

2005

**HOUSE
ELECTION LAW &
CAMPAIGN FINANCE
REFORM**

**COMMITTEE
MINUTES**

House Election Law and Campaign Finance Reform Committee

2005 Session

**Representatives Tim Moore and Deborah Ross
Co-Chairs**

Nancy Garriss and Margie Penven
Committee Assistants

**Election Law and Campaign Finance Reform
2005-2006**

<u>Member</u>	<u>Legislative Assistant</u>	<u>Phone</u>	<u>Office</u>	<u>Seat</u>
Rep. Tim Moore, Chairman	Nancy Garriss Committee Asst.	733-3438	502 LOB	85
Rep. Deborah Ross, Chairman	Margie Penven Committee Asst.	733-5773	2223 LB	65
Rep. Joe Kiser, Vice Chair	Marilyn Holder	733-5782	1326 LB	40
Rep. Paul Luebke, Vice Chair	Joyce Harris	733-7663	529 LOB	44
Rep. Mickey Michaux, Vice Chair	Anita Wilder	715-2528	1227 LB	57
Rep. John Blust	Betty Childress	733-5806	1420 LB	109
Rep. Walt Church	Joyce Fuller	733-5805	1311 LB	33
Pricey Harrison	Anne Wilson	733-5771	2119 LB	82
Rep. Hugh Holliman	Carol Bowers	715-0873	1213 LB	55
Rep. George Holmes	Glenda Jacobs	733-5654	1211 LB	102
Rep. David Lewis	Marie Strickland	715-3015	509 LOB	100
Rep. Edd Nye	Jo Bobbitt	733-5477	639 LOB	23
Rep. Edgar Starnes	Pattie Fleming	733-5931	513 LOB	116
Erika Churchill, Staff				
Bill Gilkeson, Staff				

2005 – 2006 session

[illegible]

North Carolina General Assembly
Through House Committee on
Election Law and Campaign Finance Reform

Date: 09/12/2005
Time: 16:27
Page: 001 of 003
Leg. Day: H-125/S-126

2005-2006 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H0004	Miller	ABOLISH SECOND PRIMARY.	H	Ref To Com On Election Law and Campaign Finance Reform	01-27-05	
H0088	Miller	ELECTORAL FAIRNESS ACT.	*H	Ref To Com On Judiciary I	02-07-05	03-28-05
H0126	Insko	SCHS BEVERAGE/SNACK VENDING	*H	Ref To Com On Judiciary I	02-09-05	05-05-05
H0127	Insko	PUBLIC EMPLOYEE POLL WORKERS.	*H	Ref To Com On Appropriations/ Base Budget	02-09-05	03-31-05
H0128	Insko	ELECTION CHANGES.	*H	Ref To Com On Election Law and Campaign Finance Reform	02-09-05	03-02-05
H0128	Insko	ELECTION CHANGES.	*H	Ref To Com On Election Law and Campaign Finance Reform	08-18-05	
H0158=	Preston	RECASTING LOST VOTES.	H	Ref To Com On Election Law and Campaign Finance Reform	02-10-05	
\$ H0238=	Insko	PUBLIC CONFIDENCE IN ELECTIONS.	H	Ref To Com On Election Law and Campaign Finance Reform	02-16-05	
\$ H0257	Ross	HERTFORD/CHATHAM FUNDS.	*H	Re-ref Com On Appropriations	02-16-05	07-25-05
H0302	Dollar	ANNEXATION REFERENDUM.	H	Re-ref Com On Rules, Calendar, and Operations of the House	02-21-05	04-05-05
H0363	Allred	ETJ RESIDENTS VOTE FOR COUNCIL.	H	Re-ref Com On Rules, Calendar, and Operations of the House	02-24-05	04-05-05
\$ H0386	Goodwin	DIVIDE DISTRICT 20.	*H	Re-ref Com On Appropriations	02-28-05	05-31-05
H0649	Moore	STRAIGHT TICKET FOR PRESIDENT.	H	Ref To Com On Election Law and Campaign Finance Reform	03-16-05	
H0794	Allred	VOTER IDENTIFICATION.	H	Ref To Com On Election Law and Campaign Finance Reform	03-17-05	
\$ H0851=	Ross	SAME DAY REG. AT ONE- STOP SITES.	*H	Re-ref Com On Appropriations	03-22-05	07-21-05
H0875	Insko	CHAPEL HILL CAMPAIGN FINANCE OPTIONS.	H	Ref To Com On Election Law and Campaign Finance Reform	03-24-05	
H1018=	Rhodes	TAXPAYER AND CITIZEN PROTECTION ACT.	H	Ref to the Com on Election Law and Campaign Finance	03-31-05	

'\$' indicates the bill is an appropriation bill.

A bold line indicates the bill is an appropriation bill.

'*' indicates that the text of the original bill was changed by some action.

'=' indicates that the original bill is identical to another bill.

North Carolina General Assembly
Through House Committee on
Election Law and Campaign Finance Reform

Date: 09/12/2005
Time: 16:27
Page: 002 of 003
Leg. Day: H-125/S-126

2005-2006 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
				Reform and, if favorable, to the Com on Health		
H1024	Luebke	INSTANT RUNOFF VOTING.	*H	Ref To Com On Judiciary I	03-31-05	05-12-05
H1101	Allred	PROMPT RELEASE OF ELECTION RESULTS.	H	Ref To Com On Judiciary I	04-04-05	06-01-05
H1102	Allred	EARLY PREP FOR ONE-STOP COUNT.	*HR	Ch. SL 2005-159	04-04-05	05-11-05
H1115	Moore	ELECTION ADMINISTRATION AMENDMENTS.	*H	Pres. To Gov. 8/24/2005	04-05-05	05-02-05
H1128	Moore	CAMPAIGN FINANCE AMENDMENTS.	*H	Pres. To Gov. 8/24/2005	04-06-05	05-05-05
H1256	Pierce	RIGHTS FOR ACCUSED AND EX-OFFENDERS.	*H	Re-ref Com On Rules, Calendar, and Operations of the House	04-18-05	06-01-05
H1440	Pate	ELECTION IMPROVEMENT ACT OF 2005.	H	Ref To Com On Election Law and Campaign Finance Reform	04-21-05	
H1444	Blust	CAMPAIGN ACCOUNTABILITY.	H	Ref To Com On Election Law and Campaign Finance Reform	04-21-05	
H1446	Blust	BETTER ELECTIONS ACT.	H	Ref To Com On Election Law and Campaign Finance Reform	04-21-05	
H1510	Harrison	ELECTIONEERING COMMUNICATIONS.	H	Ref To Com On Election Law and Campaign Finance Reform	04-21-05	
\$ H1563= Alexander		VOTER-OWNED ELECTIONS.	H	Ref to the Com on Election Law and Campaign Finance Reform and, if favorable, to the Com on Finance	04-27-05	
H1575	Folwell	REIMBURSE COUNTIES FOR OUT-OF-PRECINCT PROV.	H	Ref to the Com on Election Law and Campaign Finance Reform and, if favorable, to the Com on Appropriations	05-02-05	
S0082=	Daniel G. Clodfe	ELECTION CONTESTS.	*HR	Ch. SL 2005-3	02-17-05	02-23-05
S0098	Eleanor Kinnaird	ORANGE COUNTY VOTING CENTERS.	*HR	Ch. SL 2005-256	06-02-05	07-13-05
S0133	Daniel G. Clodfe	RECONFIRMING PROVISIONAL VOTING.	*HR	Ch. SL 2005-2	02-23-05	02-24-05
S0223=	Eleanor Kinnaird	PUBLIC CONFIDENCE IN ELECTIONS.	*HR	Ch. SL 2005-323	08-02-05	08-10-05
S0368	Doug Berger	FRANKLIN SCHOOL ELECTIONS NONPARTISAN.	*HR	Ch. SL 2005-80	03-31-05	06-08-05

'\$' indicates the bill is an appropriation bill.

A bold line indicates the bill is an appropriation bill.

'*' indicates that the text of the original bill was changed by some action.

'=' indicates that the original bill is identical to another bill.

MINUTES
House Committee on Election Law and Campaign Finance Reform
February 23, 2005
1:00 p.m., Room 1425
Representative Ross, Presiding

The House Committee on Election Law and Campaign Finance Reform met at 1:00 p.m. on Wednesday, February 23, 2005, in Room 1425 of the State Legislative Building.

Members present were: Representative Tim Moore, Co-Chair; Representative Deborah Ross, Co-Chair; Representative Joe Kiser, Vice-Chair; Representative Paul Luebke, Vice-Chair; Representative Mickey Michaux, Vice-Chair; Representative John Blust; Representative Walter Church; Representative Pricey Harrison; Representative Hugh Holliman; Representative David Lewis; Representative Edd Nye, and Representative Edgar Starnes. Also present were ex-officio members Representative Bill Culpepper, Representative Pete Cunningham, and Representative Joe Hackney.

There was one bill on the agenda: Senate Bill 82, Election Contests, sponsored by Senator Dan Clodfelter.

Co-Chair Deborah Ross called to order the first meeting of the committee for the 2005 Session and introduced Co-Chair Tim Moore for remarks. Representative Ross then introduced the committee's permanent staff Erika Churchill and Bill Gilkeson from the General Assembly's Research Division; special guest staff member Gerry Cohen, Director of the Bill Drafting Division; Committee Clerks Nancy Garriss and Margie Penven; three pages, and the sergeants-at-arms assigned to the meeting. The Chair then asked members of the committee to identify themselves.

The Chair asked for a motion to put a proposed House Committee Substitute for Senate Bill 82 before the committee. Representative Hackney so moved and the motion carried.

The Chair recognized Senator Clodfelter to explain the bill, and then she recognized Mr. Cohen to give a constitutional history of the bill. After discussion by the committee and questions to staff and Senator Clodfelter, Representative Cunningham moved the Proposed House Committee Substitute for Senate Bill 82 be given a favorable report. There was call for the ayes and noes, which was sustained, and Nancy Garriss called the roll. By a vote of 10 to 5, the bill was given a favorable report.

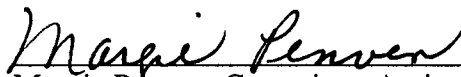
There being no further business, the meeting adjourned at 1:55 p.m.

A verbatim transcript of this meeting is attached hereto along with all pertinent documents and handouts.

Respectfully submitted,



Representative Deborah Ross, Presiding Chair



Margie Penven, Committee Assistant

TRANSCRIPT
House Committee on Election Law and Campaign Finance Reform

1:00 p.m. on February 23, 2005

Room 1425, LOB

Representative Ross, Presiding

Rep. Ross: Good afternoon. It's good to see you. For those who served on the committee last session, you'll be happy to know that we now have a Wednesday meeting instead of a Thursday afternoon meeting because that was a big problem last session.

Representative Tim Moore and I will be chairing this committee, and before I introduce the sergeants-at-arms and some of the committee staff, I wanted to just ask Representative Moore if he had any opening remarks for the committee.

Rep. Moore: Good afternoon. I just want to say that really it's been a pleasure already working with Co-chair Ross this week. We spent a lot of time working on a particular bill that's going to be coming before you today. While we might not always agree on everything, I will say that there's been an absolute great dialog. I told Senator Clodfelter I felt like I was back in law school or something. We've really gone through these bills to try to address a number of issues, and we've worked together very well along those lines. So I'm looking forward to a session of us all working together. Again, we might not always agree on things, but I do think we've had a very good working relationship. And I think we've got a very good committee with a lot of experience, and I'm looking forward to serving as your Co-chair and to a productive session. Thank you.

Rep. Ross: Okay. We have terrific staff with us. We have Erika Churchill from the Research Division and Bill Gilkeson also from the Research Division. We also have a special guest today. Gerry Cohen is here with us today from Bill Drafting. Our clerks are Nancy Garriss, who is the LA to Tim Moore, and Margie Penven, who is my LA. And then we have Toussaint Avent as one of our sergeant-at-arms, Charles Coker as a sergeant-at-arms, Martha Parrish as a sergeant-at-arms; and then we have three pages with us today. Todd Anderson. Todd, could you please stand up. There he is over there. He is a page from Wake County. He's Representative Capps' page. We have Phillip Connelly. Phillip, right here. He is from Johnston County, and he is Representative John Hall's page. And then we have Laura Millican from Brunswick County. Laura, who is Bonner Stiller's page, right back here.

Because this is our first committee meeting and we have at least one freshman on the committee, Representative Harrison, I think it would be nice if we just all went around and said hello for our first committee meeting, and maybe we should start here with Representative Kiser.

- Rep. Kiser: Thank you. I'm Joe Kiser. I serve the 97th House District, which includes all of Lincoln County.
- Rep. Ross: Representative Lewis.
- Rep. Lewis: Good afternoon. My name is Dave Lewis. I represent beautiful Harnett County.
- Rep. Starnes: I'm Edgar Starnes from Caldwell County.
- Rep. Holliman: Hugh Holliman, Davidson County.
- Rep. Blust: John Blust, Guilford County, northwest part.
- Rep. Ross: Representative Michaux, Durham County.
- Rep. Michaux: I'm Mickey Michaux, Durham County.
- Rep. Harrison: Pricey Harrison, Guilford, primarily in Greensboro.
- Rep. Church: Walter Church, Burke County.
- Rep. Nye: Edd Nye, Bladen County.
- Rep. Cunningham: Pete Cunningham, western Mecklenburg County.
- Rep. Hackney: Joe Hackney, Chatham, Orange and Moore.
- Rep. Luebke: Paul Luebke, Durham.
- Rep. Ross: Well, let's get started. The bill that we have before us today is Senate Bill 82, Election Contests. It is Senator Clodfelter's bill, and I'm going to recognize Senator Clodfelter to tell us a little bit about the bill, and then we'll also hear some about the constitutional history of this bill from Gerry Cohen. But because you have in front of you a proposed House Committee Substitute for the Senate bill, I would like a motion from Representative Hackney that the proposed House Committee Substitute is before the committee for discussion purposes. All in favor please say aye. Any opposed. Motion carries.

Okay, Senator Clodfelter, welcome to the committee.

Sen. Clodfelter:

Thank you Madam Chairman and Chairman Moore. I want to say before I start talking about the bill and reinforce something Chairman Moore said, this has been a delight already for me to work with your committee chairs and your staff. Since there are none of my Senate colleagues here to hear me say it, what I will say to you is that the committee substitute that you have before you, in my view, is very substantially improved over the version that actually passed the Senate. And, again, I want to credit the committee staff but also your co-chairs for some really excellent suggestions about the bill, all of which have been incorporated. And if your body should see fit to pass the bill, I'm very confident indeed that the Senate will concur in all of the changes that were made.

Briefly, Madam Chairman, if I may talk a little bit about the bill, I would like then, with your permission, to ask Gerry Cohen to give us some history of this because this is a bit of an unusual situation that we at least in one instance last confronted in 1796; and in one instance, I think 1872 was the last time we actually had any occasion to have to deal with the procedures this bill addresses.

We think about the allocation of power within the government as being fairly clean, and in many respects it is. One of those principles is that the courts hear and resolve disputes. But there are three times when our Constitution very plainly says the courts don't resolve the dispute: it's resolved here. And we function in the place of the courts in resolving those disputes. One of those is when we try a case of impeachment. That's not involved in this bill. That's not subject to the bill. But the other two constitutional provisions in which this body does sit in judgment on disputed matter is Article II, Section 20, which provides that each chamber of this body will be the sole judge of the qualifications and the elections of its own members. And that has always been interpreted, not only in this state but actually in other states that have similar provisions, to mean that the courts have no jurisdiction over such matters at all. The second provision that this bill also addresses is Article VI, Section 5, of our Constitution that provides that in the event there is a contest to decide the election of the Governor, the Lt. Governor, or a member of the Council of State, that contest is to be decided by this body as well. There are, in the research we did, and Mr. Cohen can talk more about that, there are, I think, thirteen other states that have very similar provisions, in some cases identical and in some cases with slight

variations, on that same concept. It is not new, and it goes back to our Constitution of 1835 where it first appeared with another provision about resolving election contests. Over the years some of those other provisions have been modified or amended in subsequent amendments to the Constitution, but this provision has remained in the Constitution since 1835. It's very similar, if you think about it, and if you think about the situation in the U. S. Constitution, where there is a disputed outcome of the election of the President of the United States, that disputed outcome is resolved in the House of Representatives in the federal Constitution. So it, again, is a provision that's little used and, hopefully, as I said in the Senate I hope never used, but in fact it is a procedure that's not unique to us or uncommon. Madam Chairman, I am prepared to go through the bill, but I would like for Mr. Cohen, maybe, to talk briefly about why we have this. How it got here.

Gerry Cohen:

Okay Mr. Chairman (sic), Senator Clodfelter. I'm going to go over it briefly, and there's a handout on the History of North Carolina Provisions on Contested Elections.

Senate Bill 82 is designed to implement a provision of the State Constitution, which grants jurisdiction to the General Assembly to hear contested Council of State elections and revise the procedure for handling contests for legislative elections.

The office of Governor was made elective by the Convention of 1835. Prior to that, the General Assembly chose the Governor. The group of amendments in Article II of the 1835 Convention provided for popular election for the Governor, for the election canvass to be done by the General Assembly, for tie votes to be broken by joint vote of both houses, and for contested elections to be determined by the General Assembly. The 1835 amendments left the Supreme Court appointed by joint ballot of both houses, and the Supreme Court did not become subject to popular election until 1868.

Some have stated that the power to decide an election contest applies only in the case of a tie vote, but the history clearly shows that a contested election is different than a tied election.

It is clear that the Constitutional Convention of 1835 reserved to the General Assembly a power that would otherwise be judicial, to resolve contested elections. At the same time as the Constitutional of 1868 made the judiciary more independent by allowing popular election of the Supreme Court, it revised slightly the procedure for

legislative handling of election contests for the Governor and Council of State.

In 1925, the General Assembly again amended that provision of the Constitution, approved by the voters in 1926, ceding to the executive branch the power to canvass the election of Council of State, but it amended and preserved its power to hear election contests.

In 1969, the General Assembly again examined the issue of election contests for the Council of State, again preserving that power. During the 1970 rewrite of the State Constitution, the committee preparing that bill discussed the matter of contested elections and decided to leave it in the Constitution, the minutes reflect. While the power has lain dormant, and there have been no contested elections for Council of State, the power clearly is inherent in the General Assembly.

While there exists no current statutory procedure for handling election contests, jurisdiction is not dependent of the existence or not of the statutory enabling legislation.

And I won't go through all the statutes that are in smaller print, but in 1836 a procedural statute was enacted to implement the contest procedure. It was amended several times, and in 1971 as part of another bill—not even mentioned in the title of the bill—that procedure was repealed. We don't know the reason. We've even spoken to the bill sponsor Jim Beatty of Charlotte, who doesn't remember why that provision was in the bill.

My research shows only one potential contested executive branch election. Ashe's *History of North Carolina* written in 1925 recounts the 1872 gubernatorial election, when there is an extensive account of proceedings before the state party executive committee of the losing candidate for Governor discussing the potential of bringing an election contest before the General Assembly, which it noted would decide the matter. The candidate never brought the contest as insufficient evidence was gathered.

North Carolina is not the only state to have a provision in its Constitution calling for the legislative branch to resolve contested elections for executive branch offices. My research shows 12 other states. Issues have been litigated in several states, and the state Supreme Court rulings I've been able to find indicate that the provisions vest jurisdiction over these matters in the legislative branch. In the Arkansas case, their supreme court even noted the

failure of the legislature to have a statutory procedure in place did not affect its jurisdiction over the matter. In deed, in Washington State right now, there's an election contest going on for Governor. One candidate received a certificate of election and had taken the oath of office, but there's parallel contest procedures going on right now in the state courts and in the legislature there with the parties arguing over who has jurisdiction. Their provision is really the same as ours except it doesn't refer to joint ballot but joint voters—some slight difference.

I'd be happy to answer any questions about the history, or during the discussion of the bill, about any substance of it. I sent out all the details of all the provisions and statutes that have existed over time. Our legislative contest provision, as the sponsor indicated, Constitution of 1776, and since then, has stated that each house shall judge the qualifications and elections of its members, and our current statute on that subject was passed in 1796 and has been changed little. And it's pretty antiquated and outdated, and wording in this bill revises that as well.

Rep. Ross: Are there any questions for Gerry Cohen before Senator Clodfelter comes and explains his bill? Representative Cunningham?

Rep. Cunningham: Gerry, I don't know how the Supreme Court would respond to this, but it's a simple explanation. I know we were appointed to maintain our powers as they are. Are there any plans for moving forward even up to the Supreme Court if need be?

Gerry Cohen: Well, our State Constitution says that the results of the election contest shall be determined by the General Assembly, so if the General Assembly were to determine this and order a certification of election issued to a candidate, and that person were to take the oath, you know.... I guess there's a possibility of a continuing conflict over this matter, but the Constitution is rather clear on the matter. I mean it's a relatively simple sentence, so in terms of if there is a continuing dispute after this bill, I can't predict that. Senator Clodfelter might not want to say anything.

Rep. Cunningham: May I just address Senator Clodfelter? Same question.

Rep. Ross: Okay, are there any other questions for Gerry Cohen before we have Senator Clodfelter explain the meat of the bill?

Rep. Starnes: Mr. Cohen, give us an example of the last time the General Assembly decided a contested election.

Gerry Cohen: Research in our library indicates there have been at least five or six election contests, the last of which was around the turn of the previous century. There have been a number of contests—at least five or six for legislative seats. I've read the journal entries on those generally. Using the 1796 procedure when the contest was received they were referred to—there used to be a committee called Privileges and Elections, which is now the Rules Committee—is its current name—and the matter generally was referred to that committee, which held hearings and at some point during the session referred out a resolution resolving the contest. We found in some cases depositions were assigned to a justice of the peace in Wake County and he took testimony and reported it to the committee for its action. So we have found records of contested elections for the legislature where a relatively orderly process has been used and the legislature eventually determined who won the election. Again, there hasn't been any actual contest ever filed for a Governor or Council of State member, but we did an almost contest in 1872 for the Governor's race.

Rep. Starnes: In other words, if we go back in our state history, our ancient history would show that the General Assembly has settled contested elections, but our most recent history our Board of Elections have decided contests.

Gerry Cohen: Well one of the reasons, of course, is since 1900 until just a few decades ago, North Carolina being for a long period of time a one-party state, there were really no contests for Governor or Council of State because there were no elections that were close in any way until the 1970s. So there was a period of maybe 1900 to 1970 where there were no close elections. 1870 was the last, really, election where there was a very close race. That was within about 2,000 votes for Governor.

Rep. Starnes: Well, I would just observe Madam Chairman, if we were still in a one-party state I doubt that we'd have this bill in front of us.

Rep. Ross: Well, Representative Starnes, that is duly noted. Representative Blust.

Rep. Blust: Mr. Cohen, didn't a case...I can't remember if it's Gore v. Bush or Bush v. Gore, but didn't that state directly to the issue of whether you could change standards of procedures for a particular election retroactively like this bill seems to be doing?

Gerry Cohen: In Bush vs. Gore, first of all, the case said that it wasn't to be precedent for anything else, and it was only on that one other issue.

But I would say that this bill does not change any standards. In other words, if we were to go out right now and pass a constitutional amendment to say that we had jurisdiction over the matter instead of the court—basically enacting what was enacted in 1835—that might fall within Bush vs. Gore, but our Constitution for 170 years before this election provided for that, it's just that there haven't been any procedures established. What Bush vs. Gore might do is—let's say there was a dispute over the ballots, and the prior standard had said in the six counties with punch cards you count them if two corners were punched, and a legislative committee decided it was going to count it if only one corner was punched. That would be a change in standards. But simply adopting a procedure for resolving the dispute, I don't think has anything to do with the holding in Bush vs. Gore where they were actually in Florida making up the standards as they went along for how to count the ballots. At least that's what I saw on television.

Rep. Ross:

Rep. Blust.

Rep. Blust:

In Section 4 of the bill, on page 6, down on line 38, it says that after all this mechanism of the bill is followed—after the procedure is followed—it may not be reviewed by the General Court of Justice. Is it constitutional for us to say that somebody with a legitimate dispute cannot go into court and have that heard?

Gerry Cohen:

Our cases on both.... We've had North Carolina Supreme Court cases on both the legislature and on congressional elections where there's a similar provision in the U. S. Constitution dealing with judging the election of U. S. House members, and our State Supreme Court three times has said that on these matters that those provisions withdrew from the jurisdiction of the courts any right of appeal...that it is not...that the Constitution has carved that out and assigned it to the legislature. So, in my opinion, that sentence there merely restates the holding in those cases. Now there is still a.... Our U. S. Supreme Court, federal courts, have reviewed legislative contests if First Amendment issues arise. For instance, in 1966 when Julian Bond was excluded from the Georgia House, the U. S. Supreme Court took up that case and reversed the exclusion saying that the Georgia House had violated the First Amendment rights of the contestants and ordered him seated. So there is federal judicial review if the reason the legislature acted violated the constitutional rights of the candidate.

Rep. Ross:

I'm going to recognize Senator Clodfelter now to explain his bill, and then what we can do is we can take the questions from Representative Cunningham and Representative Starnes after we

get the bill explanation because we've now moved into what's going on in this bill, and I'd like us to have an overall picture of that before we ask all those questions. Senator Clodfelter.

Sen. Clodfelter:

Thank you, Madam President...uh..Chair, and at whatever point you consider appropriate I'd be happy to address the questions. Habits of the Senate, excuse me, in addressing the chair.

The first part of the bill lays out the mechanics for a contest dealing with a legislative seat. The second part of the bill largely parallels the first part with some exceptions and sets up a procedure for resolving a contest over an Article III office. When we started the bill we used the best, most recent parallel we could find in a southern state, which was the State of Virginia, which had updated its statute in, I believe, 1983. And so we worked off of the Virginia procedure to model the bill. Again, now, working with your co-chairs we've made some changes since that time, but I think make North Carolina a little better than Virginia in that regard. A contest is initiated by the filing of a notice with the Clerk of the House of Representatives. And if no such notice is filed, then there will not be a contest. There will be nothing to be adjudicated by the General Assembly. That is to be filed by the unsuccessful candidate no sooner than the time the votes are counted. Obviously you can't have an election contest until somebody has counted the ballots, and that job is the job of the board of elections. The canvass is actually conducted there. It can't be filed any sooner than that, and can't be filed any later than several dates that are set out on page two of the bill. If those dates have come and gone and the result has not yet been determined of the election contest, and the General Assembly then convenes in regular session, then at that point either of the candidates or any of the candidates contesting for that office can initiate the contest procedures by filing with the clerk of the House, and I think we set the procedure that they must file no later than thirty days after the convening of the session. We don't want these things lingering on and on and on forever. There has to be a cutoff; there has to be a determination and a decision.

The process of filing that notice requires the contestant to set forth specific allegations either that the apparently winning candidate was ineligible to hold office—wasn't old enough, wasn't a resident of North Carolina, didn't have the qualifications to hold the office for which he or she is seeking to be elected. Or, set forth specific allegations of election misconduct or irregularities in the conduct of the election that if they were proven true would have an effect on the outcome of the race. In other words, you've got to be able to

make a good faith allegation that what you're complaining about might change the result of the count that's been conducted by the board of elections. Or, they can allege either one...they can allege both of them. If they think...if the contestant thinks that the candidate's ineligible and the election was not conducted correctly, they can elect both. The responding party then has a period of time to answer and reply and then the parties proceed to conduct depositions in accordance manner with a civil procedure—taking testimony, assembling affidavits. Thereafter, when that evidence has been assembled by the contesting parties, they will then file—the contestant will then file a more elaborate petition. That's on page three of the bill, subsection (d), which really lays out what they think the evidence shows. And the responding party will, likewise, file a reply in which they set out what they think the evidence shows about the allegations and the petition.

In the case of a dispute over an election of the General Assembly, all of that matter is then referred by the clerk, all the records are then referred by the clerk then to the Committee on Rules, or if you don't have a Rules Committee, to such other committee as has been designated to handle the matter. That committee may then schedule its own hearings. They may call witness of its own, issue subpoenas, and take testimony. It will then make a report of its findings and its conclusions; in the case of the House, to the House of Representatives, in the case of the Senate, to the Senate. And the body in question will then vote to accept or reject the recommendations. We put standards for that on page 4, and those are important to read. And, again, we worked very hard with the co-chairs on that. If the question is eligibility, then the recommendation will go to the question of whether or not the candidate is eligible to hold the office. If, on the other hand, the question is the outcome of the results of the ballot count, then the House is to determine which candidate received the greatest number of votes, and it will make that decision and order that candidate seated. If it cannot determine on the evidence which candidate received the greatest number of votes, then it can order a new election or it can take such other action as it deems appropriate in order to resolve the contest.

The contest is heard by the new General Assembly, not by the old one. That is consistent again with practice, history, and all of the precedent that we have available to us. There was discussion in our chamber about what we do to make sure that this procedure is not frequently used—does not become just another way of litigating about elections, which is becoming all too common these days. And so we put a provision in on page 4 that says that once the

contest is resolved by the General Assembly, then whoever wins can go to court, and if they can prove that the contest was commenced in bad faith and without substantial justification, they can recover their cost and expenses. And again, that's a court proceeding—that's a judicial proceeding—that's to recover damages. That's not to settle the outcome of the election contest. The only thing the Constitution gives us authority to do is to settle the outcome of the contest. So the party can go to court and can seek damages there if they can show what's set out on page 4.

Finally, we had a good discussion about whether this applies to primaries. The best, again, evidence and research we've been able to examine indicates that for constitutional purposes, only the general election is really at issue here. Primaries are really the nominating processes of political parties. They do not seat anyone in office. Only the general election does that. And when the Constitution was written, the primary system did not exist. We think that the process, therefore, constitutionally, is limited to that election that results in someone who will take the office itself, and the bill makes that clear.

The procedure, again, starting on page 4, for contested elections for executive branch offices is very similar to what I just described with the following changes—the following differences. The committee that will hear the matter and makes its initial recommendations is a joint committee of the House and Senate, and five members are appointed by the President Pro Tem from the Senate; five are appointed from the House by the Speaker of the House. We've also guaranteed that the minority party will have representation on this committee, and that's the same as true on the single chamber legislative contest. No more than three members from the House, no more than three members from the Senate can be from the same political party. So we assure that minority parties in each chamber are represented on the committee. That committee then will go through the same process taking evidence, making recommendation and report to the General Assembly. And then what happens is the two houses sit together as a single house as if we were a unicameral body. That's what the Constitution means by a joint ballot. And the ballot is conducted among all 170 members voting together with a majority being necessary to determine the outcome of the contest. I'll tell you my colleagues in the Senate didn't particularly like this, but they accepted it because it is the way the Constitution is written, and we must follow that process.

Once the contest is determined, then the member who has been seated by the General Assembly takes office, or in the case of

Council of State or Governor, the Board of Elections gets to issue a certificate of election, and that person will then take office. There is no appeal from the decision from the General Assembly resolving the contest. The Constitution is absolutely clear on that. In fact, the courts of North Carolina only have jurisdiction to hear appeals from the trial level courts. They have no jurisdiction under Article IV to hear appeals from the General Assembly on these contests.

There are details we can talk about, Madam Chairman, if members have questions. I think I've given you the outline of the procedure in relatively succinct form, I hope.

Rep. Ross: Okay. Questions from members of the Committee. Representative Michaux.

Rep. Michaux: Is there any definition or any criteria for calling for a contested election? In other words, just because I lose can I call for a contested election?

Sen. Clodfelter: You must be able to make the specific allegations that are required for your petition.

Rep. Michaux: Well, what are they?

Sen. Clodfelter: Well, you must either make a specific allegation that the party that beat you in that election or claims to have beaten you, does not meet the eligibility criteria laid out in the Constitution and in the statutes for holding that office. Those would be, for example, residence and age. Or they don't, perhaps, live in the district from which they were elected, in the case of a General Assembly election. You have to make that allegation. Or if you think the election was conducted in an improper manner, you must make specific allegations about that manner in which you say it was improperly conducted, and you must be able to show or allege that that irregularity would have changed the outcome of the election. So, again, we're trying to discourage frivolous filings. I think the history we've had in the state has been pretty good on that. This constitutional provision has been there; it has not been used or abused.

Rep. Ross: Representative Michaux, do you have a follow-up.

Rep. Michaux: Yes. It's just that the allegations—what's that old saying? Allegation non-provada. Allegations could be rampant in a

situation like this. I mean you could allege, but you still have to go through the process before you get thrown out.

Sen. Clodfelter: You can, but again, it's interesting the history the staff has reviewed with us of the other states where this provision has been enforced for hundreds of years, shows people tend not to pull that trigger. There is good judgment, by and large, in our history in this state and in other states. There's a case right now in the Texas Legislature where a party thought about commencing the procedure, did actually commence it, and then said, I can't go forward with this. I can't really provide this, and withdrew. As Gerry Cohen said the one time we close to it in the Governor's elections, the parties looked at the evidence and the losing party said I can't prove my case, I won't go forward.

Rep. Ross: Rep. Michaux, another follow-up and then we're going to go...

Rep. Michaux: It's clear in the Constitution what the situation is and how it should be handled, yet we have a contest right now so I just....

Sen. Clodfelter: I understand, Representative Michaux. It's my belief that if the General Assembly takes action and endorses this bill, that perhaps people will pay attention to our Constitution and everyone will stand down, and we won't have to go forward under this procedure. This procedure may not be invoked. It, perhaps, may never be invoked.

Rep. Ross: Okay. I have Representative Harrison, then Representative Kiser, then Representative Blust, then Representative Starnes, then Representative Hackney. Representative Harrison.

Rep. Harrison: Okay. Could you clarify for me on page 4, line 10, setting out standards for ordering a new election.

Rep. Clodfelter: Right.

Rep. Harrison: Would the circumstances of that be determined by the General Assembly? Say, Carteret County lost those 4,000 votes. Could the General Assembly say those 4,000 whose votes were lost could revote, or the whole county would revote or those terms would be established by the General Assembly.

Sen. Clodfelter: It could do that. It says it could order a new election or such other relief as may be necessary and proper in order to find out who got the most votes.

Rep. Harrison: It's just up to the General Assembly.

Sen. Clodfelter: That is correct.

Rep. Ross: Representative Kiser.

Rep. Kiser: Thank you. Senator Clodfelter, let's say that I've run for election and I've lost by 8,500 votes. And there seems to be 11,000 votes in question. Under this bill then would that be eligible to be considered.

Sen. Clodfelter: If you can make a good safe allegation that there's 11,000 ballots that might have affected the outcome of your election, yes.

Rep. Ross: Okay. Representative Blust.

Rep. Blust: Senator Clodfelter, I don't really see anything on page 2 in the criteria that makes this totally open ended. I can understand if it were limited to situation where there were allegations about specific ballots, and you won by 8,000 and there were 11,000 specific ballots, but this language that says that if proven true would have a probable impact on the outcome of an election. What's to stop somebody saying the 2000 Attorney General's race where a lawsuit has even gone forward that you smeared my law firm and that brought my esteem in the eyes of the voters lower and that might have cost me any number of votes, and if you haven't done that then I'm going to contest the election. There's no specific allegation. Does that mess up certain ballots, because certainly you can say that my opponent's saying something false about me tainted the outcome of the election, and I should contest it. What is to stop somebody in those circumstances from in those circumstances using this very procedure?

Sen. Clodfelter: Representative Blust, I can say that I think there are practical reasons why that would stop anyone of good sense from doing that, but the bill also says that the objection must be that the conduct of the elections—not the conduct of the candidates in their campaigns. The manner in which the election was conducted.

Rep. Blust: That would limit it to the action of those who were, I guess, part of the election machinery, the precinct people, that kind of thing.

Sen. Clodfelter: Precinct people or ineligible voters or fraudulent ballots. The conduct of the election itself.

Rep. Ross: Representative Blust, Gerry Cohen also has something to add to that.

Gerry Cohen: The term conduct, there are plenty of statutes that talk about the election being conducted by the Board of Elections. The election is not conducted by the candidates. So the conduct of the election is the process under which the election is conducted. We're talking about ballots. You should correct the actions of the election administrators, precinct officials, lost ballots, stuffed ballot boxes, machines could break down, fraud irregularities, etc. And then the current election protest procedure in the statute to follow an election protest currently—you don't have to have any grounds at all under the current statute dealing with election protests. Now the standard on overturning an election in case law in North Carolina basically is the same as this bill. You have to allege on the face that the number of ballots you are contesting exceeds the margin. That's sort of your standard for moving forward.

Rep. Ross: Representative Blust, one follow-up, but we really do need to get to Representative Starnes and Representative Hackney.

Rep. Blust: I'm not sure where the borderline of conduct of an election and conduct, let's say, the candidates or their supporters might diverge, and what about something.... I heard in Ohio that supporters from one side were going out and handing out leaflets saying be sure to vote on November 4th when the election's November 3rd. Would that be protestable? Would that be the conduct of the election when it wasn't the precinct workers or the board of elections people but people supporting their candidate?

Senator Clodfelter: No, Representative Blust, it would not be. That would be the conduct of the candidates in their campaigns.

Rep. Ross: Representative Starnes, you had a question.

Rep. Starnes: Well, I've got a couple of questions, Madam Chair.

Rep. Ross: Okay.

Rep. Starnes: Well, Senator Clodfelter, the way you envision this bill, is this a last resort or is this a first resort? And the question I'm asking, you have an election and there's a dispute. Under the current law, it goes to the county board of elections, they make a determination; if the people are not satisfied they deal with the State Board of Elections, and when they make a determination, if they're not satisfied then they can work their way through the courts. Do the

terms of this bill come into play before the State Board of Elections has an opportunity to sort through it, or can they appeal immediately to the General Assembly?

Sen. Clodfelter: No, Representative Starnes, there must be first a canvass of the vote so protests that are made to the board of elections that have to be resolved during the course of the canvass of the vote are all being resolved at the board of elections. Until there is a canvass by the board of elections, and this again links back to the original constitutional provision, which we did the canvass or counting, until that is done, you don't have a way to say there is an election contest constitutionally. This process can't be triggered any earlier than that.

Rep. Ross: Do you have a follow-up, Representative Starnes, to that because we're going to move then to....

Rep. Starnes: Okay, second question then. Senator Clodfelter, on page 4, line 10, looks like the General Assembly has two remedies. One is that they may order a new election and the other is they order such relief as may be necessary, proper, blah, blah, blah. In your mind what are the other types of relief that you envision for the General Assembly.

Sen. Clodfelter: Representative Starnes, let me say first that that sentence only comes into play if as a result of the hearing and the evidence, the General Assembly is unable to determine who got the most votes. If it cannot be decided, based upon the evidence that's available, only then do you kick into the option of conducting a new election or ordering some other remedy. Frankly, we didn't want to tie that down because we could not be sure. We were sitting here and could think of all the possible things that might go wrong in an election. Carteret County is a very good example of that. There were a number of things that might be done if that were here, and we wouldn't want to debate what's the right thing to do. Should we take affidavits from the voters whose ballots were lost? Should we let them revote? There were a number of options. We were not sure we knew how to say exactly which ones ought to be followed in some future set of circumstances we couldn't envision. But we did say that doesn't kick in, if based on the evidence, you can find who got the most votes.

Rep. Ross: Gerry Cohen has something to add to that.

Gerry Cohen: I would say that, in my opinion, there are two circumstances this year, for instance, that having the 4,300 voters be called back to

vote again could be necessary or proper relief. Or in the issue of the outer precinct provisionals for getting the other dispute in the other bill about this. But for instance, asking those 10,000 people to vote again could be some—in the correct precinct—I suppose could be a proper relief. All those are, you know, potential possibilities, but we don't what kind of problems could occur in some future election.

Rep. Ross: This ought to be the last one because we need to move to Representative Hackney and Representative Cunningham.

Rep. Starnes: Well I do have two more questions, but.... Well then just quickly, what impact does the Voting Rights Act have on this legislation, and does the Justice Department have to review and pre-clear this type of legislation?

Sen. Clodfelter: May I refer that to Mr. Cohen.

Gerry Cohen: Our Attorney General's Office has advised us that part of this act that affects elections does need to be pre-cleared under Section 5 of the Voting Rights Act by either the Justice Department or the District Court for the District of Columbia.

Sen. Clodfelter: We've also determined that the inadvertent, which appears to be the case, repeal of the 1971 statute was not pre-cleared.

Rep. Ross: After we go to Representative Hackney and Representative Cunningham, if you have another question, Representative Starnes, we'll certainly come back to you. Representative Hackney.

Rep. Hackney: I want to express admiration for the amount of thought that's gone into this by the sponsor and our chairs and staff as well. Is there a possibility that we have cut off our right to have a contest because the triggering event is never reached? Suppose the board of elections refuses to issue a certificate of election and that we have two unsuccessful candidates. What happens then?

Sen. Clodfelter: In that event, then you reach a point at which the General Assembly convenes for regular session. And if by that point no candidate has received a certificate of election because of whatever reasons the board of elections hasn't done it, then the contest at that point can be initiated by any candidate who's still contending for that seat.

Rep. Ross: Within 30 days.

Sen. Clodfelter: Within 30 days within convening of the General Assembly. Again, we didn't want this coming up two or three years down the road.

Rep. Ross: Representative Cunningham.

Rep. Cunningham: All right. All my questions have been answered, and I'm very impressed with the work that all of you did, and at the proper time I'd like to make a motion for a favorable report.

Rep. Ross: Representative Starnes, would you like to ask your question, and then Representative Blust? And then we will entertain Representative Cunningham's motion.

Rep. Starnes: Senator Clodfelter, under our current law ... (Tape ran out here and had to be turned over.) ... State Board maybe would have voted for a new election, so why would you not want to include a super majority in this provision for the General Assembly to declare a new election to make sure that the rights of the minority party are protected as well?

Sen. Clodfelter: Representative Starnes, at the end of the process of the contest, the contest has to be resolved. And if indeed the General Assembly is in the situation that would trigger that, which is they are unable to determine from the evidence who won the election, I would think at that point the presumptive remedy would need to be a new election because there is no other way to resolve a contest. Would not want to have us in a situation where a minority in either house—Senate or House of Representatives or the joint body—could, in effect, deadlock the entire process of resolving the election. If we are unable to determine here who won, then we need to let the people of North Carolina speak again in a new election.

Rep. Ross: Representative Blust.

Rep. Blust: I have a question about this. It does say that the newly elected House, and I guess by House it means whichever body.... House could mean Senate in this instance. We've seen here how long it can take to get the House organized and up and running with committee appointments. It references a Rules Committee, I imagine that would be the new Rules Committee, and it could take a while to get organized and get those committees appointed. What if there's an up.... Because I do feel that we're reaching a point where more and more contests and court suits are coming to elections. I think we all know the reality of that. And what happens when there could be a deadlock over organizing the newly elected

House because some of the seats aren't filled yet, and the party split may be equal or something along that line. Can you not see some practical impediments to this type of procedure that we can't foresee that?

Sen. Clodfelter: I can't foresee the future, Representative Blust, and I think if it proves that indeed we need to subsequently modify the procedure, I'm sure that the General Assembly will do so. But I don't want to set up a presumption in this legislation that the General Assembly is going to fail to act in accordance with its constitutional responsibility.

Rep. Ross: We have a motion before us...

Rep. Kiser: I have one question that would go along with that.

Rep. Ross: Okay, Representative Kiser, Representative Lewis, and then we will take Representative Cunningham's motion.

Rep. Kiser: In the Council of State, I believe five members from each body are appointed. No more than three can be from the majority party. Let's say that the House is of one party and the Senate is of another party, and we end up with five and five, and you know like this is here today that this is going to be a partisan issue. How do you resolve that?

Sen. Clodfelter: Well, that committee makes its recommendations and its findings. It can have multiple reports. It can have a majority report and a minority report, or it can have two reports to the General Assembly.

Rep. Kiser: But how is it resolved?

Sen. Clodfelter: But at the end of the day, that report is voted on by the General Assembly, and a majority vote is necessary. I don't make any presumptions, if I may, Representative Kiser, about how the contest will go. I will assure you that there's one contest coming out of the 2004 elections we will not have because the contestant understood that the matter would not be resolved on partisan grounds.

Rep. Ross: Representative Lewis.

Rep. Lewis: If this bill becomes law, how long it will take to be re-cleared?

Sen. Lewis: Again, I can't speak to that. I don't know.

Gerry Cohen: The Justice Department, under the federal law, has 60 days to rule. If the State were to seek to have it approved by the federal court in DC, there's a different schedule; there's procedures for expedited review. Most of the issues, however, in Section 5 review have to do with whether the changes affect the ability of minorities to elect a candidate of their choice. I think there are probably not any substantial issues under the Voting Rights Act in this legislation that relate to that particular issue, but it does have to be approved in Washington.

Sen. Clodfelter: Madam Chairman, if I may say, we're in an unusual situation because of the inadvertence in '71. The best history is no one knows why that happened. It could have been an error in drafting. But, let's say, this bill is not pre-cleared, then we're in the rather interesting position that since the 1971 repeal was not pre-cleared, we'd probably operate under that procedure. The mere fact that the procedural rules may be at issue here doesn't divest us of jurisdiction that is constitutionally placed here. You can't lose your jurisdiction because of inaction or because of lack of use.

Rep. Ross: Representative Blust, the final question.

Rep. Blust: This isn't a question. It's more a point of order. Are we going to take a final vote on the bill or will the chair allow amendments to be sent up?

Rep. Ross: We have a motion before us on the proposed committee substitute, and we are supposed to end this meeting a minute or two ago. So I'm going to entertain Representative Cunningham's motion that we give the House Committee Substitute for Senate Bill 82 a favorable report, unfavorable as to the Senate bill.

_____: Madam Chair, I call for the ayes and nos.

Rep. Ross: Is the call sustained? We'll have the ayes and nos.

(Committee Assistant Nancy Garriss called the roll and the members voted.)

Rep. Ross: By a vote of 10 to 5, the proposed committee substitute for Senate Bill 82 is given a favorable report.

The meeting is adjourned. Watch your e-mails though; we may be having another meeting tomorrow.

The meeting adjourned at 1:55 p.m.

AGENDA

HOUSE OF REPRESENTATIVES Committee on Election Law and Campaign Finance Reform

**February 23, 2005
Representative Ross, Presiding**

Introduction of chairs, members, and staff

Representative Moore
Representative Ross

Senate Committee Substitute for SB 82, Election Contests

Senator Clodfelter

Nancy Garriss (Rep. Tim Moore)

From: Margie Penven (Rep. Ross)

Sent: Monday, February 21, 2005 6:02 PM

To: Sen. Daniel Clodfelter; Wanda Joyner (Sen. Clodfelter)

Subject: Election Law and Campaign Finance Reform Meeting Notice for Wednesday, 2/23/05, 1:00 p.m.

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION**

You are hereby notified that the Committee on Election Law and Campaign Finance Reform will meet as follows:

DAY & DATE: Wednesday, February 23, 2005

TIME: 1:00 p.m.

LOCATION: 1425 LB

The following bills will be considered:

SB 82, Election Contests, Sen. Clodfelter

Respectfully,
Representatives Tim Moore and Deborah Ross
Chairs

I hereby certify this notice was filed by the committee assistant at the following offices at **5:55 p.m.** on **February 21, 2005.**

____ Principal Clerk
____ Reading Clerk - House Chamber

Margie Penven (Committee Assistant)

2005 COMMITTEE REPORT HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representatives **Tim Moore & Rep. Deborah Ross** (Chairs) for the Committee on
Election Law and Campaign Finance Reform.

☒ Committee Substitute for

S.B. 82 A BILL TO BE ENTITLED AN ACT AN ACT TO PROVIDE PROCEDURES
FOR RESOLVING ELECTION CONTESTS FOR MEMBERS OF THE GENERAL
ASSEMBLY AND COUNCIL OF STATE.

- ☐ With a favorable report.
- ☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
Appropriations ☐ Finance ☐ ☐.
- ☐ With a favorable report, as amended.
- ☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on Appropriations ☐ Finance ☐ ☐.
- ☐ With a favorable report as to the committee substitute bill (#), ☐ which changes the
title, unfavorable as to (the original bill) (Committee Substitute Bill #), (and
recommendation that the committee substitute bill #) be re-referred to the Committee
on .)
- ☒ With a favorable report as to House committee substitute bill (#), ☐ which changes
~~the title~~, unfavorable as to Senate committee substitute bill.
- ☐ With an unfavorable report.
- ☐ With recommendation that the House concur.
- ☐ With recommendation that the House do not concur.
- ☐ With recommendation that the House do not concur; request conferees.
- ☐ With recommendation that the House concur; committee believes bill to be material.
- ☐ With an unfavorable report, with a Minority Report attached.
- ☐ Without prejudice.
- ☐ With an indefinite postponement report.
- ☐ With an indefinite postponement report, with a Minority Report attached.
- ☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S

D

SENATE BILL 82
Judiciary I Committee Substitute Adopted 2/15/05
Third Edition Engrossed 2/16/05
PROPOSED COMMITTEE SUBSTITUTE S82-CSRR-5 [v.5]

2/23/2005 12:06:21 PM

Short Title: Election Contests.

(Public)

Sponsors:

Referred to:

February 9, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE PROCEDURES FOR RESOLVING ELECTION CONTESTS
3 FOR MEMBERS OF THE GENERAL ASSEMBLY AND COUNCIL OF STATE.

4 Whereas, Article II, Section 20 of the Constitution provides that each house
5 shall be the judge of the qualifications and elections of its members; and

6 Whereas, the current statutory procedures for handling contested legislative
7 elections were enacted in 1796, amended slightly in 1893, and are antiquated; and

8 Whereas, Article VI, Section 5 of the Constitution provides that a contested
9 election for Governor, Lieutenant Governor, or other Council of State member shall be
10 determined by joint ballot of both houses of the General Assembly in the manner
11 prescribed by law; and

12 Whereas, the constitutional provision on contested executive branch elections
13 was originally enacted in 1835, with the statutory implementing language enacted in
14 1836; and

15 Whereas, at the time of their repeal in 1971, those statutory procedures
16 merely referred to the antiquated procedure for contested legislative elections; and

17 Whereas, it is necessary to revise the antiquated legislative election contest
18 procedure and enact an executive election contest procedure as required by the
19 Constitution; Now, therefore,
20 The General Assembly of North Carolina enacts:

21 SECTION 1. G.S. 120-10 reads as rewritten:

22 "§ 120-10. Notice of contest. Contesting a seat.

