7). Preston v. Roberts, 1922, 110 S.E. 586, 183 N.C. 62. Notaries ⚷ 2

5. Validity of legislation

Constitutional article providing that every qualified voter in state who is 21 years of age, except as disqualified in Constitution, shall be eligible for election by the people to office does not apply to appointed positions; therefore, statute requiring that candidates to fill unexpired term of district court judges be members of same political party as vacating judge does not violate Constitution. Baker v. Martin, 1991, 410 S.E.2d 887, 330 N.C. 331. Judges ⚷ 4; Officers And Public Employees ⚷ 19

The provision in special law conditionally creating town of Havelock, that any qualified elector who has resided in the area to be incorporated in the town for not less than one year immediately preceding the election shall be eligible to be nominated for mayor or a member of board of commissioners by petition of five electors of the area, was in conflict with constitutional provisions relating to qualification of voters and to eligibility to office, and the Legislature was without power to so limit the classes which would qualify for office. Starbuck v. Town of Havelock, 1960, 113 S.E.2d 278, 252 N.C. 176. Municipal Corporations ⚷ 124(3)

The provision in special law conditionally creating town of Havelock, concerning eligibility of persons to be nominated for mayor or member of board of commissioners, was independent and separable from the remainder of the law, and unconstitutionality of such provision did not impair validity of portions of act permitting the inhabitants to determine whether the area should or should not become a town. Starbuck v. Town of Havelock, 1960, 113 S.E.2d 278, 252 N.C. 176. Statutes ⚷ 64(4)

As Const. art. 6, § 7, providing that every voter shall be eligible to office, does not require judicial officers to be members of the bar, Pub.Loc.Law 1911, c. 343, § 2, creating a recorder's court, is unconstitutional in requiring recorders to be licensed attorneys. Spruill v. Bateman, 1913, 77 S.E. 768, 162 N.C. 588, Am.Ann.Cas. 1915B,515. Judges ⚷ 4

6. Campaign financing

Court could not order state to provide public financing for political campaigns, as issue was for the legislature; state constitution did not require public financing, and court could not read requirement into constitution. Royal v. State, 2002, 153 N.C.App. 495, 570 S.E.2d 738, appeal dismissed, review denied 356 N.C. 677, 576 S.E.2d 111. Constitutional Law ⚷ 45; Constitutional Law ⚷ 70.1(7.1); Elections ⚷ 317.2

Sec. 7. Oath

Before entering upon the duties of an office, a person elected or appointed to the office shall take and subscribe the following oath:

> "I, ..., do solemnly swear (or affirm) that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties of my office as . . . . . ., so help me God."

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 6, § 7 in part.

Cross References

Appointment, term, qualifications, and bond of tax collectors and deputies, see § 105–349.

Attorney oaths taken in open court, see § 84–1.
Campus law enforcement agencies, see § 116–40.5.
Cities and towns; government; oath of office, see § 160A–61.
Cities and towns; oath of office; law enforcement holding other offices, see § 160A–284.
Cities and towns; organizational meeting of council, see § 160A–68.
County government; oath of office, see § 153A–26.
Creation of global transpark authority and board, see § 63A–3.
Election of local boards of education members, see § 115C–37.
Oaths of sundry persons; forms, see § 11–11.
Property tax commission, see § 105–288.
Taxation; county board of equalization and review, see § 105–322.
Taxation; oath of office for assessor, see § 105–295.

Notes of Decisions

Oath of voters 1

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1. Oath of voters

A qualified voter, under Const. art. 6, § 1, who has been registered as required by section 2 of said article, cannot be deprived of his right to vote because the registrar failed to administer to him the required oath before registration, nor because he was registered by a third person, with whom the registrar had left the books, where such registration has been accepted as sufficient by the registrar. State v. Lattimore, 1897, 26 S.E. 638, 120 N.C. 426, 58 Am.St.Rep. 797. Elections ⚷ 115

The registrar may receive the certificate, and administer the oath to the voter, while outside the precinct for which he is acting, and enter the name on the registration books after his return home. People v. Teague, 1890, 11 S.E. 665, 106 N.C. 576. Elections ⚷ 106

Const. art. 6, § 2, requiring that the oath administered to persons offering themselves for registration as voters shall bind them to support the constitution "and laws of the United States," and the constitution and laws of the state not inconsistent therewith, is satisfied by an oath to support the constitution of the United States and that of the state. All valid laws, whether state or national, are included by implication. State v. Nicholson, 1889, 9 S.E. 545, 102 N.C. 465. Elections ⚷ 106

Where the register testifies that the oath was not administered upon the Bible, but does not state how it was administered, it will be presumed, in the absence of direct evidence, that the oath was taken with uplifted hand, as specified in Code, § 3310, for persons who have conscientious scruples against swearing upon the "holy evangelists," as specified in the preceding section; and whether such scruples in fact existed or not is immaterial, that form of oath being sanctioned by the statute. State v. Nicholson, 1889, 9 S.E. 545, 102 N.C. 465. Elections ⚷ 106

Const. art. 6, § 2, requiring that the oath administered to persons offering themselves for registration as voters shall bind them to support the constitution "and laws of the United States," and the constitution and laws of the state not inconsistent therewith, is satisfied by an oath to support the constitution of the United States and that of the state. All valid laws, whether state or national, are included by implication. State v. Nicholson, 1889, 9 S.E. 545, 102 N.C. 465. Elections ⚷ 106

Sec. 8. Disqualifications for office

The following persons shall be disqualified for office:

First, any person who shall deny the being of Almighty God.

Second, with respect to any office that is filled by election by the people, any person who is not qualified to vote in an election for that office.

Third, any person who has been adjudged guilty of treason or any other felony against this State or the United States, or any

person who has been adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, or any person who has been adjudged guilty of corruption or malpractice in any office, or any person who has been removed by impeachment from any office, and who has not been restored to the rights of citizenship in the manner prescribed by law.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 6, § 8.

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Adjudged guilty of disqualifying crimes 5
Felons 3
Qualification as voter 2
Religious belief 4
Validity of statutes disqualifying for other reasons 6

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1. In general

Supreme Court's adjudication of "wilful misconduct in office" in a proceeding instituted by Judicial Standards Commission and in which judge or justice involved has been accorded due process of law and his guilt established by clear and convincing evidence is equivalent to adjudication of guilt of "malpractice in any office" as used in constitutional provision disqualifying from office any person who has been adjudged guilty of corruption or "malpractice in any office," and therefore legislature acted within its power when it made disqualification from judicial office consequence of removal or wilful misconduct under statute. In re Peoples, 1978, 250 S.E.2d 890, 296 N.C. 109, certiorari denied 99 S.Ct. 2859, 442 U.S. 929, 61 L.Ed.2d 297. Judges ⚷ 11(8)

Under Const. art. 6, §§ 7, 8, only voters are qualified to hold office. Bickett v. Knight, 1915, 85 S.E. 418, 169 N.C. 333, Am.Ann.Cas. 1917D,517. Officers And Public Employees ⚷ 19

The disqualification for office and the loss of the right of suffrage, imposed by Const. art. 6, § 1, upon persons convicted of infamous offenses, constitute no part of the punishment, but are mere consequences of the judgment. State v. Jones, 1880, 82 N.C. 685. Officers And Public Employees ⚷ 31

2. Qualification as voter

Constitutional article providing that every qualified voter in state who is 21 years of age, except as disqualified in Constitution, shall be eligible for election by the people to office does not apply to appointed positions; therefore, statute requiring that candidates to fill unexpired term of district court judges be members of same political party as vacating judge does not violate Constitution. Baker v. Martin, 1991, 410 S.E.2d 887, 330 N.C. 331. Judges ⚷ 4; Officers And Public Employees ⚷ 19

