

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 908
PROPOSED COMMITTEE SUBSTITUTE H908-PCS10847-RR-17

Short Title: Election Administration Amendments.

(Public)

Sponsors:

Referred to:

April 1, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR EQUAL TREATMENT OF POLITICAL AND COMMERCIAL
EXPRESSION AROUND A VOTING PLACE; TO CLARIFY THAT
SEVENTEEN-YEAR-OLDS MAY REGISTER AT EARLY VOTING SITES UNDER
THE SAME CONDITIONS THEY MAY REGISTER ELSEWHERE AND TO MAKE
RELATED TECHNICAL CHANGES; TO PROHIBIT THE AWARDING OF
ATTORNEYS' FEES AGAINST THE STATE BOARD OF ELECTIONS IN ELECTION
PROTEST CASES; AND TO COMPLETE THE BURDEN OF PROOF PROVISIONS IN
THE CANDIDATE-CHALLENGE STATUTE.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 163-166.4 reads as rewritten:

"(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 compliance with subdivision (4) of this subsection and 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.
- (4) That any restriction of political expression is also extended to commercial expression.

An agreement under this subsection shall be valid for as long as the nonpublic building is used as a voting place."

SECTION 1.(b) This section becomes effective January 1, 2010, and applies to primaries and elections held on and after that date.

SECTION 2.(a) G.S. 163-82.6A is amended by adding the following new subsection to read:



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1 "(f) Voting in Primary. – Any person who will become qualified by age to register and
2 vote in the general election for which a partisan or nonpartisan primary is held, even though not
3 so qualified by the date of the primary, may register for the primary and general election prior
4 to the primary and then vote in the primary and general election after being registered in
5 accordance with the provisions of this section."

6 **SECTION 2.(b)** G.S. 163-283 reads as rewritten:

7 **"§ 163-283. Right to participate or vote in party primary.**

8 No person shall be entitled to vote or otherwise participate in the primary election of any
9 political party unless he

10 (1) Is a registered voter, and

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

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

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

18 Any person who will become qualified by age to register and vote in the general election
19 for which the primary is held, even though not so qualified by the date of the primary election,
20 shall be entitled to register while the registration books are open during the regular registration
21 period prior to the primary and then to vote in the primary after being registered, provided
22 however, under full-time and permanent registration, such an individual may register not earlier
23 than 60 days nor later than the last day for making application to register under
24 G.S. 163-82.6(c) prior to the primary. In addition, persons who will become qualified by age to
25 register and vote in the general election for which the primary is held, who do not register
26 during the special period may register to vote after such period as if they were qualified on the
27 basis of age, but until they are qualified by age to vote, they may vote only in primary
28 elections. Such a person may also register and vote in the primary and general election pursuant
29 to G.S. 163-82.6A(f)."

30 **SECTION 2.(c)** Article 23 of Chapter 163 of the General Statutes is amended by
31 adding a new section to read:

32 **"§ 163-283.1. Voting in nonpartisan primary.**

33 Any person who will become qualified by age to register and vote in the general election
34 for which a nonpartisan primary is held, even though not so qualified by the date of the
35 primary, shall be entitled to register for the primary and general election prior to the primary
36 and then to vote in the primary after being registered. Such a person may register not earlier
37 than 60 days nor later than the last day for making application to register under
38 G.S. 163-82.6(c) prior to the primary. Such a person may also register and vote in the primary
39 and general election pursuant to G.S. 163-82.6A(f)."

40 **SECTION 2.(d)** G.S. 163-330 reads as rewritten:

41 **"§ 163-330. Voting in primary.**

42 Any person who will become qualified by age ~~or residence~~ to register and vote in the
43 general election for which the primary is held, even though not so qualified by the date of the
44 primary, shall be entitled to register for the primary and general election prior to the primary
45 and then to vote in the primary after being registered. Such person may register not earlier than
46 60 days nor later than the last day for making application to register under G.S. 163-82.6(c)
47 prior to the primary. Such a person may also register and vote in the primary and general
48 election pursuant to G.S. 163-82.6A(f)."

49 **SECTION 2.(e)** G.S. 163-59 reads as rewritten:

50 **"§ 163-59. Right to participate or vote in party primary.**

1 No person shall be entitled to vote or otherwise participate in the primary election of any
2 political party unless he:

- 3 (1) Is a registered voter, and
- 4 (2) Has declared and has had recorded on the registration book or record the fact
5 that he affiliates with the political party in whose primary he proposes to
6 vote or participate, and
- 7 (3) Is in good faith a member of that party.