23 ~~No person shall be allowed to contest the seat of any member of the General~~
24 ~~Assembly unless he shall have given to the member 30 days' notice thereof in writing,~~
25 ~~prior to the meeting of the General Assembly, which must state the particular grounds~~
26 ~~of such contest. If the seat is contested on account of the reception of illegal votes, the~~

~~notice must set forth the number of such votes, by whom given, and the supposed disqualifications; and if the same is contested on account of the rejection of legal votes, the notice must give the names of the persons whose votes were rejected. No evidence shall be admitted to show that the contestant received illegal votes, unless he shall also have been notified the same number of days, and in the same manner. The same notice of time and place required in taking depositions shall be required and proved on the investigation.~~

(a) Initiating a Contest. – A contest of the election of any member to the General Assembly may only be initiated by an unsuccessful candidate in the election, referred to hereafter as the contestant. In addition, if at the time of convening of the Regular Session of the General Assembly next after the election, no candidate has received a certificate of election for a particular seat or office, the contest may be initiated by any candidate in the election for that seat or office.

To initiate a contest, the contestant shall give written notice, in the manner provided in subsection (d) of this section, of the intent to contest the election. The written notice shall be provided to the person or persons apparently elected, hereinafter referred to as the contestee, and to the Principal Clerk of the house to which that person seeks election.

The notice of intent shall be provided 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 and no later than the last of: (i) 30 days following the date of the election; (ii) 10 days after a certificate of election has been issued, or (iii) 10 days after the conclusion of the election protest procedure under Article 15A of Chapter 163 of the General Statutes. If none of those events has occurred at the time of the convening of the Regular Session of the General Assembly next after the election, a contestant may initiate a contest no later than 30 days after the convening of that session.

As used in this section, 'to contest' means to challenge the apparent election of a member of the General Assembly or to request the decision of an undecided election to a seat in the General Assembly, where the challenge or the request is filed in accordance with the timing and procedures of this section and states as grounds: (i) objections to the eligibility or qualifications of the contestee based on specific allegations, (ii) objections to the conduct or results of the election accompanied by specific allegations which, if proven true, would have a probable impact on the outcome of the election, or (iii) both. The grounds for the contest shall be stated in the notice of intent.

The notice shall state that an answer by the contestee must be filed with the clerk of the appropriate house within 10 days following service of the notice. The contestant shall sign and verify the notice by his oath or affirmation.

(b) Answering a Contest. – Within 10 days after service of the contestant's notice on the contestee, the contestee shall file with the clerk of the appropriate house a written answer. 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. The contestee shall sign and verify his answer by his oath or affirmation.

1 (c) Filings. – The notice of intent to contest shall be filed by the contestant with
2 the clerk of the appropriate house and copies thereof served by the contestant as
3 provided under the Rules of Civil Procedure on each contestee. The answer, petition,
4 and any reply and copies thereof shall be filed with the appropriate Principal Clerk, and
5 copies shall be served on the opposing party or the opposing party's counsel, if any, in
6 the manner prescribed by the Rules of Civil Procedure.

7 After service of the notice of intent, any party, after reasonable notice to the other
8 party or parties, may take depositions to sustain or invalidate the election. The
9 contestant shall complete the taking of depositions to submit with his petition at any
10 time within 20 days following the date of the notice of intent to contest the election, and
11 the contestee shall complete the taking of his depositions within 30 days following the
12 date of the notice of intent to contest the election. By written stipulation of the parties,
13 the testimony of any witness may be filed in the form of an affidavit by the witness
14 within the same time limitations prescribed for the taking of depositions.

15 Subpoenas for witnesses shall be issued upon the application of either party or upon
16 motion of the committee under the same procedures as under Article 5A of this Chapter
17 and shall be enforced as provided under G.S. 120-19.4. Witnesses shall be entitled to the
18 same allowances and privileges, and be subject to the same penalties, as witnesses
19 summoned to attend the courts. Every deposition shall be taken before a person
20 authorized by law to administer oaths, who shall certify and seal the deposition in the
21 same manner as in judicial civil proceedings and file the same with the Principal Clerk
22 of the appropriate house.

23 (d) Petitions. – A written petition shall be filed by the contestant with the
24 Principal Clerk of the appropriate house within 40 days following the filing of the notice
25 of intent to contest the election. The petition shall set forth the facts and arguments
26 supporting the case of the contestant. The contestee may file a written reply to the
27 petition within five days following its service on the contestee.

28 No affidavit may be made a part of, or filed in support of, a petition or reply thereto
29 unless the affidavit has previously been filed with the Principal Clerk of the appropriate
30 house, pursuant to the written stipulation of the parties or their counsel, on or before the
31 date established by subsection (c) of this section for the completion of the taking of
32 depositions by the proponent of the affidavit.

33 (e) Referral to Committee. – The Principal Clerk shall refer the notice, answer,
34 petition, reply, depositions, and affidavits to the Committee on Rules, which documents
35 shall constitute part of the record in the contest. Unless another committee has been
36 designated by the rules of the house to hear contest matters, the Committee on Rules
37 shall hear the contest and conduct such investigation as has been directed by resolution
38 of its house.

39 The committee handling the protest shall set a schedule for taking depositions and
40 receiving affidavits. The committee may consider the contestant's and contestee's
41 recommendations for the procedural schedule. The committee may hold hearings and
42 may compel the attendance of witnesses and the production of documents in its inquiry.
43 The committee may order the filing of briefs. The committee may order the recount of
44 the ballots in the election.

1 The committee shall report its findings as to the law and the facts and make
2 recommendations to the house for its action.

3 (f) Standards - If the contest is as to the eligibility or qualifications of the
4 contestee, the house shall determine if the contestee is eligible and qualified. If it
5 determines that the contestee is not eligible or not qualified, it shall order a new
6 election. If the contest is as to the conduct or results of the election, the house shall
7 determine which candidate received the greatest number of votes. If it can determine
8 which candidate received the greatest number of votes, it shall order that candidate
9 seated. If it cannot determine which candidate received the greatest number of votes, it
10 may order a new election, or may order such other relief as may be necessary and
11 proper, except that if it determines that two or more candidates shall be equal and
12 highest in votes, the provisions of G.S. 163-182.8 shall apply.

13 (g) New House to Hear. - The contest shall be heard and decided by the newly
14 elected house.

15 (h) Bad Faith. - The prevailing party in any contest may in a civil action recover
16 that party's costs of the legislative proceeding, upon a showing that the contestor filed,
17 prosecuted, or maintained the contest in bad faith and without substantial justification.

18 (i) Applicability. - This section applies only to a general or special election and
19 does not apply to the primary or any other part of the nominating process."

20 **SECTION 2.** G.S. 120-11 reads as rewritten:

21 **"§ 120-11. Depositions taken; penalty and privilege of witnesses.**

22 Any person duly authorized to take depositions to be read before courts, may take
23 depositions to be used ~~on-in~~ the investigation, and may issue subpoenas for witnesses,
24 which shall be executed by any officer authorized to execute process. investigation. And
25 if any witness shall fail to appear and give his deposition according to the subpoena, he
26 shall forfeit and pay to the party causing him to be summoned forty dollars (\$40.00).
27 And on such investigation no witness in this or in the case of any other contested
28 election shall be excused from discovering whether he voted at such election, or his
29 qualification to vote, except as to his conviction for any offense which would disqualify
30 him. And if he was not a qualified voter, he shall be compelled to discover for whom he
31 voted; but any witness making such discovery shall not be subject to criminal or penal
32 prosecution for having voted at such election."

33 **SECTION 3.(a)** Article 15A of Chapter 163 of the General Statutes is
34 amended by adding a new section to read:

35 **"§ 163-182.13A. Contested elections for Executive Branch offices.**

36 (a) Notice. - Except as provided by this section, in any election for any elective
37 office established by Article III of the Constitution, notice of the intent to contest the
38 election shall be filed with the Principal Clerk of the House of Representatives as if it
39 were a contested election for the House of Representatives as prescribed in G.S. 120-10.

40 (b) Applicability. - The provisions of G.S. 120-10 and G.S. 120-11 shall apply to
41 contested elections for any elective office established by Article III of the Constitution
42 and shall govern standing, notice of intent to contest, answers, service of process,
43 evidence, the petition, procedures, and relief except as provided in this section. All
44 filings shall be with the Principal Clerk of the House of Representatives.

1 As used in this section, 'to contest' means to challenge the apparent election for any
2 elective office established by Article III of the Constitution or to request the decision of
3 an undecided election to any elective office established by Article III of the
4 Constitution, where the challenge or the request is filed in accordance with the timing
5 and procedures of this section and states as grounds: (i) objections to the eligibility or
6 qualifications of the contestee based on specific allegations, (ii) objections to the
7 conduct or results of the election accompanied by specific allegations which, if proven
8 true, would have a probable impact on the outcome of the election, or (iii) both. The
9 grounds for the contest shall be stated in the notice of intent.

10 (b1) New General Assembly to Hear – When a contest arises out of the general
11 election, the General Assembly elected at the same time shall hear and decide it.

12 (c) Jurisdiction of Select Committee. – The matter shall be heard before a select
13 committee consisting of five Senators appointed by the President Pro Tempore and five
14 Representatives appointed by the Speaker of the House of Representatives. Not more
15 than three members of the Senate appointed by the President Pro Tempore shall be
16 members of the same political party. Not more than three members of the House of
17 Representatives appointed by the Speaker shall be members of the same political party.
18 That committee shall have the same power as a committee under G.S. 120-10. The
19 committee shall report its findings as to the law and the facts and make
20 recommendations to the General Assembly for its action.

21 (d) Final Determination. – The final determination on the recommendations of
22 the committee shall be made by the General Assembly, both houses sitting in joint
23 session in the Hall of the House of Representatives, with the Speaker of the House of
24 Representatives presiding. The vote shall be taken as provided by Article VI, Section 5
25 of the Constitution. In order to find for the contestant and order the contestant elected,
26 the vote on the joint ballot must include the affirmative vote of a majority of the
27 members of the General Assembly voting on the issue. The ballots shall be considered
28 written ballots rather than secret ballots and are subject to the provisions of
29 G.S. 143-318.13(b).

30 (d1) Standards - If the contest is as to the eligibility or qualifications of the
31 contestee, the General Assembly shall determine if the contestee is eligible and
32 qualified. If it determines that the contestee is not eligible or not qualified, it shall order
33 a new election. If the contest is as to the conduct or results of the election, the General
34 Assembly shall determine which candidate received the greatest number of votes. If it
35 can determine which candidate received the greatest number of votes, it shall order that
36 candidate to be elected. If it cannot determine which candidate received the greatest
37 number of votes, it may order a new election, or may order such other relief as may be
38 necessary and proper, except that if it determines that two or more candidates shall be
39 equal and highest in votes, the provisions of G.S. 147-4 shall apply.

40 (e) Filing of Determination. – A copy of the determination of the General
41 Assembly under this section shall be filed with the Clerk of Superior Court of Wake
42 County and with the State Board of Elections.

1 (f) Copies to Senate Principal Clerk. – The Principal Clerk of the House of
2 Representatives shall make copies of any filings and transmit them to the Principal
3 Clerk for the Senate.

4 (g) Applicability. – This section applies only to a general or special election and
5 does not apply to the primary or any other part of the nominating process."

6 **SECTION 3.(b)** For any election in 2004, notice of the intent to contest the
7 election shall be filed within 10 days of this act becoming law, notwithstanding the
8 deadlines established under subsection (a) of this section. Any election contest petition
9 received prior to this act becoming law may be amended, if necessary, to comply with
10 the provisions of this act.

11 **SECTION 4.** G.S. 163-182.14 reads as rewritten:

12 **"§ 163-182.14. Appeal of a final decision to superior court.**

13 (a) Final Decision. – A copy of the final decision of the State Board of Elections
14 on an election protest shall be served on the parties personally or by certified mail. A
15 decision to order a new election is considered a final decision for purposes of seeking
16 review of the decision.

17 (b) Timing of Right of Appeal. – Except in the case of a general or special
18 election to either house of the General Assembly or to an office established by Article
19 III of the Constitution, Anan aggrieved party has the right to appeal the final decision to
20 the Superior Court of Wake County within 10 days of the date of service.

21 After the decision by the State Board of Elections has been served on the parties, the
22 certification of nomination or election or the results of the referendum shall issue
23 pursuant to G.S. 163-182.15 unless an appealing party obtains a stay of the certification
24 from the Superior Court of Wake County within 10 days after the date of service. The
25 court shall not issue a stay of certification unless the petitioner shows the court that the
26 petitioner has appealed the decision of the State Board of Elections, that the petitioner is
27 an aggrieved party, and that the petitioner is likely to prevail in the appeal.

28 (c) Contests for General Assembly and Executive Branch Offices. – In the case
29 of a general or special election to either house of the General Assembly or to an office
30 established by Article III of the Constitution, an unsuccessful candidate has the right to
31 appeal the final decision to the General Assembly in accordance with G.S. 120-10 and
32 G.S. 163-182.13A, as appropriate.

33 After the decision by the State Board of Elections has been served on the parties,
34 the certification of nomination or election shall issue pursuant to G.S. 163-182.15 unless
35 a contest of the election is initiated pursuant to G.S. 120-10 or G.S. 163-182.13A, as
36 appropriate. The decision of the General Assembly in determining the contest of the
37 election pursuant to G.S. 163-182.13A, or the decision of one of its houses in
38 determining a contest pursuant to G.S. 120-10, as appropriate, may not be reviewed by
39 the General Court of Justice."

40 **SECTION 5.** G.S. 163-182.15 reads as rewritten:

41 **"§ 163-182.15. Certificate of nomination or election, or certificate of the results of**
42 **a referendum.**

43 (a) Issued by County Board of Elections. – In ballot items within the jurisdiction
44 of the county board of elections, the county board shall issue a certificate of nomination

1 or election, or a certificate of the results of the referendum, as appropriate. The
2 certificate shall be issued by the county board six days after the completion of the
3 canvass pursuant to G.S. 163-182.5, unless there is an election protest pending. If there
4 is an election protest, the certificate of nomination or election or the certificate of the
5 result of the referendum shall be issued in one of the following ways, as appropriate:

- 6 (1) The certificate shall be issued five days after the protest is dismissed or
7 denied by the county board of elections, unless that decision has been
8 appealed to the State Board of Elections.
- 9 (2) The certificate shall be issued 10 days after the final decision of the
10 State Board, unless the State Board has ordered a new election or the
11 issuance of the certificate is stayed by the Superior Court of Wake
12 County pursuant to G.S. 163-182.14.
- 13 (3) If the decision of the State Board has been appealed to the Superior
14 Court of Wake County and the court has stayed the certification, the
15 certificate shall be issued five days after the entry of a final order in
16 the case in the Superior Court of Wake County, unless that court or an
17 appellate court orders otherwise.
- 18 (4) No certificate of election need be issued for any member of the
19 General Assembly following a contest of the election pursuant to G.S.
20 120-10.

21 (b) Issued by State Board of Elections. – In ballot items within the jurisdiction of
22 the State Board of Elections, the State Board of Elections shall issue a certificate of
23 nomination or election, or a certificate of the results of the referendum, as appropriate.
24 The certificate shall be issued by the State Board six days after the completion of the
25 canvass pursuant to G.S. 163-182.5, unless there is an election protest pending. If there
26 is an election protest, the certificate of nomination or election or the certificate of the
27 result of the referendum shall be issued in one of the following ways, as appropriate:

- 28 (1) The certificate shall be issued 10 days after the final decision of the
29 State Board on the election protest, unless the State Board has ordered
30 a new election or the issuance of the certificate is stayed by the
31 Superior Court of Wake County pursuant to G.S. 163-14.
- 32 (2) If the decision of the State Board has been appealed to the Superior
33 Court of Wake County and the court has stayed the certification, the
34 certificate shall be issued five days after the entry of a final order in
35 the case in the Superior Court of Wake County, unless that court or an
36 appellate court orders otherwise.
- 37 (3) The certificate shall be issued immediately upon the filing of a copy of
38 the determination of the General Assembly with the State Board of
39 Elections in contested elections involving any elective office
40 established by Article III of the Constitution.
- 41 (4) No certificate of election need be issued for any member of the
42 General Assembly following a contest of the election pursuant to G.S.
43 120-10.

1 (c) Copy to Secretary of State. – The State Board of Elections shall provide to
2 the Secretary of State a copy of each certificate of nomination or election, or certificate
3 of the results of a referendum, issued by it. The Secretary shall keep the certificates in a
4 form readily accessible and useful to the public."

5 **SECTION 6.** This act is effective when it becomes law.
6

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S

3

SENATE BILL 82
Judiciary I Committee Substitute Adopted 2/15/05
Third Edition Engrossed 2/16/05

Short Title: Election Contests.

(Public)

Sponsors:

Referred to:

February 9, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE PROCEDURES FOR RESOLVING ELECTION CONTESTS
3 FOR MEMBERS OF THE GENERAL ASSEMBLY AND COUNCIL OF STATE.

4 Whereas, Article II, Section 20 of the Constitution provides that each house
5 shall be the judge of the qualifications and elections of its members; and

6 Whereas, the current statutory procedures for handling contested legislative
7 elections were enacted in 1796, amended slightly in 1893, and are antiquated; and

8 Whereas, Article VI, Section 5 of the Constitution provides that a contested
9 election for Governor or Council of State member shall be determined by joint ballot of
10 both houses of the General Assembly in the manner described by law; and

11 Whereas, the constitutional provision on contested executive branch elections
12 was originally enacted in 1835, with the statutory implementing language enacted in
13 1836; and

14 Whereas, at the time of their repeal in 1971, those statutory procedures
15 merely referred to the antiquated procedure for contested legislative elections; and

16 Whereas, it is necessary to revise the antiquated legislative election contest
17 procedure and enact an executive election contest procedure as required by the
18 Constitution; Now, therefore,

19 The General Assembly of North Carolina enacts:

20 **SECTION 1.** G.S. 120-10 reads as rewritten:

21 **"§ 120-10. Notice of contest.**

22 (a) Eligibility to Contest a Seat. – No person shall be allowed to may contest the
23 seat of any member of the General Assembly except as provided in this section. unless
24 he shall have given to the member 30 days' notice thereof in writing, prior to the
25 meeting of the General Assembly, which must state the particular grounds of such
26 contest. If the seat is contested on account of the reception of illegal votes, the notice
27 must set forth the number of such votes, by whom given, and the supposed
28 disqualifications; and if the same is contested on account of the rejection of legal votes,

1 ~~the notice must give the names of the persons whose votes were rejected. No evidence~~
2 ~~shall be admitted to show that the contestant received illegal votes, unless he shall also~~
3 ~~have been notified the same number of days, and in the same manner. The same notice~~
4 ~~of time and place required in taking depositions shall be required and proved on the~~
5 ~~investigation.~~

6 (b) Initiating a Contest. – A contest of the election of any member to the General
7 Assembly may only be initiated by an unsuccessful candidate in the election, referred to
8 hereafter as the contestant. In addition, if at the time of convening of the Regular
9 Session of the General Assembly next after the election, no candidate has received a
10 certificate of election for a particular seat or office, the contest may be initiated by any
11 candidate in the election for that seat or office. To initiate a contest, the contestant shall
12 give written notice, in the manner provided in subsection (d) of this section, of the intent
13 to contest the election. The written notice shall be provided to the person or persons
14 apparently elected, hereinafter referred to as the contestee, and to the Principal Clerk of
15 the house to which that person seeks election. The notice of intent shall be provided no
16 later than the latter of: (i) 30 days following the date of the election; (ii) 10 days after a
17 certificate of election has been issued, or (iii) 10 days after the conclusion of the
18 election protest procedure under Article 15A of Chapter 163 of the General Statutes.

19 The notice of intent shall state the grounds on which the contestant intends to contest
20 the election. The grounds shall include (i) objections to the eligibility or qualifications
21 of the contestee based on specific allegations, (ii) objections to the conduct or results of
22 the election accompanied by specific allegations which, if proven true, would have a
23 probable impact on the outcome of the election, or (iii) both.

24 The notice shall state that an answer by the contestee must be filed with the clerk of
25 the appropriate house within 10 days following service of the notice. The contestant
26 shall sign and verify the notice by his oath or affirmation.

27 (c) Answering a Contest. – Within 10 days after service of the contestant's notice
28 on the contestee, the contestee shall file with the clerk of the appropriate house a written
29 answer. The contestee's answer shall admit or deny the allegations on which the
30 contestant relies, or state that the contestee has no knowledge or information concerning
31 an allegation which shall be deemed denial, and state any other defenses, in law or fact,
32 on which the contestee relies. The contestee shall sign and verify his answer by his oath
33 or affirmation.

34 (d) Filings. – The notice of intent to contest shall be filed by the contestant with
35 the clerk of the appropriate house and copies thereof served by the contestant as
36 provided under the Rules of Civil Procedure on each contestee. The answer, petition,
37 and any reply and copies thereof shall be filed with the appropriate Principal Clerk, and
38 copies shall be served on the opposing party or the opposing party's counsel, if any, in
39 the manner prescribed by the Rules of Civil Procedure.

40 After service of the notice of intent, any party, after reasonable notice to the other
41 party or parties, may take depositions to sustain or invalidate the election. The
42 contestant shall complete the taking of depositions to submit with his petition at any
43 time within 20 days following the date of the notice of intent to contest the election, and
44 the contestee shall complete the taking of his depositions within 30 days following the

1 date of the notice of intent to contest the election. By written stipulation of the parties,
2 the testimony of any witness may be filed in the form of an affidavit by the witness
3 within the same time limitations prescribed for the taking of depositions.

4 Subpoenas for witnesses shall be issued upon the application of either party or upon
5 motion of the committee under the same procedures as under Article 5A of this Chapter
6 and shall be enforced as provided under G.S. 120-19.4. Witnesses shall be entitled to the
7 same allowances and privileges, and be subject to the same penalties, as witnesses
8 summoned to attend the courts. Every deposition shall be taken before a person
9 authorized by law to administer oaths, who shall certify and seal the deposition in the
10 same manner as in judicial civil proceedings and file the same with the Principal Clerk
11 of the appropriate house.

12 (e) Petitions. – A written petition shall be filed by the contestant with the
13 Principal Clerk of the appropriate house within 40 days following the filing of the notice
14 of intent to contest the election. The contestee may file a written reply to the petition
15 within five days following its service on the contestee.

16 No affidavit may be made a part of, or filed in support of, a petition or reply thereto
17 unless the affidavit has previously been filed with the Principal Clerk of the appropriate
18 house, pursuant to the written stipulation of the parties or their counsel, on or before the
19 date established by subsection (d) of this section for the completion of the taking of
20 depositions by the proponent of the affidavit.

21 (f) Referral to Committee. – The Principal Clerk shall refer the notice, answer,
22 petition, reply, depositions, and affidavits to the Committee on Rules, which documents
23 shall constitute part of the record in the contest. Unless another committee has been
24 designated by the rules of the house to hear contest matters, the Committee on Rules
25 shall hear the contest and conduct such investigation as has been directed by resolution
26 of its house.

27 The committee handling the protest shall set a schedule for taking depositions and
28 receiving affidavits. The committee may consider the contestant's and contestee's
29 recommendations for the procedural schedule. The committee may hold hearings and
30 may compel the attendance of witnesses and the production of documents in its inquiry.
31 The committee may order the recount of the ballots in the election.

32 The committee shall report its findings as to the law and the facts and make
33 recommendations to the house for its action.

34 (g) New House to Hear. – The contest shall be heard and decided by the newly
35 elected house.

36 (h) Bad Faith. – The prevailing party in any contest may in a civil action recover
37 that party's costs of the legislative proceeding, upon a showing that the contestor filed,
38 prosecuted, or maintained the contest in bad faith and without substantial justification.

39 (i) Applicability. – This section applies only to a general or special election and
40 does not apply to the primary or any other part of the nominating process."

41 **SECTION 2. G.S. 120-11 reads as rewritten:**

42 **"§ 120-11. Depositions taken; ~~penalty and~~ privilege of witnesses.**

43 **Any person duly authorized to take depositions to be read before courts, may take**
44 **depositions to be used ~~on-in~~ the investigation, and ~~may issue subpoenas for witnesses,~~**

1 ~~which shall be executed by any officer authorized to execute process, investigation. And~~
2 ~~if any witness shall fail to appear and give his deposition according to the subpoena, he~~
3 ~~shall forfeit and pay to the party causing him to be summoned forty dollars (\$40.00).~~
4 And on such investigation no witness in this or in the case of any other contested
5 election shall be excused from discovering whether he voted at such election, or his
6 qualification to vote, except as to his conviction for any offense which would disqualify
7 him. And if he was not a qualified voter, he shall be compelled to discover for whom he
8 voted; but any witness making such discovery shall not be subject to criminal or penal
9 prosecution for having voted at such election."

10 **SECTION 3.(a)** Article 15A of Chapter 163 of the General Statutes is
11 amended by adding a new section to read:

12 **"§ 163-182.13A. Contested elections for Executive Branch offices.**

13 (a) Notice. – Except as provided by this section, in any election for any elective
14 office established by Article III of the Constitution, notice of the intent to contest the
15 election shall be filed with the Principal Clerk of the House of Representatives as if it
16 were a contested election for the House of Representatives as prescribed in G.S. 120-10.

17 (b) Applicability. – The provisions of G.S. 120-10 and G.S. 120-11 shall apply to
18 contested elections for any elective office established by Article III of the Constitution
19 and shall govern standing, notice of intent to contest, answers, service of process,
20 evidence, the petition, procedures, and relief except as provided in this section. All
21 filings shall be with the Principal Clerk of the House of Representatives.

22 (c) Jurisdiction of Select Committee. – The matter shall be heard before a select
23 committee consisting of five Senators appointed by the President Pro Tempore and five
24 Representatives appointed by the Speaker of the House of Representatives. That
25 committee shall have the same power as a committee under G.S. 120-10. The committee
26 shall report its findings as to the law and the facts and make recommendations to the
27 General Assembly for its action.

28 (d) Final Determination. – The final determination on the recommendations of
29 the committee shall be made by the General Assembly, both houses sitting in joint
30 session in the Hall of the House of Representatives, with the Speaker of the House of
31 Representatives presiding. The vote shall be taken as provided by Article VI, Section 5
32 of the Constitution. In order to find for the contestant and order the contestant elected,
33 the vote on the joint ballot must include the affirmative vote of a majority of the
34 members of the General Assembly voting on the issue. The ballots shall be considered
35 written ballots rather than secret ballots and are subject to the provisions of
36 G.S. 143-318.13(b).

37 (e) Filing of Judgment. – A copy of the judgment of the General Assembly under
38 this section shall be filed with the Clerk of Superior Court of Wake County and with the
39 State Board of Elections.

40 (f) Copies to Senate Principal Clerk. – The Principal Clerk of the House of
41 Representatives shall make copies of any filings and transmit them to the Principal
42 Clerk for the Senate.

43 (g) Applicability. – This section applies only to a general or special election and
44 does not apply to the primary or any other part of the nominating process."

1 **SECTION 3.(b)** For any election in 2004, notice of the intent to contest the
2 election shall be filed within 10 days of this act becoming law, notwithstanding the
3 deadlines established under subsection (a) of this section. The provisions of this act
4 prevail over any other procedure for protest or contest of the election of any member of
5 the General Assembly or any office created by Article III of the Constitution. Any
6 election contest petition received prior to this act becoming law may be amended, if
7 necessary, to comply with the provisions of this act.

8 **SECTION 4.** G.S. 163-182.14 reads as rewritten:

9 **"§ 163-182.14. Appeal of a final decision to superior court.**

10 (a) Final Decision. – A copy of the final decision of the State Board of Elections
11 on an election protest shall be served on the parties personally or by certified mail. A
12 decision to order a new election is considered a final decision for purposes of seeking
13 review of the decision.

14 (b) Timing of Right of Appeal. – Except in the case of an election to either house
15 of the General Assembly or to an office established by Article III of the Constitution, an
16 An aggrieved party has the right to appeal the final decision to the Superior Court of
17 Wake County within 10 days of the date of service.

18 After the decision by the State Board of Elections has been served on the parties, the
19 certification of nomination or election or the results of the referendum shall issue
20 pursuant to G.S. 163-182.15 unless an appealing party obtains a stay of the certification
21 from the Superior Court of Wake County within 10 days after the date of service. The
22 court shall not issue a stay of certification unless the petitioner shows the court that the
23 petitioner has appealed the decision of the State Board of Elections, that the petitioner is
24 an aggrieved party, and that the petitioner is likely to prevail in the appeal.

25 (c) Contests for General Assembly and Executive Branch Offices. – In the case
26 of an election to either house of the General Assembly or to an office established by
27 Article III of the Constitution, an aggrieved party may file an election contest as
28 provided by G.S. 120-10 or G.S. 163-182.13A, as appropriate. There is no review in the
29 General Court of Justice."

30 **SECTION 5.** G.S. 163-182.15(b) reads as rewritten:

31 (b) Issued by State Board of Elections. – In ballot items within the jurisdiction of
32 the State Board of Elections, the State Board of Elections shall issue a certificate of
33 nomination or election, or a certificate of the results of the referendum, as appropriate.
34 The certificate shall be issued by the State Board six days after the completion of the
35 canvass pursuant to G.S. 163-182.5, unless there is an election protest pending. If there
36 is an election protest, the certificate of nomination or election or the certificate of the
37 result of the referendum shall be issued in one of the following ways, as appropriate:

38 (1) The certificate shall be issued 10 days after the final decision of the
39 State Board on the election protest, unless the State Board has ordered
40 a new election or the issuance of the certificate is stayed by the
41 Superior Court of Wake County pursuant to G.S. 163-14.

42 (2) If the decision of the State Board has been appealed to the Superior
43 Court of Wake County and the court has stayed the certification, the
44 certificate shall be issued five days after the entry of a final order in

1 the case in the Superior Court of Wake County, unless that court or an
2 appellate court orders otherwise.

3 (3) The certificate shall be issued immediately upon the filing of a copy of
4 the judgment of the General Assembly with the State Board of
5 Elections in contested elections involving any elective office
6 established by Article III of the Constitution.

7 (4) No certificate of election need be issued for any member of the
8 General Assembly following an election contest decided pursuant to
9 G.S. 120-10 and G.S. 120-11."

10 **SECTION 6.** This act is effective when it becomes law.



SENATE BILL 82: Election Contests.

BILL ANALYSIS

Committee: House Election Laws and
Campaign Finance Reform

Date: February 23, 2005

Version: S82-CSR-5 [v.5]

Introduced by: Sen. Clodfelter

Summary by: William R. Gilkeson
Committee Co-Counsel

SUMMARY: *This House PCS for Senate Bill 82 rewrites the centuries-old procedure for the House and Senate to decide contested elections of their members. It also restores the procedure, for some reason repealed in 1971, for the General Assembly to fulfill its constitutional duty of deciding contested elections for Council of State offices. The PCS makes the restored procedure for Council of State contests parallel to the procedure for contested legislative elections. The PCS makes clear that the General Assembly's decision in either a legislative or Council of State election contest is not reviewable by State courts. Effective when it becomes law.*

CURRENT LAW: Article II, Sec. 20, of the NC Constitution makes each house of the General Assembly "judge of the qualifications and elections of its members." In 1796 the General Assembly enacted what are now codified as GS 120-10 and 120-11, providing briefly for procedures for each house to hear legislative election contests. No one may contest the seat of any member without giving written notice 30 days before the General Assembly convenes.

Article VI, Sec. 5, states that a contest for any office established by Article III "shall be determined by joint ballot of both houses of the General Assembly in the manner prescribed by law." The offices established by Article III are the 10 executive branch offices elected statewide: Governor, Lieutenant Governor, Secretary of State, Attorney General, Treasurer, Auditor, Commissioners of Agriculture, Insurance, and Labor, and Superintendent of Public Instruction, collectively known as the Council of State. Until 1971, the General Statutes referred to GS 120-10 as the procedure for Council of State election contests. For some reason, the reference was repealed in 1971. The repeal was part of a bill whose main thrust was to relieve the General Assembly of the duty to decide tie votes in legislative races and to break such ties with a new election.

BILL ANALYSIS: The bill would replace the 1796 procedure for legislative election contests with a more detailed statute patterned after the one used in Virginia. *Section 1 of the PCS.* The Virginia statute was written in the 1950s and amended in 1981. In the summary below, the procedure is the same for legislative and Council of State contests, except that the legislative procedure involves only one house, and the Council of State procedure involves both houses.

Initiating a Contest. Only an unsuccessful candidate in the contested race may initiate a contest. If upon the convening of the General Assembly no candidate has been certified, then any candidate in that race may initiate a contest. The person who initiates the contest (the "contestant") must file a notice with the Principal Clerk of the appropriate house no earlier than the day set for the definitive canvass for the election, and no later than:

- 30 days after the election,
- 10 days after a winner is certified by the board of elections, or
- 10 days after the conclusion of the election protest procedure provided for in the election laws, whichever of those 3 things occurs later.

If none of those things has occurred by the convening of a Regular Session of the General Assembly, the contest may be filed up to 30 days after the session convenes.

The notice must state the grounds: either objections to the eligibility or qualifications of the apparent winner (the "contestee"), objections to the conduct or results of the election, or both. **A contest is defined as something that**

SENATE BILL 82

Page 2

states those grounds. Within 40 days after the filing of the notice, the contestant must file a petition with the Principal Clerk, and the contestee gets 5 days after the petition is filed to reply to it.

Answering a Contest. The contestee has 10 days to answer.

Discovery. The contestant has 20 days after the filing of the notice to complete depositions, and the contestee has 30 days.

Rules Committee. The Committee on Rules of the appropriate house shall hear the contest, unless another committee is designated by the rules of that house. The Committee may hold hearings, compel witnesses and the production of documents, issue subpoenas, and order the recounting of ballots in the election. It shall make its recommendations to the full house, which shall decide the contest. The newly elected house, rather than the old one, decides.

Bad Faith. The prevailing party in a contest may take the other side to court for costs upon a showing of bad faith and lack of substantial justification.

Different Procedures for Council of State Contest. The same basic procedures apply for a Council of State contest. *Section 3 of the PCS.* However, because 2 houses are involved rather than one, there are these basic differences:

- The Committee hearing the contest would be a select committee of five senators appointed by the President Pro Tem and five House members appointed by the Speaker. **The House PCS adds to the Senate-passed bill the requirement that no more than 3 of the 5 members appointed by each presiding officer may be of the same political party.**
- The final decision would be, as required by Art. VI, Sec. 2, of the Constitution, by a joint ballot of both house, and the contestant could win only with a majority of the members of the General Assembly voting on the issue. The ballots would be "written ballot," meaning that the members would sign their ballots and the public record would reflect how each member voted.

Standards for Deciding the Contest. The House PCS adds to the Senate-passed bill a set of standards for either house, or for the General Assembly as a whole, to use in determining the contest. If the contest is about the eligibility or qualifications of the contestee, the legislative body shall determine those things, and if it decides the contestee is unqualified, it shall order a new election, rather than seat the contestant. If the contest is about the conduct or results of the election, the body shall determine if it can who received the greatest number of votes and seat that candidate. If it cannot determine who got the most votes, it may order a new election or order other relief "as may be necessary and proper." If it determines there was a tie, existing law for the breaking of ties is used.

Application to 2004 Elections. Any election contest notice filed concerning the 2004 election must be filed within 10 days of the bill becoming law. Any petition filed before the bill became law could be amended, if necessary, to comply with the bill. *Section 3.(b).*

Not Reviewable by State Courts. The bill amends current election law statutes to say that the State court system may not review the legislative determination of election contests for General Assembly or Council of State. After a final decision of the State Board of Elections in a legislative or Council of State race, there is no appeal to the court system, but an unsuccessful candidate may initiate a contest with the General Assembly. *Section 4 of the bill.* The bill further directs the State Board of Elections to issue a certificate to a winner when the General Assembly decides a Council of State election contest, and it says no certificate need be issued when the General Assembly decides a legislative election contest. *Section 5.*



North Carolina General Assembly Legislative Services Office

George R. Hall, Legislative Services Office
Legislative Services Office
16 W. Jones Street Room 2129
Raleigh, NC 27601-1030 Tel. (919)

Tony C. Goldman, Director
Administrative Division
16 W. Jones Street Room 9
Raleigh, NC 27601-1030
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
300 N. Salisbury St. Rm 401
Raleigh, NC 27603-5925
(919) 733-6660

James D. Johnson, Director
Fiscal Research Division
300 N. Salisbury St. Rm 619
Raleigh, NC 27603-5925
(919) 733-4910

Dennis W. McCarty, Director
Information Systems Division
300 N. Salisbury St. Rm 400
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
300 N. Salisbury
Raleigh, NC 276
(919) 733-2578

HISTORY OF NORTH CAROLINA PROVISIONS ON CONTESTED ELECTIONS

Senate Bill 82 is designed to implement a provision of the State Constitution which grants jurisdiction to the General Assembly to hear contested council of state elections, and to revise the procedure for handling contests for legislative elections.

The office of Governor was made elective by the Convention of 1835. Prior to that, the General Assembly chose the Governor. The group of amendments in Article II adopted by the Convention provided for popular election of the Governor, for the election canvass to be done by the General Assembly, for tie votes to be broken by joint vote of both houses, and for contested elections to be determined by the General Assembly. The 1835 amendments left the Supreme Court appointed by joint ballot of both houses, those offices not being subject to popular election until 1868.

Some have stated that the power to decide an election contest applies only in the case of a tie vote, but the history clearly shows that a contested election is different than a tied election.

It is clear that the Constitutional Convention of 1835 reserved to the General Assembly a power that otherwise would be judicial, to resolve contested elections. At the same time as the Constitutional Convention of 1868 made the judiciary more independent by allowing popular election of the Supreme Court, it revised slightly the procedure for legislative handling of election contests.

*proposed
by voters
SB 826*
In 1925, the General Assembly again amended that provision of the constitution, ceding to the executive branch the power to canvass the election of council of state, but amended and preserved its power to hear contests.

In 1969, the General Assembly again examined the issue of election contests for the Council of State, again preserving that power. While the power has lain dormant, and there have been no contested elections for council of state, the power clearly is inherent in the General Assembly.

While there exists no current statutory procedure for handling election contests, jurisdiction is not dependent on the existence or not of the statutory enabling legislation.

The fact that the General Assembly has enacted a general law on election protests and not limited its scope does not mean it was constitutional to delegate these powers to the court.

My research shows only one potential contested executive branch election. Ashe's two volume history of North Carolina published in 1925 recounts the 1872 gubernatorial election, when there is an extensive account of proceedings before the state party executive committee of the losing candidate for governor discussing the potential of bringing an election contest before the General Assembly, which would decide the matter. The candidate never brought the contest as insufficient evidence was gathered.

North Carolina is not the only state to have a provision in its constitution calling for the legislative branch to resolve contested elections for executive branch offices. My research shows 12 other states with similar provisions, including Virginia, Alabama, Arkansas, and Washington. The issue has been litigated in several states, and the State Supreme Court rulings I have been able to find indicate that the provisions vest jurisdiction over these matters in the legislative branch. In the Arkansas case, their Supreme Court even noted that failure of the legislature to have a procedure in place did not affect its jurisdiction over the matter.

Constitutional Amendment of 1835 – proposed by Convention, approved by voters

"Article II.

1. The Governor shall be chosen by the qualified voters for the members of the house of commons, at such time and places as members of the General Assembly are elected.

.....

3. The returns of every election for Governor shall be sealed up and transmitted to the seat of government, by the returning officers, directed to the speaker of the senate, who shall open and publish them in the presence of a majority of the members of both houses of the general assembly. The person having the highest number of votes shall be governor; but if two or more shall be equal and highest in votes, one of them shall be chosen governor by joint vote of both houses of the general assembly.

4. Contested elections for governor shall be determined by both houses of the general assembly, in such manner as shall be prescribed by law."

The 1835 Constitutional amendment had four distinct parts to it:

- 1) The Governor was to be elected by the people
- 2) The results were canvassed by the General Assembly
- 3) If the canvass showed a tie vote, a joint vote would be taken by both houses
- 4) If the election was contested, the contest would be "determined" by both houses "in such manner as shall be prescribed by law. Clearly, a tie vote was NOT a contest.

Sections 1 and 5 of Chapter 21, Laws of 1836 provided the statutory implementation:

"When any person or persons shall contest the election of any person, who may be elected governor, or may have received the largest number of votes, agreeably to the returns of the respective sheriffs of the State, such person or persons shall in writing give notice to him, whose election he or they intend to contest, of such his or their intention, as well as the specific grounds upon which he or they may intend to contest his election; setting forth the county or counties, in which he or they allege that spurious or illegal votes were given, or any other invasion of the law or constitution, having relation to the case, shall have taken place, at least thirty days before the first day of December in the year in which such election is held, and also in one or more newspapers published in Raleigh; and satisfactory proof that such notice has been given shall be required before the General Assembly proceed to inquire into the truth of such allegations: Provided however, that if the person whose election is contested is out of the State, or not to be found at the time, thirty days' notice, in one or more of the newspapers published in Raleigh, shall be deemed sufficient ... It may be lawful for any person to take depositions to be read in such cases, before two magistrates, which depositions shall have the certificate and seal of the clerk of the county court, in which such depositions are taken, setting forth that such persons are acting justices of the peace for the county: Provided however, that not such depositions shall be deemed evidence, unless ten days notice shall have been given to the person, whose election is contested; which notice shall be given in writing, to be proved by the person delivering it, who shall depose before a justice of the peace that such notice was delivered by him, setting forth the date of its delivery. If, however, the person whose election is contested is out of the State or not to be found, fifteen days notice given in a newspaper published in Raleigh shall be sufficient.

The Constitution of 1868 rewrote the Constitutional language:

"Article III, Section 1. The Executive Department shall consist of a Governor ... a Lieutenant Governor, a Secretary of State, and Auditor, a treasurer, a Superintendent of Public Works, a Superintendent of Public Instruction, and an Attorney General ..."

Article III, Section 3:

Sec. 3. The return of every election for officers of the Executive Department shall be sealed up and transmitted to the seat of Government by the returning officers, directed to the Speaker of the House of Representatives, who shall open and publish the same in the presence of a majority of the members of both Houses of the General Assembly. The person having the highest number of votes, respectively, shall be declared elected; but if two or more be equal and highest in votes for the same office, then one of them shall be chosen by joint ballot, of both Houses of the General Assembly. Contested elections shall be determined by a joint vote of both Houses of the General Assembly, in such manner as shall be prescribed by law."

The 1868 constitutional amendments did the following:

- 1) added additional elective executive officers
- 2) changed the presiding officer for the joint session from the Speaker of the Senate to the Speaker of the House
- 3) a tie vote was to be resolved by "joint ballot" rather than "joint vote"
- 4) a contest was to be determined by "joint vote of both houses" rather than "by both houses" Again, ties and contests were completely separate circumstances, handled by different procedures.

As mentioned above, the 1868 constitutional rewrite also changed the Supreme Court from a body appointed by the General Assembly to one subject to popular election.

Chapter 89, Section 44, Public Laws of 1901 changed the statutory implementing legislation to read: "Contested elections shall be determined by a joint vote of both Houses of the General Assembly in the same manner and under the same rules and regulations as prescribed in cases of contested election of members of the General Assembly."

A constitutional amendment in 1925 read as follows:

"Section 1. That section three of article three of the Constitution of North Carolina be and the same is hereby amended by striking out all of section three and inserting in lieu thereof the following:

"Section three. The return of every election for officers of the executive department shall be sealed up and transmitted to the seat of government by the returning officer, directed to the Secretary of State.

The return shall be canvassed and the result declared in such manner as may be prescribed by law. Contested elections shall be determined by a joint ballot of both houses of the General Assembly in such manner as shall be prescribed by law."

The 1925 amendments did the following:

- 1) The canvass itself was removed from the General Assembly and was instead the returns were to be sent to the Secretary of State
- 2) The power in the General Assembly to break ties for executive officers was removed from the Constitution (but was left in the statutes where it now appears in G.S. 147-4)
- 3) Contests were to be resolved instead of "by a joint vote of both Houses of the General Assembly" to "by a joint ballot of both houses of the General Assembly"

Section 14 of Chapter 260 of the Public Laws of 1927 changed the implementing language again, to be:

"In contested elections, the state board of canvassers shall certify to the speaker of the house of representatives a statement of such facts as the board has relative thereto and such contests shall be determined by joint vote of both houses of the general assembly in the same manner and under the same rules as described in cases of contested elections for members of the general assembly."

The 1967 rewrite of the election laws had moved the election contest provision to be the last paragraph of G.S. 163-191, to read:

"In a contested election for one of the offices referred to in the preceding paragraph, the State Board of Elections shall certify to the Speaker of the House of Representatives a statement of whatever facts the Board has relative thereto, and the contest shall be determined by joint vote of both houses of the General Assembly in the manner and under the rules applicable in cases of contested elections for members of the General Assembly."

The Constitutional Revision Commission of 1968 proposed a new Constitution which was approved by 1969 General Assembly and by the voters in 1970.

The minutes of the Commission showed that this issue was deliberated and the determination was made to move the language from Article III (Executive Branch) to Article VI (Elections), while deleting the references to who conducts the canvass. The 1969 Constitutional Amendment brought the language to its current status to be found in Section 5 of Article VI:

"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"

In 1971, the provision on how to handle executive branch election contests mysteriously disappeared in the enactment of Section 2 of Chapter 219, which was not even reflected in the title.

"H.B. 121 CHAPTER 219

AN ACT TO PROVIDE THAT A TIE VOTE FOR MEMBERS OF THE GENERAL ASSEMBLY SHALL BE BROKEN BY A SPECIAL ELECTION.

The General Assembly of North Carolina do enact:

SECTION 1. G.S. 163-191 is hereby amended by deleting the second sentence of the second paragraph and by inserting in lieu thereof the following: "But if two or more be equal and highest in votes for the office, then the State Board of Elections shall order a new election for the purpose of breaking the tie vote."

SECTION 2. The last paragraph of G.S. 163-191 is hereby repealed.

SECTION 3. This act shall become effective July 1, 1971."

As to the General Assembly, the contest provisions have been more consistent.

Section 10 of the Constitution of 1776 provided that each house shall "be judges of the qualifications and elections of their members. That language now appears in Article II, Section 20 of the 1969 Constitution as each house shall "judge the qualifications of its own members.

The first statutory implementing statute was Chapter 24 of the Laws of 1796, which read:
It shall not be lawful for any person to vacate the seat of any member of the General Assembly, who has taken his seat in consequence of the return of the sheriff or sheriffs of his county or district, certifying that he is duly elected, unless the person or persons who may intend to dispute such election shall give the member or members, whose election he or they intend to dispute, thirty days notice previous to the meeting of the General Assembly of such his intention, with the ground on which the same will be disputed; and the same notice of time and place, now required in taking depositions at law, shall also be required and proved on such investigation, and all affidavits taken without due notice as aforesaid shall be deemed improper evidence and not suffered to be read in such investigation.

Chapter 192 of the Public Laws of 1893 added the words: " prior to the meeting of the General Assembly,"

The law is now codified as G.S. 120-10, and now reads:

§ 120-10. Notice of contest.

No person shall be allowed to contest the seat of any member of the General Assembly unless he shall have given to the member 30 days' notice thereof in writing, prior to the meeting of the General Assembly, which must state the particular grounds of such contest. If the seat is contested on account of the reception of illegal votes, the notice must set forth the number of such votes, by whom given, and the supposed disqualifications; and if the same is contested on account of the rejection of legal votes, the notice must give the names of the persons whose votes were rejected. No evidence shall be admitted to show that the contestant received illegal votes, unless he shall also have been notified the same number of days, and in the same manner. The same notice of time and place required in taking depositions shall be required and proved on the investigation.

Chapter 16 of the Laws of 1800 enacted the following:

If any person, being legally summoned by any lawful officer by a subpoena issued by a justice of the peace, or any other person authorized by law to take depositions, to appear before them or either of them, to give testimony in behalf of either of the parties disputing any election for members of the General Assembly, he or they failing to attend agreeably to the said subpoena, and give testimony as aforesaid, shall forfeit and pay the party grieved the sum of forty dollars, to be recovered by action of debt, before any jurisdiction having cognizance thereof: *Provided*, nothing herein contained shall be construed to extend to the compelling any such witnesses to answer any question tending directly or indirectly, to discover the person for whom he voted, or to discover his disqualifications as an elector.

this was rewritten by Chapter 270 of the 1868-69 Session, and by Section 68 of Chapter 108 of the 1973 Session Laws. The 1973 amendment eliminated a reference to taking testimony before a justice of the peace. That law is now codified as G.S. 120-11, which reads:

"§ 120-11. Depositions taken; penalty and privilege of witnesses.

Any person duly authorized to take depositions to be read before courts, may take depositions to be used on the investigation, and may issue subpoenas for witnesses, which shall be executed by any officer authorized to execute process. And if any witness shall fail to appear and give his deposition according to the subpoena, he shall forfeit and pay to the party causing him to be summoned forty dollars (\$40.00). And on such investigation no witness in this or in the case of any other contested election shall be excused from discovering whether he voted at such election, or his qualification to vote, except as to his conviction for any offense which would disqualify him. And if he was not a qualified voter, he shall be compelled to discover for whom he voted; but any witness making such discovery shall not be subject to criminal or penal prosecution for having voted at such election."

F:/my documents/SB82 explanation

Researched and prepared by Gerry Cohen, Director of Bill Drafting

February 16, 2005

ROLL CALL VOTE

10 5 = _____ (TOTAL)
YES NO 16

HB# _____
SB# 82

HOUSE COMMITTEE ON ELECTION LAW AND CAMPAIGN FINANCE REFORM

YES	NO	MEMBER (last name)	YES	NO	MEMBER (last name)
_____	☒	BLUST	_____	_____	
☒	_____	CHURCH	_____	_____	
☒	_____	HARRISON	_____	_____	
☒	_____	HOLLIMAN	_____	_____	
_____	_____	HOLMES	_____	_____	
_____	☒	KISER	_____	_____	
_____	☒	LEWIS	_____	_____	
☒	_____	LUEBKE	_____	_____	
☒	_____	MICHAUX	_____	_____	
☒	_____	NYE	_____	_____	
_____	☒	STARNES	_____	_____	
_____	☒	MOORE, Chair	_____	_____	
☒	_____	ROSS, Chair	_____	_____	
_____	_____	<u>Ex officio Members</u>	_____	_____	
☒	_____	CULPEPPER	_____	_____	
☒	_____	CUNNINGHAM	_____	_____	
_____	_____	EDDINS	_____	_____	
☒	_____	HACKNEY	_____	_____	
<u>10</u>	<u>5</u>		_____	_____	
_____	_____		_____	_____	
_____	_____		_____	_____	
_____	_____		_____	_____	
_____	_____		_____	_____	

VISITOR REGISTRATION SHEET

Election Law and Campaign Finance Reform

February 23, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Jenny Matthews	UNC-CH School of Law
Phyllis West	
Kathleen Edwards	UNC-CH School of Government
Gary Robertson	AP
Jane Betts	Charlotte Observer
E. V. Gidner	UNC-TV
Bob Hall	Democracy North Carolina
Chris Heagarty	NC Center for Water Fed.
L. B. A.	LBA
Barbara Host	NCRITL
Charlene Carey	Elon University

MINUTES
House Committee on Election Law and Campaign Finance Reform
February 24, 2005
10:35 a.m., Room 1425
Representative Ross, Presiding

The House Committee on Election Law and Campaign Finance Reform met at 10:35 a.m. on Thursday, February 24, 2005, in Room 1425 of the State Legislative Building.