3. Felons

Former felon's alleged possession of handgun within five years of release from prison and restoration of citizenship rights would violate North Carolina Felony Firearms Act and, therefore, violated federal, statutory prohibition against former felon's possession of firearm, even if certificate of unconditional discharge was construed merely as warning that firearm possession could constitute violation of federal law; Felony Firearms Act expressly provided that felon could not possess handgun. U.S. v. McLean, 1990, 904 F.2d 216, certiorari denied 111 S.Ct. 203, 498 U.S. 875, 112 L.Ed.2d 164. Weapons ⚷ 4

4. Religious belief

Petitioner convicted in North Carolina of possessing burglary tools was not entitled to habeas corpus relief on ground that he was denied due process and equal protection in that the grand and petit juries were illegal because of requirement of North Carolina Constitution that all qualified jurors must believe in God, where state remedies had not been exhausted. Brooks v. Ed-

wards, 1974, 396 F.Supp. 662. Habeas Corpus ⚷ 337

5. Adjudged guilty of disqualifying crimes

Under constitutional provision disqualifying from office any person who has been "adjudged" guilty of corruption or malpractice in any office, the word "adjudged" means "to decide or rule upon as a judge or with judicial or quasi-judicial powers," and the word "guilty" denotes evil, intentional wrongdoing and refers to conscious and culpable acts, but it does not necessarily mean or require criminal conviction or finding of a jury; therefore, definitions are broad enough to encompass adjudication by Supreme Court that judge is guilty of wilful misconduct in office. In re Peoples, 1978, 250 S.E.2d 890, 296 N.C. 109, certiorari denied 99 S.Ct. 2859, 442 U.S. 929, 61 L.Ed.2d 297. Judges ⚷ 11(1)

6. Validity of statutes disqualifying for other reasons

Fact that member of Republican Party was not considered for nomination to fill unexpired term of district court judge because of his political affiliation was showing of sufficient injury so that he had standing to bring action challenging constitutionality of statute which requires that candidates to fill unexpired terms of district court judges be members of same political party as vacating judge. Baker v. Martin, 1991, 410 S.E.2d 887, 330 N.C. 331. Constitutional Law ⚷ 42.1(1)

Sec. 9. Dual office holding

(1) Prohibitions. It is salutary that the responsibilities of self-government be widely shared among the citizens of the State and that the potential abuse of authority inherent in the holding of multiple offices by an individual be avoided. Therefore, no person who holds any office or place of trust or profit under the United States or any department thereof, or under any other state or government, shall be eligible to hold any office in this State that is filled by election by the people. No person shall hold concurrently any two offices in this State that are filled by election of the people. No person shall hold concurrently any two or more appointive offices or places of trust or profit, or any combination of elective and appointive offices or places of trust or profit, except as the General Assembly shall provide by general law.

(2) Exceptions. The provisions of this Section shall not prohibit any officer of the military forces of the State or of the United States not on active duty for an extensive period of time, any notary public, or any delegate to a Convention of the People from holding concurrently another office or place of trust or profit under this State or the United States or any department thereof.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 14, § 7.

Cross References

Appointment of city manager; dual office holding, see § 160A–147.

Appointment, term, qualifications, and bond of tax collectors and deputies, see § 105–349.

Cities and towns; membership and appointment of commission; joint commission, see § 160A–451.

Cities and towns; oath of office; law enforcement holding other offices, see § 160A–284.
Clean water management trust fund; board of trustees established; membership qualifications; vacancies; meetings and meeting facilities, see § 113A–255.
Dual-office holding by public officers allowed, see § 128–1.1.
Election of local boards of education members, see § 115C–37.
Elementary and secondary school finance officers, see § 115C–435.
Emergency management personnel, see § 166A–13.
Holding office contrary to the constitution; penalty, see § 128–2.
Investments authorized for special funds held by state treasurer, see § 147–69.2.
Listing, appraisal, and assessment of property subject to taxation by cities and towns situated in more than one county, see § 105–328.
Marine fisheries commission—members; appointment; term; oath; ethical standards; removal; compensation; staff, see § 143B–289.54.
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Regional solid waste management authority; membership; board; delegates, see § 153A–423.
Sedimentation control commission—members; selection; compensation; meetings, see § 143B–299.
Taxation; assistant assessors, see § 105–297.
Taxation; county assessor, see § 105–294.
Tax commission, county listing, appraisal, and assessing officials, see § 105–300.

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1. Construction and application

Provision of State Constitution that prohibits person from holding more than one office does not prohibit person from seeking election to more than one office. Comer v. Ammons, 1999, 135 N.C.App. 531, 522 S.E.2d 77. Officers And Public Employees ⚷ 30.1

State constitutional provision regarding eligibility to elective office expressly limited disqualification from office to grounds set forth in Constitution. Moore v. Knightdale Bd. of Elections, 1992, 413 S.E.2d 541, 331 N.C. 1. Officers And Public Employees ⚷ 19

Under the constitution, it is not permissible for one person to hold two public offices at same time, unless second office is temporary or appointment thereto does not require continuous public service, as in case of State Board of Education Comptroller, temporarily commissioned as captain in United States Army. In re Advisory Opinion to Governor, 1944, 28 S.E.2d 567, 223 N.C. 845. Officers And Public Employees ⚷ 30.5

Under constitutional provision prohibiting double office holding, question whether two offices held are compatible is immaterial. Harris v. Watson, 1931, 161 S.E. 215, 201 N.C. 661, 79 A.L.R. 441. Officers And Public Employees ⚷ 30.1

2. Purposes

The constitutional provision respecting holding off offices under both state and United States is intended to prevent double office holding except in certain instances. In re Advisory Opinion, 1946, 39 S.E.2d 217, 226 N.C. 772. Officers And Public Employees ⚷ 30.5

3. Common law

At common law there was no limit on the right of a citizen to hold two or more offices unless their duties were incompatible, but Const. art. 14, § 7, prohibits the holding of two or more offices or places of trust under the government of the United States, the state, county, etc., without reference to their incompatibility. Wootton v. Smith, 1907, 59 S.E. 649, 145 N.C. 476. Officers And Public Employees ⚷ 30.5

4. Exceptions and exclusions

The reason for express exclusion of militia officers from operation of section of constitution prohibiting double office-holding requires that such prohibition shall not extend to temporary officers in United States Army during war. In re Advisory Opinion to Governor, 1944, 28 S.E.2d 567, 223 N.C. 845. Officers And Public Employees ⚷ 30.4

5. Leaves of absence

The acceptance by a superior court judge, while on leave of absence, of the office of a presiding judge of the United States Zonal Court in Germany, created under the War Department, which office carried with it some of the attributes of sovereignty, would, under constitutional provision against dual office holding, ipso facto create a vacancy in office of judge of the superior court. In re Advisory Opinion, 1946, 39 S.E.2d 217, 226 N.C. 772. Officers And Public Employees ⚷ 55(2)

The governor may grant Comptroller of State Board of Education a leave of absence while serving as temporarily commissioned captain in United States Army, without vacating his civil office. In re Advisory Opinion to Governor, 1944, 28 S.E.2d 567, 223 N.C. 845. States ⚷ 51

6. Office or place of trust or profit

An ''office'' is a public station or employment conferred by appointment of government, and embraces the idea of tenure, duration, emolument, and duties. In re Advisory Opinion, 1946, 39 S.E.2d 217, 226 N.C. 772. Officers And Public Employees ⚷ 1

An office which carries with it some of the attributes of sovereignty invests person occupying such office with governmental authority, and he then holds an ''office or place of trust or profit under the United States'' within constitutional provisions prohibiting one holding such office or place from exercising any other office or place under state authority. In re Advisory Opinion, 1946, 39 S.E.2d 217, 226 N.C. 772. Officers And Public Employees ⚷ 30.4

With respect to constitutional prohibition against one person's holding two offices, an ''office'' is a public station, or employment, conferred by the appointment of government, and embraces the ideas of tenure, duration emolument, and duties. Brigman v. Baley, 1938, 195 S.E. 617, 213 N.C. 119. Officers And Public Employees ⚷ 30.5