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

11 Any person who will become qualified by age to register and vote in the general election ~~or~~
12 ~~regular municipal election~~ for which the primary is held, even though not so qualified by the
13 date of the primary, shall be entitled to register for the primary and general ~~or regular municipal~~
14 election prior to the primary and then to vote in the primary after being registered. Such person
15 may register not earlier than 60 days nor later than the last day for making application to
16 register under G.S. 163-82.6(c) prior to the primary. In addition, persons who will become
17 qualified by age to register and vote in the general election ~~or regular municipal election~~ for
18 which the primary is held, who do not register during the special period may register to vote
19 after such period as if they were qualified on the basis of age, but until they are qualified by age
20 to vote, they may vote only in primary elections. Such a person may also register and vote in
21 the primary and general election pursuant to G.S. 163-82.6A(f)."

22 **SECTION 2.(f)** G.S. 163-55(a) reads as rewritten:

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

31 Except as otherwise provided in G.S. 163-59, this Chapter, the following classes of persons
32 shall not be allowed to vote in this State:

- 33 (1) Persons under 18 years of age.
- 34 (2) Any person adjudged guilty of a felony against this State or the United
35 States, or adjudged guilty of a felony in another state that also would be a
36 felony if it had been committed in this State, unless that person shall be first
37 restored to the rights of citizenship in the manner prescribed by law."

38 **SECTION 3.** G.S. 6-19.1 reads as rewritten:

39 **"§ 6-19.1. Attorney's fees to parties appealing or defending against agency decision.**

40 In any civil action, other than an adjudication for the purpose of establishing or fixing a
41 rate, or a disciplinary action by a licensing board, brought by the State or brought by a party
42 who is contesting State action pursuant to G.S. 150B-43 or any other appropriate provisions of
43 law, unless the prevailing party is the State, the court may, in its discretion, allow the prevailing
44 party to recover reasonable attorney's fees, including attorney's fees applicable to the
45 administrative review portion of the case, in contested cases arising under Article 3 of Chapter
46 150B, to be taxed as court costs against the appropriate agency if:

- 47 (1) The court finds that the agency acted without substantial justification in
48 pressing its claim against the party; and
- 49 (2) The court finds that there are no special circumstances that would make the
50 award of attorney's fees unjust. The party shall petition for the attorney's fees

1 within 30 days following final disposition of the case. The petition shall be
2 supported by an affidavit setting forth the basis for the request.

3 Nothing in this section shall be deemed to authorize the assessment of attorney's fees for the
4 administrative review portion of the case in contested cases arising under Article 9 of Chapter
5 131E of the General Statutes.

6 Nothing in this section grants permission to bring an action against an agency otherwise
7 immune from suit or gives a right to bring an action to a party who otherwise lacks standing to
8 bring the action.

9 Attorney's fees shall not be awarded against the State Board of Elections in any election
10 protest brought under Article 15A of Chapter 163 of the General Statutes.

11 Any attorney's fees assessed against an agency under this section shall be charged against
12 the operating expenses of the agency and shall not be reimbursed from any other source."

13 **SECTION 4.(a)** G.S. 163-127.5 reads as rewritten:

14 "**§ 163-127.5. Burden of proof.**

15 (a) The burden of proof shall be upon the candidate, who must show by a
16 preponderance of the evidence of the record as a whole that he or she is qualified to be a
17 candidate for the office.

18 (b) If the challenge is based upon ~~a question of residency, an allegation that the~~
19 candidate is not qualified for the office based on failure to establish residency required as a
20 qualification of the office through a change of permanent domicile, the candidate must show all
21 of the following:

22 (1) An actual abandonment of the first domicile, coupled with an intent not to
23 return to the first domicile.

24 (2) The acquisition of a new domicile by actual residence at another place.

25 (3) The intent of making the newer domicile a permanent domicile.

26 (c) Notwithstanding subsection (a) of this section, if the challenge is based upon an
27 allegation that the candidate is not qualified for the office based on abandonment of residency
28 required as a qualification of the office, the burden of proof shall be upon the challenger."

29 **SECTION 4.(b)** This section becomes effective January 1, 2010, and applies to
30 primaries and elections held on and after that date.

31 **SECTION 5.** This act is effective when it becomes law.