Members present were: Representative Tim Moore, Co-Chair; Representative Deborah Ross, Co-Chair; Representative Joe Kiser, Vice-Chair; Representative Paul Luebke, Vice-Chair; Representative Mickey Michaux, Vice-Chair; Representative John Blust; Representative Walter Church; Representative Pricey Harrison; Representative Hugh Holliman; Representative David Lewis; Representative Edd Nye, and Representative Edgar Starnes. Also present were ex-officio members Representative Bill Culpepper, Representative Pete Cunningham, and Representative Joe Hackney.

There was one bill on the agenda: Senate Bill 133, Reconfirming Provisional Voting, sponsored by Senator Dan Clodfelter.

Co-Chair Deborah Ross called the meeting to order and introduced the page and sergeants-at-arms.

The Chair recognized Senator Clodfelter to explain Senate Bill 133. After explaining the bill, Senator Clodfelter answered questions from the committee. Staff member Bill Gilkeson was also present for questions.

Representative Holliman made a motion that Senate Bill 133 be given a favorable report, and the motion carried.

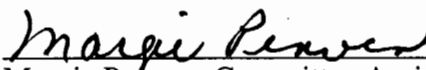
There being no further business, the meeting adjourned at 11:20 a.m.

A verbatim transcript of this meeting is attached hereto along with all pertinent documents and handouts.

Respectfully submitted,



Representative Deborah Ross, Presiding Chair



Margie Penven, Committee Assistant

TRANSCRIPT
House Committee on Election Law and Campaign Finance Reform

10:35 a.m. on February 24, 2005

Room 1425, LOB

Representative Ross, Presiding

Rep. Ross

Members of the committee, we're going to get started. I want to thank you all for your patience this week. You have been terrific, and thank you so much for staying after session today on this cold and rainy day. So today we're going to take up Senate Bill 133, Reconfirm Provisional Voting.

Before we do that, I'd like to introduce the pages and the sergeants-at-arms. We have Laura Millican again from Brunswick County who's sponsored by Representative Stiller. We have Toussaint Avent again as a sergeant-at-arms, Charles Coker as a sergeant-at-arms, and Martha Parrish and Dusty Rhodes as sergeants-at-arms.

And, again, we have Senator Clodfelter with us to share with us Senate Bill 133.

Sen. Clodfelter:

Thank you, Madam Chairman, and Co-Chairman Moore, members of the Committee. I think I've been with you guys more than I've been with my own committee over in the Senate. I hope we're not going to start a trend of that, actually.

The bill before you is a bit odd. And it's odd in one respect. It is a bill whose premise is the law is not being changed. The law is simply being declared and stated the way it was, the way it has been; and to make that crystal clear to all voters, election officials, legislators, judges, and everyone else.

I'm going to start with a section of the bill, Madam Chairman, that actually is at the end—that's Section 6—because that's the only section of the bill that, in my view, does anything new. It says to the State Board of Elections take a look at the experience that we've had in the last four years with provisional voting and all the various things people have said about it and all the various things that have happened and all the various ideas that have come forward about how we ought to change what we do with provisional voting and report back to us by April 15 of this year with some recommendations and some suggestions for us to debate. Should we change it? How should we change it? What should we do? What experiences have we learned from in the last four years? That actually is the new law in this bill in the view of

the sponsor and in the view, so far at least, of the Senate in bringing the bill to you.

The remainder of the bill deals with the confusion that has been created by a different interpretation of the law than that which is set out in the statutes themselves and in the practice that has been the practice of the boards of elections statewide since 2001.

I was being a bit flippant, and I apologize for that, when I told the press about this bill that the short version of the bill was we meant it when we said it the first time. And I was wrong when I said that. When we actually got into the bill I discovered that what I should have said, being flippant, was we meant it the first and second times we said it.

The first time we addressed the subject of provisional balloting was not in 2003 in response to the Help America Vote Act. It was back in 2001 following the 2000 elections. And again, for the benefit of everyone who doesn't know what's said in these rooms, sometimes we find it necessary, and it is unusual I acknowledge, but sometimes it becomes necessary to put on paper exactly what you did, how you did it, and what it means. That is really what Section 1 of the bill is all about, so there cannot be any confusion—so that no one will not take the position that our elections officials have mishandled elections for four years. They have not. They acted in accordance with the statutes that we enacted first in 2001 and then again reconfirmed in 2003.

In 2001 what we said was two provisions, and they're set forth for you on page two of the bill, we recognized in two statutes—163-182(a)(4) that a voter who could cast a provisional ballot would only be entitled to cast that ballot for those races for which he was eligible to vote at the place where he voted. There would be no reason for such a provision if he was always voting at his home precinct. That provision would have no meaning. It would have been surplusage. And one of the rules I was taught in law school was you don't read a statute in such a way as to make any part of it meaningless or surplus.

And we also in 2001 in 163-166.7(c)(6) told State Board of Elections to set up rules and procedures so that voters who were not eligible to vote in a particular precinct, but who sought to vote in that precinct, were given a choice. They were either to be given guidance on how to go to their home precinct or they were to be given a provisional ballot, and that provisional ballot would only count for the races for which they were eligible to vote by virtue of

their residency. It wouldn't count for everything because they weren't in their home precinct. We did that in 2001, and the elections thereafter were conducted under those statutes. This is not something that just came up in November 2004. It was also the law in 2004 for the first primary and the second primary. Provisional ballots were counted. They were used in determining the victors in first and second primaries. We have an anomalous situation now where the general election has been called into question but all the prior elections under which the procedures were followed, apparently, are being allowed to stand. And the part on that basis has been, as we were advised in the Senate Committee, in the opinion of the Attorney General is that we're in the unfortunate situation where the recent court decision has changed the law for North Carolina from what it was and therefore requires pre-clearance under Section 5 of the Voting Rights Act. It is the responsibility of the Attorney General, under our statutes, to make that determination and to proceed accordingly to submit for pre-clearance.

When we got to 2003, we had before us the Help America Vote Act, and there were a number of provisions in that act that dealt with a wide range of subjects all of which, though, were intended to facilitate the practice of voting—not to restrict it or limit it. And we had discussion. Some of you will remember them in your chamber. I know we had them in the Senate chamber about whether or not we should have one set of rules that applied in State elections and another set of rules applied to federal elections. We've looked back at all of the history and at the statutes that were enacted from that time. There was never—not a hint of any indication that the General Assembly intended to have elections conducted one way for federal offices and a different way for State offices. I will defy anyone to find that intent anywhere in the words of the statute or in any of the deliberations that occurred as best we've been able to determine.

So in 2003 we enacted 163-166.11, and that provided that, again, in the event a voter was in the wrong precinct they would be given the choice of a provisional ballot or directions about how to get to the home precinct and only have their ballot counted for those races for which they were eligible. The concept there is identical, and I, again perhaps my imagination is not sufficient to the task, but I've been unable to distinguish in principle that situation from the early voting situation where almost 900,000 North Carolinians did not vote in their home precinct. Or perhaps a few of them did, if you happened to be going to an early voting site that happened to be located in your home precinct. I know that I did not vote in my

home precinct in 2004—first primary, second primary, general election. I suspect that may be true of some of you even who did not vote in the precinct....

So we have an anomaly that's been created in the law, and, indeed, I think that is also part of the Attorney General's opinion. We have an anomaly in which some people who vote outside their precinct have had their ballots counted, and others who voted outside their home precincts have had their ballots discarded. I do not think that's a proper interpretation, nor does the Senate that passed this bill think that is a proper interpretation of the current law. It is the purpose of this bill to state that plainly, clearly, and unmistakably.

Madam Chairman, I would give a section-by-section explanation, but I really would think that's better left for questions and perhaps the staff's assistance. But we just want to be sure that what we're saying in here cross references all the pertinent statutes so no one reading our statutes can pick and choose only one part to read and ignore all of the other parts. That was actually something we shouldn't have to do either. I was taught, again, in law school that one of the things you do is you read the statute as a whole. You do not select and pick and choose different parts of it and ignore other parts of it in reaching a result. And so that is essentially what Sections 2, 3, and 4 and 5 of the bill do, for example, in interpreting what the reference to the phrase jurisdiction means in 163-166.11. You go back to the statutes on registration. The voter is registered in a county. That's what our statute says. It always has. That hasn't been changed. And so a voter who is registered in that jurisdiction is the voter who is covered by 163-166.11. It's been that way...always has been.

Again, I'll come back at the end here to say that if there are ideas about changing provisional voting, I for one am perfectly willing to take this up and consider them. There may be some very good things we ought to do about provisional voting, and that is what Section 6 addresses. But with all respect to those of a differing view, I think that is a debate for another time. The task we have before us today is to make sure that those voters who were innocent of any wrong doing who did only what elections officials told them they could do, who were duly and properly registered in their home counties and voted in their home counties, who had their ballots counted only for those races for which they were eligible to vote, that we confirm the principle that is set forth in the text of the bill. It is the principle that's been enunciated up until very recently by our courts, and that is the voter who is innocent of wrongdoing is not to be punished by having his or her ballot

disregarded. Even in a case where error has been committed, the voter who is innocent is not to be deprived of right of franchise. That's one of the most fundamental things. I think you agree with me. I'd be glad to respond to questions.

Rep. Ross Why don't we start with Rep. Michaux, then Rep. Kiser, then Rep. Blust, then Rep. Holliman.

Rep. Michaux: Madam, Chair, I just wanted to say that having had an integral part in both 2001 and the 2003 provisions that were passed almost unanimously by this body, I don't why we've got to come back and revisit this thing. I mean, I understand why we do, but I thought it was clear when we did it, particularly in 2003 to comply with HAVA (Help America Vote Act). There wasn't any problem, and the matter was restated. HAVA required us to do this in order to be able to (1) draw down the funds so that we could modernize our entire voting system, and (2) was that it simply was a method, in my book, that said that all right, if I move away from my old precinct...I moved and had a new precinct...but I went to my old precinct, I'm still registered. Why can't I just file a ballot that the board of elections has approved my registration and show that I'm eligible to vote in the matters in which I am voting for and my vote would count. I don't know why anyone wants to make a big deal out of this because that's all it does. It guarantees that person that, hey, if you are registered, you went to the wrong precinct, I'm going to even send you to where you're supposed to go if you can't find it or you have a problem there, then we'll let you file a provisional ballot, we'll inspect the records and then, you know, your vote will count. And we've had to come back and recodify and reiterate and all of this at the same time. It just doesn't make sense. But since we've got the court to say differently...and you're right, Senator Clodfelter. It's the innocent person that is hurt here. And I don't see how we...I mean, we let...we are preaching democracy around the world, and we let these folks who live in Cincinnati and Cleveland who are rightly citizens vote absentee, vote provisionally, if you want to put it that way, and you're saying that their vote counts in Iraq, but you're saying that these people who did it innocently over here, their vote doesn't count. Where do we draw the line on this? How do we...? It just doesn't make sense. I'm through. I'm off the soapbox.

Rep. Ross: Representative Kiser.

Rep. Kiser: Senator Clodfelter, you said the last several votes that you made were not in your precinct. I was wondering if that was early voting that you did.

Sen. Clodfelter: It was early voting.

Rep. Kiser: But I see a difference between early voting and provisional voting because in early voting you have the record there to prove that you are registered. In some of these districts, you will not have records to prove that the person is registered, and it costs a lot more for the election officials to process these provisional ballots. It's very time consuming. And I've heard people claim that the reason so many was filed, that the people didn't know which precinct that they were registered in because the board of elections in a 30-day period didn't have time to get them a card back to tell them where they had been registered and where they were supposed to vote.

It just appears to me that we're putting an undue cost and, I think, a prescription for fraud in elections when we allow people to vote outside their precincts. It's a mistake, I think, and I don't go with what Representative Blust said on the floor that only one side would use it. If there's going to be a chance of fraud here, I'll assure you one side will use it as quick as the other. I think it's the integrity of our elections system that we've got to guard against here, and I think this opens it up.

Sen. Clodfelter: Madam Chair, if I may. Representative Kiser, again, I want to join you in one point and that is there may be some questions. We ought to discuss how provisional balloting is being done and how we ought to change it. But, again with respect, I think those are the changes for another day for different legislation and different bills. I might support some of those. I didn't have to show any more of identification when I voted early than did someone who showed up in my home precinct but in the wrong place who cast a provisional ballot there. They had to sign, they had to sign the ballot, put it in a sealed envelope and then the board of elections officials had to verify whether they were registered or not. It's a different process and perhaps more costly, and I wouldn't argue with you about whether we ought to do things that make elections less costly, but that's not what this is about.

Rep. Kiser: If I might.... Okay. If we were to have a voter ID with picture cards this might work just fine.

Rep. Ross: Representative Blust.

Rep. Blust: I understand when there's disputes between the legislature and the courts as to what the law means and the legislature can go back in when they disagree with a court decision, tighten up the language, restructure it from that time going forward. I'm not familiar with a

time where a legislative branch in this state or the federal government has taken a case that's been decided by the courts and decided we don't like what the court's ruled as to the meaning of the law, now let's go back and change the law and relate it back to the particular dispute that the court's already settled. Have you heard of this happening before, Senator Clodfelter?

Senator Clodfelter: Representative Blust, I won't bore you with what I said on the floor of the Senate about that subject, but actually I did a lot of reading back into American history on the subject, and it does happen. It's not common, perhaps because errors of this sort are not all that common. But I was interested to read comments by James Madison, by Abraham Lincoln, by Andrew Jackson on the same subject of what is the responsibility of another branch of government when courts get it just dead flat wrong. And all of those people to whom I look for models and guidance say that it is the responsibility of each branch of government to call the others to account when any one of the three may happen to step out of line.

I would also say that, in my view, curative statutes, that is, statutes that operate to correct an error or to reinstate or to retroactively make an act valid are not at all uncommon. We do those in this General Assembly several times each session. They're called curative statutes. I see nothing wrong with that in this instance.

Rep. Ross: Representative Blust for a follow-up and then I think Representative Michaux had something on this point and then we go to Representative Holliman and then Starnes.

Rep. Blust: I'm not arguing with a curative statute from this time going forward, but you go back into this particular dispute that the court settled.... I'm not aware of instances where it's been retroactive. Maybe it has.

Rep. Ross: Representative Michaux on this point and then....

Rep. Michaux: It hasn't been settled. It has not been settled. The Supreme Court sent the matter back to the lower court for a decision to be made. That's exactly what they did, so the matter has not been settled, and it won't be settled until the lower court makes a decision.

Rep. Ross: Representative Holliman.

Rep. Holliman: Thank you, Madam Chair. I think the overriding concern is that every legitimate voter should have a say. And this provisional

ballot and the board of elections rules, these are legitimate registered voters, and their votes should be counted. I really don't understand what was going on with the Supreme Court when they said these 11,000 ballots didn't count.

At the proper time, Madam Chairman, I'd like to make a motion for a favorable report.

Rep. Ross: Okay. Thank you, Representative Holliman. We're going to hold that for now because I think there might be one or two amendments, but we appreciate that. Representative Starnes.

Rep. Starnes: Thank you. Senator Clodfelter, under the provisions of this bill, a person can go on Election Day, and they can vote in a precinct in which they don't reside. Now, when you move from precinct to precinct or when you vote in different precincts, depending on your legislative district or county commissioners running districts, school boards, various offices around the district, so you vote a provisional ballot in a certain precinct and then it's determined that they gave you the wrong ballot because you live in a different precinct, even though you voted in the one precinct. So then that person who voted a provisional ballot that they filled out the wrong ballot, how do you correct that ballot? There was nothing...so say you had a legislative race or a county commissioner race that was determined by 5 votes, 10 votes, or 1 vote. And you had someone that voted a provisional ballot in the wrong precinct.

Sen. Clodfelter: Rep. Starnes, the way the process works under the current law, and I'm open to suggestions about changing it in the future, the way the process works is that if I'm in the wrong precinct—I'm not in my home precinct—I get the ballot for the precinct where I show up. And if that has, let's say, a county commissioner district race on that ballot and that precinct, but I'm in a different district where it would have had different candidates for a different district, my vote just won't count. It won't count at all in that race. And the board of elections officials will tell me that. There're instructions are in the statute to tell me that—that your vote's not going to count for every race. You can either go back over to this precinct, which is where you reside, or you can vote here. But if you vote here and there are races on this ballot that you're not eligible to vote for, it won't count.

Rep. Ross: One more question, and then I think we have an amendment.

Rep. Starnes: Well basically though, you are disenfranchising that voter because he has voted and he still has an improper ballot and maybe he

hasn't had an opportunity to go back and fill out the correct ballot. So he's still being disenfranchised or his vote is not counted under that set of circumstances.

Sen. Clodfelter:

The voter, Representative Starnes, has the choice. And, you know, it's interesting to me.... I don't know about you guys, but I've heard from a lot of voters individually who were caught in this situation. Two are interesting to me, and they illustrate the fact that this is not about fraud. It's about the things that actually happen to people in everyday life.

One was from an election official in Winston-Salem. Now he was assigned to work in a precinct that was all the way across town from where worked (should be lived). He did his duty. He showed up at 6:30 in the morning and he sat there and worked that precinct until 6:30 in the evening. If he had left, they wouldn't have enough people in the precinct. So what did he do? He voted a provisional ballot there with the assurance that, at least for the races for which he was eligible there, it would count. It wouldn't count in the district races in that precinct. He wasn't deprived of his franchise. He made a choice.

I heard from a sergeant at Fort Bragg who was on duty and found out from his wife that it would take him three hours to go all the way across Fayetteville and vote at home, or he could vote right there where his duty station was and only be absent from duty for fifteen minutes. He said there was only one person in line. He made the choice. He made the choice, and that was in deed the purpose of these statutory enactments was to help people make choices...make it easy for them to vote...not catch them in a bunch of gotchas.

Rep. Ross:

Committee members, Representative Moore is sending around an amendment, so I'm going to recognize Representative Moore for his amendment. We're also going to circulate some statements from folks who voted provisionally whose votes are not now counted, and so you'll be getting those. Representative Moore.

Rep. Moore:

Thank you. The amendment that I'm moving at this time, Madam Chair, would be titled amendment one, which is the handwritten amendment before you. And what it does, it goes to page one and begins with line 8. Excuse me. It's the language called the whereas clauses, essentially, if you started at Section 1. It's the whereas clauses. Essentially, what I would argue is it gets rid of all those whereas clauses and simply amends the bill to read as Section 2, which are the substantive provisions, which will be the changes to

the statutes. My purpose in doing it, while I understand part of the rationale of including that, is that language...it almost seems that we're going too far in trying to set forth the legislative intent. I would contend that the amended language of 163-55 should this bill pass is very clear as to what the legislature intends, and regardless of my position on the bill whether I supported it or opposed it, I would be inclined to want to get rid of that language just as a matter of precedent of creating that on these five or six matters. It's almost an over kill, really, is the way I see it. And I would ask your support on that even if you support the underlying bill, and I would contend it doesn't hurt the bill. The language is still there.

Rep. Ross: Senator Clodfelter on the amendment.

Sen. Clodfelter: Madam Chairman. This amendment was offered in the Senate and was defeated. I would not expect the Senate to concur in such an amendment, if the House were to see fit to adopt it. I do think it is necessary in these circumstances, in these rather unusual circumstances, to do exactly what we've done in Section 1. We do include legislative findings in legislation. It is not unheard of. It is not atypical or uncommon. What may be unusual here is the circumstances that require us to do so.

Rep. Ross: Representative Michaux.

Rep. Michaux: I was just going to say that there's nothing wrong with putting the legislative history in the bill. That's all this does. It puts the legislative history so it's clear as to what the legislature meant in the situation.

Rep. Ross: Anybody else on the amendment? Representative Blust.

Rep. Blust: I support the amendment. This looks like a bunch of language that's more intended to keep up.... Some of this could have gone in the brief before the court, and it looks like there's people angry about what the court did so you've got to fill up what could be a three-page bill with four extra pages of language to try to show that we're mad that the court didn't rule the way we wanted it to. And this is excess verbiage that's not germane to the bill.

Rep. Ross: Anybody else on the amendment? If not, those in favor of the amendment signify by saying aye. Those opposed, no. The noes have it and the amendment fails.

Representative Moore has a second amendment.

Rep. Moore:

And this is the last one that I'm going to run. This is amendment number two. This is the one that's on page 7, line 15. All this does is add in the requirement that the votes that are counted are those where the voters followed the statute on 163 with respect to presenting identification. That complies with HAVA. Of course, some voters in this situation may not have presented a photo ID, and I think Representative Kiser's statement he made earlier goes to the point of this amendment. We want to make sure that any ballots that were counted that were cast in this precinct were valid ballots, and we can't just assume because it's signed that that's the case. The whole point of having a precinct is so that the precinct officials...it's small enough so they, hopefully, will know the voters who are coming there and have the precinct books to match up with the voter. For example, a lot of places you go to vote, they'll ask you your address, and you have to be able to recite your address at that point. If you're voting out of precinct, those safeguards are not present. The only thing that's there is for you to sign this form. So there's no way to know that the person who showed up and purportedly voted was, in fact, that individual. The only way to know that is if a valid photo identification was examined by the poll worker at that time and they confirmed, yes, this is John Doe, he is not registered here, but this is he and he is, and this is his vote, and the vote is made. So this, at least, addresses the issue of fraud in that case. I frankly can't see any reason anyone would be opposed to this because this is simply saying that those who are voting are who they say they are because the safeguards that would be in place had they voted at their precinct were not there.

Rep. Ross:

Senator Clodfelter, then Representative Luebke, and then Representative Hackney.

Sen. Clodfelter:

I think the issue of photo IDs is one we ought to talk about. I think it's an issue we ought to discuss. And, again as I said with all respect, however, it's not the point of this bill to change the law on photo IDs or any other subject. It is to declare what the law has been and then to say let's now talk about what changes we want to make. You know, I wasn't required to show a photo ID when I went for early voting. I don't know how many of you were, but I was not. Again, I'm reluctant to say that what we're going to do here is put one group of people in 2001, or 2004, or 2003, or 2002 in a different position than another group of people who are doing almost exactly the same thing. We ought to have photo IDs. Perhaps we should. The statutes that are in the amendment are statutes that apply only to first-time voters, and so what the

amendment would do would be after the fact to require people who didn't know they have to present photo IDs, who weren't told by board of elections officials they had to present photo IDs to have changed the rules without them ever being told what the rules were. Don't think that's what you ought to do in this amendment. I would also say, and maybe it's true in some of your communities; it is unfortunately no longer true in my community that the people who work precincts live there and know all the voters. It's just gotten a little too big for that. So the notion that this is some model where people show up in precincts and their friends and neighbors are sitting there working polls, at least in my county where there are an awful lot of voters, it just doesn't work that way any more. We can't make that presumption. Maybe that's why we ought to be debating photo IDs, but I would say that's a subject for a different bill.

Rep. Ross: Representative Luebke.

Rep. Luebke: Madam Chair, according to what Sen. Clodfelter has said, I've been here 15 years. We've had this discussion about photo IDs multiple times. We have always talked about the way in which many voters could be disenfranchised by having this requirement, so I think the amendment is trying to make new policy here, and I would urge the members to oppose the amendment.

Rep. Ross: Representative Hackney.

Rep. Hackney: Question for Representative Moore. How would we know who presented the photo ID and who didn't?

Rep. Moore: We would have to make inquiries of the board of elections on that. I would want assurance that those identifications had been made in that situation.

Rep. Ross: Representative Kiser.

Rep. Kiser: Thank you, Madam Chairman. Paul, I've been here ten years, and we have tried repeatedly on my side of the aisle to have voters photo IDs; and it's always opposed by the opposite side. We talk about fairness, we talk about elections. I don't know of anything that would improve fairness more than voter photographs on voter cards. I think that would be a thing that would assure us that all of our elections were fair. And then I don't think provisional ballots like we're talking about here would be too bad, if we had that. Otherwise, you can look out.

Rep. Ross: Further discussion on the amendment. Representative Michaux.

Rep. Michaux: Representative Moore, if I go out-of-precinct and I show my photo ID to that person that I'm receiving that provisional ballot from, how does that translate to validating my vote?

Rep. Moore: Well it ensures that it wasn't Paul Luebke that went and said he was Mickey Michaux and voted for you.

Rep. Michaux: Well you don't know that. I could have one of Luebke's pictures and show Paul Luebke's picture.

Rep. Ross: Okay. Senator Clodfelter has something to say and then we're going to vote on this amendment.

Sen. Clodfelter: Madam Chair, again, with all respect to the committee, this is a good discussion, and I don't mind having it either, but it partly illustrates why I don't think that should be done in this bill where we're simply trying to declare what the law has been and leave for another day this debate about photo IDs. I think after the fact, requiring people to have shown photo IDs when they weren't told they had to is really not what we want to do to encourage people to vote.

Rep. Ross: Okay, all those in favor of the amendment please signify by saying aye; those opposed nay. The amendment fails.

Representative Lewis and then we're going to go to Representative Holliman.

Rep. Lewis: Thank you, Madam Chair. This is to the bill's sponsor or perhaps the staff. On page 5 starting on line 4 and going through line 12, we three times refer to...we strike the word register, and I'm just curious what this bill has to do or if there is a change to the way that we register to vote in this state.

Sen. Clodfelter: Madam Chairman, I can answer that and then if Mr. Gilkeson wants to say I got it wrong, he'll correct me I'm sure.

When we were looking at that we realized that actually the words in that section of the statute are just absolutely redundant because there is a separate statute that requires you to be registered in order to vote...in order to vote anywhere...and requires you to be registered in a county that is referenced over in, page 6, it's 163-182.1, and the suggestion was made that for drafting clarity it was unnecessary to duplicate and (we) got rid of the redundant words.

There was no change in the method of registration in this bill.
None. Am I right?

Bill Gilkeson: That's correct. Yeah. At one time people had to register in their precincts, and I think this statute is old enough to go back to those days. So they actually had to go to the precinct place and be registered by the registrar, but subsequent laws have changed that many times since then.

Rep. Ross: Representative Starnes, you had a question, and then we'll go to Representative Holliman's motion.

Rep. Starnes: Senator Clodfelter, I'll ask you. I don't see anybody here from the State Board of Elections. But this is an attempt to clarify some language that was passed in the last session. To start, were provisional ballots used more or less than in this last election and previous elections.

Sen. Clodfelter: Representative Starnes, I cannot answer that question about previous elections. What we have determined was that the ballots questioned here were cast all across the state in virtually every county by people of every party—unaffiliated voters, voters of all races. But how that compares to the non-presidential years before that, I really don't have that information.

Rep. Ross: Any further questions or discussions by the committee or we're going to entertain Representative Holliman's motion.
Representative Holliman, would you like to state your motion?

Rep. Holliman: I move for a favorable report.

Rep. Ross: Okay, Representative Holliman moves that we give Senate Bill 133 a favorable report. Those in favor please say aye. Those opposed no.
The ayes have it. Senate Bill 133 is given a favorable report.

Thank you very much.

The meeting was adjourned at 11:20 a.m.

AGENDA

HOUSE OF REPRESENTATIVES Committee on Election Law and Campaign Finance Reform

**February 24, 2005
Representative Ross, Presiding**

SB 133, Reconfirming Provisional Voting.

Senator Clodfelter

Nancy Garriss (Rep. Tim Moore)

From: Margie Penven (Rep. Ross)

Sent: Wednesday, February 23, 2005 5:57 PM

To: Sen. Daniel Clodfelter

Subject: Meeting Notice for Committee on Election Law and Finance Reform on February 24, 2005, at

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION**

You are hereby notified that the Committee on Election Law and Campaign Finance Reform will meet as follows:

DAY & DATE: Thursday, February 24, 2005

TIME: 30 minutes after Session

LOCATION: 1425 LB

The following bills will be considered:

SB 133, Reconfirming Provisional Voting, Sen. Clodfelter

Respectfully,
Representatives Tim Moore and Deborah Ross
Chairs

I hereby certify this notice was filed by the committee assistant at the following offices at **6:00 p.m.** on **February 23, 2005.**

____ Principal Clerk
____ Reading Clerk - House Chamber

Margie Penven (Committee Assistant)

**2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representatives **Moore and Ross** (Chairs) for the Committee on **ELECTION LAW
AND CAMPAIGN FINANCE REFORM.**

☒ Committee Substitute for
S.B. 133 A BILL TO BE ENTITLED AN ACT TO RESTATE AND RECONFIRM THE
INTENT OF THE GENERAL ASSEMBLY WITH REGARD TO PROVISIONAL VOTING
IN 2004; AND TO SEEK THE RECOMMENDATIONS OF THE STATE BOARD OF
ELECTIONS ON FUTURE ADMINISTRATION OF OUT-OF-PRECINCT
PROVISIONAL VOTING.

- ☒ With a favorable report.
- ☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
Appropriations ☐ Finance ☐ ☐.
- ☐ With a favorable report, as amended.
- ☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on Appropriations ☐ Finance ☐ ☐.
- ☐ With a favorable report as to the committee substitute bill (#), ☐ which changes the
title, unfavorable as to (the original bill) (Committee Substitute Bill #), (and
recommendation that the committee substitute bill #) be re-referred to the Committee
on .)
- ☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.
- ☐ With an unfavorable report.
- ☐ With recommendation that the House concur.
- ☐ With recommendation that the House do not concur.
- ☐ With recommendation that the House do not concur; request conferees.
- ☐ With recommendation that the House concur; committee believes bill to be material.
- ☐ With an unfavorable report, with a Minority Report attached.
- ☐ Without prejudice.
- ☐ With an indefinite postponement report.
- ☐ With an indefinite postponement report, with a Minority Report attached.
- ☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S

2

SENATE BILL 133
Judiciary I Committee Substitute Adopted 2/17/05

Short Title: Reconfirming Provisional Voting.

(Public)

Sponsors:

Referred to:

February 15, 2005

A BILL TO BE ENTITLED

AN ACT TO RESTATE AND RECONFIRM THE INTENT OF THE GENERAL ASSEMBLY WITH REGARD TO PROVISIONAL VOTING IN 2004; AND TO SEEK THE RECOMMENDATIONS OF THE STATE BOARD OF ELECTIONS ON FUTURE ADMINISTRATION OF OUT-OF-PRECINCT PROVISIONAL VOTING.

The General Assembly of North Carolina enacts:

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).

1 All those provisions were enacted prior to G.S. 163-166.11. Most were
2 enacted decades before. As many as 1,000,000 people in North
3 Carolina may have cast out-of-precinct votes using all out-of-precinct
4 methods in 2004.

5 (11) It would be fundamentally unfair to discount the provisional official
6 ballots cast by properly registered and duly qualified voters voting and
7 acting in reliance on the statutes adopted by the General Assembly and
8 administered by the State Board of Elections in accordance with its
9 intent. Moreover, to subtract such ballots only from the count for the
10 General Election of 2004 without also doing so for the First or Second
11 Primaries of 2004 would create a bizarre result in which
12 out-of-precinct provisional ballots are allowed to count for some
13 elections but not others. The General Assembly did not and does not
14 now intend to create such a system.

15 (12) Even if the State Board of Elections had misread the language and
16 intent of the General Statutes concerning provisional voting, which it
17 did not do, it has been the long-standing and hitherto unquestioned law
18 of this State, confirmed by prior decisions of the North Carolina
19 Supreme Court, that an innocent voter's ballot shall not be disqualified
20 because of errors or omissions by elections officials. This fundamental
21 principle was adopted by Justice Samuel J. Ervin Jr. in the case of
22 Owens v. Chaplin, 228 N.C. 705 (1948) using the following language:

23 "We can conceive of no principle which permits the
24 disfranchisement of innocent voters for the mistake, or even the
25 willful misconduct, of election officials in performing the duty cast
26 upon them. The object of elections is to ascertain the popular will,
27 and not to thwart it. The object of election laws is to secure the
28 rights of duly-qualified electors, and not to defeat them."

29 See also Appeal of Judicial Review by Republican Candidates for
30 Election in Clay County, 45 N.C. App. 556 (1980).

31 The General Assembly endorses and reaffirms this fundamental
32 principle.

33 (13) It is the will of the people, as expressed through their representatives in
34 the General Assembly, that the validity of the primaries and elections
35 conducted in 2004 and certified by a county board of elections or the
36 State Board of Elections, not be called into question by retroactively
37 revisiting the propriety of provisional ballots cast by duly registered
38 voters of a county.

39 (14) To avoid all doubt and remove any possible future question as to the
40 General Assembly's plain intent with respect to the subject of
41 provisional voting, and to avoid misinterpretation of any other statute,
42 the General Assembly enacts Sections 2 through 5 of this act.

43 **SECTION 2.** G.S. 163-55 reads as rewritten:

44 **"§ 163-55. Qualifications to vote; exclusion from electoral franchise.**

1 (a) Residence Period for State Elections. – Every person born in the United
2 States, and every person who has been naturalized, and who shall have resided in the
3 State of North Carolina and in the precinct, ward, or other election district in which he
4 ~~the person~~ offers to register and vote for 30 days next preceding ~~the ensuing an~~ election,
5 shall, if otherwise qualified as prescribed in this Chapter, be qualified to register and
6 vote in ~~the precinct in which he resides; any election held in this State. Provided, that~~
7 ~~removal~~ Removal from one precinct, ward, or other election district to another in this
8 State shall not operate to deprive any person of the right to vote in the precinct, ward, or
9 other election district from which he has removed until 30 days after ~~his~~ the person's
10 removal.

11 ~~The~~ Except as provided in G.S. 163-59, the following classes of persons shall not be
12 allowed to register or vote in this State:

13 (1) Persons under 18 years of age.

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

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

31 SECTION 3. G.S. 163-82.15(e) reads as rewritten:

32 "(e) Unreported Move to Another Precinct Within the County. – If a registrant has
33 moved from an address in one precinct to an address in another precinct within the same
34 county more than 30 days before an election and has failed to notify the county board of
35 the change of address before the close of registration for that election, the county board
36 shall permit that person to vote in that election. The county board shall permit the
37 registrant described in this subsection to vote at the registrant's new precinct, upon the
38 registrant's written affirmation of the new address, or, if the registrant prefers, at a
39 central location in the county to be chosen by the county board. If the registrant appears
40 at the old precinct, the precinct officials there shall send the registrant to the new
41 precinct or, if the registrant prefers, to the central location, according to rules which
42 shall be prescribed by the State Board of Elections. At the new precinct, the registrant
43 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."

SECTION 4. G.S. 163-166.11 reads as rewritten:

"§ 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.
- (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."

SECTION 5. G.S. 163-182.2(a)(4) reads as rewritten:

- "(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

1 in the county as provided in G.S. 163-82.1 and whether the voter is
2 qualified by residency to vote in the election district as provided in
3 G.S. 163-55 and G.S. 163-57. If a voter was properly registered to vote
4 in the election by the county board, no mistake of an election official
5 in giving the voter a ballot or in failing to comply with G.S. 163-82.15
6 or G.S. 163-166.11 shall serve to prevent the counting of the vote on
7 any ballot item the voter was eligible by registration and qualified by
8 residency to vote."

9 **SECTION 6.** The State Board of Elections shall make recommendations by
10 April 15, 2005, for consideration by the 2005 General Assembly on administration of
11 provisional voting in the future, taking into account the relevant experience in the 2004
12 elections in this and other states.

13 **SECTION 7.** This act is effective when it becomes law and, being
14 declaratory of existing law, applies to all elections held after January 1, 2004, the
15 effective date of G.S. 163-166.11.

PLEASE PRESS HARD - 5 COPIES**NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____

DATE _____

S. B. No. _____

Amendment No. _____

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.)

Sen.)

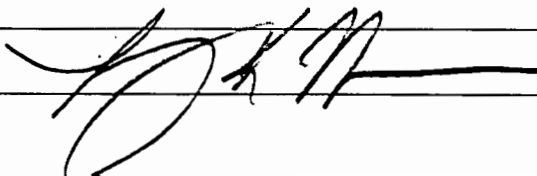
Moore

moves to amend the bill on page 1, line 8

() WHICH CHANGES THE TITLE

by delete lines 8-28 of page 1 through page 4,
line 42.Renumber bill ~~secs.~~ sections accordingly.

SIGNED _____





2

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 133

S133-ARR-19 [v.1]

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

Page 1 of 1

Date _____, 2005

Comm. Sub. [YES]
Amends Title [~~YES~~]
Second Edition ^{NO}

Representative Moore

- 1
2 on page 7, line 15,
3 by adding at the end of that line the following:
4
5 "In any counting of provisional ballots cast on November 2, 2004, by voters outside
6 their precinct of residence, only those shall be counted where the voters presented a
7 form of identification described in G.S. 163-166.12(a)(1) or (2)."
8

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____



SENATE BILL 133: Reconfirming Provisional Voting

BILL ANALYSIS

Committee: House Election Laws
Date: February 24, 2005
Version: Second Edition

Introduced by: Senator Clodfelter
Summary by: William R. Gilkeson
Committee Co-Counsel

SUMMARY: *The Second Edition of Senate Bill 133 would restate and reconfirm that the General Assembly in 2003 intended that voters could cast provisional ballots outside their precincts and that the boards of elections should count those ballots for all races in which the voter was eligible by registration and residency to vote. The bill would also direct the State Board of Elections to recommend to the General Assembly by April 15, 2005, how it thinks provisional voting should be handled in the future.*

BACKGROUND:

2001 Statutory Rewrite. In 2001, after the traumatic 2000 Presidential election, the General Assembly enacted a general rewrite of the statutes on voting procedures. It codified for the first time the practice of "provisional voting." Provisional voting had been used since the mid-1990s, when the National Voter Registration Act required that voters who had moved within the county and failed to report those moves be allowed to go to their new precinct to vote even though their names were not on the books there. Provisional voting allowed the voter to mark a paper ballot, to be placed in an envelope on which the voter would sign an affidavit certifying identity and eligibility to vote. The county board of elections would determine the voter's eligibility and decide how to count the ballot.

The philosophy of the 2001 rewrite was for the General Assembly to pull back from micro-managing election administration in the statutes and to give the State Board of Elections general guidelines with which to administer the process. In G.S. 163-166.7(a)(6) the State Board was directed to 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."** That broad authority reflected the fact that provisional ballots were no longer used simply to accommodate unreported moves in a new precinct, but were being used by voters in a number of other circumstances.

The 2001 rewrite also addressed ballot counting, and set forth this principle in G.S. 163-182.2(a)(4): **"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 for those ballot items but shall count the official ballot in any ballot items for which the individual is eligible to vote."**

2003 HAVA Compliance. In 2003, the General Assembly undertook to bring NC's election statutes into compliance with the federal Help America Vote Act of 2002 (HAVA). One of HAVA's requirements was that every state permit provisional ballots in federal elections. The General Assembly added G.S. 163-166.11, which partly tracks HAVA's language: **"If an individual seeking to vote claims to be a registered voter in a jurisdiction and though eligible to vote does not appear on the official list of eligible registered voters in the voting place, that individual may cast a provisional official ballot . . ."** Like many things in HAVA, the meaning of the term "in a jurisdiction" was not defined nor was its scope immediately clear.

The General Assembly opened its HAVA compliance legislation, S.L. 2003-226, with a statement of purpose: **"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 . . ."** The intent was to avoid conflict with HAVA's requirements for federal elections so there would be no need for 2 separate systems. Under G.S. 163-82.1, a voter must register with a county to vote, and a person continues to be registered until that person moves out of the county. Therefore, in North Carolina the "jurisdiction" for registration is the county. The State Board instructed county boards that if a person appeared in a precinct not clearly of their residence and asked to vote there, the precinct official should guide the voter to the precinct of residence or let the voter mark a provisional ballot. In counting that ballot, the county board of elections should count it for all races the voter was eligible vote, based on registration in the county, and residence in the proper district covered by the office. On Oct. 26, 2004, one week before the election, the US Circuit Court of Appeals for the 6th Circuit ruled in an Ohio case that HAVA did not require such out-of-precinct provisional voting in federal elections, but that case did not deal with NC law and the court did not have jurisdiction over North Carolina.

SENATE BILL 133

Page 2

James v. Bartlett. After the 2004 election, several plaintiffs, including Bill James and Bill Fletcher, the candidate who was apparently more than 8,000 votes behind in a race for Superintendent of Public Instruction, filed suit challenging NC's practice of allowing voters to vote provisional ballots outside their precinct of residence. The chief allegation was that the practice violated Article VI, Sec. 2, of the NC Constitution, which says in part, **"Removal from one precinct, ward, or election district to another in this State shall not operate to deprive any person of the right to vote in the precinct, ward, or election district from which that person has removed until 30 days after the removal."** The contention was that voters must physically be in their precinct of residence when voting.

The NC Supreme Court decided it did not need to reach the constitutional question because it said a statute, G.S. 163-55, patterned somewhat after the constitutional provision, even more specifically required voting within the precinct, and the State Board had acted without statutory authority to allow voters to vote provisional ballots outside their precinct. The court said there is no evidence of legislative intent to do that. Moreover, the Supreme Court ruled that regardless of the voter's qualification by county registration and residence within an office's district, any out-of-precinct provisional vote in a State race should be discounted and subtracted from the returns.

BILL ANALYSIS: The bill's purpose is to restate and reconfirm legislative intent that voters may cast provisional ballots outside their precinct and that those ballots should be counted for any race in which the voter was eligible by registration and residency to vote.

Section 1. Findings. The bill asserts its position through 14 findings, including the following:

- Restates legislative intent that voters be allowed to vote provisionally outside their precinct.
- Restates legislative intent that the State have one system of elections for State and federal races.
- Restates legislative intent that provisional ballots be counted, as provided in G.S. 163-182.2(a)(4), for any races the voter is eligible to vote.
- Notes that out-of-precinct provisional voters on election day were disproportionately African American.
- Notes 7 ways voters may vote outside their precinct, including such long-time practices as absentee voting.
- Notes that North Carolina has adopted, in no less a hand than that of Justice (later US Senator) Samuel J. Ervin Jr., the Innocent Voter Rule. That Rule does not permit the disenfranchisement of innocent voters because of the mistake of election officials. (The bill, of course, says election officials were correct.)

Section 2. Residence Period for State Elections. The bill amends G.S. 163-55, the earlier statute used by the Supreme Court as its chief basis for invalidating out-of-precinct provisional votes. This statute appears to aim at restating Art. VI, Sec. 2 of the Constitution, but uses more precinct-specific words. This section rewrites 163-55 to follow Art. VI, Sec. 2 more closely, saying the voter is qualified to vote in the "precinct, ward, or other election district" until 30 days after moving out of it. The bill adds language about election districts, clarifying that qualification to vote in a given race means residence in the district covered by the office. The amendment also adds to the statute the caption used in the parent constitutional provision, "Residence Period for State Elections," to indicate the statute's context.

Section 3. Unreported Moves Statute. This section changes G.S. 163-82.15(e), about how voters who have unreported moves within the county are to be guided by precinct officials to their precinct of residence. This adds language saying that instead they may vote a provisional ballot on the spot.

Section 4. The HAVA Provisional Ballot Statute. This section amends only slightly G.S. 163-166.11, the HAVA compliance statute about provisional voting, leaving in the "jurisdiction" language, but saying "as provided in G.S. 163-82.1." That statute makes the basic unit of voter registration the county.

Section 5. Counting Provisionals. This section amends G.S. 163-182.2(a)(4), which says provisional ballots shall be counted for all races the voter was eligible to vote, but not any race the voter was not eligible to vote. The amendment clarifies that "eligible" means being registered in the county and qualified to vote in a race by residing in the territory the office covers. This section also adds language reflecting the Innocent Voter Rule.

Section 6. State Board to Recommend Future Treatment of Provisional Voting. This section requires that the State Board of Elections recommend to the General Assembly by April 15, 2005, how provisional voting should be administered in the future. It should take into account the 2004 experiences of NC and other states.



North Carolina General Assembly Legislative Services Office

George R. Hall, Legislative Services Office
Legislative Services Office
16 W. Jones Street Room 2129
Raleigh, NC 27601-1030 Tel. (919)

Tony C. Goldman, Director
Administrative Division
16 W. Jones Street Room 9
Raleigh, NC 27601-1030
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
300 N. Salisbury St. Rm 401
Raleigh, NC 27603-5925
(919) 733-6660

James D. Johnson, Director
Fiscal Research Division
300 N. Salisbury St. Rm 619
Raleigh, NC 27603-5925
(919) 733-4910

Dennis W. McCarty, Director
Information Systems Division
300 N. Salisbury St. Rm 400
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
300 N. Salisbury
Raleigh, NC 276
(919) 733-2578

HISTORY OF NORTH CAROLINA PROVISIONS ON CONTESTED ELECTIONS

Senate Bill 82 is designed to implement a provision of the State Constitution which grants jurisdiction to the General Assembly to hear contested council of state elections, and to revise the procedure for handling contests for legislative elections.

The office of Governor was made elective by the Convention of 1835. Prior to that, the General Assembly chose the Governor. The group of amendments in Article II adopted by the Convention provided for popular election of the Governor, for the election canvass to be done by the General Assembly, for tie votes to be broken by joint vote of both houses, and for contested elections to be determined by the General Assembly. The 1835 amendments left the Supreme Court appointed by joint ballot of both houses, those offices not being subject to popular election until 1868.

Some have stated that the power to decide an election contest applies only in the case of a tie vote, but the history clearly shows that a contested election is different than a tied election.

It is clear that the Constitutional Convention of 1835 reserved to the General Assembly a power that otherwise would be judicial, to resolve contested elections. At the same time as the Constitutional Convention of 1868 made the judiciary more independent by allowing popular election of the Supreme Court, it revised slightly the procedure for legislative handling of election contests.

In 1925, the General Assembly again amended that provision of the constitution, ceding to the executive branch the power to canvass the election of council of state, but amended and preserved its power to hear contests.

In 1969, the General Assembly again examined the issue of election contests for the Council of State, again preserving that power. While the power has lain dormant, and there have been no contested elections for council of state, the power clearly is inherent in the General Assembly.

While there exists no current statutory procedure for handling election contests, jurisdiction is not dependent on the existence or not of the statutory enabling legislation.

The fact that the General Assembly has enacted a general law on election protests and not limited its scope does not mean it was constitutional to delegate these powers to the court.

My research shows only one potential contested executive branch election. Ashe's two volume history of North Carolina published in 1925 recounts the 1872 gubernatorial election, when there is an extensive account of proceedings before the state party executive committee of the losing candidate for governor discussing the potential of bringing an election contest before the General Assembly, which would decide the matter. The candidate never brought the contest as insufficient evidence was gathered.

North Carolina is not the only state to have a provision in its constitution calling for the legislative branch to resolve contested elections for executive branch offices. My research shows 12 other states with similar provisions, including Virginia, Alabama, Arkansas, and Washington. The issue has been litigated in several states, and the State Supreme Court rulings I have been able to find indicate that the provisions vest jurisdiction over these matters in the legislative branch. In the Arkansas case, their Supreme Court even noted that failure of the legislature to have a procedure in place did not affect its jurisdiction over the matter.

Constitutional Amendment of 1835 – proposed by Convention, approved by voters
"Article II.

1. The Governor shall be chosen by the qualified voters for the members of the house of commons, at such time and places as members of the General Assembly are elected.

.....

3. The returns of every election for Governor shall be sealed up and transmitted to the seat of government, by the returning officers, directed to the speaker of the senate, who shall open and publish them in the presence of a majority of the members of both houses of the general assembly. The person having the highest number of votes shall be governor; but if two or more shall be equal and highest in votes, one of them shall be chosen governor by joint vote of both houses of the general assembly.

4. Contested elections for governor shall be determined by both houses of the general assembly, in such manner as shall be prescribed by law."

The 1835 Constitutional amendment had four distinct parts to it:

- 1) The Governor was to be elected by the people
- 2) The results were canvassed by the General Assembly
- 3) If the canvass showed a tie vote, a joint vote would be taken by both houses
- 4) If the election was contested, the contest would be "determined" by both houses "in such manner as shall be prescribed by law. Clearly, a tie vote was NOT a contest.

Sections 1 and 5 of Chapter 21, Laws of 1836 provided the statutory implementation:

"When any person or persons shall contest the election of any person, who may be elected governor, or may have received the largest number of votes, agreeably to the returns of the respective sheriffs of the State, such person or persons shall in writing give notice to him, whose election he or they intend to contest, of such his or their intention, as well as the specific grounds upon which he or they may intend to contest his election; setting forth the county or counties, in which he or they allege that spurious or illegal votes were given, or any other invasion of the law or constitution, having relation to the case, shall have taken place, at least thirty days before the first day of December in the year in which such election is held, and also in one or more newspapers published in Raleigh; and satisfactory proof that such notice has been given shall be required before the General Assembly proceed to inquire into the truth of such allegations: Provided however, that if the person whose election is contested is out of the State, or not to be found at the time, thirty days' notice, in one or more of the newspapers published in Raleigh, shall be deemed sufficient ... It may be lawful for any person to take depositions to be read in such cases, before two magistrates, which depositions shall have the certificate and seal of the clerk of the county court, in which such depositions are taken, setting forth that such persons are acting justices of the peace for the county: Provided however, that not such depositions shall be deemed evidence, unless ten days notice shall have been given to the person, whose election is contested; which notice shall be given in writing, to be proved by the person delivering it, who shall depose before a justice of the peace that such notice was delivered by him, setting forth the date of its delivery. If, however, the person whose election is contested is out of the State or not to be found, fifteen days notice given in a newspaper published in Raleigh shall be sufficient.

The Constitution of 1868 rewrote the Constitutional language:

"Article III, Section 1. The Executive Department shall consist of a Governor ... a Lieutenant Governor, a Secretary of State, and Auditor, a treasurer, a Superintendent of Public Works, a Superintendent of Public Instruction, and an Attorney General ..."

Article III, Section 3:

Sec. 3. The return of every election for officers of the Executive Department shall be sealed up and transmitted to the seat of Government by the returning officers, directed to the Speaker of the House of Representatives, who shall open and publish the same in the presence of a majority of the members of both Houses of the General Assembly. The person having the highest number of votes, respectively, shall be declared elected; but if two or more be equal and highest in votes for the same office, then one of them shall be chosen by joint ballot, of both Houses of the General Assembly. Contested elections shall be determined by a joint vote of both Houses of the General Assembly, in such manner as shall be prescribed by law."