Statute authorizing, in certain cases, performance ex officio of duties of city manager by member of city council as auxiliary duties, held not to violate constitutional prohibition against one person holding two governmental offices or ''places of trust or profit,'' quoted phrase meaning those positions which approximate to, but are not offices, and yet occupy same general level in dignity and importance. Grimes v. Holmes, 1934, 176 S.E. 746, 207 N.C. 293. Municipal Corporations ⚷ 124(1)

''Office'' within constitutional provision prohibiting double office holding involves delegation to individual of some of sovereign functions of government to be exercised by him for public benefit. Harris v. Watson, 1931, 161 S.E. 215, 201 N.C. 661, 79 A.L.R. 441. Officers And Public Employees ⚷ 30.1

Position of notary public created by statute is ''public office'' within constitutional provision prohibiting double office holding (C.S. § 3175; Const. art. 14, § 7). Harris v. Watson, 1931, 161 S.E. 215, 201 N.C. 661, 79 A.L.R. 441. Officers And Public Employees ⚷ 30.1

Test of whether position created by statute is ''office'' within constitutional provision prohibiting double office holding is not term of officer but power conferred on him (Const. art. 14, § 7). Harris v. Watson, 1931, 161 S.E. 215, 201 N.C. 661, 79 A.L.R. 441. Officers And Public Employees ⚷ 30.1

''Commissioner for special purpose'' within constitutional provision prohibiting double office holding exercises no governmental power, and is therefore not public officer (Const. art. 14, § 7). Harris v. Watson, 1931, 161 S.E. 215, 201 N.C. 661, 79 A.L.R. 441. Officers And Public Employees ⚷ 30.1

The position of public administrator is a mere administrative agency, and not an office or place of trust, within Const. art. 14, § 7, prohibiting a person from filling two or more offices or

places of trust under the federal, state, or county government at the same time. Wootton v. Smith, 1907, 59 S.E. 649, 145 N.C. 476. Officers And Public Employees ⚷ 30.5

Under Const. art. 14, § 7, providing that no person who shall hold any office or place of trust or profit under the United States or any department thereof or under the state, etc., shall hold or exercise any other office or place of trust or profit under the authority of the state, provided, etc., an office or place of trust is a public position, involving a delegation to the individual of some part of the sovereign functions of the government to be exercised for the public benefit. Wootton v. Smith, 1907, 59 S.E. 649, 145 N.C. 476. Officers And Public Employees ⚷ 1

A night watchman of a federal post office building, appointed by the treasury department, does not "hold an office of trust or profit under the United States," within Const. art. 14, § 7, so as to render him ineligible to hold the office of city alderman. Doyle v. Aldermen of Raleigh, 1883, 89 N.C. 133, 45 Am.Rep. 677. Municipal Corporations ⚷ 124(3)

7. Federal officeholding

United States naval officer appointed to membership in zoning commission was incapable of performing the duties of a public officer in the state by constitutional prohibition and was neither a de facto nor de jure officer of the zoning commission, notwithstanding that fact creating the zoning commission declared that members of the commission should be considered as holding office as commissioners for a special purpose within exception to the constitutional prohibition. Vance S. Harrington & Co. v. Renner, 1952, 72 S.E.2d 838, 236 N.C. 321. Officers And Public Employees ⚷ 30.4

Where postmaster violated constitutional prohibition against double office holding by accepting office of member of county Board of Education to fill vacancy which occurred on August 31, 1951, when regular member of Board resigned, without postmaster surrendering his office as postmaster, postmaster's attempt to qualify as member of Board was absolutely void, and he did not act as either a de jure or de facto officer in performing functions as member of Board, and therefore State Board of Education, rather than Democratic Executive Committee of county, had right to fill vacancy until regular session of General Assembly in 1953. State ex rel. Atkins v. Fortner, 1952, 72 S.E.2d 594, 236 N.C. 264. Officers And Public Employees ⚷ 30.4; Schools ⚷ 48(3)

Where one holding office under the United States violates State constitutional prohibition against double office holding by accepting second office under the State without surrendering first office, his attempt to qualify for second office is absolutely void, and he does not act as either a de jure or a de facto officer in performing functions of second office. Edwards v. Board of Educ. of Yancey County, 1952, 70 S.E.2d 170, 235 N.C. 345. Officers And Public Employees ⚷ 30.4

7.5. Tribal Chairman

The position of Tribal Chairman is neither an elective nor an appointive office subject to the dual office holding prohibitions of the North Carolina Constitution and N.C.G.S. §§ 128–1, 128–1.1 and 128–1.2 as the position of Tribal Chairman exercises no sovereign powers of either the State of North Carolina or of the United States. Op.Atty. Gen., Reed, Nov. 17, 2000.

8. Refusal of office to qualified persons

Plaintiff was elected clerk of the superior court of Wilkes county for the term of four years from the first Monday in December, 1886. He had previously been elected sheriff of the county for two years from the first Monday in December, 1884. On the first Monday in December, 1886, he offered to qualify as clerk. His term as sheriff had then expired, but he had in his hands a number of tax bills for 1886 which were unpaid, and which he still had power to enforce. The board of commissioners refused to permit him to qualify, basing their refusal on Const. art. 14, § 7, which provides that no person who shall hold an office or place of trust or profit under the state shall hold or exercise any other office or place of profit under the state. Held, the refusal of the commissioners was not authorized by the constitution, and plaintiff was entitled to qualify. McNeill v. Somers, 1887, 2 S.E. 161, 96 N.C. 467. Officers And Public Employees ⚷ 30.1

9. Dual offices in violation of provision

A rural mail carrier held, under Const. U.S. art. 2, § 2, and Postal Laws

and Regulations of 1913, a public officer, within Const. N.C. art. 14, § 7, and hence for him to hold a state office subjected him to the penalties prescribed by statute. Groves v. Barden, 1915, 84 S.E. 1042, 169 N.C. 8, Am. Ann.Cas. 1917D,316. Officers And Public Employees ⚷ 30.4

Under Const. art. 14, § 7, providing that no person holding an office or place of trust shall hold or exercise any other, one cannot hold the office of county commissioner, and also be a member of the county board of education. Barnhill v. Thompson, 1898, 29 S.E. 720, 122 N.C. 493. Officers And Public Employees ⚷ 30.1

10. Dual offices not in violation of provision—In general

Under statute providing that recorder of municipal recorder's court may also be the mayor, a mayor who was duly chosen recorder of a municipal recorder's court had jurisdiction to impose judgment on a defendant charged with possessing alcoholic beverages upon which federal and state taxes had not been paid, as against contention that mayor was barred by Constitution from holding the two offices. Ex parte Barnes, 1938, 194 S.E. 499, 212 N.C. 735. Officers And Public Employees ⚷ 30.2

Serving as President of the Board of Directors of a Telephone membership corporation and on the Board of the Rural Electrification Authority does not constitute prohibited dual office holding, nor would a conflict of interest under N.C.G.S. § 14–234 arise from the President of the Board of Directors of a telephone membership corporation serving on the Board of the Rural Electrification Authority. 52 Op.Atty. Gen. 107, Hatchcock, May 20, 1983.

11. —— Law enforcement offices, dual offices not in violation of provision

Justice of the peace, who is also officer on town police force, may lawfully, as justice of the peace, take oath of another police officer to an affidavit on which a criminal warrant is to be issued and then, as justice of the peace, lawfully issue thereon a warrant addressed to the chief of police or any other lawful officer of the town or county and returnable for trial before the judge of the Recorder's Court of the town. State v. McHone, 1955, 90 S.E.2d 536, 243 N.C. 231. Criminal Law ⚷ 207(3)

Under Const. art. 14, § 7, excepting a justice of the peace from the inhibition against one holding two offices of trust or profit, one may be both a justice of the peace and the recorder of a city recorder's court. State v. Lord, 1907, 59 S.E. 656, 145 N.C. 479. Officers And Public Employees ⚷ 30.2

A person holding an appointive office as a police officer can concurrently hold a position as an elected officer in either State or local government, including as a school board member. 55 Op.Atty. Gen. 34, Kilgore, Sept. 17, 1985.