The 1868 constitutional amendments did the following:

- 1) added additional elective executive officers
- 2) changed the presiding officer for the joint session from the Speaker of the Senate to the Speaker of the House
- 3) a tie vote was to be resolved by "joint ballot" rather than "joint vote"
- 4) a contest was to be determined by "joint vote of both houses" rather than "by both houses" Again, ties and contests were completely separate circumstances, handled by different procedures.

As mentioned above, the 1868 constitutional rewrite also changed the Supreme Court from a body appointed by the General Assembly to one subject to popular election.

Chapter 89, Section 44, Public Laws of 1901 changed the statutory implementing legislation to read: "Contested elections shall be determined by a joint vote of both Houses of the General Assembly in the same manner and under the same rules and regulations as prescribed in cases of contested election of members of the General Assembly."

A constitutional amendment in 1925 read as follows:

"Section 1. That section three of article three of the Constitution of North Carolina be and the same is hereby amended by striking out all of section three and inserting in lieu thereof the following:

"Section three. The return of every election for officers of the executive department shall be sealed up and transmitted to the seat of government by the returning officer, directed to the Secretary of State.

The return shall be canvassed and the result declared in such manner as may be prescribed by law. Contested elections shall be determined by a joint ballot of both houses of the General Assembly in such manner as shall be prescribed by law."

The 1925 amendments did the following:

- 1) The canvass itself was removed from the General Assembly and was instead the returns were to be sent to the Secretary of State
- 2) The power in the General Assembly to break ties for executive officers was removed from the Constitution (but was left in the statutes where it now appears in G.S. 147-4)
- 3) Contests were to be resolved instead of "by a joint vote of both Houses of the General Assembly" to "by a joint ballot of both houses of the General Assembly"

Section 14 of Chapter 260 of the Public Laws of 1927 changed the implementing language again, to be:

"In contested elections, the state board of canvassers shall certify to the speaker of the house of representatives a statement of such facts as the board has relative thereto and such contests shall be determined by joint vote of both houses of the general assembly in the same manner and under the same rules as described in cases of contested elections for members of the general assembly."

The 1967 rewrite of the election laws had moved the election contest provision to be the last paragraph of G.S. 163-191, to read:

"In a contested election for one of the offices referred to in the preceding paragraph, the State Board of Elections shall certify to the Speaker of the House of Representatives a statement of whatever facts the Board has relative thereto, and the contest shall be determined by joint vote of both houses of the General Assembly in the manner and under the rules applicable in cases of contested elections for members of the General Assembly."

The Constitutional Revision Commission of 1968 proposed a new Constitution which was approved by the 1969 General Assembly and by the voters in 1970.

The minutes of the Commission showed that this issue was deliberated and the determination was made to move the language from Article III (Executive Branch) to Article VI (Elections), while deleting the references to who conducts the canvass. The 1969 Constitutional Amendment brought the language to its current status to be found in Section 5 of Article VI:

"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"

In 1971, the provision on how to handle executive branch election contests mysteriously disappeared in the enactment of Section 2 of Chapter 219, which was not even reflected in the title.

"H.B. 121 CHAPTER 219

AN ACT TO PROVIDE THAT A TIE VOTE FOR MEMBERS OF THE GENERAL ASSEMBLY SHALL BE BROKEN BY A SPECIAL ELECTION.

The General Assembly of North Carolina do enact:

SECTION 1. G.S. 163-191 is hereby amended by deleting the second sentence of the second paragraph and by inserting in lieu thereof the following: "But if two or more be equal and highest in votes for the office, then the State Board of Elections shall order a new election for the purpose of breaking the tie vote."

SECTION 2. The last paragraph of G.S. 163-191 is hereby repealed.

SECTION 3. This act shall become effective July 1, 1971."

As to the General Assembly, the contest provisions have been more consistent.

Section 10 of the Constitution of 1776 provided that each house shall "be judges of the qualifications and elections of their members. That language now appears in Article II, Section 20 of the 1969 Constitution as each house shall "judge the qualifications of its own members.

The first statutory implementing statute was Chapter 24 of the Laws of 1796, which read:

It shall not be lawful for any person to vacate the seat of any member of the General Assembly, who has taken his seat in consequence of the return of the sheriff or sheriffs of his county or district, certifying that he is duly elected, unless the person or persons who may intend to dispute such election shall give the member or members, whose election he or they intend to dispute, thirty days notice previous to the meeting of the General Assembly of such his intention, with the ground on which the same will be disputed; and the same notice of time and place, now required in taking depositions at law, shall also be required and proved on such investigation, and all affidavits taken without due notice as aforesaid shall be deemed improper evidence and not suffered to be read in such investigation.

Chapter 192 of the Public Laws of 1893 added the words: " prior to the meeting of the General Assembly,"

The law is now codified as G.S. 120-10, and now reads:

§ 120-10. Notice of contest.

No person shall be allowed to contest the seat of any member of the General Assembly unless he shall have given to the member 30 days' notice thereof in writing, prior to the meeting of the General Assembly, which must state the particular grounds of such contest. If the seat is contested on account of the reception of illegal votes, the notice must set forth the number of such votes, by whom given, and the supposed disqualifications; and if the same is contested on account of the rejection of legal votes, the notice must give the names of the persons whose votes were rejected. No evidence shall be admitted to show that the contestant received illegal votes, unless he shall also have been notified the same number of days, and in the same manner. The same notice of time and place required in taking depositions shall be required and proved on the investigation.

Chapter 16 of the Laws of 1800 enacted the following:

If any person, being legally summoned by any lawful officer by a subpoena issued by a justice of the peace, or any other person authorized by law to take depositions, to appear before them or either of them, to give testimony in behalf of either of the parties disputing any election for members of the General Assembly, he or they failing to attend agreeably to the said subpoena, and give testimony as aforesaid, shall forfeit and pay the party grieved the sum of forty dollars, to be recovered by action of debt, before any jurisdiction having cognizance thereof: *Provided*, nothing herein contained shall be construed to extend to the compelling any such witnesses to answer any question tending directly or indirectly, to discover the person for whom he voted, or to discover his disqualifications as an elector.

this was rewritten by Chapter 270 of the 1868-69 Session, and by Section 68 of Chapter 108 of the 1973 Session Laws. The 1973 amendment eliminated a reference to taking testimony before a justice of the peace. That law is now codified as G.S. 120-11, which reads:

"§ 120-11. Depositions taken; penalty and privilege of witnesses.

Any person duly authorized to take depositions to be read before courts, may take depositions to be used on the investigation, and may issue subpoenas for witnesses, which shall be executed by any officer authorized to execute process. And if any witness shall fail to appear and give his deposition according to the subpoena, he shall forfeit and pay to the party causing him to be summoned forty dollars (\$40.00). And on such investigation no witness in this or in the case of any other contested election shall be excused from discovering whether he voted at such election, or his qualification to vote, except as to his conviction for any offense which would disqualify him. And if he was not a qualified voter, he shall be compelled to discover for whom he voted; but any witness making such discovery shall not be subject to criminal or penal prosecution for having voted at such election."

F:/my documents/SB82 explanation

Researched and prepared by Gerry Cohen, Director of Bill Drafting

February 16, 2005

Democracy North Carolina

105 West Main Street, Carrboro, NC 27510 • Telephone (919) 967-9942

Sample of Statements from Voters Who Cast Out-Of-Precinct Ballots

(Collected from emails and interviews by Democracy North Carolina staff; submitted to
NC House Committee on Election Law and Campaign Reform 2/24/2005)

Master Sergeant Raymond J. Knagge, US Army, 34-year-old, lives in Cumberland County

I voted out of precinct for one main reason. The lines. At my normal polling station, the line was over 200 people long. I was advised by a fire department man that I should go over to the next polling station, less than a mile away to vote. I went to the Hope Mills Middle School station and there was one person in line. ONE!

I am an Army soldier who could not afford to spend 2-plus hours to vote – my wife spent 3 hours at the fire station.

One word for this [court decision], outrageous!

*

Gwen Clayton, 64-year-old, lives in Union County

I am outraged that my vote in Union County for the November elections was not counted. How can this be? We are a "free" country are we not?

There is enough trouble getting the citizenry out to vote but to have one's vote not counted is a serious mistake. I also see it as a threat to our country's very foundations.

I was a pollster [poll worker] in a different precinct than I usually vote in. Without thinking too much about it, I just assumed that I could vote in the precinct where I worked. I found out I was wrong. I spoke with someone in the Union County Election Board and was assured that my vote would be counted.

*

Angelia Ijames, 40-year-old, works as an administrator at United Way of Greater Greensboro

I had recently moved but still live in the same county; therefore I went to my old voting site to vote. I was told that I could do that. I am upset that my vote did not count and would like to find out what I need to do to support the making the Disenfranchised Voters' Vote Count!!

*

Nanci L. Burt, 38-year-old, small business owner, from Mooresville, Iredell County

My name was on the list [of disqualified voters]. I am a registered Republican and I want my vote to count! I could not go to my original destination due to child-care issues.

*

Barbara A. Foreman, 59-year-old, lives in Raleigh

I moved from my home a couple years ago because I was having treatments for cancer and could not keep it up. I only moved a few miles away and didn't think about telling the board of elections. When I went to vote in my usual place, I was told I was in the wrong location. I was given the chance to vote with a provisional ballot and I took it.

Because of my illness, I have difficulty with walking distances and have to get oxygen. I would have had to go back home to get my oxygen if I was going to another location. I am very upset that my vote is not counted.

*

Scott and Michelle Sharpe, 39 and 38 year old couple in Lincoln County

We voted in the wrong place because during the primary I went to a local polling place to see if my address put me in their precinct and a Republican candidate verified that it was the correct precinct. When we went to vote in the general election they had us fill out provisional ballots and assured us they would count.

*

Charles Phillip White, 29-year-old, lives in Charlotte

I sent in a change-of-address form and got it back a couple days before Election Day because they wanted something else filled out. So I went to my old precinct and they said I wasn't listed there. They called downtown to the elections board and they said I was registered at my new location but could vote with a provisional ballot or go to the new place. Either one. So I voted with the provisional ballot. Later, I got my voter registration card in the mail, after the election.

*

Taria Rachel Malmberg, 57-year-old, lives near Moncure in Chatham County

I was helping my mother vote at her polling place in Chatham County. She lives in a nursing home. My polling place is quite a long distance away, and very inconvenient because it is next to Lee County. I asked the election people at my mother's place if I could vote there and they said I could, but that I would have to use a provisional ballot.

I had tried to vote early on the Saturday before the Election, but that polling place closed at 1:00 pm, just as I was arriving. I think it's terrible that my vote is being thrown out!

*

VISITOR REGISTRATION SHEET

Election Law and Campaign Finance Reform

February 24, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

PATRICK BUFFKIN	NCGA
Leanne Winger	NCSRA
Chris Hyatt	NCCUE
Mary Garber	NCGA
David Ingram	WSJ
Tim Clewley	UNC TV
Andy Romanet	NCLM
Doug Heron	NCBTA ASSOC
Michelle Frazier	NC Bar Assoc.
Hilary Arthur	NCASA
Bob Hall	Democracy Nat Center

VISITOR REGISTRATION SHEET

Election Law and Campaign Finance Reform

Name of Committee

February 24, 2005

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME _____

FIRM OR AGENCY AND ADDRESS

John McKe. (

COU 047'2

Lynn Bonner

№ 20

Gary Robertson

AP

MINUTES
House Committee on Election Law and Campaign Finance Reform
March 2, 2005
1:00 p.m., Room 1425
Representative Moore, Presiding

The House Committee on Election Law and Campaign Finance Reform met at 1:00 p.m. on Tuesday, March 2, in Room 1425 of the State Legislative Building.

Members present were: Representative Tim Moore, Co-Chair; Representative Deborah Ross, Co-Chair; Representative Joe Kiser, Vice-Chair; Representative Paul Luebke, Vice-Chair; Representative John Blust; Representative Walter Church; Representative Pricey Harrison; Representative Hugh Holliman; and Representative Edd Nye.

There was one bill on the agenda: House Bill 128, Early Prep for Absentee Count, sponsored by Representatives Verla Insko and Jean Preston.

Co-Chair Tim Moore called the meeting to order and introduced the page and sergeants-at-arms.

The Chair recognized Representative Insko for her presentation, and she explained why the bill was needed and what the bill did. Representative Preston, co-sponsor, was also present.

After discussion by the committee and questions for Mr. Bill Gilkeson, committee staff, Representative Holliman moved that House Bill 128 be given a favorable report.

The Chair asked Ms. Cherie Poucher, Chairman of the Wake County Board of Elections, if she wanted to speak before the vote was taken.

Ms. Poucher spoke in favor of the bill, and Co-Chair Moore said his home county of Cleveland supported the bill, too.

The Chair asked if there was a second to the motion for a favorable report, and Co-Chair Ross seconded. The motion carried and the bill was given a favorable report.

The meeting was adjourned at 1:15 p.m. upon a motion by Representative Kiser, seconded by Representative Harrison.

A verbatim transcript of this meeting is attached hereto along with all pertinent documents and handouts.

Respectfully submitted,

T. Moore

Representative Tim Moore, Presiding Chair

Margie Penven

Margie Penven, Committee Assistant

TRANSCRIPT
House Committee on Election Law and Campaign Finance Reform

1:00 p.m. on March 2, 2005

Room 1425, LOB

Representative Moore, Presiding

Rep. Moore: I'm going to call the meeting of the committee together at this time for House Election Law and Campaign Finance Reform. Before we start I do want to recognize our page who's with us today—Casey Horne from Columbus County. Casey would you stand?
...sponsored by Representative Dewey Hill. Glad to have you here today. And our sergeants-at-arms are Thomas Wilder and Toussaint Avent. Thank you. Glad to have you here today.

The only item on our agenda today is House Bill 128, Early Prep for Absentee Count, and I think Representatives Insko are going to make the presentation. So if you all would like to come forward, we'll move on. Welcome to the committee.

Rep. Insko: My co-sponsor, Jean Preston, is here and Jean you want to be available....

Rep. Preston: I'm here.

Rep. Insko: Okay, thank you. Well I appreciate an opportunity to do this bill—one in a series that will come from the Electronic Voting Committee that met during the interim, and it's one of the easier ones so I appreciate it.

I'm going to tell you first of all what the bill does and then I want to just spend a minute or two to say why we need it.

This bill allows—if you got the bill explanation it's very clear there—it allows county boards of elections where they use optical scans to tabulate to open the...to put the ballot through the tabulator when they open it. I guess the process would be that they would receive the absentee ballots back. When they go through the absentee ballots and they approve.... The application is on the outside of the ballot. When they approve that application at that point the ballot could be opened and the ballot could be scanned in the same session where they are going through the absentee ballots. They could not tab...they could not get the total out of the machine until the regular time for counting absentee ballots, which is 2:00 or 5:00 p.m. on election day, whichever time they are using. This would only apply to counties that have optical scans to

tabulate, and so it would not apply to the paper ballot counties or to the DRE counties.

The reason that this was a very popular bill in the committee was because it is one thing that will help get the vote out earlier. As we have eliminated the restrictions on one-stop voting, we've had more and more and more people use one-stop voting, and they use this ballot that's there, and more absentee ballots are coming in, and so it's a longer process to get those absentee ballots counted. And it has delayed reporting in a great many precincts. Because it takes so long to count the absentee ballots, recording has actually been delayed. And so county boards of elections supervisors have been very, very supportive of any measure that would help more the process along and help them use the time efficiently so that they could start processes earlier. And I see Cherie Poucher is here from Wake County who's a board of elections supervisor. And so that is what the bill does and why we need it, and I'd be glad to answer questions and Representative Preston would be glad to answer questions, too.

Rep. Moore: Do members of the committee have any questions for the bill sponsors? Representative Holliman.

Rep. Holliman: Tell me how this applies to early voting. It doesn't apply to early voting, right?

Rep. Insko: No, the early voting.... I guess we need to ask Bill. Bill Gilkeson, does it apply to any early voting in the counties at all?

Bill Gilkeson: Well, early voting...there's a separate statute that provides for accounts similar to this for early voting. A lot of counties simply use optical scan machines or direct record electronic machines—the regular machines—for early voting, rather than these paper...they don't use paper absentee ballots that go into envelopes the way mail absentee voting does. So generally, the early votes go into the scanner anyway or go into some process that can be counted.

Rep. Insko: The counting on those optical scan machines or the DREs, that count is not pulled out until 2:00 on Election Day.

Bill Gilkeson: Right.

Rep. Insko: OK.

Rep. Moore: Any follow-up?

Rep. Holliman: One follow-up. If they could count these votes early—they run them and scan them—is there any tie back to make sure that the totals from the general election day total back to the actual ballots?

Rep. Insko: Part of the bill directs the State Board of Elections to put in place processes and procedures that will guarantee voter anonymity, security of the machine, and other things that will make our vote secure.

Rep. Holliman: One last follow-up. So if we have 400 absentee applications, we want to make sure that we have 400 that's actually in the totals when we get them on Election Day.

Rep. Insko: And I would say that the committee supported this unanimously, and we did have both a member of the State Board of Elections... and Mr. Bartlett sat on the Committee.

Rep. Moore: Representative Kiser.

Rep. Kiser: First of all, you could have an under vote, but you don't want more than 400.

When I was party chairman back in the 70's, we started counting absentee ballots at 2:00. When did this change?

Rep. Insko: Well, if I understand it correctly, you can still start at 2:00 if you're counting. Boards authorize that.

Bill Gilkeson: The general rule is to start the absentee ballot count at 5:00, but for years—and I'm not quite sure how long—but for many years the boards have had the option of passing a resolution ahead of time and stating that they're going to count at 2:00 p.m., and I think probably most boards do that. The way the statute's written that's the exception; but, in fact, in practice 2:00 is the general rule.

Rep. Kiser: Then what's different about this bill?

Rep. Insko: Well, under the old law, you put the application...you started at 2:00 with this huge stack of absentee ballots envelopes and you, first of all, had to verify that each application was okay and open it up and then put it through the scanner. Under the new system, on the day that the applications come in to the mail.... County boards of elections have met regularly to look at these absentee ballots and to look at the applications to see if they were approved or not. The application is on the outside of the ballot, so they could go through and do that step. What this allows them to do is actually

open up the machine and feed them through, and so on election day they could have all the absentee ballots scanned in and all they'd need to do on election day is push a button...however they get the totals out.

Rep. Moore: Representative Harrison.

Rep. Harrison: You all forgive me for being late, but why do they have to wait until 2:00 on Election Day? Is there a policy in effect?

Rep. Insko: There's a law.

Rep. Harrison: OK. Then I guess I'll talk about the basis for that.

Bill Gilkeson: I think the policy is the idea that you don't want results getting out publicly before people vote on election day.

Rep. Kiser: Mr. Chairman.

Rep. Moore: Yes, sir.

Rep. Kiser: After we vote, I want to ask some of the election officials here a question not related to this bill.

Rep. Moore: All right.

Rep. Kiser: So don't let everybody leave.

Rep. Moore: Representative Holliman.

Rep. Holliman: I'd like to move for a favorable report.

Rep. Moore: All right, the motion's been made for a favorable report.

Before we take a vote, I do think we have Cherie Poucher who's the head of the Wake County Elections Board. Did you want to speak on this to the committee also?

Ms. Poucher: As one of those who uses optical scan, I would highly recommend this bill. We had over 10,000 absentee _____ applications and ballots that came in. We had five teams of two—one to open the envelope, one to unfold the ballot, and then five tabulators that we inserted them in. It took from 2:00 in the afternoon till after 8:30 in the evening. Many counties don't have the luxury of having that many additional tabulators. And in essence, it would be treating it just like we do at our one-stop sites where at the end of the day,

that machine is unplugged, it is locked, it is sealed and the number on the public counter recorded. And so every time the board would meet to insert those ballots there would be a verification that no ballots had been inserted, the count remains the same, and then you would total the number that were inserted the first time, you verify that against the number approved, and you do that every single time the board meets. So you would have, generally I will say, a weekly verification because that's when the board meets. It would give more timely results on election night when everybody at 7:30 wants them instantaneous.

Rep. Moore: Thank you. I can tell you that the director of the Cleveland County Board of Elections certainly supports this bill also. Any further debate or discussion? Seeing not, the motion's been made for a favorable report. Is there a second?

Rep. Ross: Second.

Rep. Moore: Seconded by Co-Chair Ross. Those in favor please signify by saying aye; those opposed no. And the ayes have it, and the motion does pass.

Rep. Insko: Thank you very much.

Rep. Moore: I believe that's all the official business, but Representative Kiser wanted to ask a question.

Rep. Kiser: I'll ask my question back there and not bore everyone else with it.

Rep. Moore: I'll take that as a motion to adjourn, seconded by Representative Harrison. All opposed aye, opposed no. The ayes have it; we stand adjourned.

The meeting adjourned at 1:15 p.m.

AGENDA

HOUSE OF REPRESENTATIVES Committee on Election Law and Campaign Finance Reform

**March 2, 2005
Representative Tim Moore, Presiding**

HB 128, Early Prep for Absentee Count

Representatives Insko, Preston

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION**

You are hereby notified that the Committee on Election Law and Campaign Finance Reform will meet as follows:

DAY & DATE: Wednesday, March 2, 2005

TIME: 1:00 P.M.

LOCATION: 1425 LB

The following bills will be considered (Bill # & Short Title & Bill Sponsor):

HB128, Early Prep for Absentee Count, Representatives Insko, Preston

Respectfully,

Representatives Tim Moore and Deborah Ross
Chairs

I hereby certify this notice was filed by the committee assistant at the following offices at
on February 28, **2005**.

____Principal Clerk
____Reading Clerk - House Chamber

Nancy Garriss (Committee Assistant)

2005 COMMITTEE REPORT HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representatives **Moore & Ross** (Chairs) for the Committee on **Election Law and Campaign Finance Reform**.

☐ Committee Substitute for

H.B. 128 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE COUNTY BOARDS OF ELECTIONS TO TAKE STEPS EARLIER TO COUNT MAILED ABSENTEE VOTES, AS RECOMMENDED BY THE JOINT SELECT COMMITTEE ON ELECTRONIC VOTING SYSTEMS.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐.

☐ With a favorable report as to the committee substitute bill (#), ☐ which changes the title, unfavorable as to (the original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

1

HOUSE BILL 128

Short Title: Early Prep for Absentee Count.

(Public)

Sponsors: Representatives Insko, Preston (Primary Sponsors); Alexander, Coates, Farmer-Butterfield, Luebke, Weiss, and Wilkins.

Referred to: Election Law and Campaign Finance Reform.

February 9, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE COUNTY BOARDS OF ELECTIONS TO TAKE STEPS
EARLIER TO COUNT MAILED ABSENTEE VOTES, AS RECOMMENDED BY
THE JOINT SELECT COMMITTEE ON ELECTRONIC VOTING SYSTEMS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-234 reads as rewritten:

"§ 163-234. Counting absentee ballots by county board of elections.

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

1 or television station or both, but such notice shall be in addition to the
2 newspaper and other required notice. The count shall be continuous
3 until completed and the members shall not separate or leave the
4 counting place except for unavoidable necessity, except that if the
5 count has been completed prior to the time the polls close, it shall be
6 suspended until that time pending receipt of any additional ballots, and
7 except that one-stop ballots under G.S. 163-227.2 counted
8 electronically shall not be counted until the polls close; provided,
9 however, that if there are outstack ballots in the counting device, they
10 may be counted at the same time as other ballots are counted under this
11 subdivision. The county board of elections may begin putting them in
12 the tabulator at the same time as other ballots are counted under this
13 subdivision if the system for counting one-stop ballots requires them to
14 be put in a tabulator but the process has the voter place them in a ballot
15 box. The board shall not announce the result of the count before 7:30
16 p.m.

17 (2a) Notwithstanding the provisions of subdivision (2) of this section, a
18 county board of elections may, at each meeting at which it approves
19 absentee ballot applications pursuant to G.S. 163-230.1(c) and (c1),
20 remove those ballots from their envelopes and have them read by an
21 optical scanning machine, without printing the totals on the scanner.
22 The board shall complete the counting of these ballots at the times
23 provided in subdivision (2) of this section. The State Board of
24 Elections shall provide instructions to county boards of elections for
25 executing this procedure, and the instructions shall be designed to
26 ensure the accuracy of the count, the participation of board members
27 of both parties, and the secrecy of the results before election day. This
28 subdivision applies only in counties that use optical scan devices to
29 count absentee ballots.

30 (3) The counting of absentee ballots shall not commence until a majority
31 and at least one board member of each political party represented on
32 the board is present and that fact is publicly declared and entered in the
33 official minutes of the county board.

34 (4) The county board of elections may employ such assistants as deemed
35 necessary to count the absentee ballots, but each board member present
36 shall be responsible for and observe and supervise the opening and
37 tallying of the ballots.

38 (5) As each ballot envelope is opened, the board shall cause to be entered
39 into a pollbook designated "Pollbook of Absentee Voters" the name of
40 the absentee voter, or if the pollbook is computer-generated, the board
41 shall check off the name. Preserving secrecy, the ballots shall be
42 placed in the appropriate ballot boxes, at least one of which shall be
43 provided for each type of ballot. The "Pollbook of Absentee Voters"
44 shall also contain the names of all persons who voted under

1 G.S. 163-227.2, but those names may be printed by computer for
2 inclusion in the pollbook.

3 After all ballots have been placed in the boxes, the counting
4 process shall begin.

5 If one-stop ballots under G.S. 163-227.2 are counted electronically,
6 that count shall commence at the time the polls close. If one-stop
7 ballots are paper ballots counted manually, that count shall commence
8 at the same time as other absentee ballots are counted.

9 If a challenge transmitted to the board on canvass day by a chief
10 judge is sustained, the ballots challenged and sustained shall be
11 withdrawn from the appropriate boxes, as provided in G.S. 163-89(e).

12 As soon as the absentee ballots have been counted and the names
13 of the absentee voters entered in the pollbook as required herein, the
14 board members and assistants employed to count the absentee ballots
15 shall each sign the pollbook immediately beneath the last absentee
16 voter's name entered therein. The county board of elections shall be
17 responsible for the safekeeping of the pollbook of absentee voters.

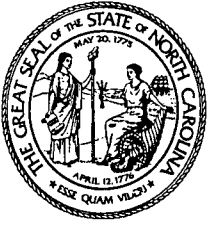
18 (6) Upon completion of the counting process the board members shall
19 cause the results of the tally to be entered on the absentee abstract
20 prescribed by the State Board of Elections. The abstract shall be signed
21 by the members of the board in attendance and the original mailed
22 immediately to the State Board of Elections. The county board of
23 elections may have a separate count on the abstract for one-stop
24 absentee ballots under G.S. 163-227.2.

25 (7) One copy of the absentee abstract shall be retained by the county board
26 of elections and the totals appearing thereon shall be added to the final
27 totals of all votes cast in the county for each office as determined on
28 the official canvass.

29 (8) In the event a political party does not have a member of the county
30 board of elections present at the meeting to count absentee ballots due
31 to illness or other cause of the member, the counting shall not
32 commence until the county party chairman of said absent member, or a
33 member of the party's county executive committee, is in attendance.
34 Such person shall act as an official witness to the counting and shall
35 sign the absentee ballot abstract as an "observer."

36 (9) The county board of elections shall retain all container-return
37 envelopes and absentee ballots, in a safe place, for at least four
38 months, and longer if any contest is pending concerning the validity of
39 any ballot.

40 **SECTION 2.** This act is effective when it becomes law.



HOUSE BILL 128: Early Prep for Absentee Count

BILL ANALYSIS

Committee: House Election Laws and
Campaign Finance Reform
Date: March 2, 2005
Version: First Edition

Introduced by: Reps. Insko and Preston
Summary by: William R. Gilkeson
Committee Co-Counsel

SUMMARY: *The First Edition of House Bill 128 would allow county boards of elections to begin the process of counting mailed absentee ballot before election day. If the county board uses an optical scan voting system to count the ballots, it could open the absentee envelopes at the pre-election meetings at which it approves the absentee applications. It could at that time ~~it could~~ run the approved ballots through the scanner, without printing the totals readout. The bill would be effective when it becomes law. The bill was recommended by the Joint Select Committee on Electronic Voting Systems.*

CURRENT LAW: Under current law, the county board of elections is directed to begin counting mail absentee ballots at 5 p.m. on election day. But the board may, if it gives notice 2 weeks ahead of time, begin counting at 2 p.m. on election day.

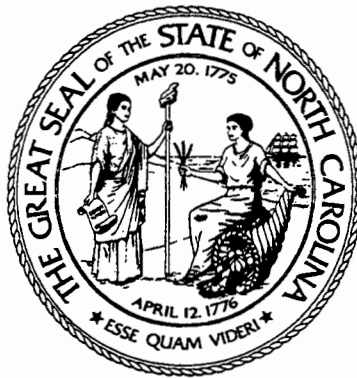
The county board is required to meet several times before election day to decide whether to approve the applications for absentee ballots. The applications are on the outside of the envelopes that contain the voted ballots themselves. After approving the applications at each meeting, the board is required by current law to leave the ballots sealed inside the application-envelopes to be counted on election day.

Since all mailed absentee ballots are paper, most counties use some kind of optical scan equipment to count them.

BILL ANALYSIS: The bill would permit a county board of elections to begin the process of counting mail absentee ballots at the pre-election meetings for counting absentee ballots. If it uses a tabulator to count the ballots, the board could remove the approved absentee voters' ballots from the envelopes and run them through the tabulator. But the board would not print the totals on the tabulator until 2 p.m. or 5 p.m., the current time for counting on election day. The State Board of Elections would provide instructions to counties for executing the procedure, designed to ensure the accuracy of the count, bipartisan participation by board members, and the secrecy of results before election day.

BACKGROUND: In 2001, the excuse requirement was removed from absentee voting. Since then, absentee voting has increased and county boards have had more absentee ballots to count. During the 2004 election, some boards of elections reportedly stayed up all night counting absentee ballots. As a result of those experiences, Gary Bartlett, Executive Director of the State Board of Elections, recommended the idea contained in the bill to the Joint Select Committee on Electronic Voting Systems, which recommended it to the 2005 General Assembly.

**JOINT SELECT COMMITTEE
ON ELECTRONIC VOTING SYSTEMS**



*Interim Report to the
2005 General Assembly
of North Carolina*

A LIMITED NUMBER OF COPIES OF THIS REPORT IS AVAILABLE
FOR DISTRIBUTION THROUGH THE LEGISLATIVE LIBRARY.

ROOMS 2126, 2226
STATE LEGISLATIVE BUILDING
RALEIGH, NORTH CAROLINA 27611
TELEPHONE: (919) 733-7778

OR

ROOM 500
LEGISLATIVE OFFICE BUILDING
RALEIGH, NORTH CAROLINA 27603-5925
TELEPHONE: (919) 733-9390

TABLE OF CONTENTS

LETTER OF TRANSMITTAL	i
COMMITTEE MEMBERSHIP	ii
COMMITTEE FINDINGS & RECOMMENDATIONS	1
COMMITTEE PROCEEDINGS	5
SUMMARY OF RECOMMENDED BILLS.....	13
RECOMMENDED BILLS.....	17
Proposal 1 -- Public Confidence in Elections	17
Proposal 2 -- Public Employee Pollworkers.....	29
Proposal 3 -- Early Prep Absentee.....	31
Proposal 4 -- Any Precinct Voting Pilot	35
Proposal 5 -- Recasting Lost Votes.....	37
AUTHORIZING DOCUMENT	39

STATE OF NORTH CAROLINA

JOINT SELECT COMMITTEE ON ELECTRONIC VOTING SYSTEMS



February 9, 2005

TO THE MEMBERS OF THE 2005 GENERAL ASSEMBLY:

Attached for your consideration is the interim report to the 2005 General Assembly. This report was prepared by the Joint Select Committee on Electronic Voting Systems pursuant to G.S. 120-70.81.

Respectfully submitted,

A handwritten signature in cursive script, reading "Austin Allran".

Senator Austin Allran
Cochair

A handwritten signature in cursive script, reading "Verla Insko".

Representative Verla Insko
Cochair

A handwritten signature in cursive script, reading "Elle Kinnaird".

Senator Elle Kinnaird
Cochair

A handwritten signature in cursive script, reading "Susan T. Adams".

Ms Susan T. Adams
Cochair

JOINT LEGISLATIVE EDUCATION OVERSIGHT COMMITTEE

2003-2005

COMMITTEE MEMBERSHIP

Senate Appointees

Senator Austin Allran, Cochair
Hickory, NC

Senator Ellie Kinnaird, Cochair
Carrboro, NC

Mr. David Allen
Computer Systems Engineer and Publisher.
High Point, NC

Mr. Michael Ashe
Election Director of Durham County
Durham, NC

Honorable Barry Jacobs
Orange County Commissioner
Hillsborough, NC

Mr. Warren Murphy
Co-Chair of Common Cause
Raleigh, NC

House Appointees

Representative Verla Insko, Cochair
Chapel Hill, NC

Ms. Susan T. Adams, Cochair
Secretary, Moore County Board of Elections
Pinehurst, NC

Representative Jean Rouse Preston
Emerald Isle, NC

Mr. Robert B. Cordle
Member, State Board of Elections
Charlotte, NC

Mr. John Esparza
Computer Security Specialist
Cary, NC

Mr. Roger W. Knight
Attorney
Raleigh, NC

Joint House-Senate Appointee

Mr. Gary O. Bartlett
Executive Director, State Board of Elections

COMMITTEE STAFF

Bill Gilkeson Gerry Cohen Erika Churchill Brenda Carter Marilyn Chism Peter Capriglione

Pam Evans, Committee Assistant

Angie Whitener, Committee Assistant

COMMITTEE FINDINGS AND RECOMMENDATIONS

I. Restoring Public Confidence in the Election System

The Committee finds that, despite capable, dedicated election officials, the election system has malfunctioned just often enough and recently enough to create doubt in the public mind that the system is healthy. Those malfunctions, together with questions raised by critics of electronic voting about what problems are possible, threaten to leave the State with an election system that does not have the public's confidence.

The Committee heard presentations from county election officials describing the problems that occurred in the 2004 election. The election board chair of Carteret County, where 4,438 votes were lost on an electronic voting system, said the nearest computer support person for his system was 3,000 miles away. The Committee also heard testimony from computer specialists who asserted that computer-based voting systems are subject to errors and manipulation on a magnitude beyond anything possible with paper ballots. (The Committee was reminded that paper ballots have their own long history of manipulation.) The Committee was told that since computer source code is proprietary, no one but the vendor can know how the system operates. The State Election Director, Gary Bartlett, recommended that the acquisition and support of voting systems move toward greater centralization.

As a result of its meetings, the Committee makes the following findings and recommendations to the 2005 General Assembly:

- **Paper Ballots**

The Committee finds that the critics of pure direct record electronic voting system -- "black box voting", as they call it -- have raised enough legitimate questions and found resonance with a large enough share of the public, that a requirement that all voting systems be reducible to paper is a necessity.

The Committee recommends that any voting system must generate a paper form of the ballot. The voter would always be given an opportunity to review and verify the paper ballot before casting it. Though with optical scan and direct record electronic (DRE) voting systems, the electronic or mechanical means would be the primary means of counting, a hand-to-eye sample count of the paper would be required in every county as a way of post-testing the accuracy of the count. If a discrepancy appeared that was significant in a race, a full hand-to-eye count of all the ballots in that race would be conducted. The right to a hand-to-eye recount would also be expanded, giving a candidate entitled to a recount under current law the right to demand a sample hand-to-eye recount (if the first recount was not hand-to-eye) in 3% of the precincts in each county. If that sampling indicated a potential reversal of results, there would be a hand-to-eye recount in the entire jurisdiction in which the election was held. (*See Proposal 1.*)

- **Need for Uniformity, Quality Control, and Accountability in Voting System Acquisition and Support.**

The Committee finds that the current county-based purchasing model has resulted in an array of voting systems across the State, some good, some outdated, some unreliable, some lacking in needed support for operation. The power that the State Board of Elections has been given to approve types of equipment counties may purchase and, more recently, to decertify types already in use, is helpful in creating a uniform system, but it is not enough.

The Committee recommends that the State Board of Elections, with the assistance of the Office of Information Technology, be given authority to negotiate with vendors. The State Board, rather than the counties, would write the "request for proposal" for all voting systems of a certain type. The counties would still do the purchasing, but their choices would be limited to certain types of contracts negotiated by the State Board. The State Board would assure uniformity of cost and features within the type. All vendors doing business in North Carolina would be required to escrow their source code and submit it for review by the State Board and representatives of all the State's legally recognized political parties. Every vendor would be required to post a bond to cover damages from defects in the voting system. Every vendor would be required to have an operating office in North Carolina, to notify the State Board of updates in its system, and to report defects it is aware of that have occurred in its system anywhere. Felony penalties would apply to willful and fraudulent violations of the duties, and civil penalties would apply to any violation. *(See Proposal 1.)*

- **Need for Ensuring Able Election Officials**

The Committee finds that, despite the dedication and ability of most election officials, nonetheless some of the problems appear to be the result of staffing weaknesses. Particularly at the precinct level, election boards have increasing difficulty in recruiting officials able to handle the complexities and ardors of staffing the precinct. Efforts should be made to provide incentives for more capable people to serve as election officials.

The Committee recommends that all public employees in North Carolina – State and local – be given 24 hours of "community service leave" to serve as precinct officials or in early voting sites. *(See Proposal 2.)*

- **Need for Relief for Election Officials by Streamlining the Counting Process**

The Committee finds that county boards of elections have spent long, grueling election nights opening and counting mail absentee ballots because they were not permitted to begin the process of opening envelopes and beginning to count them before 2 p.m. on election day. The requirement has the legitimate purpose of preventing the disclosure of election results while people are still voting. However, a way to relieve the time pressure on election officials appears to exist that does not jeopardize the secrecy of the results.

The Committee recommends that counties using optical scanners to count mail absentee ballots (apparently most counties) may open the envelopes and enter the ballots into a tabulator at the pre-election meetings at which they approve the absentee ballot

applications. They may enter the ballots into the tabulator, but may not print a totals readout until election day, since doing so would reveal the results. **(See Proposal 3)**

- **Need for Experiment in Convenient and More Reliable Voting**

The Committee finds that the system of early voting, in which almost a third of North Carolina's voters participated in 2004, has the possibility of solving a number of problems. Early voting sites can be outfitted with online access to all the voter registration data in the State, and they can be equipped with all the ballots with which anyone in the county can vote. Early voting sites can be staffed with the best available election officials. Because anyone in a county may vote at any site, voters may vote at a site convenient to their place of work as well as one close to their home. Voters who have moved and are uncertain of the right precinct polling place can vote at an early voting site while updating their records. The success of early voting suggests that it might be used on election day.

The Committee recommends that the State Board of Elections conduct, during 2005 and 2006, a pilot program in 10 diverse counties allowing the process of early voting to continue through election day. Larimer County, Colorado, where this practice has been tried, calls the sites used in this practice "voting centers." The number of traditional polling places open on election day would be reduced or eliminated. As part of the pilot, the State Board would determine which early votes or voting center ballots need, for irregularity-prevention purposes, to be tagged with the voter's identity. Current law requires this tagging in early voting. The State Board should report on its pilot to the 2007 General Assembly. **(See Proposal 4)**

- **Need for Dealing with the Consequences of Voting System Problems**

The Committee finds that the State Board of Elections needs the tools to remedy the consequences of voting system failures when election results are close. The number of lost votes in Carteret County exceeded the apparent victory margin in a 2004 statewide race. The State Board of Elections felt that it did not have the tools to remedy the situation. A majority of the board interpreted the "new election" statute to mean that allowing the 4,438 whose votes were lost to recast those votes would be a "new election." That statute said a new election must be conducted in the entire jurisdiction of the original election. And the State Board could not muster the required four out of five votes required to call a new election.

The Committee recommends (upon the recommendation of State Election Director Gary Bartlett) that the State Board may authorize a county board to allow a known group of voters whose votes were lost irretrievably to recast those votes. It would not be deemed a "new election" and would not require another jurisdiction-wide vote. **(See Proposal 5.)**

- **Need for Ethics Code for Election Boards and Staff.**

The Committee finds that, whatever the reality, the appearance exists in some eyes of election boards and their staff having contacts with vendors that raise questions about

their objectivity. As the voting equipment trade becomes more high-pressure, as the debate about voting equipment becomes more heated, and as the State Board assumes a new role in the purchasing process, it may be healthy to take a fresh look at traditionally accepted practices.

The Committee recommends that the State Board of Elections recommend a model code of ethics for election board members and their staff that addresses appropriate relations with vendors that do business or seek to do business with boards of elections in North Carolina. The code should address how to avoid both the reality and appearance of conflict of interest and impropriety. State Board would report the recommended code to the Committee. *(See Proposal 1.)*

II. Need for Providing State Help to Promote Uniformity and Avoid Inequities and Unfunded Mandates.

The Committee finds that its recommendations above will inevitable cause some counties to spend money to upgrade voting systems to comply with new requirements. Some counties have a greater ability to meet the cost than others. The difference in ability to pay may parallel other differences, resulting in more kinds of discrimination than one. The interests of uniformity and equity, in addition to the plain fairness of avoiding unfunded mandates, require the State to provide reimbursement.

The Committee recommends that the General Assembly appropriate money which, together with money available under the Help America Vote Act, will fully reimburse the counties for the voting system costs they incur by complying with this Committee's recommendations. The reimbursement would be for the lesser of the cost of upgrading an existing DRE system, a new DRE system, or a new optical scan system. There would also be an appropriate to reimburse counties for sample counts and newly required recounts. *(See Proposal 1.)*

COMMITTEE PROCEEDINGS

The Joint Legislative Education Oversight Committee held seven meetings.

Agenda

10 a.m. Monday, December 13, 2004
Room 643, Legislative Office Building, Raleigh NC

Call to Order:

Rep. Verla Insko

Introductory Remarks by Co-Chairs:

Sen. Ellie Kinnaird Rep. Verla Insko Sen. Austin Allran Ms. Susan Adams

Statements by Committee Members of Their Goals and Expectations

Background on Federal and State Law concerning Voting Equipment:

Committee Staff

Review of Current Array of Voting Systems in North Carolina, Problems That Have Occurred, and Potential Solutions:

Mr. Gary O. Bartlett, Executive Director of State Board of Elections, with assistance from State and county election boards members and staff.

Explanatory Presentation Concerning Electronic Voting Technology:

Mr. Justin Moore, Duke University Department of Computer Science

Adjournment

Committee Website: http://www.ncleg.net/committees/jointselectcomm_/

Agenda

10 a.m. Monday, December 20, 2004

Before Lunch in Room 643, Legislative Office Building, Raleigh NC

After Lunch in Room 1228, State Legislative Building, Raleigh NC

Call to Order – Room 643, Legislative Office Building:

Sen. Ellie Kinnaird

Approval of Minutes

Presentation on Voter-Verified Electronic Voting:

[CANCELLED BECAUSE OF WEATHER/TRAVEL PROBLEMS]

Dr. Rebecca Mercuri, Radcliff Institute Fellow, Harvard University

Continuation of Reports from NC Counties on 2004 Voting Problems:

Mr. Gary O. Bartlett, Executive Director of State Board of Elections, with assistance from State and county election boards members and staff.

Statements by Groups Interested in the Issue of Voting Systems:

- Ms. Allison Bowen, Interim Director, Governor's Advocacy Council for Persons With Disabilities
- Representative of visually impaired community
- Ms. Mary Klenz, Co-President NC League of Women Voters
- Ms. Mary Perry, State Vice President, NAACP **[unable to attend]**
- Ms. Marisol Jimenez-McGee, El Pueblo, Inc.
- Mr. Paul Meyer, Associate General Counsel, Association of County Commissioners
- Mr. John Gilbert, Legislative Chair, NC Election Boards Association
- Mr. George Gilbert, representing NC Election Directors Association

-- Break for Lunch --

Demonstration of Voting Equipment – Room 1228 of Legislative Bldg:

Mr. Gary O. Bartlett, Executive Director of State Board of Elections

Adjournment

Committee Website:

http://www.ncleg.net/committees/jointselectcomm_/

Agenda

**10 a.m. Friday, January 7, 2005
Room 643, Legislative Office Building, Raleigh NC**

Call to Order:

Sen. Austin Allran

Approval of Minutes

Presentation on Auditability and Standards for Electronic Voting and Tabulation Equipment:

Dr. Rebecca Mercuri, Fellow, Radcliffe Institute for Advanced Study, Harvard University

National Overview of the Voting Systems Business and Government Response to Voting System Issues:

Mr. Doug Chapin, Director of electionline.org

Presentation on Security of Electronic Voting Systems:

Mr. Chuck Herrin, Information Technology Auditor and Professional Hacker

-- Break for Lunch --

Proposals for Better Voting Systems in North Carolina:

Mr. Gary O. Bartlett, Executive Director of State Board of Elections

Committee Discussion

Adjournment

Committee Website: http://www.ncleg.net/committees/jointselectcomm_/

Agenda

**10 a.m. Friday, January 14, 2005
Room 414, Legislative Office Building, Raleigh NC**

Call to Order:

Ms. Susan T. Adams, Co-Chair

Approval of Minutes

Committee Discussion of Possible Recommendations to the 2005 General Assembly

Adjournment

Committee Website: http://www.ncleg.net/committees/jointselectcomm_/

Agenda

**10 a.m. Friday, January 21, 2005
Room 544, Legislative Office Building, Raleigh NC**

Call to Order:

- Rep. Verla Insko, Co-Chair

Approval of Minutes

Presentations about Electronic Voting and Related Matters:

- Mr. David Hood, Member of Catawba County Board of Elections
- Mr. Glenn Newkirk, President of InfoSENTRY Services Inc. and former Information System Director of NC General Assembly

CoChairs' Proposed Recommendations to 2005 General Assembly:

- **Proposal 1 – Public Confidence in Elections**
- **Proposal 2 – Public Employee Pollworkers**
- **Proposal 3 – Early Prep for Absentee Count**
- **Proposal 4 – Any-Precinct Voting Pilot**
- **Proposal 5 – Out-of-Precinct Provisionals**
- **Proposal 6 – Recasting Lost Votes**
- **Proposal 7 – County Elections Employees/State Employees**

Adjournment

Committee Website: http://www.ncleg.net/committees/jointselectcomm_/

Joint Select Committee on Electronic Voting Systems

Agenda

**10 a.m. Tuesday, January 25, 2005
Room 414, Legislative Office Building, Raleigh NC**

Call to Order:

- Sen. Ellie Kinnaird, Co-Chair

Proposed Interim Report to 2005 General Assembly:

Adjournment

Committee Website: http://www.ncleg.net/committees/jointselectcomm_/

Joint Select Committee on Electronic Voting Systems

Agenda

Final Meeting During Legislative Session

**9:30 a.m. Wednesday, February 9, 2005
Room 1228, State Legislative Building, Raleigh NC**

9:30 Call to Order:

- Sen. Austin Allran, Co-Chair

9:40 --10:10 Presentation by Dr. Ted Selker, Associate Professor, Massachusetts Institute of Technology, and Co-Director of CalTech/MIT Voting Technology Project.

10:10 – 10:30 Questions of Dr. Selker

10:30 – 11:00 Amendments to Main Bill (3 potential amendments known)

11:00 – 11:15 Discussion and Vote on Main Bill and Interim Report

11:15 Adjournment

Committee Website: http://www.ncleg.net/committees/jointselectcomm_/

Summaries of Proposed Bills

Proposal One – Public Confidence in Elections. Proposal One makes several changes designed to restore public confidence in the election process.

Section 1 – Permitted Voting Systems, Paper Ballots, and Counting. Lists the three voting systems used in NC: paper ballots counted by hand, Optical scan, and direct record electronic (DRE). Requires by 1-1-06 that every voting system must generate a ballot. Directs that, with optical scan and DRE systems, subject to sample hand counts and mandatory hand recounts, the boards of elections shall rely on an electronic or mechanical count. If there is a discrepancy between an electronic or mechanical counts and hand-to-eye paper counts, the hand-to-eye prevails unless it is reasonable to conclude it is not the true count.

Section 2 -- Requirements for Voting System Vendors. Effective with any upgrade or new voting system purchased beginning 7-1-05, vendors of voting systems in NC must:

- Escrow their relevant source code and make it available for review by the State Board of Elections, the NC Office of Information Technology, and the Chair (or designee) of any legally recognized political party in NC.
- Keep the escrowed source code up to date, and must swear that it is the code used in operating voting systems.
- Maintain an active office in NC.
- Notify the State Board of any known defect in a voting system used in NC, even if the defect shows up outside the State.

Fraudulent and willful violation of any of the requirements, or substitution of software into a voting system without notifying the State Board, is a Class I felony. Other violations are a civil penalty.

Section 3 -- State Board of Elections' Role in Purchasing. Effective with any upgrade or new voting system purchased beginning 7-1-05, the State Board of Elections is directed to develop a Request for Proposal. The vendor would have to agree to:

- Post a bond or letter of credit to cover damages from defects in its voting system, including the cost of a new election.
- State a statewide price for each unit of the equipment.

The State Board would be given the duties of monitoring voting system contracts, and of providing training and support to counties in their use. The goal would be that, within each type of voting system, all vendors would provide the same equipment. New voting systems would have to allow reporting of absentee and early voting returns by precinct. The requirement that all counties must report such returns by precinct would be moved from 2006 to 2008.

Section 4 -- County Commissioners' Role in Purchasing. Effective 7-1-05, county commissioners would continue to purchase voting equipment. But because of the State Board's new duties, counties would be exempt from the purchasing rules that normally apply to local governments.

Section 5 -- County Board of Elections' Role in Purchasing. Effective 7-1-05, the county board of elections would have the duty to recommend to the county commissioners which type of voting system the county should purchase. Currently, the county chooses from a list of types, makes, and models approved by the State Board.

Section 6 -- Sample Counts. Effective 1-1-06, State Board of Elections rules must require a hand-to-eye count of paper ballots in a sampling of precincts, early voting sites, or sets of mail absentee ballots in every county. The hand-to-eye sample counts would be of a sampling of statewide races, always including the presidential race when it is on the ballot. Unless there is clear evidence to believe otherwise, the hand-to-eye count will prevail. If the difference between the hand-to-eye and the electronic or machine count is significant, a complete hand-to-eye count will be conducted.

Section 7 -- Expansion of Right to Hand-to-Eye Recount. Effective 1-1-06, any candidate entitled to a recount under current law – that is, a candidate who was less than 1% behind in the initial count (or the lesser of 0.5% or 10,000 votes behind in a statewide race) – is entitled to a sample hand-to-eye recount. That sample would be of all the ballots in 3% of the precincts, randomly selected, in each county. If an extrapolation of the sample count to the whole count forecasts a reversal of the result, the candidate is entitled to a full hand-to-eye recount. This expanded right would not cost the candidate.

Section 8 -- Appropriations to Reimburse Counties. Effective 7-1-05, the General Assembly would appropriate a sufficient amount of money (minus Help America Vote Act funds) to reimburse the counties for the lesser of the following:

- Upgrading an existing DRE system to comply with the act.
- Purchasing a new DRE system to comply with the act.
- Acquiring a new optical scan system to comply with the act.

Section 9 -- Appropriations to State Board for New Duties. Effective 7-1-05, the General Assembly would appropriate funds to the State Board of Elections to conduct its new duties under the bill.

Sec. 10 -- Code of Ethics. The State Board of Elections would be directed to recommend a code of ethics for members and employees of boards of elections at the county and State level. The code would address appropriate relations with voting system vendors. It would address how to avoid the reality and appearance of conflicts of interest and impropriety. The State Board would report to this Committee within 60 days after the bill became law.

Proposal Two – Public Employee Pollworkers. "Community service leave" already exists for State employees for a variety of school-based and community service activities. It includes service as election officials. It allows paid leave without employees' using up vacation leave. Proposal Two says any public employee in NC would be guaranteed 24 hours per year "community service leave" to serve as a precinct official or temporary employee of a county board of elections in a voting site, including an early voting site. If an employee has already taken pre-existing community service leave (as in State employment) for election service, that employee cannot use this act to add onto it. Effective when bill becomes law.

Proposal Three – Early Prep for Absentee Count. Currently, county boards can count mail absentee ballots no earlier than 2 p.m. on election day. This has forced some election board to stay up all night on election night to get them all counted. Proposal Three would allow boards to begin the process of counting mail absentee votes before election day: If they use optical scan voting system to count mail absentees, they may begin the process during each pre-election meeting they hold to approve absentee applications. At those meetings, they would be able to take the ballots out of their envelopes and feed them into the scanner, without printing the scanner's totals readout. The State Board of Elections would provide instructions so

this would be done accurately and without compromising the secrecy of the results before election day. Effective when bill becomes law.

Proposal Four – Any Precinct Voting Pilot. Proposal Four would require the State Board of Elections to select up to 10 counties in which to conduct a pilot program during 2005 and 2006 of continuing one-stop (early) voting through election day as the principal method of voting. That would mean any voter in the county could vote at any one of the sites, and the number of traditional precinct polling places open on election day would either be reduced or eliminated. Where technically feasible, however, returns would be reported by precinct. The State Board would report its findings and recommendations to 2006 and 2007 sessions of the General Assembly.

Proposal Five – Recasting Lost Votes. In 2004 the early votes of 4,438 people in Carteret County were lost beyond retrieval because a voting system was put on the wrong setting and would not record more than a certain number. The 4,438 votes were greater than the apparent margin of victory in the statewide race for Commissioner of Agriculture. The State Board of Elections was asked to allow the 4,438 to recast (or complete) the votes they cast that were lost. A majority of the State Board decided that doing so would constitute ordering a "new election," and would violate the provision in the new election statute that says all new elections must be in the entire jurisdiction in which the original election was held. Proposal Five would permit the State Board of Elections to allow a county board to permit a known group of voters whose votes were lost beyond retrieval to recast those votes. The bill would specify that the procedure would not be a "new election." Effective when bill becomes law.

PROPOSAL 1 – Public Confidence in Elections

A BILL TO BE ENTITLED

AN ACT TO RESTORE PUBLIC CONFIDENCE IN THE ELECTION PROCESS BY REQUIRING THAT ALL VOTING SYSTEMS PERMIT ALL VOTERS TO VERIFY THEIR VOTES ON PAPER; BY PROVIDING STATUTORY GUIDANCE AS TO COUNTING; BY PROVIDING CHECKS ON ELECTRONIC VOTING SYSTEM VENDORS INCLUDING MULTI-PARTY REVIEW OF SOURCE CODE, BY AUTHORIZING THE STATE BOARD OF ELECTIONS TO PROMOTE UNIFORMITY IN VOTING SYSTEMS BY STANDARDIZING PURCHASING OF VOTING SYSTEMS IN NORTH CAROLINA, BY EMPOWERING THE STATE BOARD OF ELECTIONS TO CONTROL THE TESTING AND SUPPORT OF VOTING SYSTEMS; BY REQUIRING POST-ELECTION TESTING OF VOTING SYSTEMS INCLUDING A PAPER SAMPLE-COUNT; BY EXPANDING THE RIGHT TO A HAND-TO-EYE RECOUNT OF PAPER BALLOTS; BY APPROPRIATING STATE FUNDS FOR VOTING SYSTEM ACQUISITION TO PREVENT IMPOSING UNFUNDED MANDATES UPON COUNTIES; AND BY APPROPRIATING FUNDS TO THE STATE BOARD OF ELECTIONS TO IMPLEMENT ITS EXPANDED DUTIES WITH REGARD TO VOTING SYSTEMS.

The General Assembly of North Carolina enacts:

SECTION 1. Effective January 1, 2006, Article 14A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-165.9B. Voting systems: permitted voting systems; paper ballot required; counting.

(a) Permitted Voting Systems – The State allows three voting systems: (i) paper ballots; (ii) optical scan; and (iii) direct record electronic (DRE). Paper ballots are inherent to paper ballots and optical scan voting systems. In order to provide a paper ballot in a DRE, each DRE shall generate a paper ballot which can be verified by the voter before the vote is cast.

(b) Counting on Voting Systems. – In counties that use optical scan or DRE voting systems, subject to the sample counts under G.S. 163-182.1 and 163-182.2, and of a hand-to-eye recount under G.S. 163-182.7 and 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 recount of the paper ballots. In the event of a discrepancy between the electronic or mechanical count and a hand-to-eye count, the hand-to-eye count shall control, except where it is reasonable to conclude that the hand-to-eye count for whatever reason is not the true count."

SECTION 2.(a) Part 2 of Article 14A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 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 a copy of all source code relevant to the recording or counting of votes, and related documentation, together with updates as they become known or available. The documentation shall include a system configuration and a sworn affidavit that the source code includes all relevant program statements in low-level and high-level languages. As used in this section, 'source code' does not include variable codes created for specific elections.
- (2) The vendor shall notify the State Board of Elections of any change in source code or any change in the foundation operating system.
- (3) The vendor shall make accessible for review all source code relevant to the recording or counting of votes by the State Board of Elections; the Office of Information Technology Services; the state chairs, or one designee of each chair, of each political party recognized under G.S. 163-96; and the purchasing county board of elections.
- (4) The chief executive officer of the vendor shall sign a sworn affidavit that the source code 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.
- (5) The vendor shall notify the State Board of Elections and the county board of elections of any county using its voting system of any defect in the same system known to have occurred anywhere.
- (6) The vendor shall maintain an office in North Carolina with staff to service the contract.

(b) Penalties. – Willful and fraudulent violation of any of the duties in subsection (a) of this section is a Class I 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 of up to {Insert dollar amount} dollars (\$) per violation. "

SECTION 2.(b) This section applies with respect to any county that upgrades a voting system or acquires a new voting system on or after July 1, 2005.

SECTION 3.(a) Effective July 1, 2005, and applicable with respect to all voting systems upgraded or acquired on or after that date, G.S. 163-165.7 reads as rewritten:

"§ 163-165.7. Voting systems: powers and duties of State Board of Elections.

(a) Certification of voting systems.~~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-certified by the State Board of Elections shall be used to conduct elections under this Chapter, and the~~

approved certified voting 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 use of paper ballots counted by hand is a certified voting system. The State Board shall certify additional voting systems through the use of a request for proposal process. In consultation with the Office of Information Technology Services, the State Board of Elections shall develop the requests for proposal subject to the provisions of this Chapter and other applicable State laws. The request for proposal shall require at least all of the following:

- (1) That the vendor must post a bond or letter of credit to cover damages resulting from defects in the voting. Damages include the cost of a new election.
- (2) That the voting system comply with all federal requirements for voting systems.
- (3) That the voting system have the capacity to include in precinct returns the votes cast by voters outside of the voter's precinct.
- (4) For all voting systems utilizing electronic means, accessibility to review all source code relevant to the recording or counting of votes by the State Board of Elections; the Office of Information Technology Services; the state chairs, or one designee of each chair, of each political party recognized under G.S. 163-96; and the purchasing county board of elections.
- (5) That the vendor state a statewide uniform price for each unit of the equipment.

The State Board shall have as its goal in its request for proposals and its negotiations with vendors the eventual establishment of a uniformity of features within type throughout the State such that each optical scan voting system shall have substantially identical features to all other optical scan voting systems and each direct record electronic voting system shall have substantially identical features to all other direct record electronic systems. A uniformity of features within type does not necessarily mean there will be only one vendor per type.

(b) Decertification of voting systems. 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.

(c) Monitoring Duties of the State Board. – The State Board of Elections shall review, or designate an independent expert to review, all source code escrowed by vendors pursuant to G.S. 163-165.9A, and shall publish or otherwise make available its findings in accordance with Chapter 132 of the General Statutes. The State Board shall facilitate the review of the escrowed source code by the other entities provided for in G.S. 163-165.9A(a)(3). All source code made available for review pursuant to the provisions of this Chapter shall be deemed a trade secret of the vendor, and any person responsible for the misuse or unauthorized release of the source code shall be subject to the provisions of G.S. 14-75.1 and Article 24 of Chapter 66 of the General Statutes. The State Board shall monitor vendor compliance with all contractual agreements and with all provisions of G.S. 163-165.9A.

(d) Rules. – 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, but not limited to, the following:

- (1) Procedures for county boards of elections to utilize when recommending the purchase of a ~~Types, makes, and models of~~ certified voting systems approved system for use in this State that county.
- (2) Form of official ballot labels to be used on voting systems.
- (3) Operation and manner of voting on voting systems. The rules shall comply with G.S. 163-165.9B.
- (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 before and after use in an election.

Any rules adopted under this section 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) Training and Support of Voting Systems. – The State Board of Elections, with the assistance of other State agencies, shall provide training and support of the certified voting systems, so that no county board of elections must rely on a vendor for primary support.

SECTION 3.(b) Section 11 of S.L. 2003-226, which would have made amendment to G.S. 163-165.7 effective January 1, 2006, is repealed.

SECTION 3.(c) In order to carry forward the first of two amendments that would have been made by Section 11 of S.L. 2003-226 to the old version of G.S. 163-165.7, effective January 1, 2006, G.S. 163-165.7 as rewritten by subsection (a) of this section is amended by adding the following new subsection:

"(a) 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.

SECTION 3.(d) In order to carry forward the second of two amendments that would have been made by Section 11 of S.L. 2003-226 to the old version of G.S. 163-165.7, effective January 1, 2006, G.S. 163-165.7(d) as rewritten by subsection (a) of this section is amended by adding the following new subdivision:

"(9) Compliance with section 301 of the Help America Vote Act of 2002."

SECTION 3.(e) G.S. 163-132.5G reads as rewritten:

"§ 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 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~~ 2008 election. Those rules shall provide for exemptions where the expense of compliance would place a financial hardship on a ~~county~~ county and shall provide an exemption if the current voting system cannot be programmed to provide such information, but any new voting system acquired after July 1, 2005 must have the ability to provide such information. Those rules shall provide for compliance by 2004 for counties the State Board determines are capable of complying by that year."

SECTION 4. Effective July 1, 2005, G.S. 163-165.8 reads as rewritten:

"§ 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 purchase or lease for reimbursement by the State only a voting system of a type, make, and model ~~approved~~ 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 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. Article 8 of Chapter 143 of the General Statutes does not apply to county boards of commissioners purchasing voting systems certified by the State Board of Elections."

SECTION 5. Effective July 1, 2005, G.S. 163-165.9 reads as rewritten:

"§ 163-165.9. Voting systems: powers and duties of county board of elections.

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. 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 by the proposed vendor or lessor and also witness a demonstration of at least one other type of voting system ~~approved~~ 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."

SECTION 6.(a) G.S. 163-182.1(b) reads as rewritten:

"(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 official ballots of a sampling of statewide ballot items in every county, always including the presidential ballot item. The sample chosen by the State Board shall be of full precincts, full counts of absentee ballots, and full counts of 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 discrepancy between the electronic or

mechanical count and a hand-to-eye count, the hand-to-eye count shall control, except where it is reasonable to conclude that the hand-to-eye count for whatever reason 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~~ 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)~~a.~~ Notify the voter that the voter has selected more than the correct number of candidates or proposals in the ballot item.

(2)~~b.~~ Notify the voter before the vote is accepted and counted of the effect of casting overvotes in the ballot item.

(3)~~c.~~ Provide the voter with the opportunity to correct the official ballot before it is accepted and counted."

SECTION 6.(b) G.S. 163-182.2 reads as rewritten:

"§ 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.

(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.
- (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 official ballots of a sampling of statewide ballot items in every county, always including the presidential ballot item. The sample chosen by the State Board shall be of full precincts, full counts of absentee ballots, and full counts of 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 discrepancy between the electronic or mechanical count and a hand-to-eye count, the hand-to-eye count shall control, except where it is reasonable to conclude that the hand-to-eye count for whatever reason 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) 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."

SECTION 6.(c) G.S. 163-182.5 reads as rewritten:

"§ 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 seventh day after every 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."

SECTION 6.(d) This section becomes effective January 1, 2006.

SECTION 7.(a) G.S. 163-182.7 reads as rewritten:

"§ 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 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 in the case of a multiseat ballot item, one-half of one percent (0.5%) of the votes cast for those two candidates, 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 Thursday after the election. If on that Thursday 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."

SECTION 7.(b) Article 15A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 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 and the mail-in absentee ballots 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."

SECTION 7.(c) This section becomes effective January 1, 2006.

SECTION 8. To meet the goals of uniformity and equity, and to avoid placing unfunded mandates upon the counties, there is appropriated from the General Fund to the State Board of Elections the sum of _____ for the 2005-2006 fiscal year and the sum of _____ for the 2006-2007 fiscal year (minus Help America Vote Act funds available for the same purpose) for the purpose of reimbursing counties for the lesser of the following expenses:

- (1) Upgrading an existing direct record electronic system used in that county to comply with this act (if it is possible to upgrade)
- (2) Acquiring a direct record electronic system (DRE) that complies with this act
- (3) Acquiring an optical-scan system that complies with this act.

SECTION 9. There is appropriated from the General Fund to the State Board of Elections the sum of _____ for the 2005-2006 fiscal year and the sum of _____ for the 2006-2007 fiscal year for the purpose of meeting its expanded duties under this act with regard to voting systems.

SECTION 9.1. There will be appropriated from the General Fund to the State Board of Elections an appropriate sum in the 2005-2006 fiscal year and the 2006-2007 fiscal year for the purpose of reimbursing counties for costs incurred for conducting post-election verification or any other hand-eye counting or recounting of votes.

SECTION 10. The State Board of Elections shall recommend a model code of ethics for members and employees of county boards of elections and of the State Board of Elections. The code shall address the appropriate relations between those members and staff and vendors who do business or seek to do business with boards of elections in North Carolina. It shall address how to avoid both the reality and the appearance of conflicts of interest and impropriety. The State Board shall report its recommended code to the Joint Select Committee on Electronic Voting Systems no later than 60 days after this act becomes law.

SECTION 11. Sections 8 and 9 of this act become effective July 1, 2005. Except as otherwise provided herein, the remainder of this act is effective when it becomes law.

Proposal 2 – Public Employee Pollworkers

A BILL TO BE ENTITLED
AN ACT TO ALLOW LEAVE TO PUBLIC EMPLOYEES FOR WORKING AS
PRECINCT OFFICIALS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"163-41.3. Leave for public employees to work as election officials.

Every employee of the State of North Carolina or of a city, county, school administrative unit, constituent institution of the University of North Carolina, or other political subdivision or public corporation in the State is entitled to up to 24 hours per year of community service leave to serve as a precinct official or as a temporary employee of a county board of elections in a voting site, including a one-stop site as provided in G.S. 163-227.2. As used in this section, 'community service leave' for an employee means absence with full pay in addition to any vacation leave or sick leave to which the employee is already entitled. This section does not entitle an employee to additional community service leave in addition to leave that employee received for the equivalent election service under an equivalent program of the employer."

SECTION 2. This act is effective when it becomes law.

Proposal 3 – Early Prep Absentee

A BILL TO BE ENTITLED
AN ACT TO AUTHORIZE COUNTY BOARDS OF ELECTIONS TO TAKE STEPS
EARLIER TO COUNT MAILED ABSENTEE VOTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-234 reads as rewritten:

"§ 163-234. Counting absentee ballots by county board of elections.

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, 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.

(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 county 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."

SECTION 2. This act is effective when it becomes law.

Proposal 4 – Any Precinct Voting Pilot

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE STATE BOARD OF ELECTIONS TO CONDUCT A PILOT PROGRAM IN WHICH THE METHODS USED IN ONE-STOP VOTING WOULD CONTINUE THROUGH ELECTION DAY AS THE PREDOMINANT VOTING METHOD.

The General Assembly of North Carolina enacts:

SECTION 1. The State Board of Elections shall select up to 10 counties in which to conduct a pilot program during the 2005 and 2006 elections. In selecting those counties, the State Board shall seek diversity of population size, regional location, and demographic composition. The pilot shall be conducted in a county only with the concurrence of the county board of elections. The pilot program shall consist of continuing one-stop voting as provided in G.S. 163-227.2 through election day as the principal method of voting. In the counties participating in the pilot, the State Board shall adopt a plan in which the following shall occur:

- (1) Any voter properly registered in the county may vote at any one-stop site during the one-stop period established in G.S. 163-227.2 and on election day.
- (2) All one-stop sites used in the pilot counties shall have online connection to the voter registration system so that voters can be checked.
- (3) The number of precinct voting places open on election day shall be reduced or eliminated.
- (4) The larger number of one-stop sites may be open on election day than during the earlier part of the one-stop period.
- (5) Where technically feasible, the election returns shall be reported by precinct, using all the precincts in existence in the county, whether or not the precinct polling place is open.
- (6) The State Board shall determine which ballots must be made retrievable and identifiable to the voter in order to ensure that the vote-count by eligible voters is accurate. If any vote need not be identifiable to the voter, it shall not be made so, notwithstanding G.S. 163-227.2(e1).
- (7) Notwithstanding G.S. 163-227.2(g), the State Board may allow the county board in a pilot county to designate one-stop sites in commercial buildings that are not public buildings.
- (8) In designing the pilot program, the State Board shall ensure fairness to all voters, candidates, and parties, including candidates and voters in counties outside the pilot counties.

SECTION 2. This act is effective when it becomes law. The State Board of Elections shall closely monitor the pilot program and report its findings and

recommendations to the General Assembly at its 2006 regular session and to the 2007 General Assembly.

Proposal 5 – Recasting Lost Votes

A BILL TO BE ENTITLED
AN ACT TO AUTHORIZE BOARDS OF ELECTIONS TO ALLOW KNOWN
VOTERS WHOSE VOTES WERE LOST TO RECAST THEIR BALLOTS
DURING A TWO-WEEK PERIOD AFTER THE ELECTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-182.12 reads as rewritten:

"§ 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~~. 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, 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. 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."

SECTION 2. This act is effective when it becomes law.



North Carolina General Assembly

Marc Basnight
President Pro Tem

James B. Black
Speaker

Richard T. Morgan
Speaker

JOINT SELECT COMMITTEE ON ELECTRONIC VOTING SYSTEMS

Section 1. The Joint Select Committee on Electronic Voting Systems (hereinafter "Committee") is established by the President Pro Tempore of the Senate and the Speakers of the House of Representatives pursuant to G.S. 120-19.6, Rule 31 of the Rules of the Senate of the 2003 General Assembly, and Rule 26(a) of the Rules of the House of Representatives of the 2003 General Assembly. This committee is formed to study the issues in S.L. 2004-161, Part XII (Voter Paper Trail Study). Therefore, the Electronic Voting Systems Study Commission in S.L. 2004-161, Part XII will not be appointed.

Section 2. The Committee consists of 13 members as follows:

Sen. Eleanor Kinnaird, Cochair, appointed by the President Pro Tempore of the Senate

Sen. Austin Allran, Cochair, appointed by the President Pro Tempore of the Senate

Ms. Susan Adams, Cochair, appointed by the Speakers of the House of Representatives

Rep. Verla Insko, Cochair, appointed by the Speakers of the House of Representatives

Mr. Michael Ashe, appointed by the President Pro Tempore of the Senate

Mr. Barry Jacobs, appointed by the President Pro Tempore of the Senate

Mr. Warren Murphy, appointed by the President Pro Tempore of the Senate

Mr. David Allen, appointed by the President Pro Tempore of the Senate

Mr. Bob Cordle, appointed by the Speakers of the House of Representatives

Rep. Jean Preston, appointed by the Speakers of the House of Representatives

Mr. John Esparza, appointed by the Speakers of the House of Representatives

Mr. Roger Knight, appointed by the Speakers of the House of Representatives

The Executive Director of the State Board of Elections, appointed by the President Pro Tempore of the Senate and the Speakers of the House of Representatives

Members serve at the pleasure of their appointing authority.

Section 3. The Committee shall study the issue of whether direct record electronic (DRE) voting systems should be prohibited in North Carolina unless each unit of the system produces a voter-verifiable paper record that is suitable for a recount or a manual audit and that is equivalent or superior to the paper record produced by a paper ballot system. In conducting the study, the Committee shall consider DRE voting systems, compliance with the Help America Vote Act of 2002 (HAVA) and with voting-systems standards to be adopted under HAVA, including providing sufficient opportunity for access and participation, and privacy and independence, to all voters regardless of disability. The Committee shall consider any other issue related to the use of electronic voting systems.

Section 4. The Committee may report on the results of its study, including any proposed legislation, to the members of the Senate and the House of Representatives, on or before the convening of the 2005 Regular Session of the 2005 General Assembly by filing a copy of the report with the President Pro Tempore's office, the Speakers' offices, and the Legislative Library. The Committee shall report on the results of its study, including any proposed legislation, to the members of the Senate and the House of Representatives, on or before the convening of the 2006 Regular Session of the 2005 General Assembly by filing a copy of the report with the President Pro Tempore's office, the Speakers' offices, and the Legislative Library. The Committee terminates upon the convening of the 2006 Regular Session of the 2005 General Assembly, or upon the filing of its final report, whichever occurs first.

Section 5. The Committee shall meet during the interim period between regular sessions upon the call of the House and Senate co-chairs.

Section 6. The Committee is vested with the authority contained in Article 5A of Chapter 120 of the General Statutes.

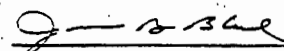
Section 7. Members of the Committee shall receive per diem, subsistence, and travel allowance at the rate established in G.S. 120-3.1, 138-5, or 138-6, as appropriate.

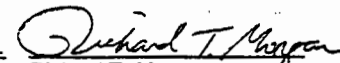
Section 8. The expenses of the Committee shall be considered expenses incurred for the joint operation of the General Assembly. Individual expenses of \$5,000 or less, including per diem, travel, and subsistence expenses of members of the Committee, and clerical expenses shall be paid upon the authorization of a co-chair of the Committee. Individual expenses in excess of \$5,000 shall be paid

upon the written approval of the President Pro Tempore of the Senate and the Speakers of the House of Representatives. All expenses of the Committee shall be paid from the Legislative Services Commission's Reserve for Studies.

Effective this 19th day of November, 2004.


Marc Basnight
President Pro Tempore


James B. Black
Speaker


Richard T. Morgan
Speaker

VISITOR REGISTRATION SHEET

Election Law and Campaign Finance Reform Committee

March 2, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

CURTIS B Woods

INTERIN FOR REP. SUTTON

SHANE REESE

NC VOTERS FOR CLEAN ELECTIONS

Chris Hearn

NC Center for Voter Education

Cherie Poucher

Wake Co. Board of Elections

Bob Hall

Democracy North Carolina

Tim Crowley

ONC TV

MINUTES
House Committee on Election Law and Campaign Finance Reform
March 9, 2005
1:00 p.m., Room 1425
Representative Moore, Presiding

The House Committee on Election Law and Campaign Finance Reform met at 1:00 p.m. on Tuesday, March 9, 2005, in Room 1425 of the State Legislative Building.

Members present were: Representative Tim Moore, Co-Chair; Representative Deborah Ross, Co-Chair; Representative Joe Kiser, Vice-Chair; Representative Paul Luebke, Vice-Chair; Representative John Blust; Representative Pricey Harrison; Representative Hugh Holliman; Representative David Lewis; Representative Edd Nye, and Representative Edgar Starnes.

There was one bill on the agenda: House Bill 127, Public Employee Poll Workers, introduced by Representatives Verla Insko and Jean Preston.

Co-Chair Tim Moore called the meeting to order and introduced the pages and sergeants-at-arms.

The Chair called on Mr. Bill Gilkeson, committee staff, to explain House Bill 127. Mr. Gilkeson said the bill was recommended by the Joint Select Committee on Electronic Systems, and it would allow state the local government employees the right to 24 hours of community service leave each year to serve as a precinct official or temporary employee of a county board of elections to work at a voting site. This leave would be in addition to vacation leave or sick leave.

Representative Insko was recognized to explain why the bill is needed. She said there are more people appearing at the polls, the lines are longer, and it is becoming difficult to recruit poll workers on Election Day who are willing to work from 6 a.m. until 9 p.m. Additionally, being a poll worker has turned into a high-skill job that requires physical stamina. She said the request for this bill came from the elections supervisors and elections officials who served on the Election Laws interim committee.

There was discussion by the committee, and committee members raised many issues. The Chair said rather than taking a vote that day, a subcommittee would be appointed to consider the issues and report to the committee at a later meeting.

The Chair recognized Ms. Leanne Winner from the audience. Ms. Winner represented the North Carolina School Boards Association. She said the Board had specific concerns about this bill and the implications that it would have for them to be able to run the public schools. She said the Board asked that the committee exempt public schools from the bill because it would be problematic and costly to find substitutes for the classroom that day. In addition, she said the public schools had no backup workers for their kitchen and

custodial staffs. She said she expected schools to be fully operational on Election Day now because of the change in the school calendar law last year.

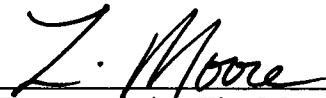
Representative Lewis made a motion to send the bill to a subcommittee over the protests of Representative Luebke. The motion passed.

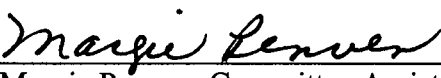
The Chair named Representative Starnes and Representative Holliman as co-chairs of the subcommittee and asked that they report to the committee when they completed their work. Representatives Harrison Representative Lewis volunteered to serve as members.

There being no further business, the meeting was adjourned at 1:40 p.m.

A verbatim transcript of this meeting is attached hereto along with all pertinent documents and handouts.

Respectfully submitted,


Representative Tim Moore, Presiding Chair


Margie Penven, Committee Assistant

TRANSCRIPT
House Committee on Election Law and Campaign Finance Reform

1:00 p.m. on March 9, 2005

Room 1425, LOB

Representative Moore, Presiding

Rep. Moore: We have one bill on our agenda today, and I don't see either of the sponsors here, but I think we can let staff move forward with presenting the bill. The bill that we are going to be considering today is House Bill 127, short title "Public Employee Poll Workers."

In the interest of time, I'm going to ask staff—I don't know which one of you wants to do this—but provide an explanation of the bill and then, hopefully, by the time you're finished one of the bill sponsors will show up.

Bill Gilkeson: Okay. Can I just do it from here?

Rep. Moore: Whatever you prefer.

Bill Gilkeson: This bill was recommended by the Joint Select Committee on Electronic Systems. There are several bills like that. And it would require for all public employees in North Carolina—state and local governments—that they have a right up to 24 hours per year of community service leave to serve as either a precinct official or as a temporary employee of a county board of elections in a voting site such as an early voting site. And this leave would be in addition to any kind of vacation leave or sick leave that they would get. The bill would not allow somebody to get more than 24 hours or would not require a public agency to give more than 24 hours of election leave to one of its employees if it provides election leave under some other program other than this bill. In other words, you would not have to stack leave time in addition to what was already given because of this bill.

Rep. Moore: Thank you. At this point we'll recognize Representative Insko who is the primary sponsor of the bill to speak on the bill also.

Rep. Insko: Thank you, Mr. Chair. I'm going to talk a little bit about—since you've had the bill explanation—about why we need this bill. Increasingly information about elections is more complex. We have provisional ballots that need to be explained, more complex ballots that need to be explained. Another issue is that more people are voting. We have more people appearing at the polls. The lines are longer. A lot of people end up not voting because they can't stand in the lines. We've done a lot to accommodate these problems. We've implemented one-stop, no-excuse voting. We have streamlined our absentee ballot process, but still the

problems remain and election supervisors, especially, find it very difficult to recruit poll workers on Election Day—people who are willing to work from 6 a.m. in the morning until 9 p.m. at night or later, who can staff the elections process, deal with a lot of issues that come up with challenges, with explaining how the vote goes, with explaining provisional ballots, with making sure that their calls are made to the boards of elections at the appropriate time. So being a poll worker has turned into quite a high-skill job that requires physical stamina. And we have just.... Traditionally, a lot of local elections supervisors have recruited people who don't work ordinarily. A lot are senior citizens who don't especially want to stay at the polls all day long or find it difficult to do that. And election supervisors are asking for more and more help getting people to be able to attend and work at the polls who can stay there for these long hours, handle complex information, attend training, and be prepared to make our election process smooth on Election Day. And this request came from the elections supervisors and the elections officials who served on the Election Law Committee. This is a way that we could have a pool of workers who would be accessible to us on Election Day who are the kind of people we need to have. And what they have suggested is that we implement a public one-day leave for state employees to help assist on Election Day. There is a great deal of support across the state for this among our election workers at the county level, and it would greatly facilitate that.

Now we do have two amendments, and did you explain those amendments?

Rep. Moore: No. Copies are being made of those amendments. Did someone come back with those yet? They're still making them? Okay.

Rep. Insko: We have.... Do I need to explain the amendments before we have them?

Rep. Moore: I've got some copies of the amendments here. The amendments are actually in the alternative. Yes, Representative Luebke, a question?

Rep. Luebke: So entitled up to 24 hours per year actually means that a person could work three elections.

Rep. Insko: That's right. Up to 24 hours per year of community service. Actually the polls are open longer, but you'd only be off eight hours of work. That's right.

Rep. Luebke: Bill, is that your understanding of it? You're saying that three times a year that person could do this.

- Bill Gilkeson: Right, but of course you would only be able to get this kind of leave for that kind of work if that kind of work is available. I mean, if it is not being done, then you can't get the leave for it because you wouldn't qualify for the leave. Also, the early voting sites are open for several days—more per election—and most places have more than one election per year.
- Rep. Moore: Representative Kiser, do you have a question?
- Rep. Kiser: Yes, thank you, Mr. Chairman. Does this person that was working for the state, the city or the county have to gain prior approval from their supervisor?
- Rep. Moore: Is that question directed toward the bill sponsor or toward staff?
- Rep. Insko: Sorry. I apologize.
- Rep. Kiser: Well, I'll put it in these terms. If there is a fella who is a sheriff of a county, and he's got eight deputies out there working one day on election and four of them decide they want to take off that day and work, does he have to do this? Does the person who's going to be working at the polls have to gain prior approval for being out of work or can he just let the person in charge know that he's going to work at the polls? Reading this, I don't see anything about it.
- Rep. Insko: That's not explicit in the law. I believe that would be handled through rules and regulation or we could add it to the statute.
- Rep. Kiser: Follow-up. It could create a problem here, not only for a sheriff but for anyone else as I see it. And it's not explicit in here. Does a person have the right to work—I'll put the question this way. Does a person have this right to take off a day and work whether his employer wants him to have that day or not?
- Rep. Insko: The way this reads is that every employee of the State of North Carolina is entitled to up to 24 hours per year of community service leave. When you have a sick leave day, you take that at your discretion. So I think that the way this is worded, that would be true—that a public employee, if an elections supervisor contacted a public employee and said can you work, that that would mean that the public employee would go to the supervisor and say that I've been requested and am planning to take this day off...I want to take this day off for poll work. That's the way it's worded right now.
- Rep. Moore: Representative Kiser for follow-up.

Rep. Kiser: What if everyone that was working in a small clerk's office and they had eight deputy clerks there and all eight of them decided they wanted to work. What happens in a situation like that?

Rep. Insko: It would create problems. I have no doubt it would create problems.

Rep. Moore: Representative Holliman.

Rep. Holliman: Well along those same lines, does this apply to county board of elections people?

Laughter

Rep. Insko: It certainly would. It says every employee of the State of North Carolina. Actually elections people are not State employees. They're local employees. It says or of a city, county, or school administrative unit. Yes, it would. It would apply to local boards of elections people. You're identifying some very good issues.

Rep. Moore: Let me say something to you. Representative Ross and I have discussed this. We are not going to take a vote on this bill today. And, in fact, it is going to be referred to a subcommittee. So those of you with a great interest, we're going to be asking for volunteers to serve on that subcommittee in a few moments, and I've noticed by a few good questions who probably some of the appointees of this committee are going to be. Any further questions? Representative Starnes.

Rep. Starnes: Representative Insko, you indicated that seems to have been a problem in attracting all of the people that work the polls.

Rep. Insko: Enough quality people, right.

Rep. Starnes: Enough quality people. Well it looks to me like maybe you're offering the wrong incentive. I always thought people were more motivated by financial incentives, so why don't you consider raising the salary of the people who are paid to work at the polls as opposed to giving a class of people an extra day off because people that work for the private sector won't necessarily get a paid day off. Many people because of their own patriotic responsibilities or civic responsibilities they want to take a day off and they do so without pay or they sacrifice a vacation day so they can work at the polls. So why don't we just look at raising the salary of all the poll workers whether they're public or private, and if they're being paid minimum wage, then I think you'll be able to attract better people?

Rep. Insko: Well actually you've an issue that I probably could have answered two or three months ago but can't today and that is whether or not the poll workers are set by the local counties or whether they are set statewide.

Bill Gilkeson: There is a minimum set statewide, but local counties can add to that.

Rep. Moore: What is that amount, Bill? Do you know?

Bill Gilkeson: The amount is minimum wage.

Rep. Moore: So minimum wage is the minimum.

Bill Gilkeson: Minimum wage on Election Day, \$15 flat rate for training; and for judges \$15, for chief judges \$20 if they have to attend the county canvass. But that's a minimum.

Rep. Moore: Representative Luebke.

Rep. Luebke: What I was going to say is two things. I think that, first of all, there is somewhat of a _____ just an unfunded mandate on the counties, just a general stance on doing this. But secondly, it seems that there really is a shortage. I know in my county there really is, and what we're doing here is looking for a place where since we say elections are in the public interest, these are public employees, it's the logical first place to go. There's no reason why a private employer couldn't wander on his own and offer a similar policy. We're looking for a place.... We have a severe shortage of precinct workers, and that's why I think the bill has some merit. I think it also needs some work, but I think that.... Do you really want to suggest that the State tell the counties that they've got to pay people more?

Rep. Starnes: I would really like to suggest that we treat all of poll workers equally and fairly.

Rep. Moore: Further debate or discussion? Representative Lewis.

Rep. Lewis: Does the bill provide any kind of a mechanism to verify that the state employee who is being paid to be at the polls is actually at the polls?

Rep. Insko: The poll workers are recruited and signed up and then accounted for by the local boards of elections, so there is a tracking that takes place of who is working on Election Day.

Rep. Moore: Further discussion? Representative Kiser.

Rep. Kiser: I'm glad to see that Representative Luebke has come across to our side on unfunded mandates to counties. About a week ago we couldn't get him to say that when we were talking about provisional ballots.

Laughter

Rep. Moore: Representative Lewis.

Rep. Lewis: To the bill's sponsor: Does the bill provide a mechanism by which a state employee's supervisor can verify that the employee who's not at work is at the polls.

Rep. Insko: The employer could check with the local boards of elections to see who got paid for that work on Election Day. There is no notification that goes from the board of elections to the supervisor automatically—not in this bill.

Rep. Moore: Further debate or discussion? Rep. Starnes.

Rep. Starnes: In a lot of counties—in my county—schools are out on Election Day, and aren't the teachers paid for this day? As I understand it, they don't lose their day just because the.... It's usually an optional teacher's workday, but they're getting paid for it anyway because schools are not in. So they're getting paid for their job and then you're just creating.... Go work for the county on Election Day so their getting paid for this anyway.

Rep. Insko: That's right; they would get it. If a teacher or a public employee were to take off for a day to work on Election Day, they would not lose their pay under this bill and they would also get paid for their work, the minimal wage, to work on Election Day. That's what this bill provides for.

Rep. Moore: Representative Nye.

Rep. Nye: I wanted to ask about what you mean by.... Well what does the bill mean, I don't mean you individually, a public corporation. Does that mean a company in the State, you're directing them—forcing them—to if somebody's wanting to work the polls, then they would have 24 hours off?

Rep. Insko: That's the way the bill's worded now. It says entitled; they're entitled to. There's no.... I don't know personnel law or state personnel law enough to know whether or not a supervisor has to approve a leave. We have many leaves that are entitlements like sick leave. I don't know personnel law often enough or well enough....

Rep. Moore: Follow-up.

Rep. Nye: We're not talking about the State personnel. You're talking about private companies, aren't you, when you say a public corporation. They're filing with the State.

Rep. Insko: Well, I need to refer that to Bill. We didn't intend for private....

Bill Gilkeson: This was some language that was pulled, I believe, from the open meetings law, which attempted to describe.... The seemed like a good place to go to find all the public agencies, and they mentioned public corporation. I think what that's talking about is hospital authority or an airport authority or something of that sort that is corporate but is also public.

Rep. Moore: Follow-up.

Rep. Nye: You know, I've been doing this stuff for a long time. What is the need for this bill?

Rep. Insko: We have fewer and fewer people who are available to work at polls on Election Day and increasingly complex Election Day issues that come up with absentees, with provisional ballots and challenges for ballots, issues that need to be called into the boards of elections. This request came from the people who were sitting on the Elections Law interim committee. It came from the local supervisors—local elections supervisions—who were sitting on that committee. And their report was that they are overwhelmed on Election Day and cannot get enough poll workers and they need a pool of workers who will be available and who will be trainable to deal with complex issues and who will be physically able to deal with the long hours on Election Day.

Rep. Moore: Representative Nye.

Rep. Nye: I hope this is my last question on this, but you know this is absolutely far-reaching when you are talking about every employee of the state, every city employee, every county employee, every school unit employee, The University of North Carolina, or, if we've forgotten about anything, any other political subdivision. I don't.... It is absolutely far-reaching. It appears to me that you can be much less far-reaching and probably do the same job.

Rep. Moore: Representative Starnes.

Rep. Starnes: Representative Insko, we've got thousands of poll workers on Election Day, and this is creating a class of people or thousands of people being

eligible to be paid for this. What's the fiscal impact to the State on paying these people to work the polls?

Rep. Insko: You've raised a good question as has to do with public school employees, especially teachers. I think if a person takes a day off on sick leave or takes a vacation day that usually they come back and do their work and they make up for the work so that they don't hire a substitute to fill many of these vacancies. People still have the responsibility to perform their entire job. But it is also true that if a teacher takes a day off, then there is a substitute that has to be hired, and that's an issue we need to deal with.

Rep. Moore: Representative Starnes.

Rep. Starnes: But the fiscal impact is greater than that because these people will be paid by the State or the county or the city or someone. So the money is going to come from somewhere. There's got to be a fiscal impact. Surely we've got a fiscal note.

Rep. Insko: You know how I would address that is that we make... the State addresses employee benefits. We change the number of holidays. We change the number of sick days. We adjust those things as we see that there is a need for them and that the need is legitimate. We do that without making any adjustment in a person's salary so that the person is expected with those adjustments to accommodate and carry their full workload within those.... We added a Martin Luther King holiday; we didn't raise salaries or put any additional money into the budget in order to do that. People are expected to carry their full workload, and we occasionally make changes. We have some personal leave days that we've added so that parents can attend school parent/teacher conferences. We think that that's an important role for parents to play, that it provides a foundation of support to our society and makes sure that those children get a better education. It benefits society in the long run, so we make these kinds of laws all the time when we see that there is a benefit to the larger society.

Rep. Moore: You're recognized for a follow-up.

Rep. Starnes: But do you have the fiscal note and could members of the committee get that?

Rep. Insko: We do not have a fiscal note. We could call for a fiscal note.

Rep. Starnes: I certainly hope that we will.

Rep. Moore: I think a fiscal note would be a good idea. If there is no cost we can at least know it at that point. There may be. Representative Luebke.

Rep. Luebke: I just wanted to raise a question. You said something about a subcommittee, but it seems to me with a couple of amendments that are coming, requests for a fiscal note—and don't fall over, Representative Kiser—I agree with you that they ought to...

Rep. Kiser: I must be wrong.

Rep. Luebke: I agree with you that we ought to have some language in the bill that talks about prior permission. I would just make a friendly suggestion that we work on a committee substitute and bring it back another time rather than have a subcommittee.

Rep. Moore: I think that's the intention of letting the subcommittee meet because we have number of elections bills that we're going to have to take up as a full committee. I think we have several more. We seem to be an eventful committee this year, and we have several more coming before us. And our thought was to let it go to a subcommittee, and they'd probably come back with a PCS on this bill. And if there's any volunteers....

Rep. Ross: I would just say that if it was obvious exactly what the PCS should be at the end of this committee meeting, then we could have Representative Insko work with staff to do that. But if it's not obvious and we have several suggestions, it might be something that would be important to hash out with the subcommittee. So let's keep going through the committee meeting. I think there are even people in the audience who have some things that they want to say. And if it seems like it's more than a couple of amendments, it might be nice to get a subcommittee working on this.

Rep. Moore: Further debate or discussion from members of the committee?

Rep. Kiser: One more thing, Mr. Chairman.

Rep. Moore: Yes, sir.

Rep. Kiser: If this is a county employee that is working at the polls, he is going to be paid for his regular job by the county and paid at the same time for his work there. And I was just wondering about the ethics of that. He's being paid twice for that day's work.

Rep. Moore: Is that being directed toward the bill's sponsor?

Rep. Kiser: I'm just throwing that out for thought.

Rep. Moore: I don't see anybody rushing to answer, so we're going to move on to staff at this point. All right, we had several folks. If whoever wants to start speaking would just stand up and identify yourself and say what you'd like to say on the bill. I know several folks indicated they wanted to speak.

Leanne Winner: I'm Leanne Winner. I'm with the North Carolina School Boards Association. We have specific concerns about this bill and the implications that it would have for us to be able to run our public schools. We would actually ask you to exempt public schools from the bill. We think that on the teachers' side it is particularly problematic and costly because we would then have to find a substitute for the classroom that day. We also think, Representative Starnes, that school districts will now, because of the change in the school calendar law last year, that most school districts will now be having school on Election Days and not having teacher workdays. We think it is problematic beyond the teachers because we don't have substitutes for our kitchen staff, our custodial staff; and if those people wanted to participate, we don't have backups for those people and we think it could get to the point where the schools were not operational for the day. So we would ask to please be exempted from the bill. Thank you.

Rep. Moore: Further members of the public wishing to comment on the bill? All right, seeing no further comment.... Since there's no further discussion, if you want to try to make a few amendments, we'll recognize you for those, Representative Insko, unless you want to....

Rep. Insko: If I may, Mr. Chairman, what I'd like to do is just go over the notes I've made and see if we could come back with a committee substitute that would address these. One has to do with narrowing the scope of who is eligible to take this leave, especially not to eliminate the local boards of elections personnel would probably be a good idea. Dealing with the issue of the word "entitlement" on line 11 to make sure that we have prior permission built in. Dealing with the issue of clarifying public corporations. I guess the dual pay—whether or not they would get paid with both their salary and their board of elections pay. Did I miss anything?

Rep. Moore: Representative Lewis.

Rep. Lewis: I think there needs to be some provision in the bill that provides accountability. I know 99 percent of our state employees would never abuse the right to take three extra days off during the election year. But for that one percent that might, there needs to be some way to verify that they actually worked at the polls for at least eight hours.

Rep. Insko: Got that. Thank you.

Rep. Moore: Representative Starnes.

Rep. Starnes: We've heard from the School Board Association. Have we heard from the League of Municipalities or the County Commissioners Association?

Rep. Insko: I haven't had any response. I did talk informally to somebody at the county commissioners and they are aware of this bill and I didn't get any negative feedback from them about it.

Rep. Moore: Representative Kiser. Did you....

Rep. Kiser: Yes. I need a little help in understanding this 24 hours per year. As I read this, I don't believe a person has to work 24 hours. I believe he could work 8 hours and take 24 hours off. Am I wrong about that?

Rep. Insko: I think that you're talking about working on Election Day.

Rep. Kiser: Uh huh.

Rep. Insko: If I understand this 24 hours per year, because most people work 8 hours shifts, the only time they would be counted as taking off from their work would be during that 8-hour shift. Now for some law enforcement people who work 12-hour shifts, then they would have a 12-hour debit counted if they took off one day. But this 24 hours per employee would actually allow an employee, if they worked 8-hour shifts, for them to take off three different full days, and they might work at the polls from 6 a.m. to 9 p.m., but they would only be gone from work for 8 hours.

Rep. Kiser: But my question is, is it clear the way the bill is constructed?

Rep. Moore: Mr. Cohen, did you want to respond to that question?

Gerry Cohen: What it says in the bill on lines 11 and 12 is that you're entitled to up to 24 hours per leave of community service...leave to serve as a precinct official or as a temporary employee. So if you're not actually serving as a precinct official or temporary employee, I don't think you're entitled to a leave. I would say that that's clear—that it's hour per hour during the same time period. In other words, if you're being paid from 9 to 5 and, for instance, in Wake County you're on these voting sites from 11 to 7.... I took a few days of regular vacation to serve as an election official. I only took vacation from 11 to 5 because I was actually here from 9 to 11. So, as an example, I took 6 hours of vacation time to work the early voting site. From 9 to 11, I was here and got paid, and then

from 5 to 7, I wasn't supposed to be here anyway, so it wasn't leave at all because that wasn't time that I would normally be working.

Rep. Moore: Yes, Representative Harrison.

Rep. Harrison: I'm just curious. Do other states have provisions like this?

Rep. Insko: I'd have to refer that to staff.

Bill Gilkeson: We have not checked that, but we can.

Rep. Moore: Does anyone know the answer? Representative Starnes.

Rep. Starnes: I'm curious to know how many counties were having trouble staffing the polls. And I'd like to hear from the State Board of Elections, but I know that in Caldwell County it hasn't been a problem, but you know maybe there is a problem, but I don't know how widespread it is.

Rep. Ross: Representative Starnes, Johnnie McLean is here from the Board of Elections and she can address it. I can tell you that I got an e-mail from the head of my board of elections, Cherie Poucher, who was here with the committee last week saying, "Sorry I couldn't be here. Boy would this bill help Wake County." So at the very least, I've heard from Wake County that it would be helpful, but Johnnie is here.

Rep. Moore: Johnnie do you want to speak on that on behalf of the board?

Ms. McLean: I will do my best. I am Johnnie McLean, Deputy Director at the State Board of Elections, and in many of the counties it is a problem every election to have enough staff at each of the polling places. The one-stop, absentee, or early voting sites have become particularly problematic because that is for an extended period of time. And the pool of workers from which they have to draw becomes smaller each year, and that's why the local elections boards were requesting this bill.

Rep. Moore: Representative Starnes, do you have a follow-up.

Rep. Starnes: You said pool. Why does it become smaller each year? Why is that?

Ms. McLean: Because...one of the reasons is that most of the people who work at the polling places are retired people, and they reach a point where they feel that they cannot put in those hours that are required on Election Day. Unfortunately, and I'm not trying to be ugly here, but unfortunately they die. I saw a newspaper article where one of the comments made about a particular election place was that this is the first time that I've been here and I haven't seen Mr. So and So who has always worked these

elections, and this is the first election since his death. So very often what happens, the younger members of the work force are working, and that leaves the pool of those who are not employed 8 to 5 or 9-5 as being those who have already done their term, if you will, as an employee and they are now enjoying retirement. And sometimes they just get tired.

Rep. Moore: Further debate or discussion on the bill from the committee?
Representative Lewis.

Rep. Lewis: Mr. Chairman, would you accept a motion to refer this to a subcommittee to be appointed by the chairs?

Rep. Moore: I would. I was going to see if there was any further comment, but that motion will be entertained, especially if I don't see any hands rising for any more comment.

Rep. Luebke: I just really... as chair of one committee, subcommittees just give committee members who are already busy even more work to do. And I think in this particular case, you've gotten pretty clear comments from our members, and I just don't think the subcommittee's going to do anything more than take the notes that Representative Insko's already collected and staff has heard.... I would just rather than assigning people to a subcommittee, I'd rather see us come back with a committee substitute whenever the chairs think there's time to put it on the calendar.

Rep. Moore: Representative Kiser.

Rep. Kiser: I've heard some very serious complaints here, particularly about the school system; and that troubles me. And then it makes me think that there are other agencies that have not been consulted on this and I think a subcommittee would be fine and ask for the Association of County Commissioners and the League of Municipalities to give us some comment on it.

Rep. Moore: Here's what we're going to do is entertain that motion at this time to refer this to a subcommittee, the members being named by the chairs. All in favor of the motion please say aye. Those opposed no. The ayes have it. First I want to ask if there's any volunteers to be on the committee. Okay, Starnes. Who else?

Rep. Ross: Holliman, Lewis. Okay.

Rep. Moore: Representative Luebke, do you want to since you're one of the co-sponsors of the bill?

Rep. Luebke: I really decline to be on the subcommittee. I don't think it's needed.

Rep. Moore: Okay. Representative Harrison would you like to serve on the committee?

Rep. Harrison: Happily.

Rep. Blust: I would note that Representative Luebke is the Finance Committee Chairman, and we've only had one meeting of that committee so far.

Rep. Moore: Okay. The co-chairs of that subcommittee will be Representative Starnes and Representative Holliman. And that committee will report back to this committee once it finishes its deliberations.

I don't see any further business before the committee today. At this time we'll entertain a motion to adjourn made by Representative Kiser, seconded by Representative Lewis. All in favor aye, opposed no. We are adjourned. (Adjourned at 1:40 p.m.)

AGENDA

HOUSE OF REPRESENTATIVES Committee on Election Law and Campaign Finance Reform

**March 9, 2005
Representative Tim Moore, Presiding**

HB 127, Public Employee Poll Workers

Representatives Insko, Preston

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION**

You are hereby notified that the Committee on Election Law and Campaign Finance Reform will meet as follows:

DAY & DATE: **March 9, 2005**

TIME: **1:00 p.m.**

LOCATION: **1425 LB**

The following bills will be considered (Bill # & Short Title & Bill Sponsor):

HB 127, Public Employee Poll Workers, Representatives Insko, Preston

Respectfully,
Representatives Tim Moore and Deborah Ross
Chairs

I hereby certify this notice was filed by the committee assistant at the following offices at
1:00 p.m. on March 7, 2005.