12. —— Attorneys, dual offices not in violation of provision

Superior court's assignment of member of bar holding office of United States district attorney to prosecute for estate in necessary absence of solicitor of district was not improper, under Const. art. 14, § 7, prohibiting person from holding two offices. State v. Wood, 1918, 95 S.E. 1050, 175 N.C. 809. Officers And Public Employees ⚷ 30.4

If superior court's appointment of United States district attorney to prosecute for state in necessary absence of solicitor of district had made appointee an officer in violation of Const. art. 14, § 7, his acceptance would not have made conviction invalid, but merely have vacated his previous office as district attorney. State v. Wood, 1918, 95 S.E. 1050, 175 N.C. 809. Officers And Public Employees ⚷ 30.4

13. —— Notaries public, dual offices not in violation of provision

Position of notary public held not that of "commissioner for special purpose" within constitutional provision prohibiting double office holding (Const. art. 14, § 7). Harris v. Watson, 1931, 161 S.E. 215, 201 N.C. 661, 79 A.L.R. 441. Officers And Public Employees ⚷ 30.1

14. Acceptance of office as vacation of prior office

Where one holding office under the State violates constitutional prohibition against double office holding by accepting a second office under either the State or the United States without surrendering first office, he automatically and instantly vacates first office and does not thereafter act as either a de jure or de facto officer in performing functions of first office. Edwards v. Board of Educ. of Yancey County, 1952,

70 S.E.2d 170, 235 N.C. 345. Officers And Public Employees ⚷ 55(2)

One who holds an office or place of trust under state authority forfeits such office or place of trust when he accepts another office or place of trust which is forbidden by the Constitution, or which is incompatible with office or place of trust already held, and ipso facto the first office is vacated. In re Advisory Opinion, 1946, 39 S.E.2d 217, 226 N.C. 772. Officers And Public Employees ⚷ 30.5; Officers And Public Employees ⚷ 55(2)

A person holding an office or place of trust or profit by accepting another such office or place, in contravention of the Constitution, vacates the first office or place, and not the second. Ex parte Barnes, 1938, 194 S.E. 499, 212 N.C. 735. Officers And Public Employees ⚷ 55(2)

Acceptance and qualification for one office vacates eo instanti an office already filled by same incumbent (Const. art. 14, § 7). Harris v. Watson, 1931, 161 S.E. 215, 201 N.C. 661, 79 A.L.R. 441. Officers And Public Employees ⚷ 55(2)

Under Const. art. 14, § 7, the acceptance and qualification for a second office ipso facto vacates the first. Midgett v. Gray, 1912, 73 S.E. 791, 158 N.C. 133, on rehearing 74 S.E. 1050, 159 N.C. 443. Officers And Public Employees ⚷ 55(2)

Since Const. art. 14, § 7, prohibits a person holding more than one office under the state at the same time, the clerk of the superior court of Madison county could not discharge the duties of clerk of the criminal court of such county after a separate office of clerk of the criminal court had been created. White v. Murray, 1900, 35 S.E. 256, 126 N.C. 153. Clerks Of Courts ⚷ 2

15. Authorities of officers in violation

Where party holding office of clerk of county recorder's court accepted office of justice of peace without surrendering first office, party automatically and instantly vacated first office and did not thereafter act as either de jure or de facto clerk of county recorder's court. State v. Cook, 1968, 160 S.E.2d 49, 273 N.C. 377. Officers And Public Employees ⚷ 55(2)

Party who held office as clerk of county recorder's court and thereafter accepted office of justice of peace without surrendering first office had authority to issue search warrant as justice of the peace. State v. Cook, 1968, 160 S.E.2d 49, 273 N.C. 377. Searches And Seizures ⚷ 103.1

Where member of County Board of Education violated constitutional prohibition against double office holding by accepting on July 5, 1951, the office of mayor of town, without surrendering his membership on Board, he automatically and instantly vacated his office on Board and did not thereafter act as either a de jure or de facto officer of board, and State Board of Education rather than Democratic Executive Committee of county had right to fill vacancy for appointment until regular session of General Assembly in 1953. State ex rel. Atkins v. Fortner, 1952, 72 S.E.2d 594, 236 N.C. 264. Officers And Public Employees ⚷ 55(2); Schools ⚷ 48(3)

Under Const. art. 14, § 7, prohibiting any person from holding two offices at the same time, the acceptance by a town commissioner of the office of county superintendent of public instruction operated ipso facto to vacate the office of commissioner, and he was not thereafter a de jure or de facto officer. Whitehead v. Pittman, 1914, 80 S.E. 976, 165 N.C. 89. Officers And Public Employees ⚷ 55(2)

16. Validity of statutes and local acts—In general

Federal district court should have abstained from ruling on merits of claims that North Carolina statute placing certain county under county manager form of government and specifically prohibiting chairman or any other board member of that county from simultaneously holding office of county manager violated federal equal protection clause, since there were unsettled questions of validity of the statute under state law that might have been dispositive of the case. N.C.Laws 1963, c. 129, § 2; c. 936, § 1 et seq., as amended; N.C.G.S. §§ 128–1.1(b), 153A–1(5), 153A–58(4), par. b, 153A–81(2), 153A–84; N.C. Const. Art. 6, § 9(1); U.S.C.A. Const. Amend. 14; 42 U.S.C.A. §§ 1983, 1985. Ratcliff v. Buncombe County, 1985, 759 F.2d 1183. Federal Courts ⚷ 47.1

Statute prohibiting dual office holding in county was local act within meaning of Constitution and laws of state of North Carolina, and thus statute violated North Carolina Constitution requiring that subject of dual office holding in North Carolina could only be validly treated by general laws uniformly applicable throughout state, and thus

statute was invalid. Ratcliff v. Buncombe County, N.C., 1987, 663 F.Supp. 1003. Landlord And Tenant ⚷ 9; Statutes ⚷ 125(1)

Statute providing for election on issue of merging school administrative units did not involve dual office holding forbidden by state Constitution, since taking oath of office as member of newly constituted county board of education would terminate appointee's former membership on board of administrative unit. Hobbs v. Moore County, 1966, 149 S.E.2d 1, 267 N.C. 665. Schools ⚷ 22

Act relating to election of tax collector for Madison county which imposed additional duties ex officio upon those holding county offices was not unconstitutional as in violation of prohibition against holding two offices. Pub.Loc. Laws 1931, c. 341, § 4; Const. art. 14, § 7. Freeman v. Board of Com'rs of Madison County, 1940, 7 S.E.2d 354, 217 N.C. 209. Officers And Public Employees ⚷ 30.5

A public local act providing that chairmen of board of education and board of health and superintendent of schools should constitute a jury commission and tax commission for Madison county, requiring them to take oath of office but not to resign from their previous offices, was unconstitutional as providing for two offices for the same person. Pub.Loc.Laws 1931, c. 177; Code 1935, § 3200 et seq.; Const. art. 14, § 7. Brigman v. Baley, 1938, 195 S.E. 617, 213 N.C. 119. Officers And Public Employees ⚷ 19

A statute which creates no new office and appoints no additional officer, but merely attaches new duties to existing offices, to be performed by incumbents, or requires existing officers to act as ex officio members of boards or commissions, does not violate constitutional prohibition against any person's holding two offices. Brigman v. Baley, 1938, 195 S.E. 617, 213 N.C. 119. Officers And Public Employees ⚷ 30.5

Where statute providing that designated county officers should serve as jury commission and tax commission was unconstitutional because requiring same person to fill two offices, appointment of tax lister by commission formed under such statute was invalid and appointee could not maintain quo warranto for the office and emoluments thereof. Pub.Loc.Laws 1931, c. 177; Code 1935, § 3200 et seq.; Const. art. 14, § 7. Brigman v. Baley, 1938, 195 S.E. 617, 213 N.C. 119. Officers And Public Employees ⚷ 30.5; Quo Warranto ⚷ 10

Laws 1911, c. 62, § 9, relating to boards of health, held not to violate Const. art. 14, § 7, forbidding the holding of two offices by one person. McCullers v. Board of Com'rs of Wake County, 1912, 73 S.E. 816, 158 N.C. 75, Am.Ann.Cas. 1913D,507. Officers And Public Employees ⚷ 30.5

17. —— Resign to Run statute, validity of statutes and local acts

"Resign to run" statute, requiring officeholder to resign from position prior to running for another office, was a disqualification from holding office not authorized by State Constitution, even though it was claimed statute was qualification on candidacy or limitation on right to retain one office while seeking another, and that statute advanced constitutional prohibition against dual office holding and allowed for officeholder's vacancy to be filled by election rather than appointment. Moore v. Knightdale Bd. of Elections, 1992, 413 S.E.2d 541, 331 N.C. 1. Officers And Public Employees ⚷ 27

Sec. 10. Continuation in office

In the absence of any contrary provision, all officers in this State, whether appointed or elected, shall hold their positions until other appointments are made or, if the offices are elective, until their successors are chosen and qualified.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 14, § 5.

Notes of Decisions

In general 1

1. In general

"Resign to run" statute, requiring officeholder to resign from position prior to running for another office, was a disqualification from holding office not authorized by State Constitution, even though it was claimed statute was qualification on candidacy or limitation on right to retain one office while seeking another, and that statute advanced constitutional prohibition against dual office holding and allowed for officeholder's vacancy to be filled by election rather than appointment. Moore v. Knightdale Bd. of Elections, 1992, 413 S.E.2d 541, 331 N.C. 1. Officers And Public Employees ⚷ 27

Under Priv.Laws 1915, c. 341, relating to Elizabeth City, and in view of Const. art. 14, § 5, and Revisal 1905, § 2368, containing similar provisions, city attorney once duly elected and inducted into office is entitled to same as against alleged successor not rightfully elected. Markham v. Simpson, 1918, 95 S.E. 106, 175 N.C. 135. Municipal Corporations ⚷ 149(4)

While N.C. Gen. Stat. § 162–5 provides a process to fill the office of sheriff upon the occurrence of a vacancy in the office, where an election contest is pending, this process will not be invoked since, pursuant to Article VI, Section 10 of the North Carolina Constitution, the incumbent sheriff will retain his position and no vacancy will occur. Op.Atty.Gen., Yarborough, Dec. 3, 1998.

ARTICLE VII

LOCAL GOVERNMENT

Section

1. General Assembly to provide for local government.
2. Sheriffs.
3. Merged or consolidated counties.

Section 1. General Assembly to provide for local government

The General Assembly shall provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable.

The General Assembly shall not incorporate as a city or town, nor shall it authorize to be incorporated as a city or town, any territory lying within one mile of the corporate limits of any other city or town having a population of 5,000 or more according to the most recent decennial census of population taken by order of Congress, or lying within three miles of the corporate limits of any other city or town having a population of 10,000 or more according to the most recent decennial census of population taken by order of Congress, or lying within four miles of the corporate limits of any other city or town having a population of 25,000 or more according to the most recent decennial census of population taken by order of Congress, or lying within five miles of the corporate limits of any other city or town having a population of 50,000 or more according to the most recent decennial census of population taken by order of Congress. Notwithstanding the fore-

going limitations, the General Assembly may incorporate a city or town by an act adopted by vote of three-fifths of all the members of each house.

Amended by Laws 1971, c. 857, § 1.

Historical and Statutory Notes

The provisions comprising this section are similar in part to North Carolina Constitution of 1868, Article 8, § 4.

Sec. 2. Sheriffs

In each county a Sheriff shall be elected by the qualified voters thereof at the same time and places as members of the General Assembly are elected and shall hold his office for a period of four years, subject to removal for cause as provided by law.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 6, § 1.

Sec. 3. Merged or consolidated counties

Any unit of local government formed by the merger or consolidation of a county or counties and the cities and towns therein shall be deemed both a county and a city for the purposes of this Constitution, and may exercise any authority conferred by law on counties, or on cities and towns, or both, as the General Assembly may provide.

Historical and Statutory Notes

This section is new with the adoption of the 1970 Constitution.

ARTICLE VIII

CORPORATIONS

Section

1. Corporate charters.
2. Corporations defined.

Sec. 1. Corporate charters

No corporation shall be created, nor shall its charter be extended, altered, or amended by special act, except corporations for charitable, educational, penal, or reformatory purposes that are to be and remain under the patronage and control of the State; but the General Assembly shall provide by general laws for the chartering, organization, and powers of all corporations, and for the amending, extending, and forfeiture of all charters, except those

above permitted by special act. All such general acts may be altered from time to time or repealed. The General Assembly may at any time by special act repeal the charter of any corporation.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 8, § 1.

Sec. 2. Corporations defined

The term ''corporation'' as used in this Section shall be construed to include all associations and joint-stock companies having any of the powers and privileges of corporations not possessed by individuals or partnerships. All corporations shall have the right to sue and shall be subject to be sued in all courts, in like cases as natural persons.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 8, § 3.

ARTICLE IX

EDUCATION

Section

1. Education encouraged.
2. Uniform system of schools.
3. School attendance.
4. State Board of Education.
5. Powers and duties of Board.
6. State school fund.
7. County school fund; State fund for certain moneys.
8. Higher education.
9. Benefits of public institutions of higher education.
10. Escheats.

Cross References

Sec. 1. Education encouraged

Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools, libraries, and the means of education shall forever be encouraged.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 9, § 1.

Sec. 2. Uniform system of schools

(1) General and uniform system: term. The General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools, which shall be maintained at least nine months in every year, and wherein equal opportunities shall be provided for all students.

(2) Local responsibility. The General Assembly may assign to units of local government such responsibility for the financial support of the free public schools as it may deem appropriate. The governing boards of units of local government with financial responsibility for public education may use local revenues to add to or supplement any public school or post-secondary school program.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 9, §§ 2, 3 .

Sec. 3. School attendance

The General Assembly shall provide that every child of appropriate age and of sufficient mental and physical ability shall attend the public schools, unless educated by other means.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 9, § 11.

Sec. 4. State Board of Education

(1) Board. The State Board of Education shall consist of the Lieutenant Governor, the Treasurer, and eleven members appointed by the Governor, subject to confirmation by the General Assembly in joint session. The General Assembly shall divide the State into eight educational districts. Of the appointive members of the Board, one shall be appointed from each of the eight educational districts and three shall be appointed from the State at large. Appointments shall be for overlapping terms of eight years. Appointments to fill vacancies shall be made by the Governor for the unexpired terms and shall not be subject to confirmation.

(2) Superintendent of Public Instruction. The Superintendent of Public Instruction shall be the secretary and chief administrative officer of the State Board of Education.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 9, § 8.

Sec. 5. Powers and duties of Board

The State Board of Education shall supervise and administer the free public school system and the educational funds provided for its support, except the funds mentioned in Section 7 of this Article, and shall make all needed rules and regulations in relation thereto, subject to laws enacted by the General Assembly.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 9, § 9.