___Principal Clerk
___Reading Clerk - House Chamber

Nancy Garriss (Committee Assistant)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

1

HOUSE BILL 127

Short Title: Public Employee Poll Workers.

(Public)

Sponsors: Representatives Insko, Preston (Primary Sponsors); Alexander, Coates, Farmer-Butterfield, Luebke, and Weiss.

Referred to: Election Law and Campaign Finance Reform.

February 9, 2005

A BILL TO BE ENTITLED
AN ACT TO ALLOW LEAVE TO PUBLIC EMPLOYEES FOR WORKING AS
PRECINCT OFFICIALS, AS RECOMMENDED BY THE JOINT SELECT
COMMITTEE ON ELECTRONIC VOTING SYSTEMS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 163 of the General Statutes is amended by
adding a new section to read:

"§ 163-41.3. Leave for public employees to work as election officials.

Every employee of the State of North Carolina or of a city, county, school
administrative unit, constituent institution of The University of North Carolina, or other
political subdivision or public corporation in the State is entitled to up to 24 hours per
year of community service leave to serve as a precinct official or as a temporary
employee of a county board of elections in a voting site, including a one-stop site as
provided in G.S. 163-227.2. As used in this section, 'community service leave' for an
employee means absence with full pay in addition to any vacation leave or sick leave to
which the employee is already entitled. This section does not entitle an employee to
additional community service leave in addition to leave that employee received for the
equivalent election service under an equivalent program of the employer."

SECTION 2. This act is effective when it becomes law.



HOUSE BILL 127: Public Employee Poll Workers.

BILL ANALYSIS

Committee: House Election Laws and
Campaign Finance Reform

Date: March 9, 2005

Version: First Edition

Introduced by: Reps. Insko and Preston

Summary by: William R. Gilkeson
Committee Co-Counsel

SUMMARY: *The First Edition of House Bill 127 would give every public employee in North Carolina state or local government the right to take up to 24 hours per year of "community service leave" to serve as a precinct official or as a temporary employee at a voting site such as an early voting site. "Community service leave" would be paid leave in addition to vacation leave or sick leave. The bill was recommended by the Joint Select Committee on Electronic Voting Systems. Effective when it becomes law.*

CURRENT LAW: The election law defines "precinct official" to include the chief judges, judges, and assistants who staff the precincts. G.S. 163-41(a). They are appointed by county boards of elections from nominations made by the chairs of the county political parties. Precinct officials are required to be paid the State minimum wage for service on election day, \$15 for training, and \$20 (for chief judges) or \$15 (for judges) if they are required to attend the county canvass. County boards of elections usually hire temporary employees (often veteran precinct officials) to staff early voting sites.

Currently, employers are prohibited from discharging or demoting their employees because they serve as precinct officials on election day or on canvass day. (That provision, enacted in 2001, contains certain protections for employers.)

"Community service leave" is a concept created by the State Personnel Commission for State employees subject to the State Personnel Act. It gives 24 hours paid leave per year (36 if tutoring) "in recognition of the State's diverse needs for volunteers to support schools, communities, citizens and non-profit organizations, and recognizing the commitment of State employees to engage in volunteer service."

BILL ANALYSIS: The bill would give every public employee, state or local, in North Carolina to right to up to 24 hours of community service leave to serve as a precinct official or temporary employee of a county board of elections in a voting site including a one-stop (early voting) site. "Community service leave" would be paid leave in addition to vacation or sick leave to which the employee is already entitled. If the employer already has a program equivalent to the community service leave in the bill and the employee has already taken leave under that program for precinct or voting site work, the bill would not entitle that same employee additional leave.

Margie Penven (Rep. Ross)

From: Nancy Garriss (Rep. Tim Moore)
Sent: Wednesday, March 09, 2005 2:52 PM
To: Rep. Edgar Starnes; Rep. Hugh Holliman; Rep. David Lewis; Rep. Pricey Harrison
Cc: Rep. Tim Moore; Rep. Deborah K. Ross; Margie Penven (Rep. Ross); Pattie Fleming (Rep. Starnes); Carol Bowers (Rep. Holliman); Marie Strickland (Rep. Lewis); Anne Wilson (Rep. Harrison)
Subject: Subcommittee on Election Law and Campaign Finance Reform

Rep. Starnes, Rep. Holliman, Rep. Lewis, and Rep. Harrison,

The Co-Chairs Moore and Ross would like the subcommittee to report back on Wednesday, March 30, 2005. Thank you.

Nancy

VISITOR REGISTRATION SHEET

Election Law and Campaign Finance Reform Committee

March 9, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Shen Greaves

PENC

Loanne Nimmo

NCEBA

Johnnie McLean

SBE

Michael Houser

NCAE

Ed King

NC Green Party

Frederick Lynn

SBE/DOT

MINUTES
House Committee on Election Law and Campaign Finance Reform
March 23, 2005
1:00 p.m., Room 1425
Representative Ross, Presiding

The House Committee on Election Law and Campaign Finance Reform met at 1:00 p.m. on Tuesday, March 23, 2005, in Room 1425 of the State Legislative Building.

Members present were: Representative Tim Moore, Co-Chair; Representative Deborah Ross, Co-Chair; Representative Joe Kiser, Vice-Chair; Representative Paul Luebke, Vice-Chair; Representative Mickey Michaux, Vice-Chair; Representative John Blust; Representative Walter Church; Representative Pricey Harrison; Representative Hugh Holliman; Representative George Holmes; Representative David Lewis; Representative Edd Nye, and Representative Edgar Starnes.

There was one bill on the agenda: House Bill 88, Electoral Fairness Act, sponsored by Representative Paul Miller.

Co-Chair Deborah Ross called the meeting to order and introduced the pages and sergeants-at-arms.

The Chair recognized Representative Miller to explain House Bill 88. He said the purpose of the bill was to open the electoral process to make it easier for third party candidates and members of third parties to participate and express their views.

Mr. Bill Gilkeson, committee staff, explained the provisions of the bill in detail and answered questions from the committee.

The Chair recognized Ms. Barbara Howe, State Chairman of the Libertarian Party, to speak on the bill. Ms. Howe said the Libertarian Party supported the bill but would like to see the effective date changed to immediately upon passage because they were already in their petition drive. Ms. Howe answered questions from the committee.

The Chair recognized Ms. Elena Everett, Chair of the North Carolina Green Party, and Ms. Everett said the Green Party supported House Bill 88 in its present form.

The Chair recognized Mr. Michael Badnarik, Libertarian candidate for President of the United States in the 2004 election. Mr. Badnarik said he strongly recommended the passage of House Bill 88.

The Chair recognized Mr. Ed King, retired history teacher and member of the Green Party. Mr. King spoke about why he thinks third parties are necessary. Mr. King answered questions posed to him by committee members.

The committee discussed the bill and Rep. Lewis asked Mr. Gary Bartlett, Director of the State Board of Elections, how the bill would affect straight party votes. Mr. Bartlett said if it were a recognized party, when somebody voted a straight ticket it would be for the members of that party that were candidates for office.

Representative Kiser sent forth an amendment to require any candidate running for office to pay a filing fee equal to one percent of the annual salary of the office sought.

Staff suggested a perfecting amendment to change the title accordingly, and Representative Kiser agreed to the perfecting amendment. The motion as perfected was passed.

Representative Michaux sent forth an amendment to prevent a person from filling a vacancy in the nomination of another party after losing the primary while representing a different party. The amendment passed unanimously.

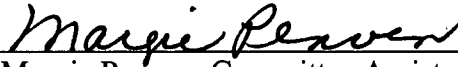
Representative Luebke moved to take the amendments and roll them into a proposed committee substitute and to give the committee substitute a favorable report, unfavorable report as to the committee substitute bill. The motion carried.

The meeting was adjourned at 1:53 p.m.

A verbatim transcript of this meeting is attached hereto along with all pertinent documents and handouts.

Respectfully submitted,

Representative Deborah Ross, Presiding Chair


Margie Penven, Committee Assistant

TRANSCRIPT
House Committee on Election Law and Campaign Finance Reform

1:00 p.m. on March 23, 2005

Room 1425, LOB

Representative Ross, Presiding

Rep. Ross: Well gentlemen, it appears we have both a quorum and a bill sponsor. Welcome back to Election Laws. We hope that you enjoyed your week off. Today we have four pages, and when I call your name please stand up and wave so the members will get to know you: Ashley Vaughn from Union County who is sponsored by Representative Gibson. Thank you, Ashley. Colby Anderson from Mecklenburg County, sponsored by Speaker Black. Jennifer Fuller from Wake County, sponsored by Representative Martin. And Ben Azevedo from Wake County, sponsored by Representative Dollar. And then our sergeant-at-arms staff are Walter Spell and James Worth. We're very happy to have you with us today.

Today we are taking up House Bill 88, Electoral Fairness Act. We have a few people in the audience who would like to speak on this bill. Of course we have Representative Miller, who's sponsoring this bill. The Committee has seen this bill before—not this year's committee—but last session's committee. So several of you are familiar with it. But we'll turn the podium over to Representative Miller to talk about his bill.

Rep. Miller: Thank you madam chair and members of the committee. I appreciate the opportunity to present this bill before this committee. As the chair has mentioned, this bill roughly in its form now has been through the Elections Laws Committee in the previous session. But I'm just going to recap the highlights and be happy to answer and question, and any questions I can't answer we can pass on to staff.

The purpose of this bill is basically to open the electoral process. It's basically to make it easier for third party candidates and members of third parties to participate and express their views.

As a Democrat, I'm fairly certain that with more participation that sooner or later many of these same members will eventually become Democrats. And if I was a Republican, I'd think that probably many members would probably become Republican, too. Also as a Democrat, I think that probably if you have third party candidates on the ballot, they will probably hurt Republicans and help Democratic candidates, and I'm sure for my colleagues who are Republicans these same third party candidates will probably hurt Democrats. But seriously though, basically this bill would just allow greater participation by third party members.

In terms of our relationship to other states, we probably have the more draconian laws that make it very difficult for third party candidates, and I think everyone would agree that it's a good move by us to allow greater participation, especially by those who are probably younger who may not see the light of the Democrats or Republicans yet but will in the future to participate. I'd be happy to answer questions and look forward to your favorable support. Thank you.

Rep. Ross: Thank you, Representative Miller. Why don't we have Bill or Erika...? Which one of you is in charge of that? Bill? Let's have Bill Gilkeson come up and take us through the bill so everybody understands what's in the bill and give the members an opportunity to ask some questions and then I know we do have a few people in the audience who would like to share their views on the bill. So Bill Gilkeson to explain House Bill 88.

Bill Gilkeson: You should have a summary in front of you that is like four or five...several pages. It's kind of long, but if you look on the second page, that might be a good place to start. There's a chart there that shows provisions and current law and provisions in House Bill 88 and how House Bill 88 would change the current law. And the bill affects both how new parties can get on the ballot and how unaffiliated statewide candidates can get on the ballot. Currently, a new party has the following hurdles: In order to get access to the ballot, in order for candidates of a new political party to get their candidates on the ballot under their party's label, they have to collect signatures on petitions of registered voters in North Carolina equal in number to two percent of the turnout in the last governor's race. And two percent of the turnout in the governor's race in 2004 was 69,734. So in order to get on the ballot as a new party, you have to collect 69,734 names on petitions. Two hundred of those have to be from each of four congressional districts, so there's some kind of requirement for distribution. A new party to stay on the ballot, once they've gotten on the ballot, they get to go through a leap year election that has both presidential and a governor's race on it, and they can stay on the ballot if their candidate for either president or for governor gets ten percent of the votes. And you can see there what that would be for 2004. The new party candidate for president had to get 350,101 and 348,669 votes for governor. The closest anybody came in 2004 was that the Libertarian candidate for governor received 52 thousand—and she's here so she probably remembers exactly, but it was basically 52,513 votes. That's new parties. They have to get their signatures filed with the Board of Elections by June 1st of the election year.

Unaffiliated candidates running for statewide offices are subject to a different formula. They have to get two percent of all registered voters

as of January 1st of the election year in which they are running; and if you look at the registration figures closest to January 1st of this year, that would be 107,762 signatures on petitions. They have to get those in by the last Friday in June of the election year.

There was a candidate who wanted to run as an unaffiliated candidate in 2002 for the U. S. Senate named Paul Delaney, who challenged this as being unconstitutional, and last July a U. S. district court in Greensboro agreed with him on this basis: He said the difference between the 107,762 signatures that an unaffiliated candidate running statewide has to collect and the disparity between that and the 69,000 that a new party has to get is a disparity that has no rational basis that he could tell. And, therefore, it infringed against the expressive rights and the associational rights guaranteed by the First Amendment to the Constitution for candidates who want to run without a party label for a statewide office. So that two percent of all registered voters requirement, which would bring in the 107,762 signatures has been held unconstitutional and we currently do not have a valid provision for statewide, unaffiliated candidates to get on the ballot. So part of what the bill would do would be to get the state to a point where it can have a valid procedure.

Here's what the bill does. It changes the access requirement for new parties and for statewide, unaffiliated candidates so that they are the same. That's what the court found was a problem in the Delaney case last summer. It also drops the percentage—the number of signatures—that are required. For a new party, you see in that last column, one half of one percent of the turnout of the governor's race, which would be 17,434 signatures—that's contrasted with the 69,000 currently.

For the new party to stay on the ballot, instead of having to poll ten percent of the vote for the party's nominee for either governor or president, it would only have to poll two percent, and you can see what that would be. Still the Libertarian candidate would not have gotten quite enough to meet that, and the party would lose its ballot access, but it would be significantly lower than the 348,000 votes that they had to get in 2004.

This bill also changes the deadlines for when a new party has to do things. It moves them back two months, actually before the major party primaries. Currently new parties have to get their signatures into the Board of Elections by June 1st of the election year. This would change it to April 1st of the election year. Currently they have to nominate their candidates in a convention and report those nominees to the State Board of Elections by July 1st of the election year. This would move that back to May 1st. So in both cases, the new party would have to get on the ballot and to nominate its candidates before the party primary. For

unaffiliated candidates, they would be, as the court indicated it should be, they would be given the same threshold of signatures as new parties, which would be 17,434 as opposed to the current 107,000. And finally, the bill doesn't change the deadline for when unaffiliated statewide candidates have to get their petitions into the State Board of Elections. That's the basics of what this bill does.

Rep. Ross: Okay. Yes, we'll take questions from the committee and then we'll take the speakers. Representative Holmes.

Rep. Holmes: Bill, basically then, are you saying that accept for the petitions that the new parties are governed the same way as the two major parties are now; that is, for deadlines of naming their candidates for the general election?

Bill Gilkeson: It's pretty close. The party primaries have to be held the Tuesday after the first Monday in May. Of course, sometimes that's been delayed in recent times; but that's what it is. There could be a second primary, but this would require that the new party has to get its nominees in by May 1st, which is very close to the primary.

Rep. Ross: Representative Lewis and then Representative Kiser.

Rep. Lewis: Are there provisions in this bill or in comp law that would prevent a losing candidate in one of the major party primaries from using this new means to get on the ballot as an unaffiliated candidate?

Bill Gilkeson: There is provision in the unaffiliated candidates statute that says a losing candidate in a party primary is ineligible to be on the ballot as an unaffiliated candidate. That's also in the write-in statute. A new party, under current law, is not restricted in whom it could nominate. It could nominate a defeated candidate, but this bill would put the nomination deadline before the primary so they wouldn't necessarily know. What they could do, it's possible that a new party could select a nominee by May 1st, and then that nominee could resign and the new party could name as a replacement a candidate who was a defeated candidate in the primary. There's no prohibition against that.

Rep. Ross: Representative Kiser, Nye, Starnes, and then Michaux.

Rep. Kiser: Thank you, madam chairman. Bill, is there a filing fee required for these people that would qualify?

Bill Gilkeson: No. There's no filing fee for the candidates who are nominated by the new parties in the convention, and there's no filing fee required for an unaffiliated candidate.

Rep. Ross: Follow-up.

Rep. Kiser: I think you would have a lot less frivolous candidates filing if they had to step up there and put their money down. They will have these conventions and they'll come out for the other local offices and they'll end up lining them up against you, and they don't have to pay anything—it doesn't cost anybody anything. I don't understand why everyone doesn't have to pay the filing fee.

Rep. Ross: Representative Nye.

Rep. Nye: Bill, I wanted to ask about the unaffiliated. The courts said it was unconstitutional. If nothing changes in this or anything else, what happens to the unaffiliated? I supposed they get in on the same grounds as a new party.

Bill Gilkeson: I'm not sure that's necessarily true. That would probably have to be decided by a court. I suppose a candidate who wanted to be on the ballot as an unaffiliated candidate could file a suit and say just put me on the ballot. I'm not required to pull up any signatures at all.

Rep. Nye: Well, that would be good for the legal community, but you lawyers could handle that.

Rep. Ross: Representative Nye, I assure you we're going to have an omnibus election law bill, and that is one of the issues that will be addressed in that omnibus election law bill. But it never hurts to have it in two bills.

Representative Starnes.

Rep. Starnes: Thank you, madam chair. Bill, as I understand this, new parties and new candidates would be governed under the same laws as the two major political parties. Is that right?

Bill Gilkeson: Well, under some of the same laws—obviously not the primary. They don't have to go through a primary, and, of course, candidates in existing parties don't have to collect anything on them—don't have to collect any signatures on petitions.

Rep. Starnes: Follow-up. Well, I'm more interested in the process for a new party in nominating their candidates. And let's say they choose to have a primary. Can the new parties have a primary?

Bill Gilkeson: There's no provision for that. Actually, they are required—and you can see it in the bill in Section 3—they are required to nominate their candidates in a convention.

Rep. Ross: Do you have a final one because I want to get to Rep. Michaux?

Rep. Starnes: Well, it's not my final question but it is a follow-up to...
Then, let's say a third party will...they have their petition, they nominate their candidates and then in that next general election they receive the two percent threshold so that they become a recognized political party in North Carolina. Then in the subsequent election, are they eligible for a primary?

Bill Gilkeson: Yes.

Rep. Starnes: And so then if the Libertarian Party or the Green Party would get two percent of the vote, and then they had primary and then there's a runoff, the State would pay for these elections.

Bill Gilkeson: Right. Yes.

Rep. Ross: Okay. Let's get Representative Michaux's question in.

Rep. Michaux: Bill, going back to the candidate who runs and loses, that candidate cannot then come back. You said that that candidate could come back and become.... For instance, the Democratic candidate runs and loses...

Bill Gilkeson: Right.

Rep. Michaux: ...in the primary. Could that candidate then run as a Libertarian?

Bill Gilkeson: Under the current law, yes. The Libertarian Party could nominate that person and there'd be no prohibition on that in the current law.

Rep. Michaux: But there is a prohibition against write-in candidates...

Bill Gilkeson: Right, and unaffiliated candidates. They have the so-called "sore loser" provision.

Rep. Michaux: To me, I think somewhere or other that ought to be cleared up because if a candidate loses in the primary, if he can then run under a different flag, then why can't that candidate who loses that party's election also run as a write-in?

Rep. Ross: Okay. Sounds like you might want to be thinking about an amendment.

Representative Blust.

Rep. Blust: Addressing that, I think that's the big reason to...changing from May to July when they'd have to have their convention and their slates goes a

long way to closing that loophole of a losing candidate just going to that convention and getting nominated. I guess, if I understand Mr. Gilkeson right, that the convention could nominate someone else, then that person could step down and then be replaced. But wouldn't that be true of say the Republicans and the Democrats now? I mean couldn't...there's a Republican candidate, the Democrat loses a primary, then the Republican candidate could step down, the Republicans could replace him with the losing Democrat, could they not?

Bill Gilkeson: That is true.

Rep. Ross: Okay. Representative Starnes, you had another question?

Rep. Starnes: Well, I do hope that we will have an amendment that will address that issue and in recent history that has happened. Representative Steve Wood ran for office on the Republican Party and lost the primary and then showed up again on the ballot in November as the Reform Party candidate. So we do need something new. But I would also like staff to prepare an amendment requiring filing fees for all candidates who run.

Rep. Kiser: It's already done.

Rep. Ross: Before we entertain these amendments because it sounds like we might have two amendments, and they will give staff a little time to draft them, we do have a few members of the audience who would like to speak, and so I'd like to ask you to...I'll call on you each and, hopefully, you can keep your remarks to two minutes because I'd really like to be able to move this bill today, and we have some amendments to do. So our first person who has asked to speak is Barbara Howe from the Libertarian Party. Barbara. Please state your full name and any other identifying information.

Ms. Howe: I am Barbara Howe. I am the current State Chairman of the Libertarian Party. I was the gubernatorial candidate for 2004—only 298,000 votes short of the keeping on the ballot. We spent \$100,000 getting on the ballot. Had I had that \$100,000 in my coffers to put in my campaign, maybe I could have...I could have easily passed the two percent threshold.

The Libertarian Party actually supports this bill in its current form. The only issue we have with it right now—Representative Miller, I think Sean Paul talked to you about this—is changing the effective date to effective immediately upon passage because we are already in our petition drive. And so, we would like it to be relevant to us this year. We've already collected over 20,000 signatures so to help us this year, it would have to be effective immediately upon passage. It's basically the

same bill you considered last session. We believe that if you give this bill up to half of that number for petitioning for the primary, it is something that a committed group of volunteers could do on their own. Seventeen thousand signatures is not a walk in the park, but it's doable by a strong core group of volunteers who are committed to their calling and want to get out and beat the bushes and gather signatures.

The 69,000 figure is a big hurdle. You'd have to bring these petitioners in here to get that number met by the deadline. So that's one of the views we find objectionable. It brings us in line with most of the rest of the country as far as ballot access. Richard Winger of Ballot Access News analyzes North Carolina's ballot access law and says we're second or third most difficult ballot in the nation to get on. I don't think North Carolina wants that distinction. You want to give the voters of North Carolina the opportunity to have the choices they want. Frequently people say, "I'm not going to the polls because there's nobody on that ballot I want to vote for." And rather than having them vote against somebody, let's offer them choices so they can vote for somebody.

We appreciate your consideration and hope you'll vote favorably for H88. I'll be glad to answer questions with regard to deadlines and fees and conventions, too.

- Rep. Ross: Thank you. Are there any questions for Mrs. Howe before we hear from our next speaker? Representative Starnes.
- Rep. Starnes: Mrs. Howe, did any of the Libertarian candidates try to run statewide for the nonpartisan judicial races?
- Ms. Howe: I do not believe so. I think you have to be an attorney, and we don't have that many attorneys.
- Rep. Starnes: Under the terms of this bill, how would a third party candidate run for one of the nonpartisan judicial races.
- Ms. Howe: I assume the same way that.... And I would also like to point out that this prequalifying in 2000, I put down my \$1400 to run for governor even though we didn't have a primary. So, I want Representative Kiser to know that. We did pay filing fees in 2004.
- Rep. Kiser: That's fine.
- Rep. Ross: All right. I'm going to switch between the Libertarians and the Green Party. I don't want to give anybody any extra preference. We have Elena Everett from the Green Party.

Ms. Everett: Thank you. My name is Elena Everett...

Rep. Ross: Come forward a little bit closer so everybody can hear you.

Ms. Everett: Okay. I'm the current chair of the North Carolina Green Party. Barbara already covered some of the things I wanted to cover. Just that we're among the five worst states in the nation right now as far as ballot access, and I wanted to give you a little history about why that is the case. Before 1981, the threshold for ballot access was 10,000 signatures for a new party. But in 1981, there was a party called the Socialist Workers Party that got ballot access. In sort of a knee-jerk, red scare reaction the Legislature upped the signature requirement to make sure that wouldn't happen again and that no other party got on the ballot, and it worked. And actually the Republican Party of North Carolina acknowledges that in its platform when it says that the current ballot access laws are meant to limit access and debate and they support lowering the threshold in their platform. And it goes on to say that they support it because the Republican Party is not afraid of the people's voice. So whether you are a Republican or a Democrat, I hope you will take that to heart and support HB 88 in its current form. Thanks.

Rep. Ross: Any questions for Ms. Everett? Okay. Michael Badnarik from the Libertarian Party. Did I say your name right?

Mr. Badnarik: Yes, you did. Thank you very much. Good afternoon. My name is Michael Badnarik. I was the Libertarian candidate for President of the United States in 2004, and the current ballot access laws in North Carolina personally and adversely affected my campaign.

In 1870, Congress passed the 15th Amendment recognizing the rights of Blacks and other minorities to cast their ballots; however, Jim Crow laws and poll taxes made that practically impossible. Legally you could vote, but it was very, very difficult or impossible to do so. I believe that the current ballot access laws make it legally possible for our candidates to get on the ballot, but it becomes almost a practical impossibility; and in the spirit of freedom of speech and giving the voters of North Carolina more options on the ballot, I strongly recommend the passage of this bill. Thank you very much.

Rep. Ross: Any questions from the committee for Mr. Badnarik? Okay. We now have Ed King from the Green Party. Mr. King.

Mr. King: I'm a retired history teacher. I'm going to address the question of why we need to have a third party system. And basically most of you know your history about how most of our progressive legislation of the 20th Century came into being. The Progressive Party and the Populist Party

in the Nineteenth Century ran candidates and had platforms and those issues and planks from those platforms became part of the Democratic and Republican Party later on and part of the establishment. And that's the way, I think, that new ideas have gotten introduced in American history very frequently is through a third party that wasn't threatening to the two established parties and had new ideas and new blood and new leadership. Here in North Carolina we don't have any party that represents women. We don't have any party that represents children. We don't have any party that represents Hispanics. We don't have one party that represents African Americans. So, therefore, it's very important that those people who are in those groups feel that they have somebody that represents them in a party that's not only for them. And that's why I think that third parties are very necessary. We have a diverse population. We have diverse ideas. We have different ideas about growth, how fast, what direction; and it's important, I think, for the state to have as many ideas in the market place—in the free marketplace of ideas—as it is possible to have in order to do that. So third parties, I think, are very helpful to the growth of the state economically, politically, and culturally. Thanks.

Rep. Ross: Any questions for Mr. King? Representative Starnes.

Rep. Starnes: Mr. King.

Mr. King: Yes.

Rep. Starnes: To your knowledge, how many members does the Green Party have in North Carolina?

Mr. King: Depends on what day of the week you ask.

Rep. Starnes: As of today.

Mr. King: As of today? Well I didn't poll everyone this morning when I got up. I would say there is a clump of Greens—this is the closest I can get to a seismic estimate—a clump of Greens in Wilmington, a clump of Greens in Charlotte. There's a clump of Greens in Winston-Salem, a clump of Greens in the Triangle area. So there is a clump of Greens everywhere in the state, pretty much. So that's about as close as I can get to that.

Rep. Starnes: How many's in the average clump?

Mr. King: Have you ever heard of Margaret Meade? Margaret Meade said where there's only two or three people who have done most of the starting of ideas and that is the way that change has taken place, pretty much. That's a paraphrase; that's not exactly. So we go along with the

Margaret Meade principle that it's not how many people you have when you start, but how many you have at the end.

Rep. Starnes: Well I guess you would claim somewhere between one and two hundred members in the states.

Mr. King: It depends what degree of activity, right? I mean not everybody who's a Democrat is probably an active Democrat, no more than everybody who's a Republican is an active Republican. It's the same way with the Greens.

Rep. Ross: We have a question from Representative Luebke.

Rep. Luebke: Actually, I want to just comment on the bill.

Rep. Ross: Okay, just to comment on the bill. Thank you, Mr. King. Representative Luebke to comment on the bill and then are our amendments ready? At least one is. Representative Luebke and then Representative Holliman.

Rep. Luebke: Thank you, madam chair. I think the thrust of House Bill 88 is really to make it possible for voters to have more choices, and I also think that the bill, the goal, the requirement say of 17,000 is not a small requirement and so it is going to take a committed group of volunteers from that party. It's real different from 69,000 whether you're in the business of having to hire people to do this. So it seems to me the bill reaches a compromise level in terms of making it easier for people to have access. If I as a Democrat don't present ideas that are attractive enough for people in my district, I think it's appropriate that Libertarians can ring the bell at my house if they didn't have to have different requirement fees for getting on the ballot. I think we should be in favor of that. So I realize there are amendments coming forward, but I would like at the appropriate time to make a motion for a favorable report.

Rep. Ross: Okay, thank you, Representative Luebke. We'll hold that motion until after the amendments. We have Representative Holliman and then Representative Holmes.

Rep. Holliman: Thank you, madam chairman. What impact, if any, does this have on the non-statewide races?

Rep. Ross: Mr. bill sponsor?

Miller: If you're analyzing impact, obviously, if you have a situation where there's a new party that met the requirements and then in the next election cycle became a party that basically that ran by the same standards as the Democrats and Republicans, if there were no Democrat

or Republican primary and there were, for instance, a Libertarian primary that it would affect, of course, the cost of elections for those local offices. I guess, considering the numbers etc., I would say that it's probably unlikely, but that I guess is my best judgment on how it will affect local....

Rep. Ross Representative Holliman.

Rep. Holliman: When they get access to the ballot, that's all....

Rep. Ross: Representative Holliman, there were several Libertarians who ran for the General Assembly, for example. Representative Michaux has had folks up. Representative Holmes then Representative Lewis then Representative Blust.

Rep. Holmes: I wanted to ask Representative Luebke a question.

Rep. Ross: Does the gentleman yield?

Rep. Luebke: Of course I yield.

Rep. Holmes: Representative Luebke, I know that you are interested in this bill, but my question to you would be don't you think that every party that qualifies should be governed by the election board rules as far as filing fees, primaries, the whole gambit? Everybody work on a level playing field.

Rep. Luebke: In general, yes.

Rep. Ross: Representative Lewis.

Rep. Lewis: This is for the bill sponsor. Does this bill or are there laws that exist if.... How will this affect straight party votes? Will the Greens, for instance, will they have a box in the margin? All the Greens get the votes? I'm just curious.

Rep. Ross: We do have the head of the State Board of Elections, Gary Bartlett. Gary do you mind addressing the committee on that issue?

Mr. Bartlett: If it's a recognized party, when somebody votes the straight ticket it would be for the members of that party that have candidates for offices.

Rep. Ross: Okay. Representative Blust.

Rep. Blust: Thank you, madam chairman. I just decline to Representative Holliman's question about how it affects statewides. To me that's the most—or local—and legislators. That's the most important reason I see

for enacting this bill because what we've done whether purposeful or not—and we could argue that—through our redistricting plans we've almost repealed elections in North Carolina for many offices. To be quite honest, if I could get away without an election, I'd love to. But it's not healthy for democracy; it's not healthy for a republican form of government, and many times just given the realities now that every seat or 80% of them are either so Republican or so Democrat that no one in their right minds from the other party are even going to bother to run. And many times it will only be these third parties that will provide any choice for the voters. And I just think this legislature having created this situation where there's so few elections for state house, state senate, and congress, we ought to do something to put some competition—some semblance of competition—back into this.

Rep. Ross: Okay. Representative Michaux.

Rep. Michaux: May I ask the gentleman a question?

Rep. Blust: I yield.

Rep. Michaux: What republican form of government? Is that a small arm?

Rep. Blust: That's a small arm. That's in the Constitution.

Rep. Ross: Members of the committee, we have an amendment from Representative Kiser. We don't have copies, but I think it's a pretty obvious amendment so you can take you bill and look at page two, line 15, and it would rewrite that line to read: "ballots upon paying a filing fee equal to one percent (1%) of the annual salary of the office sought." And then he moves to amend the bill on page three, lines 13 through 14 by inserting the following: "Section 5. G.S.163-122 is amended to add a new subsection to read: (d) Any candidate seeking to have his name printed on the general election ballot under this section shall pay a filing fee equal to one percent (1%) of the annual salary of the office sought." And Representative Kiser on your amendment and then we'll hear from Representative Miller.

Rep. Kiser: Thank you, madam chairman. This amendment just simply does what is fair. What is fair for both Democrats and Republicans and for other people who are running, irregardless of what party they have been put on to. It levels the playing field as far as filing fees are concerned, and I urge that you support it.

Rep. Ross: Representative Miller.

Rep. Miller: I have no objection to this amendment.

Rep. Ross: Okay. There is a perfecting amendment if Representative Kiser wants to take it—it has been offered by staff—to say and change the title of the bill accordingly.

Rep. Kiser: That's fine.

Rep. Ross: That's fine with you? Any other comment on the amendment? Questions? If not, so many as favor the amendment please say aye. Any opposed no. The amendment passes. (It was unanimous.)

Now we have the next amendment, which is brought by Representative Michaux. And this is on page 3, line 13. It would insert after that line the following Section 5. We're going to have to renumber accordingly. This would be—well we don't know what line it's going to be—but Section 6. G.S. 163-114 reads as rewritten and adds a final paragraph as follows: "An individual whose name appeared on the ballot in a primary election preliminary to the general election shall not be eligible to fill a vacancy in the nomination of another party for the same office in the same year; and to change the title of the bill accordingly and renumber subsequent sections accordingly." So that's what we have here. Representative Michaux and then Representative Miller.

Rep. Michaux: What it does is—and I have two thoughts on this—what this does, this puts it in line with write-in ballots. You can't...once you lose as a party candidate, you cannot come back as a write-in candidate. Once you lose in this situation, you cannot come back as a candidate for another party. That's simply what it is. I'd much prefer to have it the other way because I believe in write-in votes, too. But this will put it on an equal playing field.

Rep. Ross: Okay. Any other comments? Representative Starnes.

Rep. Starnes: Question for Representative Michaux. I understand that the amendment said a person cannot run for the same office with a different party.

Rep. Michaux: That's right. That's what it says.

Rep. Starnes: Well, I'm a little bit concerned about that. I wish you could change it for this reason. When the filing period opens you file for a specific office and you can't file for two different offices at the same time. So let's say you run for General Assembly, and you lose the primary, then there's nothing to prevent you from filing as a county commission candidate with a different party, a different office.

Rep. Michaux: That doesn't bother me to the extent that you're going to switch to another party to run for the same seat. And this is what this amendment does. It prohibits you from switching for the same seat. Course one of the thing you've got to understand, I don't have a problem with anyone who wants to run for county commission, but if I'm in a primary against a candidate from the Republican Party...I mean my own Party...and then that candidate loses, I don't want to see him again in the general election.

Rep. Ross: Let's let the bill sponsor speak to the amendments since we jumped in a little bit ahead of the bill sponsor and we owe him that courtesy. And then we'll come back to your question.

Rep. Miller: Thank you, chair. Appreciate it. I guess my comment is this. I understand the reasoning for trying to make this the same as the sore loser provision for unaffiliated and write-in candidates. I would say, though, that this particular amendment even though it does address that issue, the main reason for this bill is to allow third party candidates more access and participation, and this kind of goes almost in a different direction. I don't think it hurts the bill at all by adding this, but I also would say that I'm for the will of this committee and the will of the body of the General Assembly. This provision, though, addresses a different issue.

Rep. Ross: Representative Starnes.

Rep. Starnes: I think Representative Michaux is on the right track with his amendment. It just didn't go as far as I would have liked for it to go for this reason. You have to declare which office you want to seek. And so I use an analogy of a legislative race and a county commission race. Maybe a better analogy would be running for the House, losing in the primary, so now you're going to be nominated for running in the Senate. Under your amendment, that would be permissible. I just think that a person needs to declare which office they're going to run for. If they lose in the primary, then basically they should be out for this election cycle.

Rep. Ross: Well, that amendment is not before us, and this amendment is. So, further discussion on this amendment? I would like to.... Okay, all those in favor of Representative Michaux's amendment signify by saying aye. All those opposed no. The amendment passes. (Unanimously.)

Now we do have Representative Luebke's motion before the committee, and.... Representative Harrison.

Rep. Harrison: Well, I'm just going to address the concern raised by Mrs. Howe about making the bill effective immediately...if there's a reason why we have an effective date of January 1, 2006.

Rep. Ross: Representative Miller.

Rep. Harrison: I mean, I'd offer an amendment but I just....

Rep. Miller: Well, actually I don't object to that reasoning; however, one of the issues before us is that in one way or another in the last two sessions this type of bill has been before the legislature, so I'm looking for a bill that will pass this body. I'm not sure whether that provision would hurt or help that, and I'm fairly certain that most third parties would actually want as a priority to have the bill pass period. And then even though it is an inconvenience currently, in the long term it's still something that's very productive for the electoral process and participation as opposed to having something that might hinder people from supporting the bill. That's the only reason I haven't really pushed that particular...but I don't object to it if you do want to put it forward.

Rep. Ross: Representative Harrison would you like to put that amendment forward?

Rep. Harrison: I don't feel strongly about it if it's going to help the bill pass to not amend it. I won't offer it.

Rep. Ross: Representative Michaux.

Rep. Michaux: I think we should take what we can get and go with it.

Rep. Ross: Representative Moore and then we're going to go with Representative Luebke's motion. We're running out of time.

Rep. Moore: I just have one observation, and that is when this bill is passed, and I do plan on voting for it, and when we have more parties in play, should we change the way we elect our straight ticket? Right now you have two votes in two separate places for straight ticket. Should we just have one block and it applies to president all the way down and allow a separate bill to do that, because I do think that if we're going to expand...(Tape ran out.

Rep. Ross: I am sure that that bill will be before us at some point. Right now we have a motion from Representative Luebke to take the amendments and roll them into a proposed committee substitute, to give the committee substitute a favorable report, unfavorable as to the original bill.

Rep. Luebke: Precisely my words, madam chair.

Rep. Ross: All those in favor of Representative Luebke's motion, please say aye. All those opposed, no. The ayes have it and the proposed committee substitute is given a favorable report.

Thank you members of the committee. Next Wednesday, is the subcommittee ready to come back with the bill on the poll workers for next Wednesday? Okay. That will give you the incentive to move that bill.... (Tape was stopped before adjournment.)

AGENDA

HOUSE OF REPRESENTATIVES Committee on Election Law and Campaign Finance Reform

**March 23, 2005
Representative Ross, Presiding**

HB 88, Electoral Fairness Act.

Representative Paul Miller

Nancy Garriss (Rep. Tim Moore)

From: Margie Penven (Rep. Ross)
Sent: Thursday, March 17, 2005 12:29 PM
To: Rep. Paul Miller
Subject: 03-23-05 Meeting Notice.doc

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION**

You are hereby notified that the Committee on Election Law and Campaign Finance Reform will meet as follows:

DAY & DATE: Wednesday, March 23, 2005

TIME: 1:00 p.m.

LOCATION: 1425 LB

The following bills will be considered (Bill # & Short Title & Bill Sponsor):

HB 88, Electoral Fairness Act

Respectfully,

Representatives Tim Moore and Deborah Ross
Chairs

I hereby certify this notice was filed by the committee assistant at the following offices at **12:30 p.m.** on **March 17, 2005.**

____ Principal Clerk
____ Reading Clerk - House Chamber

Margie Penven (Committee Assistant)

**2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representatives **Moore and Ross** (Chairs) for the Committee on **ELECTION LAW
AND CAMPAIGN FINANCE REFORM.**

☐ Committee Substitute for

H.B. 88 A BILL TO BE ENTITLED AN ACT TO REDUCE THE NUMBER OF SIGNATURES REQUIRED OF A NEW POLITICAL PARTY AND OF A STATEWIDE UNAFFILIATED CANDIDATE TO ACHIEVE BALLOT ELIGIBILITY; TO REDUCE THE NUMBER OF VOTES A NEW POLITICAL PARTY MUST GAIN FOR A NOMINEE IN ORDER TO MAINTAIN BALLOT ELIGIBILITY; AND TO MOVE TO A DATE BEFORE THE POLITICAL PARTY PRIMARIES THE DEADLINES FOR FILING NEW POLITICAL PARTY PETITIONS AND NOMINATING NEW POLITICAL PARTY CANDIDATES.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.

☒ With a favorable report as to the committee substitute bill (~~#~~), ☒ which changes the title, unfavorable as to (the original bill) (~~Committee Substitute Bill #~~), (and recommendation that the committee substitute bill ~~#~~) be re-referred to the Committee on ~~on~~.)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

D

HOUSE BILL 88
PROPOSED COMMITTEE SUBSTITUTE H88-PCS30129-RRf-9

Short Title: Electoral Fairness Act.

(Public)

Sponsors:

Referred to:

February 7, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO REDUCE THE NUMBER OF SIGNATURES REQUIRED OF A NEW
3 POLITICAL PARTY AND OF A STATEWIDE UNAFFILIATED CANDIDATE
4 TO ACHIEVE BALLOT ELIGIBILITY; TO REDUCE THE NUMBER OF
5 VOTES A NEW POLITICAL PARTY MUST GAIN FOR A NOMINEE IN
6 ORDER TO MAINTAIN BALLOT ELIGIBILITY; TO MOVE TO A DATE
7 BEFORE THE POLITICAL PARTY PRIMARIES THE DEADLINES FOR
8 FILING NEW POLITICAL PARTY PETITIONS AND NOMINATING NEW
9 POLITICAL PARTY CANDIDATES; TO EXTEND FILING FEE PROVISIONS
10 TO NEW PARTY AND UNAFFILIATED CANDIDATES; AND TO PROVIDE
11 THAT A CANDIDATE WHO RAN IN A PARTY PRIMARY FOR AN OFFICE IS
12 NOT ELIGIBLE FOR NOMINATION BY ANOTHER PARTY TO FILL A
13 VACANCY IN ITS NOMINATION FOR THE SAME OFFICE IN THE SAME
14 YEAR.

15 The General Assembly of North Carolina enacts:

16 **SECTION 1.** G.S. 163-96(a) reads as rewritten:

17 "(a) Definition. – A political party within the meaning of the election laws of this
18 State shall be either:

- 19 (1) Any group of voters which, at the last preceding general State election,
20 polled for its candidate for Governor, or for presidential electors, at
21 least ~~ten-two~~ percent (~~10%~~) (2%) of the entire vote cast in the State for
22 Governor or for presidential electors; or
23 (2) Any group of voters which shall have filed with the State Board of
24 Elections petitions for the formulation of a new political party which
25 are signed by registered and qualified voters in this State equal in
26 number to ~~two-one-half~~ of one percent (~~2%~~) (0.5%) of the total number
27 of voters who voted in the most recent general election for Governor.
28 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~~ April 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."

SECTION 2. G.S. 163-97 reads as rewritten:

"§ 163-97. Termination of status as political party.

When any political party fails to poll for its candidate for governor, or for presidential electors, at least ~~ten-two~~ percent (10%) (2%) of the entire vote cast in the State for governor or for presidential electors at a general election, 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."

SECTION 3. G.S. 163-98 reads as rewritten:

"§ 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~~ ballots upon paying a filing fee equal to one percent (1%) of the office sought.

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~~ May 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 ~~for State, congressional, and national offices~~ in the ensuing general election. 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."

SECTION 4. G.S. 163-122(a)(1) reads as rewritten:

"(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%)~~ one-half of one percent (0.5%) of the total number of ~~registered voters 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~~ 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.

...."

SECTION 5. G.S. 163-122 is amended by adding a new subsection to read:

"(d) Any candidate seeking to have his name printed on the general election ballot under this section shall pay a filing fee equal to one percent (1%) of the annual salary of the office sought."

SECTION 6. G.S. 163-114 reads as rewritten:

"§ 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

Appropriate district executive committee of political party in which vacancy occurs

District Attorney
State Senator in a multi-county
senatorial district
Member of State House of
Representatives in a multi-county
representative district

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, 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."

SECTION 7. This act becomes effective January 1, 2006, and applies to all primaries and elections held on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

1

HOUSE BILL 88

Short Title: Electoral Fairness Act.

(Public)

Sponsors: Representatives Miller; Luebke, Rayfield, Stam, and Weiss.

Referred to: Election Law and Campaign Finance Reform.

February 7, 2005

A BILL TO BE ENTITLED

AN ACT TO REDUCE THE NUMBER OF SIGNATURES REQUIRED OF A NEW POLITICAL PARTY AND OF A STATEWIDE UNAFFILIATED CANDIDATE TO ACHIEVE BALLOT ELIGIBILITY; TO REDUCE THE NUMBER OF VOTES A NEW POLITICAL PARTY MUST GAIN FOR A NOMINEE IN ORDER TO MAINTAIN BALLOT ELIGIBILITY; AND TO MOVE TO A DATE BEFORE THE POLITICAL PARTY PRIMARIES THE DEADLINES FOR FILING NEW POLITICAL PARTY PETITIONS AND NOMINATING NEW POLITICAL PARTY CANDIDATES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-96(a) reads as rewritten:

"(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 ~~ten-two~~ percent ~~(10%)~~ (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 one-half of one percent~~ ~~(2%)~~ (0.5%) 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~~ April 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

1 with it and shall immediately communicate its determination to the
2 State chairman of the proposed new political party."

3 **SECTION 2.** G.S. 163-97 reads as rewritten:

4 **"§ 163-97. Termination of status as political party.**

5 When any political party fails to poll for its candidate for governor, or for
6 presidential electors, at least ~~ten-two~~ percent ~~(10%)-(2%)~~ of the entire vote cast in the
7 State for governor or for presidential electors at a general election, it shall cease to be a
8 political party within the meaning of the primary and general election laws and all other
9 provisions of this Chapter."

10 **SECTION 3.** G.S. 163-98 reads as rewritten:

11 **"§ 163-98. General election participation by new political party.**

12 In the first general election following the date on which a new political party
13 qualifies under the provisions of G.S. 163-96, it shall be entitled to have the names of its
14 candidates for national, State, congressional, and local offices printed on the official
15 ballots.

16 For the first general election following the date on which it qualifies under
17 G.S. 163-96, a new political party shall select its candidates by party convention.
18 Following adjournment of the nominating convention, but not later than the first day of
19 ~~July-May~~ prior to the general election, the president of the convention shall certify to the
20 State Board of Elections the names of persons chosen in the convention as the new
21 party's candidates ~~for State, congressional, and national offices~~ in the ensuing general
22 election. The State Board of Elections shall print names thus certified on the appropriate
23 ballots as the nominees of the new party. The State Board of Elections shall send to
24 each county board of elections the list of any new party candidates so that the county
25 board can add those names to the appropriate ballot."

26 **SECTION 4.** G.S. 163-122(a)(1) reads as rewritten:

27 "(a) Procedure for Having Name Printed on Ballot as Unaffiliated Candidate. –
28 Any qualified voter who seeks to have his name printed on the general election ballot as
29 an unaffiliated candidate shall:

- 30 (1) If the office is a statewide office, file written petitions with the State
31 Board of Elections supporting his candidacy for a specified office.
32 These petitions must be filed with the State Board of Elections on or
33 before 12:00 noon on the last Friday in June preceding the general
34 election and must be signed by qualified voters of the State equal in
35 number to ~~two percent (2%)~~ one-half of one percent (0.5%) of the total
36 number of ~~registered voters in the State as reflected by the voter~~
37 ~~registration records of the State Board of Elections as of January 1 of~~
38 ~~the year in which the general election is to be held.~~ voters who voted in
39 the most recent general election for Governor. Also the petition must
40 be signed by at least 200 registered voters from each of four
41 congressional districts in North Carolina. No later than 5:00 p.m. on
42 the fifteenth day preceding the date the petitions are due to be filed
43 with the State Board of Elections, each petition shall be presented to
44 the chairman of the board of elections of the county in which the

1 signatures were obtained. Provided the petitions are timely submitted,
2 the chairman shall examine the names on the petition and place a
3 check mark on the petition by the name of each signer who is qualified
4 and registered to vote in his county and shall attach to the petition his
5 signed certificate. Said certificates shall state that the signatures on the
6 petition have been checked against the registration records and shall
7 indicate the number of signers to be qualified and registered to vote in
8 his county. The chairman shall return each petition, together with the
9 certificate required in this section, to the person who presented it to
10 him for checking. Verification by the chairman of the county board of
11 elections shall be completed within two weeks from the date such
12 petitions are presented.

13"

14 **SECTION 5.** This act becomes effective January 1, 2006, and applies to all
15 primaries and elections held on or after that date.

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 88

DATE _____

S. B. No. _____

Amendment No. _____

COMMITTEE SUBSTITUTE _____

(to be filled in by
Principal Clerk)Rep. MICHAUX

Sen.)

1 moves to amend the bill on page 3, line ~~14~~ 13

2 () WHICH CHANGES THE TITLE

3 by _____

4 inserting after that line the following:

5 "Section ~~163-114~~ G. S. 163-114 reads as rewritten6 " --- [~~Section~~ adds final paragraph] follows:

7 An individual whose name appeared on the

8 ballot in a primary election preliminary to the

9 general election ~~shall~~ shall not be eligible

10 to be nominated to fill a vacancy in the

11 nomination of another party for the same

12 office in the same year; and

13 to change the title of the bill accordingly

14 and by renumbering subsequent sections

15 accordingly.

SIGNED [Signature]

ADOPTED _____ FAILED _____ TABLED _____

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 88

DATE _____

S. B. No. _____

Amendment No. _____

COMMITTEE SUBSTITUTE _____

(to be filled in by
Principal Clerk)

Rep.)

Sen.)

Kiser

1 moves to amend the bill on page 2, line 15

2 () WHICH CHANGES THE TITLE

3 by rewriting that line to read:4
5 ballots ballots will pay a filing fee equal to
6 one percent (1%) of the annual salary of the office sought7
8 and make the on page 3 lines 13-14 by inserting
9 the following between those lines:10
11 SECTION 5. GS 16-3-122 is amended to add a new
12 subsection to read:13 (d) Any candidate seeking to have his name printed on
14 the general election ballot under this section shall pay a
15 filing fee equal to one percent (1%) of the annual salary
16 of the office sought.17
18 and change the title
19 of the accordingly
bill

SIGNED

J. Kiser

ADOPTED _____ FAILED _____ TABLED _____



HOUSE BILL 88: Electoral Fairness Act.

BILL ANALYSIS

Committee: House Election Law and
Campaign Finance Reform

Date: March 23, 2005

Version: First Edition

Introduced by: Rep. Miller

Summary by: William R. Gilkeson
Committee Co-Counsel

SUMMARY: *The First Edition of House Bill 88 would equalize and reduce the number of signatures required of a new political party and of a statewide unaffiliated candidate to achieve ballot access. It would reduce the number of votes a new party must generate for its nominee for President or Governor for the party to maintain ballot eligibility. And it would move backward the deadlines for new parties to submit their petitions and to nominate candidates from dates after the party primaries to dates before the party primaries.*

CURRENT LAW:

New Parties. A new party, in order to qualify to nominate candidates who will appear on the North Carolina ballot under its party label, a new party must first collect signatures of registered NC voters on petitions equal to 2% of the votes cast in the last general election for Governor. In the 2004 election for Governor, the number of votes cast was 3,486,688. Two percent of that number is 69,734. So, to nominate candidates to be on the ballot under its label in 2006, a new party must collect 69,734 names on petitions and present them to the State Board of Elections by June 1, 2006.

(For a party to qualify to be on the ballot anywhere in North Carolina, it must qualify statewide. This State has no regional or local new party qualification. The petition signatures must include at least 200 voters from each of 4 congressional districts.)

Once on the ballot, a new party may stay on the ballot only if its nominee for President, or its nominee for Governor, receives in the next election at least 10% of the vote. If neither party nominee gets that much of the vote, the party loses its ballot status and may only regain it by again collecting signatures equal to 2% of the vote in the last Governor's race. In 2004 in NC:

- 3,501,007 voted for President and 10% of that is 350,101.
- 3,486,688 voted for Governor and 10% of that is 348,669.

The closest any new party candidate came in 2004 to that ballot-access-maintenance threshold was Barbara Howe, the Libertarian candidate for Governor, who received 52,513 votes.

In its first election after gaining – or regaining – ballot access, a new party nominates its candidates in a convention rather than in a primary. The new party must complete the nominations and certify them to the State Board of Elections by July 1.

Unaffiliated Candidates. To qualify as an unaffiliated candidate for statewide office, a person must collect signatures equal to 2% of all the registered voters in the State. That number of registered voters is measured at the beginning of the election year in which the candidate seeks to be on the ballot. That precise number cannot be known now, but the total voter registration in NC in February 2005 was 5,388,094. Two percent of that is 107,762. So, to appear on the ballot as an unaffiliated candidate for a statewide office, a person must collect 107,762 names on petitions and submit them to the State Board of Elections by the last Friday in June of the election year.

Delaney v. Bartlett. In the lawsuit of Delaney v. Bartlett, U.S. District Judge Frank Bullock of Greensboro looked at the difference between the threshold for new parties and the threshold for statewide unaffiliated candidates and said he saw no reasonable basis for the wide disparity. He concluded that the disparity between the two paths for getting on the ballot infringed on constitutional rights under the First and Fourteenth Amendments to the US Constitution. The judge noted that the percentages NC used for both the new party threshold and the unaffiliated threshold had been upheld in court, either in NC or elsewhere. But the disparity between the two, he said, was

HOUSE BILL 88

Page 2

constitutionally indefensible. Paul Delaney, the plaintiff, was challenging the unaffiliated threshold. IN July 2004 Judge Bullock held subsection (a) of G.S. 163-122, which contains the procedure for statewide unaffiliated candidates, unconstitutional. The State did not appeal.

BILL ANALYSIS: House Bill 88 would close the disparity between the signature thresholds for a new party and for an unaffiliated candidate for statewide office, satisfying the Delaney decision. Going beyond that, it would drop the thresholds to a level well below where either is now. Following the formula now used for new parties, the bill would set the signature threshold for both a new party and a statewide unaffiliated candidate at 0.05% of the turnout in the most recent Governor's race.

The bill would also lower the percentage the new party's nominee for either President or Governor in order for the party to remain on the ballot. That maintenance threshold would drop from 10% to 2%.

And the bill would set two months earlier both the new party's deadline for filing its signature petitions to qualify and its deadline for nominating candidates. The signature petition filing deadline would go from June 1 to April 1. The candidate nomination deadline would go from July 1 to May 1. In both cases, the deadlines would be before the major party primaries. Now they come after the primaries.

	Current Statute	House Bill 88
NEW PARTY: Formula for gaining ballot access	2% of last Governor's race turnout (200 signatures from each of 4 congressional districts)	0.05% of last Governor's race turnout (200 signatures from each of 4 congressional districts)
NEW PARTY: Raw number of signatures for gaining access in 2006.	69,734	17,434
NEW PARTY: Formula for maintaining ballot access	10% of vote by party's nominee for President or Governor	2% of vote by party's nominee for President or Governor
NEW PARTY: Raw number of votes for maintaining access in 2004	President – 350,101 Governor – 348,669	President – 70,021 Governor – 69,734
NEW PARTY: Deadline for signatures to be filed with State Board of Elections	June 1 of the election year	April 1 of the election year
NEW PARTY: Deadline for nominating candidates	July 1 of the election year	May 1 of the election year
STATEWIDE UNAFFILIATED CANDIDATE: Formula for ballot gaining access	2% of all registered voters as of Jan. 1 of the election year (Invalid after <u>Delaney v. Bartlett</u> case)	0.05% of last Governor's race turnout (200 signatures from each of 4 congressional districts)
STATEWIDE UNAFFILIATED CANDIDATE: Raw number of signatures (using 2-20-05 registration figures)	107,762 (Invalid after <u>Delaney v. Bartlett</u> case)	17,434
STATEWIDE UNAFFILIATED CANDIDATE: Deadline for signatures to be filed with State Board of Elections	Last Friday in June of election year	Last Friday in June of election year

BACKGROUND: In 2003, HB 867, a bill almost identical to HB 88 was given a favorable report by the House Committee on Election Law and Campaign Finance Reform in 2003. The bill was never taken up on the House floor.

In 2001 the Senate passed SB 10, a bill that would have equalized the statewide unaffiliated signature requirement with that for new parties at 2% of the Governor's race turnout. The bill was defeated 45-71 in the House.

North Carolina Voting Numbers – November 2004

Total votes for President in 2004	3,501,007
10%	350,101
2%	70,021
0.5%	17,506

Total votes for Governor in 2004	3,486,688
10%	348,669
2%	69,734
0.5%	17,434

Total voter reg. in NC, 2-20-05	5,388,094
10%	538,810
2%	107,762
0.5%	26,941

2006 PETITIONING FOR STATEWIDE OFFICE

STATE	REQUIREMENTS		SIGNATURES COLLECTED					Deadline
	FULL PARTY	CAND.	LIB'T	GREEN	CONSTI	NAT LAW	REFORM	
Alabama	41,012	41,012	*1,200	0	0	0	0	in court
Alaska	(reg) 9,258	#3,128	*6,748	in court	0	0	0	Aug. 22
Ariz.	26,835	est. #20,000	already on	0	0	0	0	June 14
Arkansas	10,000	10,000	*0	*0	*0	*0	*0	*July 1
Calif.	(reg) 77,389	165,573	already on	already on	already on	already on	40,516	Aug. 11
Colorado	(reg) 1,000	#1,000	already on	already on	already on	534	337	July 10
Connecticut	no procedure	#7,500	already on	0	already on	0	0	Aug. 11
Delaware	est. (reg) 280	est. 5,600	already on	already on	already on	257	211	July 15
D.C.	no procedure	est. #3,800	can't start	already on	can't start	can't start	can't start	Aug. 30
Florida	be organized	pay fee	already on	already on	already on	already on	already on	July 18
Georgia	42,676	#42,676	already on	can't start	can't start	can't start	can't start	July 11
Hawaii	648	25	already on	already on	0	already on	0	July 25
Iaho	11,968	5,984	already on	0	already on	already on	0	Aug. 31
Illinois	no procedure	#25,000	can't start	can't start	can't start	can't start	can't start	June 26
Indiana	no procedure	#29,553	already on	0	0	0	0	June 30
Iowa	no procedure	#1,500	0	0	0	0	0	Aug. 18
Kansas	16,477	5,000	already on	0	0	0	already on	July 31
Kentucky	no procedure	#2,800	0	0	0	0	0	Aug. 8
La.	(reg) 1,000	pay fee	already on	*940	50	23	virtually on	Sep. 7
Maine	24,798	#4,000	0	already on	0	0	0	May 25
Maryland	10,000	est. 29,400	already on	already on	already on	0	0	Aug. 7
Mass.	est. (reg) 41,000	#10,000	23,900	9,509	56	44	1,168	Aug. 1
Michigan	31,731	31,731	already on	already on	already on	already on	0	July 20
Minnesota	141,420	#2,000	0	0	0	0	0	July 18
Mississippi	be organized	1,000	already on	already on	already on	already on	already on	April 7
Missouri	10,000	10,000	already on	0	0	0	0	July 31
Montana	5,000	#5,000	already on	0	0	0	0	May 30
Nebraska	4,735	2,500	0	0	0	0	0	Aug. 29

Nevada	7,915	7,915	already on	0	already on	0	0	July 7
New Hamp.	20,299	#3,000	0	0	0	0	0	Aug. 9
New Jersey	no procedure	#800	0	0	0	0	0	June 6
New Mex.	3,782	14,079	*already on	already on	already on	0	0	July 11
New York	no procedure	#15,000	can't start	can't start	can't start	can't start	can't start	Aug. 22
No. Car.	69,734	law is void	*19,000	8,900	0	0	0	June 30
No. Dakota	7,000	1,000	0	0	0	0	0	Sep. 8
Ohio	56,280	5,000	in court	0	0	0	0	May 1
Oklahoma	73,188	pay fee	in court	0	0	0	0	June 21
Oregon	18,381	18,356	already on	already on	already on	0	0	Aug. 29
Penn.	no procedure	est. #24,000	can't start	can't start	can't start	can't start	can't start	Aug. 1
Rhode Isl.	21,815	#1,000	can't start	can't start	can't start	can't start	can't start	July 20
So. Caro.	10,000	10,000	already on	already on	already on	0	already on	July 15
So. Dakota	8,364	#3,346	already on	0	already on	0	0	June 20
Tennessee	41,314	25	0	0	0	0	0	April 6
Texas	45,253	45,253	already on	can't start	can't start	can't start	can't start	May 11
Utah	2,000	#1,000	already on	0	*finished	0	0	Mar. 17
Vermont	be organized	#1,000	already on	already on	0	0	0	Sep. 21
Virginia	no procedure	#10,000	can't start	can't start	can't start	can't start	can't start	June 13
Washington	no procedure	law is unclear	can't start	can't start	can't start	can't start	can't start	July 7
West Va.	no procedure	#8,724	0	0	0	0	0	May 8
Wisconsin	10,000	#2,000	already on	already on	already on	0	0	July 11
Wyoming	4,774	4,774	already on	0	0	0	0	Aug. 28
TOTAL STATES ON			*27	15	15	6	4	

Three states (Ky., La., N.C.) have no statewide partisan races up in 2006, so the chart shows the requirements for a party to run a full slate for U.S. House.

*means a change since the Dec. 1, 2004 chart.

#means partisan label is permitted (other than "indp.").

VISITOR REGISTRATION SHEET

Election Law and Campaign Finance Reform

March 23, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Alisa Casid	House Page Program
Dan Ing	WSJ
William David Stamps	Libertarian Party
JUDIE BURKE	League of Women Voters Orange, Durham, Chatham
Mary Klenz	League of Women Voters of N.C.
Barbara Howe	Chair, Libertarian Party
Ed King	N.C. Green Party
John Howell	At-Large, Libertarian Party
Patrick Buffin	NCGA
R. Paul Wilms	NCHBA
Larry O. Bartlett	SBE

VISITOR REGISTRATION SHEET

Election Law and Campaign Finance Reform

March 23, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Johnnie McLean	SBE
Hassamuddin Sitayeb	NC Green Party
Elena Everett	Chair, NC Green Party
Aimee Schmidt	Policy Chair, Progressive Democrats of Wake County
Tim Liszewski	Progressive Dems of Wake County 3506 Mill Run, Raleigh, NC 27612
MICHAEL BANWARIK	2004 LIBERTARIAN PRESIDENTIAL CANDIDATE
Barry Smith	Freedom Newspapers
Michelle Bank	State Govt Pk10
Bob Hall	Bob Hall
Sam M. Miller	Gov. Miller
Sam Brewer	NCDP member. Wake County

[illegible]

MINUTES
House Committee on Election Law and Campaign Finance Reform
March 30, 2005
1:00 p.m., Room 1425
Representative Moore, Presiding

The House Committee on Election Law and Campaign Finance Reform met at 1:00 p.m. on Tuesday, March 30, 2005, in Room 1425 of the State Legislative Building.

Members present were: Representative Tim Moore, Co-Chair; Representative Deborah Ross, Co-Chair; Representative Joe Kiser, Vice-Chair; Representative Paul Luebke, Vice-Chair; Representative John Blust; Representative Walter Church; Representative Pricey Harrison; and Representative Hugh Holliman.

There was one bill on the agenda: House Bill 127, Public Employee Poll Workers, introduced by Representatives Verla Insko and Jean Preston.

Co-Chair Tim Moore called the meeting to order and introduced the pages and sergeants-at-arms.

The Chair reminded the committee members that House Bill 127 was before the committee at a prior meeting and was sent to a subcommittee. He said there was a proposed committee substitute recommended by the subcommittee, and he asked for a motion to put the proposed committee substitute before the committee for consideration. Representative Holliman so moved, and the motion passed.

Co-Chair Moore asked if either Representative Starnes or Representative Holliman, co-chairs of the subcommittee, wished to explain the bill, and Representative Holliman deferred to committee staff, Mr. Bill Gilkeson.

Mr. Gilkeson explained the bill, and Ms. Peggy Oliver from State Personnel added comments. The bill would direct the State Personnel Commission to have a policy allowing State employees subject to the State Personnel Act to take 24 hours of paid leave for election service per year as long as they are not paid by the board of elections.

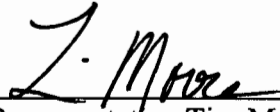
Mr. Gary Bartlett, Director of the State Board of Elections, said the Board had not taken an official position, but everyone on the Board and agency staff welcomed any help that could be given to the counties in recruiting poll workers.

Representative Holliman moved that the proposed committee substitute be given a favorable report, unfavorable as to the original bill. The motion carried.

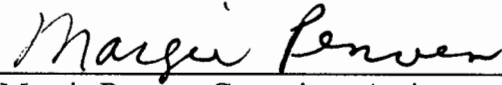
There being no further business, the meeting was adjourned at 1:13 p.m.

A verbatim transcript of this meeting is attached hereto along with all pertinent documents and handouts.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "T. Moore", written over a horizontal line.

Representative Tim Moore, Presiding Chair

A handwritten signature in cursive script, appearing to read "Margie Penven", written over a horizontal line.

Margie Penven, Committee Assistant

TRANSCRIPT
House Committee on Election Law and Campaign Finance Reform

1:00 p.m. on March 30, 2005

Room 1425, LOB

Representative Moore, Presiding

Rep. Moore: Before we get started I do want to recognize here at the House Election Law and Campaign Finance Reform Committee that we have two pages with us today: Ashley Fox who is from McDowell County and sponsored Representative Frye. Ashley—if you'd raise your hand so everybody can see you—and Downing McDade. Downing is from Iredell County and sponsored by Representative Karen Ray. Welcome ya'll to the committee today. Our sergeants-at-arms today are Frank Prevo and Brad Barefoot. Glad to have you guys with us also.

The only item on the agenda for today is the continuation of House Bill 127, which was referred to the subcommittee at the last meeting (actually referred to subcommittee on March 9), and I believe a proposed committee substitute has been distributed to the members for your consideration. Is there a motion that the committee consider the PCS to House Bill 127? Recognizing Representative Holliman for that motion, all in favor please say aye. Opposed no. The ayes have it. We are now considering the PCS to House Bill 127.

I think, Representative Holliman, you and Representative Starnes were the co-chairs of the subcommittee. Would you like to provide a report for the committee from the subcommittee of your deliberations?

Rep. Holliman: Mr. Chairman, I think Bill Gilkeson would probably be better at that.

Rep. Moore: Very well. Mr. Gilkeson, if you could enlighten us, please.

Bill Gilkeson: I'll try. There is a PCS in front of you that was worked out with the subcommittee mainly through e-mails, and what it does—the original bill gave every public employee a right to 24 hours of paid leave for elections service with the board of elections regardless of whether they also got paid by the board of elections. This is significantly trimmed back in that it only deals with State employees subject to the State Personnel Act. What it does is direct the State Personnel Commission to have a policy allowing employees to take 24 hours per year of paid leave for election service. Election service is a defined term there that says being a precinct official or working in a one-stop site or an early voting site. This policy would provide for the paid leave in addition to vacation time and sick leave, but only for hours in which the employee was not compensated by the board of elections. Typically, the board of elections pays everybody who works for them, although they may not pay them as

much as the people are making at their real jobs. This provision would require that the policy give paid leave only for the hours—doing the election work—that the State employee was not compensated by the board of elections. And actually in Section 2 of the bill, it requires the county boards of elections not to compensate any precinct official for hours that the precinct official takes this kind of leave.

On lines 17 through 21 of the bill, it says that the commission may satisfy the requirement to have this kind of a policy by including election service as an option in some community service policy that it's already got, that includes other kinds of elections service. And you would take whatever election leave you're going to take and that would be added to other kinds of community service leave that they have, and the state could put a cap of 24 hours per year on all of that—on all that you took under that policy. There already is a community service leave policy that's copied for you here. If you read it, it doesn't seem to include election service, but Ms. Peggy Oliver with the Office of State Personnel is here. She has told us that the Office of State Personnel now interprets—did not always, but now does interpret—the community service policy to include election work if the state employee doesn't get compensated by the board of elections for the hours worked. If the chair would recognize her, she could probably explain the history of that. And basically what the bill winds up doing is to put in statute what the Office of State Personnel considers already to be the policy. I'm not sure that's clear to everybody that that is the policy, and so it may...it's not as though the bill completely cancels itself out and doesn't do anything. It actually is putting in statute that this would be the policy.

Rep. Moore: Okay. Who did you say was here from State Personnel?

Bill Gilkeson: Her name is Peggy Oliver, and she's right there.

Rep. Moore: Ms. Oliver, would you like to address the committee on behalf of the Office of State Personnel on this?

Ms. Oliver: Well, I think Mr. Gilkeson explained it exactly as it has happened. In the beginning, of course, the policy existed in 501C3 organizations. And for a number of years after the policy went into effect, we did not allow it to apply to working on elections because it was not considered a 501C3 organization policy. But our previous personnel director determined that due to an interpretation that in his work for another state agency is that it should be allowed. We considered putting it into the policy, but then when we found out that most that most poll workers were paid, and this wouldn't apply to them anyway, we didn't ever include it in the policy. But we're certainly willing to do that and think it would be a good idea if is what the body directs us to do.

Rep. Moore: Thank you. Do we have questions of Mr. Gilkeson before we get on to the public comment? Representative Kiser.

Rep. Kiser: Thank you, Mr. Chairman. As I understand this, this solves our problem with the teachers as well.

Bill Gilkeson: The teachers are not even included.

Rep. Kiser: Are not even included in this nor neither is local government.

Bill Gilkeson: That's right.

Rep. Moore: Further comments for Mr. Gilkeson? If not, is there any comment from members of the public? If not, I would recognize both of our bill sponsors, Representatives Insko and Preston, if you all would like to address the committee to make any comments on the PCS to the bill.

Rep. Insko: Well, I'd just like to thank the subcommittee for the work they did. I think all of the questions were answered, and I think it's a good bill and would appreciate your support. And if I may, I would just like to also recognize Gary Bartlett, or ask the chair to do that, and Michael Ashe. Mr. Bartlett and Mr. Ashe served on electronic voting committee with me.

Rep. Moore: Mr. Bartlett, has the state board taken an official position on the bill?

Mr. Bartlett: Not an official position, but everyone on the state board level and the agency staff welcome any help that can be given to the counties in recruiting poll workers.

Rep. Moore: Representative Preston, did you have anything to add as a bill sponsor?

Rep. Preston: No, I think we pretty much were in agreement, particularly with this proposed committee substitute. And again, I want to thank those who have worked on it. We worked very hard on that study committee and certainly asked for guidance from our folks at the board of elections and other private folks. So I think this substitute makes it a much better bill, and we thank you.

Rep. Moore: Representative Holliman, you're recognized.

Rep. Holliman: Mr. Chairman, I'd like to make a motion.

Rep. Moore: You're recognized for a motion.

Rep. Holliman: I move that we give this PCS a favorable report and unfavorable as to the original bill.

Rep. Moore: A motion's been made for the approval of the proposed committee substitute to House Bill 127, unfavorable as to the original bill. Further debate or discussion? Seeing not, those that favor the motion please say aye. Those opposed no. Appears to the chair the ayes have it, the ayes do have it, and the bill is adopted and will be forwarded to the floor.

Any further comments before we adjourn? Seeing not, we stand adjourned.

(Adjourned at 1:13 p.m.)

AGENDA

HOUSE OF REPRESENTATIVES ELECTION LAW AND CAMPAIGN FINANCE REFORM COMMITTEE

**March 30, 2005
Representative Moore, Presiding**

HB127, Public Employee Poll Workers

Representatives Insko, Preston

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION**

You are hereby notified that the Committee on Election Law and Campaign Finance Reform will meet as follows:

DAY & DATE: **Wednesday, March 30, 2005**

TIME: **1:00 p.m.**

LOCATION: **1425 LB**

The following bills will be considered (Bill # & Short Title & Bill Sponsor):

HB 127, Public Employee Poll Workers.

Respectfully,

Representatives Tim Moore and Deborah Ross
Chairs

I hereby certify this notice was filed by the committee assistant at the following offices at
2:10 p.m. on March 28, 2005.

____Principal Clerk
____Reading Clerk - House Chamber

Margie Penven (Committee Assistant)

2005 COMMITTEE REPORT HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representatives **Moore and Ross** (Chairs) for the Committee on **Election Law and Campaign Finance Reform**.

☐ Committee Substitute for

H.B. 127 A BILL TO BE ENTITLED AN ACT TO ALLOW LEAVE TO PUBLIC EMPLOYEES FOR WORKING AS PRECINCT OFFICIALS, AS RECOMMENDED BY THE JOINT SELECT COMMITTEE ON ELECTRONIC VOTING SYSTEMS.

- ☐ With a favorable report.
- ☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.
- ☐ With a favorable report, as amended.
- ☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐ ☐.
- ☒ With a favorable report as to the committee substitute bill (~~#~~), ☒ which changes the title, unfavorable as to (the original bill) (~~Committee Substitute Bill #~~); (and ~~recommendation that the committee substitute bill #~~) ~~be re-referred to the Committee on~~.)
- ☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.
- ☐ With an unfavorable report.
- ☐ With recommendation that the House concur.
- ☐ With recommendation that the House do not concur.
- ☐ With recommendation that the House do not concur; request conferees.
- ☐ With recommendation that the House concur; committee believes bill to be material.
- ☐ With an unfavorable report, with a Minority Report attached.
- ☐ Without prejudice.
- ☐ With an indefinite postponement report.
- ☐ With an indefinite postponement report, with a Minority Report attached.
- ☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

D

HOUSE BILL 127
PROPOSED COMMITTEE SUBSTITUTE H127-CSRR-6 [v.11]

3/29/2005 4:56:39 PM

Short Title: State Employee Poll Workers.

(Public)

Sponsors:

Referred to:

February 9, 2005

1 A BILL TO BE ENTITLED
2 AN ACT PROVIDING THAT STATE EMPLOYEES BE GRANTED PAID LEAVE
3 FOR ELECTION SERVICE IN VOTING SITES.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 126-4 is amended by adding a new subdivision to read:

6 "(5b) A policy allowing employees to take 24 hours per year of paid leave
7 for election service. For purposes of this section, 'election service'
8 means service as a precinct official as provided in G.S. 163-42 or
9 service for a board of elections in a voting site, including a one-stop
10 site as provided in G.S. 163-227.2. In the policy, the Commission shall
11 provide for leave with full pay for any hours of election service for
12 which the employee is not compensated by a board of elections. The
13 Commission shall provide that the leave shall be in addition to any
14 vacation leave or sick leave to which the employee is already entitled.
15 Employees must receive approval from their supervisor to use leave
16 under this subdivision. The agency may require proof that leave is
17 taken within the purpose of this subdivision. The Commission may
18 satisfy the requirements of this subdivision by including paid leave for
19 election service as an option within another paid leave policy for
20 community service. If it does so, the Commission may limit to 24
21 hours per year the paid leave for all forms of service under that policy
22 an employee takes."

23 **SECTION 2.** G.S. 163-46 reads as rewritten:

24 **"§ 163-46. Compensation of precinct officials and assistants.**

25 The precinct chief judge shall be paid the state minimum wage for his services on
26 the day of a primary, special or general election. Judges of election shall each be paid
27 the state minimum wage for their services on the day of a primary, special or general
28 election. Assistants, appointed pursuant to G.S. 163-42, shall each be paid the state

1 minimum wage for their services on the day of a primary, special or general election.
2 Ballot counters appointed pursuant to G.S. 163-43 shall be paid a minimum of five
3 dollars (\$5.00) for their services on the day of a primary, general or special election. If
4 an election official is being paid an hourly wage or daily fee on an election day and the
5 official is performing additional election duties away from the assigned precinct voting
6 place, the official shall not be entitled to any additional monies for those services,
7 except for reimbursable expenses in performing the services.

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

15 The chairman of the county board of elections, along with the director of elections,
16 shall conduct an instructional meeting prior to each primary and general election which
17 shall be attended by each chief judge and judge of election, unless excused by the
18 chairman, and such precinct election officials shall be paid the sum of fifteen dollars
19 (\$15.00) for attending the instructional meetings required by this section.

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

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

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

31 The county board of elections shall not compensate a precinct official for any hours
32 worked for which the precinct official takes paid leave subject to a policy of the State
33 Personnel Commission adopted pursuant to G.S. 126-4(5b)."

34 **SECTION 3.** This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

1

HOUSE BILL 127

Short Title: Public Employee Poll Workers.

(Public)

Sponsors: Representatives Insko, Preston (Primary Sponsors); Alexander, Coates, Farmer-Butterfield, Luebke, and Weiss.

Referred to: Election Law and Campaign Finance Reform.

February 9, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW LEAVE TO PUBLIC EMPLOYEES FOR WORKING AS
PRECINCT OFFICIALS, AS RECOMMENDED BY THE JOINT SELECT
COMMITTEE ON ELECTRONIC VOTING SYSTEMS.

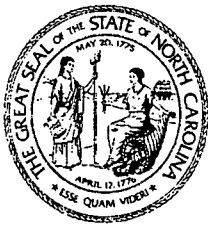
The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 163 of the General Statutes is amended by
adding a new section to read:

"§ 163-41.3. Leave for public employees to work as election officials.

Every employee of the State of North Carolina or of a city, county, school
administrative unit, constituent institution of The University of North Carolina, or other
political subdivision or public corporation in the State is entitled to up to 24 hours per
year of community service leave to serve as a precinct official or as a temporary
employee of a county board of elections in a voting site, including a one-stop site as
provided in G.S. 163-227.2. As used in this section, 'community service leave' for an
employee means absence with full pay in addition to any vacation leave or sick leave to
which the employee is already entitled. This section does not entitle an employee to
additional community service leave in addition to leave that employee received for the
equivalent election service under an equivalent program of the employer."

SECTION 2. This act is effective when it becomes law.



HOUSE BILL 127: Public Employee Poll Workers.

BILL ANALYSIS

Committee: House Election Laws and
Campaign Finance Reform

Date: March 30, 2005

Version: H127-CSRR-6 [v.11]

Introduced by: Reps. Insko and Preston

Summary by: William R. Gilkeson
Committee Co-Counsel

SUMMARY: *This PCS for House Bill 127 direct the Office of State Personnel to adopt a policy giving State employees covered by the State Personnel Act the right to take 24 hours per year of paid leave to serve as a precinct official or as a temporary employee at a voting site such as an early voting site. The leave would be only for hours for which the employee is not compensated by the board of elections. The leave would be in addition to vacation leave or sick leave. The Commission could satisfy the bill's requirement by making paid election leave a part of a policy that includes other community service. Effective when it becomes law.*

CURRENT LAW: The election law defines "precinct official" to include the chief judges, judges, and assistants who staff the precincts. G.S. 163-41(a). They are appointed by county boards of elections from nominations made by the chairs of the county political parties. Precinct officials are required to be paid the State minimum wage for service on election day, \$15 for training, and \$20 (for chief judges) or \$15 (for judges) if they are required to attend the county canvass. County boards of elections usually hire temporary employees (often veteran precinct officials) to staff early voting sites.

Currently, employers are prohibited from discharging or demoting their employees because they serve as precinct officials on election day or on canvass day. (That provision, enacted in 2001, has some protections for employers.)

"Community service leave" is a concept created by the State Personnel Commission for State employees subject to the State Personnel Act. It gives 24 hours paid leave per year (36 if tutoring) "in recognition of the State's diverse needs for volunteers to support schools, communities, citizens and non-profit organizations, and recognizing the commitment of State employees to engage in volunteer service." The policy says an employee is eligible for the leave if the employee uses the leave to work in "community service organization," which is defined as a "non-profit, nonpartisan community organization which is designated as a IRS Code 501(c)(3) agency, or a human services organization licensed or accredited to serve citizens with special needs including children, youth, and the elderly." The Office of State Personnel reported once interpreted their community service leave policy not to include election work, but later decided to include it if the employee is not paid by the board of elections.

BILL ANALYSIS: The PCS would direct the State Personnel Commission to adopt a policy to give every State employee covered by the State Personnel Act to take 24 hours of paid leave, in addition to vacation and sick leave, to serve as a precinct official or temporary employee of a county board of elections in a voting site including a one-stop (early voting) site. The requirement only provides that the paid leave be given for hours for which the employee was not compensated by the board of elections. The bill puts into statute two provisions of the Community Service Leave policy: that the employee must get the supervisors's approval to take the leave, and that the employer may require proof that the leave is really taken for election service. The Commission may satisfy the requirement to provide 24 hours of election service leave by including election service leave as an option within a policy, such as the Community Service Leave policy, that gives paid leave for various kinds of community service. If it does that, the Commission may cap at 24 hours a year all the leave taken under that policy for all forms of service.

Thus, the bill would put into statute the interpretation that the Office of State Personnel currently applies to Community Service Leave and election service. That interpretation is not spelled out in the policy, and may not be well known.

The bill also directs a county board of elections not to compensate election workers for hours for which they take leave under the bill.

Community Service Leave

Policy

In recognition of the State's diverse needs for volunteers to support schools, communities, citizens and non-profit organizations, and recognizing the commitment of State employees to engage in volunteer service, Community Service Leave, within the parameters outlined below, may be granted to:

- parents for child involvement in the schools (as defined below)
- any employee for volunteer activity in the schools or in a Community Service Organization (as defined below), or
- any employee for tutoring and mentoring in the schools.

In addition, there are special guidelines outlined at the end of this policy for Emergency Services, Blood and Bone Marrow Donorship and Disaster Service Volunteer with the American Red Cross.

Definitions

Following are definitions of terms used in this policy:

Terms	Definition
School (public or private)	One that is authorized to operate under the laws of the State of North Carolina and is: • an elementary school, • middle school, • high school, or • a child care program Advisory Note: Advisory Note: For employees who live in a state adjacent to North Carolina, the agency may grant community service leave to parents for involvement in the child's school.
Child	A son or daughter who is: • a biological child, • an adopted child, • a foster child • a step-child, • a legal ward • a child of an employee standing in loco parentis

Continued on next page

Community Service Leave, Continued

Definitions (continued)

Community Service Organization	A non-profit, non-partisan community organization which is designated as a IRS Code 501(c)(3) agency, or a human service organization licensed or accredited to serve citizens with special needs including children, youth, and the elderly. Advisory Note: Although religious organizations may be 501(c)(3) agencies, this leave does not apply to activities designed to promote religious beliefs.

Covered
Employees
And Credits

With approval of the supervisor, an employee is eligible for Community Service Leave as follows:

Type of Appointment	Amount Granted
Full-time - permanent, probationary, trainee, or time-limited	24 hours/year OR 1 hour/week (up to a max of 36 hrs) for mentoring/tutoring (as outlined below)
Part-time (half time or more) -- permanent, probationary, trainee, or time limited	Prorated --equal to percentage of full- time amount
Temporary, intermittent, or part-time (less than half-time)	None

The twenty-four hours (24) of paid leave shall be credited to each employee on January 1 of each year, unless the employee chooses the mentoring/tutoring option. New employees shall be credited with leave immediately upon their employment, prorated at two hours per month for the remainder of the calendar year.

Employee
Option for
Tutoring and
Mentoring

In lieu of the twenty-four (24) hour award as noted above, an employee may choose to tutor/mentor in a school. Leave under this option shall be used exclusively for tutoring or mentoring a student in accordance with established standards rules and guidelines for such arrangements as determined and documented by joint agreement with the employee's agency and the school.

Continued on next page

Community Service Leave, Continued**Employee
Option for
Tutoring and
Mentoring
(cont)**

The amount of community service leave for tutoring/mentoring is one (1) hour of community service leave for each week, up to a maximum of 36 hours, that schools are in session as documented by the elected board of the local education agency or the governing authority of any non-public school.

Advisory Note: Any time used for tutoring/mentoring, including time spent traveling to and from the school, must be accounted for either by the use of the one hour of community service leave or other leave policies.

**Changing
Options**

If an employee chooses to change options during the calendar year, the maximum hours that may be granted is the maximum allowed under the new option chosen minus the amount already used.

**What is
Community
Service?**

Community service, for this purpose, is:

- meeting with a teacher or administrator concerning the employee's child,
- attending any function sponsored by the school in which the employee's child is participating. This provision shall only be utilized in conjunction with nonathletic programs that are a part or supplement to the school's academic or artistic program,
- performing school-approved volunteer work approved by a teacher, school administrator, or program administrator, or
- performing a service for a community service organization.

Advisory Note: Service does not include activities designed to promote religious beliefs such as teaching or leading religious assemblies or in raising funds to support religious activities. Service would include activities supported by religious organizations such as working in soup kitchens, homeless shelters or other community activities.

Agency Policy

Each agency shall set forth a policy that shall be administered consistently.

**Approval of
Leave**

Employees must receive approval from their supervisor to use this leave. The supervisor or other agency management may require that the leave be taken at a time other than the one requested, based on the needs of the agency.

The agency may require acceptable proof that leave taken is within the purpose of this policy.

Continued on next page

Community Service Leave, Continued

Inter-Agency Transfer	If an employee transfers to another State agency, any balance of community service leave not used shall be transferred to the new agency. Under the tutoring/mentoring option, the employee should secure approval from the new supervisor prior to the transfer so that any necessary changes may be communicated to appropriate officials.

Noncumulative	Leave not taken is forfeited; it shall not be carried into the next calendar year.

Separation	Employees shall not be paid for this leave upon separation.

Additional time for community service activities	The agency may allow an employee additional time away from regular duties above the 24 hours of paid leave to perform significant community service activities with provisions for the employee to make up the time.

Hours worked in excess of forty during a workweek would constitute overtime under Federal regulations for FLSA non-exempt employees; therefore, it will be necessary for make-up time for these employees to be limited to the workweek in which the time is lost or in a week when the employee has not worked a full work schedule due to such absences as holidays, vacation, sick leave, etc.

The following guidelines for granting additional time apply:

- The amount of time that any employee may be allowed is left to the discretion of the agency head.
 - When agency operations require, all arrangements for the community service activity time may be interrupted or suspended.
 - Consideration of employee requests should include:
 - * nature of work - not all jobs permit rearrangement of work schedules,
 - * the quality of the employee's job performance with the agency,
 - * indication from the supervisor that unit performance can be maintained,
 - * any special circumstances such as the importance of the community service activity to community relations needs of the agency.
-

Records	Supervisors who approve such activities shall maintain records indicating the number of employees involved and the number of hours used

Continued on next page

Community Service Leave, Continued

SPECIAL LEAVE PROVISIONS

In addition to the above leave provisions, there are special guidelines that apply to **Emergency Services, Blood, Bone Marrow and Organ Donorship and Disaster Service Volunteer with the American Red Cross.**

Emergency Services

Agency heads are authorized to establish a policy providing time off with pay to employees participating in volunteer emergency and rescue services. Each agency head is responsible for determining that a bonafide need for such services exists within a given area. A bonafide need should be defined as real or imminent danger to life or property.

Each policy should require:

- sufficient proof of the employee's membership in an emergency volunteer organization and
- that the performance of such emergency services will not unreasonably hinder agency activity for which the employee is responsible.

Advisory Note: In emergency situations, which are not covered by an emergency volunteer organization, agencies may determine whether the emergency service to be provided can justifiably be designated as a work assignment, based on the expertise of the employee. If so, the agency head may authorize short-term work assignments when requested by an official party.

Blood, Bone Marrow and Organ Donorship

Employees are encouraged to use the privilege and opportunity to participate in life giving through blood, bone marrow and organ donorship. Participating employees shall be given reasonable time off with pay for whole blood donation, pheresis procedure and bone marrow transplant. Employees may be given up to 30 days with pay for organ donation.

Continued on next page

Community Service Leave, Continued

**American Red
Cross Disaster
Service Leave**

An agency may grant leave with pay not to exceed 15 workdays in any 12-month period to participate in specialized disaster relief services. The decision to grant leave rests in the sole discretion of the agency based on the work needs of that agency.

To qualify for leave, the employee must:

- be a disaster service volunteer of the American Red Cross, and
- be requested by the American Red Cross to participate.

The disaster must:

- be within the United States and
- be designated at Level III or higher in the American National Red Cross Regulations and Procedures.

While on disaster leave, the employee shall:

- be compensated at the regular rate of pay, and shall
- not lose seniority, pay, vacation leave, sick leave, or earned overtime accumulation.

Duties performed while on disaster leave shall not be considered to be a work assignment. The employee is granted leave based on the need for the employee's area of expertise. Job functions although similar or related are performed on behalf of and for the benefit of the American Red Cross. The State shall not be liable for workers' compensation claims arising from accident or injury while the employee is on assignment.

Note: This policy implements the provisions of G.S. 166A-30 - 166A-32.

**Partisan
Political
Involvement**

Partisan political activity during State time and the use of State equipment or supplies for any community service are not permitted. Special care must be taken to avoid any possible interpretation that the State is, in fact, permitting time off and in so doing supporting a political candidacy. Political activity must be in accordance with G.S. 126-13 of the State Personnel Act.

Civil Leave and Job Related Proceedings

Leave

Section 5, Page 41

December 1, 1995

NON-JOB RELATED CIVIL LEAVE

Policy Leave with pay is provided to employees when serving on a jury or when subpoenaed as a witness. It is the responsibility of the employee to inform the supervisor when the duty is scheduled and the expected duration.

Employees Covered Employees with a full-time or part-time (half-time or more) permanent, probationary, trainee, or time-limited appointment are covered for non-job related civil leave. (Employees with a temporary, intermittent or part-time [less than half-time] appointment are not eligible for non-job related civil leave but are eligible for job-related civil leave and other job-related proceedings.)

Jury Duty An employee who serves on a jury is entitled to:

- * leave with pay,
- * regular compensation, and
- * fees received for jury duty.

The employee:

- * should report back to work as soon as jury duty is completed, and
- * must report back to work the day following completion of the duty.

Note: If jury duty occurs on a scheduled day off, the employee is not entitled to additional time off. Time on jury duty is not included in total hours worked per week.

Shift Employees When a second shift employee serves on a jury, the employee will not be required to work on the day that jury duty occurs. When a third shift employee serves on a jury, the employee will not be required to work the third shift that begins on the day prior to the day that jury duty occurs. This applies to all employees, regardless of the length of the shift.

Leave

Section 5, Page 42

December 1, 1995

Court Attendance When an employee is subpoenaed or directed by proper authority to appear as a witness, the employee may choose one of the following options:

Option 1	Option 2
* charge no leave, and	* use vacation leave, and
* turn fees received in to the agency	* retain any fees received
<i>In either case, the time is not considered as work time and is not included in the total hours worked per week.</i>	

Advisory Note: An employee who is a party (plaintiff or defendant) in a court procedure is not considered as a ?witness?; therefore, vacation leave must be used, or leave without pay, for purpose of attending court.

JOB-RELATED CIVIL LEAVE AND OTHER JOB RELATED PROCEEDINGS

Policy Leave with pay is provided to an employee to attend court or a job-related proceeding in connection with official job duties.

Employees Covered In addition to employees with a full-time or part-time (half-time or more) permanent, probationary, trainee or time-limited appointment, an employee with a temporary, intermittent or part-time (less than half-time) appointment is also included.

Court Attendance - Official Duties When an employee attends court in connection with official duties:

- * no leave is required, and
- * fees received as a witness shall be turned in to the agency.

Note: If court is on a day that is normally an off-day, the time is working time and included in the total hours worked per week.

Leave

Section 5, Page 43
December 1, 1995

Shift Employees When a second or third shift employee is required to attend court or a job-related proceeding in connection with official job duties, management shall determine the amount of time off regular duties as may be necessary.

Table of Contents

VISITOR REGISTRATION SHEET

Election Law and Campaign Finance Reform

March 30, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

DAVID TEDDY	TEDDY & MEDKINS - 139 WESTFIELD RD. SHELBY, NC 28151
MARY KLENZ	League of Women Voters of NC
John Agn	SBE / DPT
Leanne Winner	NC SBA
Peggy Oliver	Office of State Personnel
mike Ashe	Durham Cty Bd of Elections
Johnnie McLean	SBE
Dan O. Bartlett	"
Andy Romcast	NCLM
Michael Houser	NCAE

MINUTES
House Committee on Election Law and Campaign Finance Reform
April 13, 2005
1:00 p.m., Room 1425
Representative Ross, Presiding

The House Committee on Election Law and Campaign Finance Reform met at 1:00 p.m. on Tuesday, April 13, 2005, in Room 1425 of the State Legislative Building.

Members present were: Representative Tim Moore, Co-Chair; Representative Deborah Ross, Co-Chair; Representative Paul Luebke, Vice-Chair; Representative John Blust; Representative Pricey Harrison; Representative Hugh Holliman; Representative George Holmes; Representative David Lewis; and Representative Edgar Starnes.

There were two bills on the agenda: House Bill 1115, Election Administration Amendments, sponsored by Representatives Tim Moore and Deborah Ross; and House Bill 1128, Campaign Finance Amendments, also sponsored by Representatives Moore and Ross.

Co-Chair Deborah Ross called the meeting to order and introduced the pages and sergeants-at-arms.

Co-Chair Ross gave the genesis of the bills before the committee and then asked Mr. Bill Gilkeson, staff to the committee, to explain House Bill 1115 section by section.

There was discussion of the bill, and Mr. Gary Bartlett, Director of the State Board of Elections, was present to help answer questions from the committee.

There were three technical amendments sent forth by Representative Moore. The first amendment dealt with date changes triggered because of changing the date of the canvas and also changed the title of the bill. Representative Moore moved that the amendment be adopted, and the motion passed.

The second technical amendment changed protest deadlines to a "business" day so it would not fall on a weekend. Upon a motion by Representative Moore, the amendment was adopted.

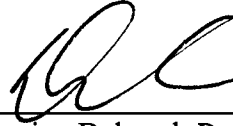
The third technical amendment changed the title of the bill to conform with the change for the cancellation of duplicate registrations. Upon a motion by Representative Moore, the amendment was adopted.

Representative Starnes had a potential amendment regarding runners, but he agreed to put off his amendment until the next meeting so he could confer with Representatives Lewis and Holliman to reach a consensus on the amendment.

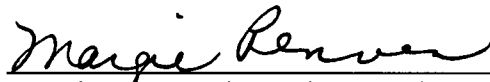
The meeting was adjourned at 1:53 p.m.

A verbatim transcript of this meeting is attached hereto along with all pertinent documents and handouts.

Respectfully submitted,



Representative Deborah Ross, Presiding Chair



Margie Penven, Committee Assistant

TRANSCRIPT
House Committee on Election Law and Campaign Finance Reform

1:00 p.m. on April 13, 2005

Room 1425, LOB

Representative Ross, Presiding

Rep. Ross: We have a quorum, and I know that some people have to go to Commerce and do some other things, so I want to get us underway. Welcome back to Election Laws. We have three pages with us today: Alicia Graham from Rowan County sponsored by Representative Coates, Courtney Patterson from Franklin County sponsored by Representative Earle, and Conrad Patterson from Franklin County sponsored by Representative Coleman. Our three sergeants-at-arms are Charles Williams, Linda Fuller, and Jonathan Callaway.

What we're going to do in this meeting and the next meeting and maybe even in a third meeting, if it's necessary, is go through two bills that are largely based some requests from the State Board of Elections and county elections boards for some changes to our election laws that we believe have bipartisan support. Representative Moore and I co-sponsored these bills, and they've gone through numerous committee meetings where we...

Rep. Kiser: (Unintelligible comment re bipartisan)

Rep. Ross: ...well I just wanted to share with you the genesis of these bills.

Rep. Kiser: They were bipartisan committees.

Rep. Ross: They were bipartisan meetings...

Rep. Kiser: Sometimes bicameral

Rep. Ross: Sometimes bicameral. We met with the senators; Mary Shuping joined us. So I just wanted you to know because I know so many of the bills in here have a back story. But where these bills came from, and they're long and they're technical and so what I thought we would do is have Bill Gilkeson and Erika pass out the bill summary for the first bill, Election Administration Amendments, and we'll let Bill come and explain the first bill in detail. And then if there are questions, we might as well take the questions as we go through it because it may take even more than one committee meeting to do the bill. So, Bill, will you come forward? Does everybody have a copy of the bill—House Bill 1115 and the bill summary? And Bill can tell you where these ideas came from, and we also might have one or two amendments to deal with.

Bill Gilkeson: Hi. As Representative Ross said, these bills basically came from some recommendations from the staff of the State Board of Elections. As I understand it, the State Board itself, because the Board is going to be re-appointed perhaps next month, I guess, would prefer not to make these recommendations that they had a formal endorsement because they were potentially going out, but the staff was in contact with their board member about them.

The first section of the bill has to do with...as you can see the title is long and reflects, hopefully, everything that's in the bill.... The first section comes in two parts, and it is a legal recognition of a certain type of functionary on Election Day called a runner. Currently there is a provision in the statutes for political party chairs at the county level to appoint observers to go into the polling place and to see what is going on, and there's a certain process that has to be gone through to appoint these people and to notify the board of elections ahead of time as to who they are and where they're going to be. But one of the duties of an observer is to pick up voter lists at 10:00, 2:00 and 4:00, like Dr. Pepper used to be. The party chairs frequently would just get the runners rather than go through the process of appointing an observer, and I believe that practice was pretty well recognized administratively, but the people at the State Board thought it would be a good idea to put it in the statute. A runner would be anybody named by the chair of a county party to simply go to a polling place and pick up a voter list at one of these times, and they would not have to be named days ahead of time. Anybody picked by the county chair, the county chair of the party needs would need to notify someone at the board of elections who is going to be a runner, what precincts they're going to be going to, and the runner could go into the voting enclosure only to the extent of announcing that he or she is there. Once they pick up the list, the runner would have to leave. This section also provides something new that I think was sort of recognized on page 2, line 16 and 17, that no person who is a candidate in a primary or election can be an observer in that election, and this also says can be a runner. So that's Section 1.

Section 2, beginning on page 3 of the bill at the bottom of the page there, would allow the Executive Director of the State Board of Elections to permit county boards of elections to use more than one type of voting system—more than one kind of voting equipment—in the same polling place. And it would be done there on page 4, lines 9 through 12, you see that the Executive Director in order to do this would have to find doing that would be necessary to comply with federal or State law. There's some thinking that in order to comply with the Help America Vote Act disability requirements...it says there has to be at least one voting system in every polling place that is handicapped accessible. In voting for the blind, really

the only way to conform to that in some places is to have a separate kind of machine in the polling place. Mr. Bartlett can speak to that, I'm sure.

Section 3, middle of page 4, says that there are a number of ways that county lines can be either clarified, adjusted or even changed. The General Assembly can change county lines and has in the past, and there's a procedure whereby counties that are...boards of county commissioners may agree to fixing a disputed or unclear county line just between themselves. They have to report this to the Secretary of State, but there have been instances in which people who were registered to vote in a certain county, without moving, turned out to be living in another county. And because county voter registration is based on the county in North Carolina, you have to re-register to vote to get into another county; I mean to be able to vote in another county. This would allow the Executive Director of the State Board of Elections to direct county boards of elections to administratively change somebody's voter registration from one county to another, if necessary, if those people have not moved.

Section 4 changes the.... Currently the deadline for protesting a...for filing an election protest is 6:00 p.m. on the second day after the county canvas, and this would.... 5:00 p.m. is usually when most board offices close, so this just changes this from 6:00 to 5:00 to reflect that sort of thing.

Section 5 changes.... Currently there's one set of rules for who can assist a voter at the polling place on Election Day, and those rules are in compliance with...basically track Section 208 of the Voting Rights Act, which says who...gives a voter who is illiterate who has trouble voting because they're illiterate or disabled the ability to get anyone to assist them in voting other than their employer or an agent of their labor union. For one-stop voting, there's a different set of rules. And there is also a felony provision if anybody other than the people who assist someone at a one-stop site, other than whoever is allowed to by the statute, does so. So what this would do is make the assistance at one-stop sites the same as the assistance at the polls on Election Day.

Section 6. This is actually something that this committee has visited at a previous meeting. This would visit it in a different way. As you know, a federal court in Greensboro has held unconstitutional the threshold of six signatures for a statewide candidate to get on the ballot. As an unaffiliated candidate in a general election, it's two percent of all the registered voters in the State, which is about a hundred and seven thousand people. That's only about sixty percent of the.... That's about forty percent more than the number of people that a new party would have to get signing petitions to get on the ballot statewide. The court said in Delaney vs. Marlette last year that the disparity between those two things was unconstitutional, and

found the statewide, unaffiliated threshold, too, which was the higher one, to be unconstitutional. What this does is simply change the statewide, unaffiliated threshold to be the same as the statewide party threshold. There was another bill that was given a favorable report by this committee last month that made the two thresholds the same but dropped them by three quarters to one-half of one percent of the last Governor's race.

Section 7. This would prohibit the payment of anyone who is participating in a voter registration drive...this would prohibit anyone paying that person from paying them per voter registration application that they generated. And this would add as a misdemeanor to the list of Class 2 misdemeanors doing that.

Section 8 provides that if a person...that transfer voters, that is unreported moves voters, the people who were registered to vote in a county, they moved from one precinct to another within the same county, that these people who, if they go to a polling place on Election Day and they actually live there but their name is not on the books, can vote a provisional ballot. This would provide that if those same people go to a one-stop site, they don't have to vote a provision ballot; they just vote the same kind of one-stop ballot that everybody else votes because the thinking is that at the one-stop site there is electronic access to all the voter registration records in the county, and all the ballot styles in the county are available there, so the people at the one-stop site can determine where the person's address puts them, can determine whether they really are registered, and can give them the right ballot. So most counties did not insist on doing provisional ballots at one-stop sites for these unreported moves voters. Wake County did. Perhaps some other counties didn't. This makes clear that you don't have to.

Section 9. For some reason there's something in the one-stop statute that says that the official at the one-stop site when a person has filled out the form is supposed to instruct them on how they could vote mail absentee. And the State Board thought that was inappropriate because they are already there voting in person, so why should the staff tell them how they could vote the second time another way.