Sec. 6. State school fund

The proceeds of all lands that have been or hereafter may be granted by the United States to this State, and not otherwise appropriated by this State or the United States; all moneys, stocks, bonds, and other property belonging to the State for purposes of public education; the net proceeds of all sales of the swamp lands belonging to the State; and all other grants, gifts, and devises that have been or hereafter may be made to the State, and not otherwise appropriated by the State or by the terms of the grant, gift, or devise, shall be paid into the State Treasury and, together with so much of the revenue of the State as may be set apart for that purpose, shall be faithfully appropriated and used exclusively for establishing and maintaining a uniform system of free public schools.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 9, § 4.

Sec. 7. County school fund; State fund for certain moneys

(a) Except as provided in subsection (b) of this section, all moneys, stocks, bonds, and other property belonging to a county school fund, and the clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal laws of the State, shall belong to and remain in the several counties, and shall be faithfully appropriated and used exclusively for maintaining free public schools.

(b) The General Assembly may place in a State fund the clear proceeds of all civil penalties, forfeitures, and fines which are

collected by State agencies and which belong to the public schools pursuant to subsection (a) of this section. Moneys in such State fund shall be faithfully appropriated by the General Assembly, on a per pupil basis, to the counties, to be used exclusively for maintaining free public schools.

Amended by S.L. 2003–423, § 1, eff. Jan. 1, 2005.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 9, § 5.

2003 Legislation

S.L. 2003–423, § 1, rewrote the section, which prior thereto read:

''Sec. 7. County school fund

''All moneys, stocks, bonds, and other property belonging to a county school fund, and the clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal laws of the State, shall belong to and remain in the several counties, and shall be faithfully appropriated and used exclusively for maintaining free public schools.''

S.L. 2003–423, §§ 4 to 6, provide:

''Section 4. The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at the statewide general election in November of 2004, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

''[ ]FOR [ ] AGAINST

''Constitutional amendment to provide that the General Assembly may place the clear proceeds of civil penalties, civil forfeitures, and civil fines collected by a State agency in a State fund to be used exclusively for maintaining free public schools.

''Section 5. If a majority of votes cast on the question are in favor of the amendment set out in Section 1 of this act, the State Board of Elections shall certify the amendment to the Secretary of State. The Secretary of State shall enroll the amendment so certified among the permanent records of that office. The amendment set out in Section 1 of this act shall become effective January 1, 2005.

''Section 6. Sections 2 through 3 of this act become effective only if the voters approve the constitutional amendment set out in Section 1 of this act. If the voters approve the constitutional amendment, Sections 2 through 3 of this act shall become effective January 1, 2005.''

The constitutional amendment proposed by S.L. 2003–423, § 1, was approved at the 2004 general election and was certified Nov. 23, 2004.

Sec. 8. Higher education

The General Assembly shall maintain a public system of higher education, comprising The University of North Carolina and such other institutions of higher education as the General Assembly may deem wise. The General Assembly shall provide for the selection of trustees of The University of North Carolina and of the other institutions of higher education, in whom shall be vested all the privileges, rights, franchises, and endowments heretofore granted to or conferred upon the trustees of these institutions. The General Assembly may enact laws necessary and expedient for the maintenance and management of The University of North Carolina and the other public institutions of higher education.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 9, § 6.

Sec. 9. Benefits of public institutions of higher education

The General Assembly shall provide that the benefits of The University of North Carolina and other public institutions of higher education, as far as practicable, be extended to the people of the State free of expense.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 9, § 7 in part.

Sec. 10. Escheats

(1) Escheats prior to July 1, 1971. All property that prior to July 1, 1971, accrued to the State from escheats, unclaimed dividends, or distributive shares of the estates of deceased persons shall be appropriated to the use of The University of North Carolina.

(2) Escheats after June 30, 1971. All property that, after June 30, 1971, shall accrue to the State from escheats, unclaimed dividends, or distributive shares of the estates of deceased persons shall be used to aid worthy and needy students who are residents of this State and are enrolled in public institutions of higher education in this State. The method, amount, and type of distribution shall be prescribed by law.

Amended by Laws 1969, c. 827, § 1.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 9, § 7 in part.

ARTICLE X

HOMESTEADS AND EXEMPTIONS

Section

1. Personal property exemptions.
2. Homestead exemptions.
3. Mechanics' and laborers' liens.
4. Property of married women secured to them.
5. Insurance.

Section 1. Personal property exemptions

The personal property of any resident of this State, to a value fixed by the General Assembly but not less than $500, to be

selected by the resident, is exempted from sale under execution or other final process of any court, issued for the collection of any debt.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 10, § 1.

Sec. 2. Homestead exemptions

(1) Exemption from sale; exceptions. Every homestead and the dwellings and buildings used therewith, to a value fixed by the General Assembly but not less than $1,000, to be selected by the owner thereof, or in lieu thereof, at the option of the owner, any lot in a city or town with the dwellings and buildings used thereon, and to the same value, owned and occupied by a resident of the State, shall be exempt from sale under execution or other final process obtained on any debt. But no property shall be exempt from sale for taxes, or for payment of obligations contracted for its purchase.

(2) Exemption for benefit of children. The homestead, after the death of the owner thereof, shall be exempt from the payment of any debt during the minority of the owner's children, or any of them.

(3) Exemption for benefit of surviving spouse. If the owner of a homestead dies, leaving a surviving spouse but no minor children, the homestead shall be exempt from the debts of the owner, and the rents and profits thereof shall inure to the benefit of the surviving spouse until he or she remarries, unless the surviving spouse is the owner of a separate homestead.

(4) Conveyance of homestead. Nothing contained in this Article shall operate to prevent the owner of a homestead from disposing of it by deed, but no deed made by a married owner of a homestead shall be valid without the signature and acknowledgement of his or her spouse.

Amended by Laws 1977, c. 80, §§ 1, 2.

Historical and Statutory Notes

The provisions comprising this section are similar to provisions in North Carolina Constitution of 1868, Article 10, §§ 2, 3, 5, 8.

Sec. 3. Mechanics' and laborers' liens

The General Assembly shall provide by proper legislation for giving to mechanics and laborers an adequate lien on the subject-matter of their labor. The provisions of Sections 1 and 2 of this Article shall not be so construed as to prevent a laborer's lien for work done and performed for the person claiming the exemption or a mechanic's lien for work done on the premises.

Historical and Statutory Notes

The provisions comprising this section are similar to provisions contained in North Carolina Constitution of 1868, Article 10, § 4.

Sec. 4. Property of married women secured to them

The real and personal property of any female in this State acquired before marriage, and all property, real and personal, to which she may, after marriage, become in any manner entitled, shall be and remain the sole and separate estate and property of such female, and shall not be liable for any debts, obligations, or engagements of her husband, and may be devised and bequeathed and conveyed by her, subject to such regulations and limitations as the General Assembly may prescribe. Every married woman may exercise powers of attorney conferred upon her by her husband, including the power to execute and acknowledge deeds to property owned by herself and her husband or by her husband.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 10, § 6.

Sec. 5. Insurance

A person may insure his or her own life for the sole use and benefit of his or her spouse or children or both, and upon his or her death the proceeds from the insurance shall be paid to or for the benefit of the spouse or children or both, or to a guardian, free from all claims of the representatives or creditors of the insured or his or her estate. Any insurance policy which insures the life of a person for the sole use and benefit of that person's spouse or children or both shall not be subject to the claims of creditors of the insured during his or her lifetime, whether or not the policy reserves to the insured during his or her lifetime any or all rights provided for by the policy and whether or not the policy proceeds are payable to the estate of the insured in the event the beneficiary or beneficiaries predecease the insured.

Amended by Laws 1977, c. 115, § 1.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 10, § 7.

ARTICLE XI

PUNISHMENTS, CORRECTIONS, AND CHARITIES

Section

1. Punishments.

Section

2. Death punishment.
3. Charitable and correctional institutions and agencies.
4. Welfare policy; board of public welfare.

Sec. 1. Punishments

The following punishments only shall be known to the laws of this State: death, imprisonment, fines, suspension of a jail or prison term with or without conditions, restitution, community service, restraints on liberty, work programs, removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under this State.

Amended by Laws 1995, c. 429, § 2.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 11, § 1 in part.

Laws 1995, c. 429, §§ 3, 4, provide:

''Sec. 3. The amendment set out in Section 2 of this act shall be submitted to the qualified voters of the State at the general election in November 1996, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

'' '[ ] FOR [ ] AGAINST

''Constitutional amendment to provide that probation, restitution, community service, work programs, and other restraints on liberty are punishments that may be imposed on a person convicted of a criminal offense.'

''Sec. 4. If a majority of the votes cast on the question are in favor of the amendment set out in Section 2 of this act, the State Board of Elections shall certify the amendment to the Secretary of State. The amendment becomes effective upon this certification. The Secretary of State shall enroll the amendment so certified among the permanent records of that office.''

Laws 1995, c. 429, was ratified July 13, 1995.

The constitutional amendment proposed by Laws 1995, c. 429, § 2, was approved at the 1996 general election, and certified Nov. 26, 1996.

Sec. 2. Death punishment

The object of punishments being not only to satisfy justice, but also to reform the offender and thus prevent crime, murder, arson, burglary, and rape, and these only, may be punishable with death, if the General Assembly shall so enact.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 11, § 2.

Sec. 3. Charitable and correctional institutions and agencies

Such charitable, benevolent, penal, and correctional institutions and agencies as the needs of humanity and the public good may require shall be established and operated by the State under such organization and in such manner as the General Assembly may prescribe.

Historical and Statutory Notes

This section is new with the adoption of the 1970 Constitution.

Sec. 4. Welfare policy; board of public welfare

Beneficent provision for the poor, the unfortunate, and the orphan is one of the first duties of a civilized and a Christian state. Therefore the General Assembly shall provide for and define the duties of a board of public welfare.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 11, § 7.

ARTICLE XII

MILITARY FORCES

Section

1. Governor is Commander in Chief.

Sec. 1. Governor is Commander in Chief

The Governor shall be Commander in Chief of the military forces of the State and may call out those forces to execute the law, suppress riots and insurrections, and repel invasion.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 12, § 3.

ARTICLE XIII

CONVENTIONS; CONSTITUTIONAL AMENDMENT AND REVISION

Section

1. Convention of the People.
2. Power to revise or amend Constitution reserved to people.
3. Revision or amendment by Convention of the People.
4. Revision or amendment by legislative initiation.

Sec. 1. Convention of the People

No Convention of the People of this State shall ever be called unless by the concurrence of two-thirds of all the members of each house of the General Assembly, and unless the proposition ''Convention or No Convention'' is first submitted to the qualified voters of the State at the time and in the manner prescribed by the

General Assembly. If a majority of the votes cast upon the proposition are in favor of a Convention, it shall assemble on the day prescribed by the General Assembly. The General Assembly shall, in the act submitting the convention proposition, propose limitations upon the authority of the Convention; and if a majority of the votes cast upon the proposition are in favor of a Convention, those limitations shall become binding upon the Convention. Delegates to the Convention shall be elected by the qualified voters at the time and in the manner prescribed in the act of submission. The Convention shall consist of a number of delegates equal to the membership of the House of Representatives of the General Assembly that submits the convention proposition and the delegates shall be apportioned as is the House of Representatives. A Convention shall adopt no ordinance not necessary to the purpose for which the Convention has been called.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 13, § 1 in part.

Notes of Decisions

Amendment and revision of state constitution 2
Amendment of federal constitution 1

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1. Amendment of federal constitution

Convention called under proposed act providing for submitting question of calling convention to consider proposed amendment to the United States Constitution in accordance with provisions of state Constitution and providing for election of delegates at same time in case majority of votes be in favor of convention would be valid (Const.N.C. art. 13, § 1; Const.U.S. art. 5). In re Opinions of the Justices, 1933, 172 S.E. 474, 204 N.C. 806. Constitutional Law ⚷ 10

Proposed act providing for submitting question of calling convention to consider proposed amendment to United States Constitution to qualified voters of state at next general election to be called and held exclusively for such purpose in November, 1933, and at same time to elect delegates thereto would be valid (Const.U.S. art. 5; Const.N.C. art. 13, § 1.) In re Opinions of the Justices, 1933, 172 S.E. 474, 204 N.C. 806. Constitutional Law ⚷ 10

Convention called under proposed act providing for calling of convention to pass on proposed amendment to United States Constitution without submitting question of convention or no convention to vote of people and providing that delegates to convention should be elected at special election, would be invalid (Const.N.C. art. 13, § 1; Const.U.S. art. 5). In re Opinions of the Justices, 1933, 172 S.E. 474, 204 N.C. 806. Constitutional Law ⚷ 10

2. Amendment and revision of state constitution

Constitutional amendments proposed by General Assembly of 1961 were required to be submitted to voters at general election in November 1962 and could not be submitted at bond election in 1961. Advisory Opinion in re General Elections, 1961, 127 S.E.2d 1, 255 N.C. 747. Constitutional Law ⚷ 9(.5)

Sec. 2. Power to revise or amend Constitution reserved to people

The people of this State reserve the power to amend this Constitution and to adopt a new or revised Constitution. This power

may be exercised by either of the methods set out hereinafter in this Article, but in no other way.

Historical and Statutory Notes

This section is new with the adoption of the 1970 Constitution.

Sec. 3. Revision or amendment by Convention of the People

A Convention of the People of this State may be called pursuant to Section 1 of this Article to propose a new or revised Constitution or to propose amendments to this Constitution. Every new or revised Constitution and every constitutional amendment adopted by a Convention shall be submitted to the qualified voters of the State at the time and in the manner prescribed by the Convention. If a majority of the votes cast thereon are in favor of ratification of the new or revised Constitution or the constitutional amendment or amendments, it or they shall become effective January first next after ratification by the qualified voters unless a different effective date is prescribed by the Convention.

Historical and Statutory Notes

This section is new with the adoption of the 1970 Constitution.

Sec. 4. Revision or amendment by legislative initiation

A proposal of a new or revised Constitution or an amendment or amendments to this Constitution may be initiated by the General Assembly, but only if three-fifths of all the members of each house shall adopt an act submitting the proposal to the qualified voters of the State for their ratification or rejection. The proposal shall be submitted at the time and in the manner prescribed by the General Assembly. If a majority of the votes cast thereon are in favor of the proposed new or revised Constitution or constitutional amendment or amendments, it or they shall become effective January first next after ratification by the voters unless a different effective date is prescribed in the act submitting the proposal or proposals to the qualified voters.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 13, § 2.

Notes of Decisions

Effective date of amendment 2
Time of election 1

1. Time of election

The general assembly at a special session could provide for the holding prior to November of a statewide election where the only questions which might be submitted to the electorate on the day designated for the election would be the ratification or rejection of certain constitutional amendments dealing with educational problems and such constitutional amendment or amendments as might be duly proposed at the special session of the general assembly, provided such election was held in conformity with the general election laws. In re Opinion of the Justices, 1956, 93 S.E.2d 853, 244 N.C. 748. Constitutional Law ⚷ 9(.5)

Election held on Tuesday after first Monday in November, 1933, to vote on repeal of Eighteenth Amendment to Federal Constitution, held ''next general election'' following adjournment of 1933 session of General Assembly within state constitutional provision that any amendment to Constitution must be submitted to voters at ''next general election'' (Laws 1933, c. 403; Const. N.C. art. 13, § 2; Const.U.S. Amend. 18). In re Opinions of the Justices, 1934, 181 S.E. 557, 207 N.C. 879. Constitutional Law ⚷ 10

2. Effective date of amendment

Amendments to Constitution, submitted under Pub.Laws 1915, c. 99, and adopted at November, 1916, general election, in view of Revisal 1905, § 5326, and Const. art. 3, § 3, held not to have taken effect until January 10, 1917, date named in such act, thus validating laws adopted January 9, 1917, in view of Const. art. 13, § 2. Reade v. City of Durham, 1917, 92 S.E. 712, 173 N.C. 668. Constitutional Law ⚷ 22

ARTICLE XIV

MISCELLANEOUS

Section

1. Seat of government.
2. State boundaries.
3. General laws defined.
4. Continuity of laws; protection of officeholders.
5. Conservation of natural resources.

Sec. 1. Seat of government

The permanent seat of government of this State shall be at the City of Raleigh.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 14, § 6.

Sec. 2. State boundaries

The limits and boundaries of the State shall be and remain as they now are.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 1, § 34.

Sec. 3. General laws defined

Whenever the General Assembly is directed or authorized by this Constitution to enact general laws, or general laws uniformly applicable throughout the State, or general laws uniformly applicable in every county, city and town, and other unit of local government, or in every local court district, no special or local act shall be enacted concerning the subject matter directed or authorized to be accomplished by general or uniformly applicable laws, and every amendment or repeal of any law relating to such subject matter shall also be general and uniform in its effect throughout the State. General laws may be enacted for classes defined by population or other criteria. General laws uniformly applicable throughout the State shall be made applicable without classification or exception in every unit of local government of like kind, such as every county, or every city and town, but need not be made applicable in every unit of local government in the State. General laws uniformly applicable in every county, city and town, and other unit of local government, or in every local court district, shall be made applicable without classification or exception in every unit of local government, or in every local court district, as the case may be. The General Assembly may at any time repeal any special, local, or private act.

Amended by Laws 1969, c. 1200, § 1.

Historical and Statutory Notes

The provisions comprising this section are similar to North Carolina Constitution of 1868, Article 4, § 20.

Sec. 4. Continuity of laws; protection of officeholders

The laws of North Carolina not in conflict with this Constitution shall continue in force until lawfully altered. Except as otherwise specifically provided, the adoption of this Constitution shall not have the effect of vacating any office or term of office now filled or held by virtue of any election or appointment made under the prior Constitution of North Carolina and the laws of the State enacted pursuant thereto.

Historical and Statutory Notes

This section is new with the adoption of the 1970 Constitution.

Sec. 5. Conservation of natural resources

It shall be the policy of this State to conserve and protect its lands and waters for the benefit of all its citizenry, and to this end it shall be a proper function of the State of North Carolina and its political subdivisions to acquire and preserve park, recreational,

and scenic areas, to control and limit the pollution of our air and water, to control excessive noise, and in every other appropriate way to preserve as a part of the common heritage of this State its forests, wetlands, estuaries, beaches, historical sites, openlands, and places of beauty.

To accomplish the aforementioned public purposes, the State and its counties, cities and towns, and other units of local government may acquire by purchase or gift properties or interests in properties which shall, upon their special dedication to and acceptance by a law enacted by a vote of three-fifths of the members of each house of the General Assembly for those public purposes, constitute part of the ''State Nature and Historic Preserve,'' and which shall not be used for other purposes except as authorized by law enacted by a vote of three-fifths of the members of each house of the General Assembly. The General Assembly shall prescribe by general law the conditions and procedures under which such properties or interests therein shall be dedicated for the aforementioned public purposes.

Added by Laws 1971, c. 630, § 1. Amended by S.L. 1999–268, § 3.

Historical and Statutory Notes

This section was adopted by the electorate at the general election of November 7, 1972. Laws 1971, c. 630, § 4, provided that the section take effect July 1, 1973.

S.L. 1999–268, § 3, in the second paragraph, first sentence, substituted ''a law enacted'' for ''resolution adopted''.

2001 Legislation

S.L. 1999–268, §§ 4, 5, provide:

''Section 4. The amendment set out in Section 3 of this act shall be submitted to the qualified voters of the State at the statewide general election in 2002, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

''( ) FOR ( ) AGAINST

''Constitutional amendment making a technical correction to allow dedication and acceptance of property into the State Nature and Historic Preserve by the General Assembly by enactment of a bill rather than a joint resolution. [Amended by S.L. 2001–217, § 3, eff. June 15, 2001; S.L. 2002–3 (Ex.Sess.), § 1, eff. May 21, 2002.]

''Section 5. If a majority of the votes cast on the question are in favor of the amendment set out in Section 3 of this act, the State Board of Elections shall certify the amendment to the Secretary of State. The amendment becomes effective upon this certification. The Secretary of State shall enroll the amendment so certified among the permanent records of that office.''

This measure was approved by the voters in the Nov. 5, 2002 general election and certified by the State Board of Elections Nov. 19, 2002.

2003 Legislation

S.L. 2003–234, § 2, provides:

''The following tracts of land are removed from the State Nature and Historic Preserve pursuant to Section 5 of Article XIV of the Constitution of North Carolina:

''(1) The portion of that certain tract or parcel of land at Crowders Mountain State Park in Cleveland County, Number Four Township, described in Deed Book 1286, Page 85, and containing 1.64 acres as shown on the drawing prepared by the Division of Parks and Recreation entitled Property to be Excepted Crowders Mountain State Park dated 14 April 2003 and filed in the State Property Office.

''(2) The portion of those certain tracts or parcels of land at South Mountains State Park in Burke County, Lower Creek Township, described in Deed

Book 925, Page 1284, and Deed Book 870, Page 1729 required for the right–of–way and easements for the relocation of SR 1904 within the Park and shown on the drawing prepared by Suttles Surveying P.A. entitled Survey of the Proposed Centerline of the New Road Alignment for the State of North Carolina bearing the preparer's file name 12455D.dwg, dated 10 April 2003 and filed in the State Property Office.

''(3) The portion of that certain tract or parcel of land at South Mountains State Park in Burke County, Morganton Township, described in Deed Book 28, Page 607, Deed Book 28, Page 467, and Plat Book 3, Page 78, and containing 0.33 acres as shown on the drawing prepared by Hawkins Land Surveying entitled Subdivision for Trustees of Walker Top Baptist Church dated 26 September 2001 and filed with the State Property Office.

''(4) The portion of that certain tract or parcel of land at Eno River State Park in Durham County, Durham Outside Township, described in Deed Book 435, Page 673, and Plat Book 87, Page 66, containing 11,000 square feet and being the portion of Lot No. 2 shown as the existing scenic easement hereby removed on the drawing prepared by Sear–Brown entitled Recombination Plat Eno Forest Subdivision bearing the preparer's file name 00–208–07.dwg, and filed with State Property Office.''

2004 Legislation

S.L. 2004–25, § 1, eff. June 25, 2004, provides:

''The following tracts of land are removed from the State Nature and Historic Preserve pursuant to Section 5 of Article XIV of the Constitution of North Carolina: The portion of that certain tract or parcel of land at Hemlock Bluffs State Natural Area in Wake County, Swift Creek Township, described in Deed Book 2461, Page 037, containing 2,025 square feet and being the portion of this tract shown as proposed R/W on the drawing prepared by Titan Atlantic Group entitled 'Right of Way Acquisition Map for Town of Cary Widening of Kildaire Farm Road (SR 1300) from Autumgate Drive to Palace Green' sheet 1 of 3 bearing the preparer's file name Town of Cary Case File No. TOC 01–37, dated 26 September 2003, and filed with the State Property Office; and the portion of those certain tracts or parcels of land at Hemlock Bluffs State Natural Area in Wake County, Swift Creek Township, described in Deed Book 4670, Page 420, containing 24,092 square feet and being the portion of these tracts shown as proposed R/W on the drawing prepared by Titan Atlantic Group entitled 'Right of Way Acquisition Map for Town of Cary Widening of Kildaire Farm Road (SR 1300) from Autumgate Drive to Palace Green' sheet 3 of 3 bearing the preparer's file name Town of Cary Case File No. TOC 01–37, dated 26 September 2003, and filed with the State Property Office.''