Section 10. This involves two changes to the filing fees statute. Basically the filing fee is set at one percent of the annual salary of the office sought unless the office is compensated entirely by fees, in which case the statute sets it as a fixed dollar amount. This makes two changes. One, it gets rid of the references to offices compensated entirely by fees because there aren't any anymore. It leaves a section that says offices compensated partly by salary and partly by fees. I don't actually know if there are any of those anymore, but that's one percent of the salary anyway. This also fixes the salary that...in some cases, apparently, there was doubt about

what salary you should take one percent of. Would it be the starting salary for the office, if the office had that kind of scale, or should it be the salary of the incumbent, which the person actually running for the office, if they would be a first term probably wouldn't get because they hadn't been there as long as a long-time incumbent. This would say that it is the starting salary for the office rather than the incumbent's salary, if those are different. If no starting salary can be determined, then you use the salary of the incumbent as of January 1st of the election year.

Section 11. This would allow.... As it is now, when you fill out a voter registration form and you're registering in a county, there's a part of the form that calls for you to cancel...fill it out...to cancel your registration in a previous county where you were registered. Some people forget to do that. What this would allow is for the State Board of Elections to inform—the little title on the summary is not exactly correct—it would direct the State Board of Elections to notify the county board of elections where the old registration was that a new registration in a different county has been achieved and the county board in the old county would cancel that registration. The State Board is supposed to set up procedures for notifying the person whose registration is about to be cancelled in some county, just in case it wasn't really that person who registered at the new county so the State Board is supposed to come up with new rules to prevent disenfranchisement. It may be that there needs to be a title change in reference to this. At the beginning of the bill, lines 20 through 23, maybe that we need to say that rather than the State Board actually making the cancellation, that the State Board shall set up a procedure for that, so that would be okay for us to do it that way.

Section 12. The statutes about access to voter registration data were most recently written back in the mid 90s, and they were written with language that was very specific to the technology that existed at the time. It talks about things that if you know a lot about computers you would probably laugh at because people don't use it any more. But it requires the State Board to provide information in this outdated equipment. It also has language that suggests that county boards of elections have the option of not having their voter registration data on line. This section changes that and cleans up the old language and makes it clear that the county board doesn't have the option of not being electronic. It also makes clear that the county board does not have to provide a pre-paper list to the county party chairs. It will provide it electronically, and that's what they would generally want.

Section 13 of the bill moves the canvas date from the 7th day after the election, as it is now—as it was recently made because of changes that were deemed necessary—for the general election only, for a general election in even-numbered years only, the canvas date would be moved

from the 7th day to the 10th day. In 2004, a number of county boards of elections found that they had so much to do between Election Day and canvas day that they just didn't have time to get it done. That probably would not be the case any time but a general election, so this has a ten-day canvas day. This would, I believe, be the second Friday after the election. It was pointed out to us that there needed to be some conforming changes to other dates, and we have an amendment that would make at least one of them and change the title of the bill so that it would be possible even on the floor to add more dates, if that were necessary.

Section 14 of the bill, the final section of the bill, clarifies that at the polling place a county, if it has the capacity of doing that, may use any electronic poll book or an electronic voter registration record rather than paper. And that's the bill.

Rep. Ross: Okay. Members of the committee, we do have two technical amendments, but why don't we take some questions from the committee and then we'll do those two technical amendments that Mr. Gilkeson just mentioned—the one having to do with the timing and then the other one to more accurately reflect the body of the bill. I saw Representative Luebke and then Representative Harrison, and then Representative Holliman.

Rep. Luebke: So I am recognized?

Rep. Ross: Representative Luebke.

Rep. Luebke: Thank you. Just a small question. On page 9, lines 20-22, there is a sentence. This is for Mr. Gilkeson. The State Board of Elections shall adopt rules to prevent disenfranchisement and implementation of this section. What's an example of what the State Board would do here?

Mr. Gilkeson: Well, the disenfranchisement would probably be in an inadvertent thing. Perhaps somebody fraudulently registers to vote under my name in Mecklenburg County, and I'm registered to vote in Wake County now. If the State Board automatically...or if my registration in Wake County were automatically cancelled, then I wouldn't be able to vote the next time I show up at my polling place. So that would be the kind of thing that they would deal with. And part of that, as it says here, would include notifying me—making sure that I know that this is going to happen—so if I didn't really register in Mecklenburg, I can speak up.

Rep. Luebke: Follow-up?

Rep. Ross: Yes.

Rep. Luebke: So in the normal course of events, if I switched counties, then as my registration was picked up at the one place, cancelled at the other, I would be notified that this process was occurring.

Mr. Gilkeson: Well, the way it works now, and maybe the Board of Elections people can explain it better, but the way it works now as I understand it is when you register, when you fill out the registration form, there's a part of the form that you're supposed to fill out in which you authorize the cancellation of your registration in the old county. But some people just forget to fill it out. Does that...?

Rep. Ross: Gary Bartlett is here from the State Board of Elections. Mr. Bartlett, would you like to share.

Mr. Bartlett: That is correct, and part of the responsibility for the new registration, the county sends a verification mailing to the registered voter.

Rep. Ross: Okay. Mr. Holliman can follow up on that, and then we'll go to Representative Harrison.

Rep. Holliman: You got a Robert Smith who registers in Wake County. How do you know it's the same people. How are you sure you're deleting the right one?

Rep. Ross: Mr. Bartlett?

Rep. Bartlett: We contact the counties involved and ask them to get additional information that would be certain to check such as _____ notices, social security, driver's license number, birth date, address. All of those issues come into play, and if we have to, we will contact those people to ensure that the accurate Mr. or Mrs. Smith is dealt with in the administrative way it should.

Rep. Ross: Representative Harrison.

Rep. Harrison: In section 5, I was just curious about the reason for not getting assistance from anyone...the employer and wondering what that reason might be.

Rep. Ross: That's federal law.

Rep. Harrison: Oh. Okay.

Mr. Gilkeson: That, I think, came from federal law. I know that is the federal law. That is a part of the Voting Rights Act, so I guess the rationale has to do with the fear that somebody could be under duress from one of those of those people...be strong-armed or pressured to vote a certain way.

Rep. Ross: Do you have a follow-up question?

Rep. Harrison: Do. I was just curious.

Rep. Ross: Representative Holliman. You had another question.

Rep. Holliman: In Section 13, I'm just kind of curious. I would think with all the electronic voting that you have now that you could canvas, probably be better _____, but we seem to be moving it back. What are the problems that cause us to move it back?

Rep. Ross: I believe that Gary Bartlett could address that, but I think what happened—this is largely based on what happened with our last presidential election when we had people in the local boards of election working through the night to try to complete the canvas, but why don't we let Mr. Bartlett give us a more complete explanation.

Mr. Bartlett: What has occurred is that there is so much research that has to be done for provisional ballots plus we have got to do a cross check of the number of registered voters that are eligible for the precinct, match it against poll books, and match that against tapes, that that research for provisional voting in our urban counties is just not enough time.

Rep. Ross: Representative Holliman.

Rep. Holliman: Does it all have to be done manually or is this a computer match?

Mr. Bartlett: It's a manual match.

Rep. Ross: And I would just say, Representative Holliman, in Wake County the chair of my board of elections really likes this provision. Representative Blust is your question on this issue? Okay. I'll put you on the list. Representative Holliman, did that answer your question? Do you need any more? Okay. Representative Starnes.

Rep. Starnes: Section 2, you said maybe to comply with HAVA requirements, you may have to have more than one type of voting machine for precinct use. And you said specifically to accommodate those that are blind. How extensive is that going to be? Is every precinct going to be required to have a machine designed for the blind? I don't know what type of machine they have. Does it have brail on it or is it not acceptable to have someone just to assist them in voting?

Rep. Ross: Representative Starnes, we're going to ask Mr. Bartlett to address your question.

Mr. Bartlett: It is law through that Help America Vote Act that those who are visually impaired be able to vote independently and in secret. So there must be some—least one—piece of voting equipment that is ABA accessible. Those standards will soon be submitted by the Elections Assistance Commission to us so that we can incorporate those standards in North Carolina.

Rep. Ross: Representative Starnes for a second question.

Rep. Starnes: So then basically every precinct in the State of North Carolina at some point in time in the future will have to have some sort of handicapped voting machine in place.

Mr. Bartlett: Yes, sir. And in addition to that I will remind members that our State HAVA Plan that was accepted by the EAC has \$11 million worth of grant to ensure that this....

Rep. Ross: Representative Starnes for another question.

Rep. Starnes: This isn't a question, but I have a suggestion for an amendment that I want to throw out for committee and see if there's any interest before I pursue it. On page 3, line 5, and this has to do with the runners...problems. The way the election are run now—and I can speak more for Caldwell County because that's what I'm more familiar with—we have the observers, which the observers can bring the list out every four hours, if they want to, or you can have someone go in to pick up the list. This is going to change it in such a way that the runner or the designated person has to be put on a list prior to the election, that way they're approved and they go ahead or don't go ahead. It's just been my observation that...of course getting ready for an election is very hectic, and sometimes you overlook things. Would it be all right if we just said on line 5, the runner may be the precinct chair or any person named by the county party chair? That way we know that basically in every precinct each party has a party chair that will be there, and it might just be normal for the precinct chair to be one person that could go in and get it. That's just a suggestion that I would make.

Rep. Ross: Is there any discussion by members of the committee about this proposal of Representative Starnes? Any objections to it? Okay, why don't we have an amendment prepared for Representative Starnes on this? Representative Blust, you had a question.

Rep. Blust: Yes. Section 11 allows cancellation of an old registration when a new one appears. What are the current rules for canceling a registration upon not voting for a certain number of elections? How many elections is that? How is that done? Are we under a federal requirement on that subject?

Rep. Ross: Representative Blust, I believe there was legislation passed last session on this matter, but we'll again defer to Mr. Bartlett to explain.

Mr. Bartlett: There is a federal requirement that passed in 1993. It was the National Voter Registration Act. You cannot take anyone off the list for non-voting; however, there is a list maintenance procedure that allows us to send a mailing to anyone that we have not had any contact with through two federal elections, and through that process we're able to clean our lists.

Rep. Ross: Representative Blust.

Rep. Blust: One observation. Maybe this isn't the right bill for it, but I can tell you having done a lot of door-to-door, I can't tell you how many times I've come to a house, another address, and there might be four or five different couples that are registered different names at that same address that are still legally registered...knock on the door and you know that three of the pairs do not live there and don't exist and they're really not valid voters. And I think we ought to look at somehow being able to clean our lists because I'll bet twenty to twenty-five percent of the registered voters aren't really there anymore.

Rep. Ross: Well, Representative Blust, why don't you since we are not entirely sure of exactly your ideas would jive with the other laws, why don't you take some time to meet with Mr. Bartlett and staff, and if this bill is inappropriate, believe me, we're going to have plenty of bills before crossover, and if there's a way to deal with this issue, I'm sure the committee would be interested. Representative Lewis.

Rep. Lewis: Thank you, Madam Chair. This may be for Bill or for the Chair; I don't know, but Section 6 of the bill. We just dealt two weeks with a bill that would lower the threshold. I don't understand if that's going to be the message that the committee wants to send, why we don't include that message in this bill?

Rep. Ross: I can answer that a little bit. The Senate when we looked at this bill, and there's a companion bill filed on the Senate side, the Senate agreed that this would be appropriate. We're not entirely sure that the Senate will be in agreement with the other bill. And so in order to make the bills consensus bills between the Senate and the House and between both parties on the House side, we chose this way to go because we don't know what the fate will be of the other bill. It's appropriate to have an amendment to this bill if the committee feels that that's its will. I just would let you know that that's why this bill came through the way it did.

Rep. Lewis: May I make one remark.

Rep. Ross: Yes.

Rep. Lewis: I went back. The only reason I say this now is that I tried to prepare Representative Starnes amendment. Part of what this bill calls for is for the county chairs to provide a list of names to the board, and I know in our county the board of elections doesn't deal with the county party politics, if you will. So probably the amendment would need to include that the chairs would need to provide those precinct chair's names; and if that's the case, I'm not sure we need to amend the bill.

Rep. Ross: Representative Starnes. Do you have any response to Representative Lewis's comment?

Rep. Starnes: Are you still talking about Section 6 here?

Rep. Lewis: Yes, sir.

Rep. Starnes: Okay, you're going back with....

Rep. Ross: Would you prefer to make Representative Lewis's amendment, which would require county chairs provide the information of the precinct chairs' names in addition to the runners' names or would you prefer to just say...

Rep. Starnes: Well my preference is just leave it the way it is because, I mean, both parties had the opportunity to name their own precinct chairs and then what this is doing, the law would say that the precinct chair would be eligible to pick up the voter list in addition to a runner who is named by the party chair and registered with the board of elections prior to the election. So I don't see why you'd necessarily have to have the precinct chair registered with the board of elections.

Rep. Ross: Representative Lewis.

Rep. Lewis: I just want to inquire of Representative Starnes, and I might should just lean over, but how does the county board know who the precinct chairs are?

Rep. Ross: Right. That's the point. So would you like...I assume the question is would like a perfecting amendment to your amendment that includes providing the names of the precinct chairs to the county board so that the county board doesn't say to a precinct...somebody who claims to be a precinct chair...how do we know? Representative Holliman.

Rep. Holliman: On that subject, I think that the party chairs have to provide a list on a certain day to the board of elections, and it would be a lot clearer if they gave both names to the board of elections, or they're trying to figure out

who's precinct chair and who's not. I think that's already in motion and they have deal with it. I think it should be actual names of people.

Rep. Ross: Okay. Representative Starnes, we're going to do a couple of other amendments before we get to yours. Why don't you think about that and maybe talk a little bit with Representative Lewis and see if you want to have a perfecting amendment. If not, I don't see any reason why we can't add that. That would be clearly within the scope of the bill, and so if it takes a little while to do it, we can do it. Representative Holliman.

Rep. Holliman: Just want to be clear, Madam Chair. In Section 6 dealing with an unaffiliated candidate, that is consistent with what we passed before, or is it not?

Rep. Ross: Why don't we let Mr. Gilkeson explain what this is and then how it is, in fact, different from what we passed before.

Mr. Gilkeson: What you passed before, or what this does is simply make the unaffiliated candidate threshold and the new party threshold the same and puts it at the same level as the current new party threshold. What the other bill did was make the two thresholds the same but lowered them from two percent down to one-half of one percent. So the other bill, I believe, is in the Finance Committee and has not been taken up—in the House Finance Committee and has not been taken up.

Rep. Ross: Representative Holliman for a follow-up, and then I believe Gerry Cohen wanted to interject.

Rep. Holliman: Well I just believe we should be consistent. (The rest is unintelligible)

Rep. Ross: Why don't we let Gerry Cohen speak and the maybe another amendment.

Mr. Cohen: I think part of the concept was that if House Bill 88 went forward—passed out of the House and the Senate—then when the Senate took up this bill they would drop this Section 6 from this bill because House Bill 88 would take care of it. Or if this bill got ratified first, and then House Bill 88 came along afterwards that whatever house its in would then drop this section, but the idea is that is bill is technical and not policy so we're complying literally with the court's decision to treat them equally, whereas the other bill makes a policy change, which is to lower both of them. So part of the concept, I think, is this bill is not to change policy but just correct mistakes, errors, and comply in court cases, etc.

Rep. Ross: Representative Blust.

- Rep. Blust: I would agree with what Mr. Cohen just said that we can't assume that other bill, which I support by the way, is going to make it all the way through the legislative process and become law, so I think this bill should go forward right now on the assumption that that won't, and then we can reconcile the two—whichever bill passes last, that bill can be reconciled with the one that passes first.
- Rep. Ross: That was the assumption when we put this bill together also knowing that the Senate has not yet decided what they are going to do with the other bill. If there's a strong feeling to the contrary, why don't we...we're going to be going through a few amendments, and we'll see where we go. Let's try to get.... (Tape ended.) (New tape) ...is something that is burning for you, we'll be back. Let's start. Representative Moore wants to send forward...the first amendment he's going to send forward...do committee members have amendments? Have they been handed out to you? Okay. Bill Gilkeson is handing them out. This first amendment is to deal with this date change situation because we're changing the date of the canvas, that is going to then trigger a couple of other changes in dates, and so all this amendment does, it makes a change to the title of the bill so that if other dates are found later on, we can easily amend it...and addresses another date change that would be required dealing with mandatory recounts. Do members have copies of the amendment at this point? Okay. So Representative Moore moves the adoption of his amendment. All those in favor please signify by saying aye. All those opposed. Okay the amendment is adopted. (Unanimous.) Then Representative Moore has another amendment on page 4, line 31, that's about the protest deadlines, and on line 31 what it does is, it says the second day, and what it does is it inserts the word "business" between second and day because it might fall on a Friday or where the second day might be on the weekend. And then on page 4, line 35, it makes the exact same change—inserts the word "business" between the words second and day. Is there any discussion by members of the committee?
- Rep. Holliman: This is saying Monday through Friday?
- Rep. Ross: Yes. Okay, Representative Moore moves adoption of this amendment. All those in favor please signify by saying aye. Those opposed no. Okay the ayes have it. (Unanimous.) We have a third amendment. Representative Moore moves to amend the title of the bill, so this is on page 1, lines 20 through 21, and this is to address the conforming change for the cancellation of duplicate registrations, to delete the phrase, "the State Board of Elections to automatically cancel" and substitute the phrase, "for the cancellation of". Any discussion on this amendment? Okay, Representative Moore moves the adoption of this amendment. All those in favor please signify by saying aye. Those opposed no. The amendment passes. (Unanimous.) Those are the amendments that we had...the kind of

simple amendments that we had. Representative Starnes still has an amendment before us or an amendment he'd like to bring before us, but there was some question about that. Representative Lewis.

Rep. Lewis: This is not on that matter, but I'd like the Chair or perhaps Mr. Bartlett to address on Section 12 of the bill, if this will in any way limit an individual's chance to get a hard copy or a written list of registered voters because I know there are still some folks that rely on that.

Rep. Ross: Mr. Bartlett.

Mr. Bartlett: It will not hurt anyone whatsoever. In fact, it's my understanding that you can, if you have access to a computer, you can download it... (unintelligible).

Rep. Ross: Do you have a follow-up question.

Mr. Bartlett: If you need a hard copy, all you have to do is ask the county board of elections or us.

Rep. Ross: Does that answer your question, Representative Lewis? Okay. We have...we're running out of time so, again, I want to respect your time. Representative Starnes has an amendment and a few people have some thoughts about that amendment, so Representative Starnes, do you mind holding that amendment to our next committee meeting and conferring with Representative Lewis and potentially Representative Holliman to see if maybe we can wrap that all up into one amendment and get staff to prepare that...in the fine tradition of their subcommittee. And then we may have one or two amendments on this bill and then we're going to move on to that campaign finance bill, which is equally technical and specific, so please do your homework. The committee meeting is adjourned.

Adjourned at 1:53.

AGENDA

HOUSE OF REPRESENTATIVES ELECTION LAW AND CAMPAIGN FINANCE REFORM COMMITTEE

**April 13, 2005
Representative Ross, Presiding**

HB 1115, Election Administration Amendments, Reps. Moore and Ross

HB 1128, Campaign Finance Amendments, Reps. Moore and Ross

Margie Penven (Rep. Ross)

From: Margie Penven (Rep. Ross)

Sent: Thursday, April 07, 2005 11:28 AM

Subject: 4-13-05 Meeting Notice for Election Law and Campaign Finance Reform

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION**

You are hereby notified that the Committee on Election Law and Campaign Finance Reform will meet as follows:

DAY & DATE: Wednesday, April 13, 2005

TIME: 1:00 p.m.

LOCATION: 1425 LB

The following bills will be considered (Bill # & Short Title & Bill Sponsor):

HB 1115, Election Administration Amendments, Reps. Moore and Ross

HB 1128, Campaign Finance Amendments, Reps. Moore and Ross

Respectfully,

Representatives Tim Moore and Deborah Ross
Chairs

I hereby certify this notice was filed by the committee assistant at the following offices at 11:30 a.m. on April 7, 2005.

____ Principal Clerk
____ Reading Clerk - House Chamber

Margie Penven (Committee Assistant)

4/7/2005

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

1

HOUSE BILL 1115

Short Title: Election Administration Amendments.

(Public)

Sponsors: Representatives Moore, Ross (Primary Sponsors); and Insko.

Referred to: Election Law and Campaign Finance Reform.

April 5, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW POLITICAL PARTIES TO USE "RUNNERS" TO PICK UP
VOTER LISTS FROM POLLS; TO PROHIBIT A CANDIDATE FROM BEING
AN OBSERVER OR RUNNER AT THE POLLS; TO AUTHORIZE THE
EXECUTIVE DIRECTOR OF THE STATE BOARD OF ELECTIONS TO
PERMIT DIFFERENT VOTING SYSTEMS IN THE SAME PRECINCT; TO
ALLOW THE CHANGING OF REGISTERED VOTERS BASED ON ADJUSTED
COUNTY LINE; TO CHANGE THE DEADLINE FOR FILING A PROTEST
FROM SIX O'CLOCK P.M. TO FIVE O'CLOCK P.M.; TO PERMIT THE SAME
KIND OF VOTER ASSISTANCE IN ONE-STOP SITES AS AT VOTING
PLACES ON ELECTION DAY; TO CHANGE THE REQUIREMENT FOR A
STATEWIDE UNAFFILIATED CANDIDATE TO CONFORM TO A FEDERAL
COURT DECISION; TO PROHIBIT PIECE PAYMENT FOR VOTER
REGISTRATION DRIVES; TO EXPRESSLY PROVIDE THAT PRECINCT
TRANSFER VOTERS AT ONE-STOP SITES NEED NOT VOTE PROVISIONAL
BALLOTS; TO DELETE THE REQUIREMENT THAT ONE-STOP VOTERS BE
INSTRUCTED IN HOW TO VOTE MAIL ABSENTEE BALLOTS; TO FIX THE
SALARY ON WHICH A FILING FEE FOR AN OFFICE IS BASED; TO
REMOVE THE OUTDATED REFERENCE IN THE FILING FEE STATUTE TO
OFFICES "COMPENSATED ENTIRELY BY FEES"; TO ALLOW THE STATE
BOARD OF ELECTIONS TO AUTOMATICALLY CANCEL A VOTER'S
REGISTRATION IN A FORMER COUNTY WHEN THE VOTER REGISTERS
IN A NEW COUNTY; TO UPDATE AND MAKE MORE
TECHNOLOGY-NEUTRAL THE LANGUAGE IN THE STATUTE PROVIDING
FOR ACCESS TO VOTER REGISTRATION DATA; TO EXTEND FOR THREE
DAYS THE COUNTY CANVASS AFTER A GENERAL ELECTION IN
NOVEMBER OF AN EVEN-NUMBERED YEAR; AND TO EXPRESSLY
ALLOW ELECTRONIC POLLBOOKS.

The General Assembly of North Carolina enacts:

1 SECTION 1.(a) G.S. 163-45 reads as rewritten:

2 **"§ 163-45. Observers; appointment.**

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

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

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

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

1 have voted in the precinct so far that election day; each observer shall be entitled to
2 make the inspection at times specified by the State Board of Elections, but not less than
3 three times during election day with the spacing not less than one hour apart. Instead of
4 having an observer receive the voting list, the county party chair may send a runner to
5 do so. The runner may be any person named by the county party chair. That party chair
6 must notify the chair of the county board of elections or the board chair's designee of
7 the names of all runners to be used in each precinct before the runner goes to the
8 precinct. The runner may receive a voter list from the precinct on the same schedule as
9 an observer. Whether obtained by observer or runner, each party is entitled to only one
10 voter list at each of the scheduled times. No runner may enter the voting enclosure
11 except when necessary to announce that runner's presence. The runner must leave
12 immediately after being provided with the list."

13 **SECTION 1.(b)** G.S. 163-166.3 reads as rewritten:

14 **"§ 163-166.3. Limited access to the voting enclosure.**

15 During the time allowed for voting in the voting place, only the following persons
16 may enter the voting enclosure:

- 17 (1) An election official.
- 18 (2) An observer appointed pursuant to G.S. 163-45.
- 19 (2a) A runner appointed pursuant to G.S. 163-45, but only to the extent
20 necessary to announce that runner's presence and to receive the voter
21 list as provided in G.S. 163-45.
- 22 (3) A person seeking to vote in that voting place on that day but only
23 while in the process of voting or seeking to vote.
- 24 (4) A voter in that precinct while entering or explaining a challenge
25 pursuant to G.S. 163-87 or G.S. 163-88.
- 26 (5) A person authorized under G.S. 163-166.8 to assist a voter but, except
27 as provided in subdivision (6) of this section, only while assisting that
28 voter.
- 29 (6) Minor children of the voter under the age of 18, or minor children
30 under the age of 18 in the care of the voter, but only while
31 accompanying the voter and while under the control of the voter.
- 32 (7) Persons conducting or participating in a simulated election within the
33 voting place or voting enclosure, if that simulated election is approved
34 by the county board of elections.
- 35 (8) Any other person determined by election officials to have an urgent
36 need to enter the voting enclosure but only to the extent necessary to
37 address that need."

38 **SECTION 2.** G.S. 163-165.10 reads as rewritten:

39 **"§ 163-165.10. Adequacy of voting system for each precinct.**

40 The county board of elections shall make available for each precinct voting place an
41 adequate quantity of official ballots or ~~equipment so that all voters qualified to vote at~~
42 ~~the precinct may do so. equipment.~~ When the board of county commissioners has
43 decided to adopt and purchase or lease a voting system for voting places under the
44 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."

SECTION 3. Article 7A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-82.15A. Administrative change of registration when county line is adjusted.

When a boundary between counties is changed by legislation, or adjusted by the counties pursuant to G.S. 153A-18, the Executive Director of the State Board of Elections shall direct the county boards of elections involved to administratively change the voter registration of any voter whose residence the change or adjustment places in a different county. The voter shall not be required to submit a new application to register. The Executive Director shall prescribe a method of notifying the voter of the change of county registration, the correct precinct, and other relevant information."

SECTION 4. G.S. 163-182.9(b)(4) reads as rewritten:

"(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 6:00-5:00 P.M. on the second 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 6:00 5:00 P.M. on the second 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."

SECTION 5.(a) G.S. 163-227.2(e) reads as rewritten:

"(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.~~ 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."

SECTION 5.(b) G.S. 163-226.3(a) reads as rewritten:

"(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 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 guardian;~~ 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 ~~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;~~ 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

1 written request pursuant to G.S. 163-230.1 or an application on behalf
2 of a registered voter who is a patient in any hospital, clinic, nursing
3 home or rest home in this State or for any owner, manager, director,
4 employee, or other person other than the voter's near relative or
5 verifiable legal guardian, to mark the voter's absentee ballot or assist
6 such a voter in marking an absentee ballot;

7 (5) Repealed by Session Laws 1987, c. 583, s. 8.

8 (6) For any person to take into that person's possession for delivery to a
9 voter or for return to a county board of elections the absentee ballot of
10 any voter, provided, however, that this prohibition shall not apply to a
11 voter's near relative or the voter's verifiable legal guardian;

12 (7) Except as provided in subsections (1), (2), (3) and (4) of this section,
13 G.S. 163-231(a), G.S. 163-250(a), and G.S. 163-227.2(e), for any voter
14 to permit another person to assist the voter in marking that voter's
15 absentee ballot, to be in the voter's presence when a voter votes an
16 absentee ballot, or to observe the voter mark that voter's absentee
17 ballot."

18 **SECTION 6.** G.S. 163-122(a) reads as rewritten:

19 "(a) Procedure for Having Name Printed on Ballot as Unaffiliated Candidate. –
20 Any qualified voter who seeks to have ~~his~~that voter's name printed on the general
21 election ballot as an unaffiliated candidate shall:

22 (1) If the office is a statewide office, file written petitions with the State
23 Board of Elections supporting ~~his~~ candidacy for a specified office.
24 These petitions must be filed with the State Board of Elections on or
25 before 12:00 noon on the last Friday in June preceding the general
26 election and must be signed by qualified voters of the State equal in
27 number to two percent (2%) of the total number of ~~registered voters in~~
28 ~~the State as reflected by the most recent statistical report issued by the~~
29 ~~State Board of Elections. voters who voted in the most recent general~~
30 election for Governor. Also the petition must be signed by at least 200
31 registered voters in each of four congressional districts in North
32 Carolina. No later than 5:00 p.m. on the fifteenth day preceding the
33 date the petitions are due to be filed with the State Board of Elections,
34 each petition shall be presented to the ~~chairman~~chair of the board of
35 elections of the county in which the signatures were obtained.
36 Provided the petitions are timely submitted, the ~~chairman~~chair shall
37 examine the names on the petition and place a check mark on the
38 petition by the name of each signer who is qualified and registered to
39 vote in ~~his~~that county and shall attach to the petition ~~his~~the
40 petitioner's signed certificate. Said certificates shall state that the
41 signatures on the petition have been checked against the registration
42 records and shall indicate the number of signers to be qualified and
43 registered to vote in ~~his~~that county. The ~~chairman~~chair shall return
44 each petition, together with the certificate required in this section, to

the person who presented it to ~~him~~ for checking. Verification by the ~~chairman~~ chair of the county board of elections shall be completed within two weeks from the date such petitions are presented."

SECTION 7.(a) Article 7A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-82.25A. Piece payment in voter registration drives prohibited.

No person who employs or contracts with another person to register voters or assist or encourage voters to fill out voter registration forms shall pay that person per voter registration application completed. No person shall accept payment per voter registration application. A violation of this section is a Class 2 misdemeanor."

SECTION 7.(b) G.S. 163-274 is amended by adding a new subdivision to read:

"(14) For any person to pay or accept payment per voter registration application completed in violation of G.S. 163-82.25A."

SECTION 8.(a) G.S. 163-227.2 is amended by adding a new subsection to read:

"(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."

SECTION 8.(b) G.S. 163-166.11 is amended by adding a new subdivision to read:

"(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)."

SECTION 9. G.S. 163-227.2(c) reads as rewritten:

"(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; ~~shall furnish the voter with the instruction sheets called for by G.S. 163-229(c); and 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 ~~chairman~~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."

SECTION 10. G.S. 163-107(a) reads as rewritten:

"(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~~	~~Twenty dollars (\$20.00), plus one percent~~

1 entirely by fees (1%) of the income of the office above
2 two thousand dollars (\$2,000)
3 All county offices compensated partly One percent (1%) of the first annual
4 by salary and partly by fees salary to be received (exclusive of
5 fees)

6 The salary of any office that is the basis for calculating the filing fee is the starting
7 salary for the office, rather than the salary received by the incumbent, if different. If no
8 starting salary can be determined for the office, then the salary used for calculation is
9 the salary of the incumbent, as of January 1 of the election year."

10 SECTION 11. G.S. 163-82.9 reads as rewritten:

11 "**§ 163-82.9. Cancellation of prior registration.**

12 If an applicant indicates on an application form described in G.S. 163-82.3 a current
13 registration to vote in any other county, municipality, or state, the county board of
14 elections, upon registering the person to vote, shall send a notice to the appropriate
15 officials in the other county, municipality, or state and shall ask them to cancel the
16 person's voter registration there. If an applicant completes an application form described
17 in G.S. 163-82.3 except that the applicant neglects to complete the portion of the form
18 that authorizes cancellation of previous registration in another county, the State Board
19 of Elections shall notify the county board of elections in the previous county of the new
20 registration, and the board in the previous county shall cancel the registration. The State
21 Board of Elections shall adopt rules to prevent disenfranchisement in the
22 implementation of this section. Those rules shall include adequate notice to the person
23 whose previous registration is to be cancelled."

24 SECTION 12.(a) G.S. 163-82.10(b) reads as rewritten:

25 "(b) Access to Registration Records. – Upon request by that person, the county
26 board of elections shall provide to any person a list of the registered voters of the county
27 or of any precinct or precincts in the county. The county board may furnish selective
28 lists according to party affiliation, gender, race, date of registration, precinct name,
29 precinct identification code, congressional district, senate district, representative district,
30 and, where applicable, county commissioner district, city governing board district, fire
31 district, soil and water conservation district, and voter history including primary,
32 general, and special districts, or any other reasonable category. No list produced under
33 this section shall contain a voter's date of birth. However, lists may be produced
34 according to voters' ages. The Both the following shall apply if a county maintains or
35 has its voter registration list maintained on a computer to all counties:

- 36 (1) In addition to the typed, mimeographed, photocopied, computer
37 printout or label lists, the The county board of elections shall make the
38 voter registration information available to the public on electronic or
39 magnetic medium. Magnetic medium for the purpose of this section
40 shall consist of nine track tape or 3.5 inch diskettes and 5.25 inch
41 diskettes readily accessible using MS-DOS or Microsoft Windows
42 operating systems or both such systems; and For purposes of this
43 section, "electronic or magnetic medium" means any of the media in
44 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, 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)."

SECTION 12.(b) G.S. 163-82.10(c) reads as rewritten:

"(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~~ of all the registered voters in the county to
- a. ~~The~~ the State chair of each political ~~party;~~ party and
- b. ~~The~~ 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.
- (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 on one of any electronic or magnetic media, but no later than 30 days after written request. Each State party chair shall provide ~~the discs or tapes~~ the information on the media received from the county boards or a copy of the media containing the data itself to candidates of that

1 party who request the ~~disks or tapes data~~ in writing. ~~Each State party chair shall return~~
2 ~~disks and tapes to the county boards within 30 days after receiving them.~~ As used in this
3 section, "political party" means a political party as defined in G.S. 163-96."

4 **SECTION 13.** G.S. 163-182.5(b) reads as rewritten:

5 "(b) Canvassing by County Board of Elections. – The county board of elections
6 shall meet at 11:00 A.M. on the seventh-tenth day after every election held on the same
7 day as a general election in November of the even-numbered year, and at 11:00 A.M. on
8 the seventh day after every other election, to complete the canvass of votes cast and to
9 authenticate the count in every ballot item in the county by determining that the votes
10 have been counted and tabulated correctly. If, despite due diligence by election officials,
11 the initial counting of all the votes has not been completed by that time, the county
12 board may hold the canvass meeting a reasonable time thereafter. The canvass meeting
13 shall be at the county board of elections office, unless the county board, by unanimous
14 vote of all its members, designates another site within the county. The county board
15 shall examine the returns from precincts, from absentee official ballots, and from
16 provisional official ballots and shall conduct the canvass."

17 **SECTION 14.** G.S. 163-166.7(c) reads as rewritten:

18 "(c) The State Board of Elections shall promulgate rules for the process of voting.
19 Those rules shall emphasize the appearance as well as the reality of dignity, good order,
20 impartiality, and the convenience and privacy of the voter. Those rules, at a minimum,
21 shall include procedures to ensure that all the following occur:

- 22 (1) The voting system remains secure throughout the period voting is
23 being conducted.
- 24 (2) Only properly voted official ballots are introduced into the voting
25 system.
- 26 (3) Except as provided by G.S. 163-166.9, no official ballots leave the
27 voting enclosure during the time voting is being conducted there.
- 28 (4) All improperly voted official ballots are returned to the precinct
29 officials and marked as spoiled.
- 30 (5) Voters leave the voting place promptly after voting.
- 31 (6) Voters not clearly eligible to vote in the precinct but who seek to vote
32 there are given proper assistance in voting a provisional official ballot
33 or guidance to another voting place where they are eligible to vote.
- 34 (7) Information gleaned through the voting process that would be helpful
35 to the accurate maintenance of the voter registration records is
36 recorded and delivered to the county board of elections.
- 37 (8) The registration records are kept secure. The State Board of Elections
38 shall permit the use of electronic registration records in the voting
39 place in lieu of or in addition to a paper pollbook or other registration
40 record.
- 41 (9) Party observers are given access as provided by G.S. 163-45 to current
42 information about which voters have voted.
- 43 (10) The voter, before voting, shall sign that voter's name on the pollbook,
44 other voting record, or voter authorization document. If the voter is

1 unable to sign, a precinct official shall enter the person's name on the
2 same document before the voter votes."

3 **SECTION 15.** Sections 2, 6, 8, 9, 10, 12, and 14 of this act are effective
4 when this act becomes law and apply to all primaries and elections held on or after that
5 date. The remainder of this act becomes effective January 1, 2006, and applies to all
6 primaries and elections held on or after that date.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1115

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

H1115-ARR-38 [v.1]

Page 1 of 2

Date _____, 2005

Comm. Sub. [NO]
Amends Title [YES]
First Edition

Representative Moore

1 moves to amend the bill on page 1, line 27,
2 by inserting before the semi-colon the following:

3
4 "AND TO CHANGE OTHER RELATED DATES"; and

5
6 on page 11, line 4,
7 by deleting the term "13" and substituting the term "13.(a)"; and

8
9 on page 11, line 16,
10 by inserting after that line the following:

11 "SECTION 13.(b) G.S. 163-182.7(c) reads as rewritten:

12 "(c) Mandatory Recounts for Ballot Items Within the Jurisdiction of the State
13 Board of Elections. – In a ballot item within the jurisdiction of the State Board of
14 Elections, a candidate shall have the right to demand a recount of the votes if the
15 difference between the votes for that candidate and the votes for a prevailing candidate
16 are not more than the following:

- 17 (1) For a nonstatewide ballot item, one percent (1%) of the total votes cast
18 in the ballot item, or in the case of a multiseat ballot item, one percent
19 (1%) of the votes cast for those two candidates.
20 (2) For a statewide ballot item, one-half of one percent (0.5%) of the votes
21 cast in the ballot item, or in the case of a multiseat ballot item, one-half
22 of one percent (0.5%) of the votes cast for those two candidates, or
23 10,000 votes, whichever is less.

24 The demand for a recount must be in writing and must be received by the State Board of
25 Elections by noon on the second ~~Thursday after the election.~~ Business day after the



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1115

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

H1115-ARR-38 [v.1]

Page 2 of 2

1 county canvass. If on that Thursday at that time the available returns show a candidate
2 not entitled to a mandatory recount, but the Executive Director determines subsequently
3 that the margin is within the threshold set out in this subsection, the Executive Director
4 shall notify the eligible candidate immediately and that candidate shall be entitled to a
5 recount if that candidate so demands within 48 hours of notice. The recount shall be
6 conducted under the supervision of the State Board of Elections."
7

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

PLEASE PRESS HARD - 5 COPIES

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1115

DATE _____

S. B. No. _____

Amendment No. _____

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)

Sen.)

Moore1 moves to amend the bill on page 4, line 31

2 () WHICH CHANGES THE TITLE

3 by inserting the phrase "business" between the words
4 "second" and "day";

5 _____

6 and on page 4, line 35 inserting the phrase

7 _____

8 "business" between the words "second" and "day".

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

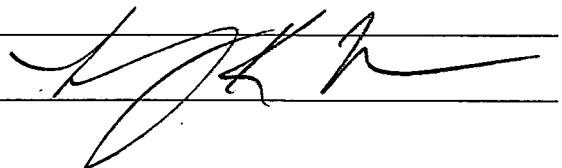
16 _____

17 _____

18 _____

19 _____

SIGNED _____



ADOPTED _____ FAILED _____ TABLED _____

PLEASE PRESS HARD - 5 COPIES**NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1115DATE 4-13-05

S. B. No. _____

Amendment No. _____

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)

Sen.)

Moore1 moves to amend the bill on page 1, lines 20-21

2 () WHICH CHANGES THE TITLE

3 by deleting the phrase "THE STATE BOARD OF ELECTIONS4 TO AUTOMATICALLY CANCEL" and substitute5 the phrase "FOR THE CANCELLATION OF"

7 _____

8 _____

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

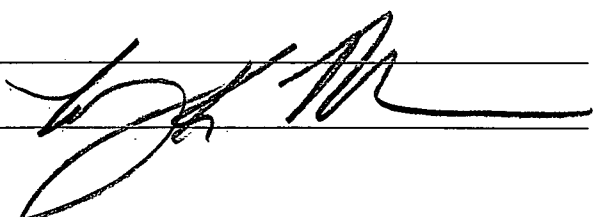
16 _____

17 _____

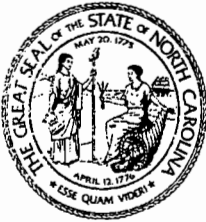
18 _____

19 _____

SIGNED _____



ADOPTED _____ FAILED _____ TABLED _____



HOUSE BILL 1115: Election Administration Amendments.

BILL ANALYSIS

Committee: House Election Law and
Campaign Finance Reform

Date: April 13, 2005

Version: First Edition

Introduced by: Reps. Moore and Ross

Summary by: William R. Gilkeson
Committee Co-Counsel

SUMMARY: *The First Edition of House Bill 1115 would make several changes to the laws concerning election administration. The changes are based on proposals made by the staff of the State Board of Elections.*

Section 1. Legal Recognition of "Runners"; No Candidate as Observer or Runner. Current law allows county political parties to appoint "observers" to be inside a polling place to monitor what is going on, as long as they do not disrupt. One of the things they may do is pick up lists at certain times of the day of the people who have voted at the precinct. A practice has grown up of parties sending "runners," who have not gone through the process of being appointed observers, to pick up the voter lists and nothing more. The bill would write this function into the law, allowing a party chair to send a runner to precinct and pick up the voter list. The runner could be anyone appointed by the party chair. The party chair must provide the county board of elections a list of which runners will go to which precincts before the runners are sent. The runner may enter the voting enclosure only where necessary to announce his or her presence. Upon receiving the list, they must leave immediately. This section also provides that no candidate in an election may be either an observer or runner. Effective 1-1-06.

Section 2. Allow Different Voting Systems in Same Precinct. Current statute does not expressly address whether a county may provide more than one voting system per precinct. The bill says the Executive Director of the State Board of Elections may permit a county to use more than one voting system in a precinct where doing so would be necessary to comply with State or federal law. It is expected that, to comply with the Help America Vote Act's requirement for a fully disabled-accessible station in every precinct, some counties may need to have two systems in the same precinct. Effective when the bill becomes law.

Sections 3. Allow Administrative Voter Registration Change If County Line Adjusted. Currently counties are authorized to settle between themselves a disputed or uncertain county line. In addition, the General Assembly has the authority to change county lines by legislation. It has been known to happen that such a county line change or adjustment has resulted in a voter residing in a county other than the one in which the voter was registered. Because voter registration in NC is county-based, the voter could be disenfranchised without realizing it. The bill would authorize the Executive Director of the State Board of Elections to move the voter's registration to the correct county administratively. The voter, who has not moved, would not need to submit a new voter registration application. Notice to the voter would be required. Effective 1-1-06.

Section 4. Change Protest Deadline from 6 pm to 5 pm. Current law sets the certain deadlines for filing an election protests at 6 pm on the second day after the county canvass. Most county board of elections offices close at 5 pm. The bill would change the statutory deadline to reflect the boards' regular hours. Effective 1-1-06.

Section 5. Same Voter Assistance Rules for One-Stop as for Election Day. Current law says that at the polls on election day, a voter whose illiteracy or disability requires them to have assistance to vote may receive assistance from anyone other than their employer or union representative. If not illiterate or disabled, a voter may receive assistance from a specified group of relatives. Those provisions reflect federal law. At a one-stop site, however, the law is different: A one-stop voter who needs assistance or who is blind may receive assistance only from a county board of elections member, a county election director, a board employee, a near relative of the voter or the voter's verifiable legal guardian. Anyone else providing assistance to a voter at a one-stop site is subject under G.S. 163-226.3 to prosecution for committing a Class I felony. The bill makes the one-stop rules on assistance the same as those at the polls on election day. It changes the felony statute accordingly.

HOUSE BILL 1115

Page 2

Section 6. Conforming Statewide Unaffiliated Ballot Access to a Court Decision. The current statute regulating how an unaffiliated candidate gets on the general election ballot in a statewide race requires the candidate to collect signatures from voters on petitions equal to 2% of all the registered voters in the State. That is now about 107,000 signatures. To get on the ballot as a new party, a group is required to collect signatures equal to 2% of the turnout in the latest Governor's race. That is now 69,734. Last year a US District Court in Delaney v. Bartlett found the disparity between the two thresholds unconstitutional and held the statewide unaffiliated threshold unconstitutional. The State did not appeal. The bill would make the statewide unaffiliated threshold 2% of the latest Governor's race turnout, the same as the new party threshold. Effective when the bill becomes law. (Note: This Committee last month approved House Bill 88, which would, among other things, drop the both thresholds to 0.5% of the latest Governor's race.)

Section 7. Prohibiting Piecework Payment for Voter Registration Drives. Current law does not regulate how groups doing voter registration drives may pay people doing the registration work. In 2004 some groups doing drives turned in questionable voter registration applications, burdening county boards of elections at the last minute with checking thousands of applicants, some of whom were bogus. It was believed that piecework pay gave an incentive to create bogus applications. The US Supreme Court has ruled, in the similar situation of initiative petition drives, that a State cannot prohibit paying people for doing the petition work. Courts have been less clear on whether payment on a piecework or commission basis can be banned. One such prohibition was struck down when the State offered no evidence that piecework pay resulted in fraud but the petitioners did offer evidence that it hindered their drive. Another such prohibition was upheld when the State offered evidence that piecework pay resulted in fraud but the petitioners offered no evidence of hindrance. The bill prohibits anyone from paying someone to register voters per voter registration application completed. It adds violation to the list of Class 2 misdemeanors. Effective 1-1-06.

Section 8. One-Stop Precinct Transfers Need Not Be Provisionals. Currently, if a person moves more than 30 days before an election within the county where registered to vote but does not notify the board of elections of the move, the person may show up at the new voting place and will be allowed to vote. But, since their name is not on the books there, they must vote a provisional ballot. If such a voter with an unreported move went to vote at a one-stop site, however, most counties allowed that person to vote the same kind of retrievable ballot as other one-stop voters rather than a provisional ballot. The reasoning, endorsed by the State Board of Elections, was that the one-stop site had on-line access to the entire county's voter registration database and had all ballot styles available. And the one-stop vote was retrievable anyway. At least one large county, Wake, felt that even at a one-stop site an unreported-move voter was legally required to vote a provisional ballot. This practice slowed down the one-stop voting process and led to Wake having more provisional ballots to count than even its large size warranted. The bill makes clear that a voter who has not reported a move within the county does not, on that account, need to vote a provisional ballot at a one-stop site. Effective when the bill becomes law.

Section 9. Clean Up One-Stop Statute Requiring Instruction in Voting by Mail. For some reason, the statute on one-stop voting requires officials at a one-stop site to furnish one-stop voters, who are there voting in person, with instructions in how to vote mail absentee. The bill removes the language as inappropriate. Effective when the bill becomes law. Effective when it becomes law.

Section 10. Two Changes to Filing Fee Statute. Currently the statute saying how much is a candidate's filing fee sets the fee at 1% of the annual salary of the office sought, except it sets a raw dollar amount for offices "compensated entirely by fees." The bill specifies that the salary is the starting salary for the office, rather than the incumbent's salary, if the two are different. If no starting salary can be determined, then the salary used for the 1% is the incumbent's salary as of January 1 of the election year. The bill also removes the references to offices compensated entirely by fees, since such offices no longer exist. Effective when bill becomes law.

Section 11. Allow SBOE to Cancel Old Registration When New One Appears. Currently the voter registration form calls for a person registering in a new county to cancel any registration they had in a previous county. Sometimes applicants neglect to complete the cancellation part of the form. The bill would direct the State Board of Elections, which runs the statewide computerized voter registration system, to notify the county board in the old county of the new registration. The board in the old county would then be required to cancel the registration. The State Board is required to adopt rules to prevent disenfranchisement, including adequate notice to the voter whose registration is going to be cancelled. Effective 1-1-06.

HOUSE BILL 1115

Page 3

Section 12. Update Statute About Access to Voter Registration Data. The current statute allowing free and paid access to voter registration data was written in the mid-1990s in language that was specific to the technology of the time. It also contains language implying that a county has an option in having or not having computerized voter registration data. Now all counties are being required to be part of the State computerized voter registration system. The bill updates the access to records statute, removing references old technology and to the option not to have lists on computer. It does not require the county boards to provide its list to county party chairs on paper. Effective when the bill becomes law.

Section 13. Canvass on 10th Day After General Election. Current law requires the county board of elections to hold its canvass on the 7th day after a primary or election. Ten years ago the canvass was the 3rd day after the election. But various federal and State changes in the law have made it difficult for county boards to complete all their pre-canvass work so a succession of extensions have been enacted. After the 2004 presidential election some counties found the 7th day wasn't soon enough. The bill moves the county canvass to the 10th day for even-year general elections only. For other elections ("election" is defined to include primary), the canvass stays on the 7th day. Effective when the bill becomes law.

Section 14. Clarify that Electronic Pollbooks May Be Used. Traditionally, the list of registered voters in the precinct was a paper book called a pollbook. As time went on, computer printouts were used. The 2001 rewrite of the statutes about voting at the polls gave the State Board of Elections broader authority to design a system, following statutory criteria. The bill adds to the State Board's criteria that it must permit to use of electronic registration records in the voting place in lieu of paper pollbooks or other records.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

1

HOUSE BILL 1128

Short Title: Campaign Finance Amendments.

(Public)

Sponsors: Representatives Moore, Ross (Primary Sponsors); and Rapp.

Referred to: Election Law and Campaign Finance Reform.

April 6, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE TRAINING FOR ALL CAMPAIGN TREASURERS; TO REQUIRE AN AUDIT TRAIL FOR ANY CAMPAIGN CONTRIBUTION MADE BY MONEY ORDER; TO ALLOW CAMPAIGN EXPENDITURES TO BE MADE BY ANY VERIFIABLE FORM OF PAYMENT; TO SET A THREE-YEAR TIME LIMIT BEFORE ANY UNPAID DEBT IN A CAMPAIGN IS DEEMED TO BE A CONTRIBUTION; TO INCLUDE VACANCY ELECTIONS AND NONPARTISAN RUNOFFS IN THE DEFINITION OF "ELECTION" FOR PURPOSES OF CONTRIBUTION LIMITS; TO CLARIFY THE MEANING OF "QUALIFIED TO RECEIVE VOTES ON THE BALLOT AS A CANDIDATE FOR THE OFFICE" AS A PRECONDITION FOR CERTIFICATION UNDER THE PUBLIC CAMPAIGN FINANCING FUND; TO CLARIFY WHAT CANDIDATES UNDER THAT FUND MAY RAISE AND SPEND AFTER FILING NOTICE OF INTENT TO PARTICIPATE; TO PROVIDE FOR EARLIER DISTRIBUTION OF THE JUDICIAL VOTER GUIDE; TO LIMIT THE USE OF CREDIT CARDS FOR PAYMENT OF EXPENDITURES IN PUBLICLY FUNDED JUDICIAL CAMPAIGNS; TO APPLY THE SCOPE AND ADVISORY OPINION SECTIONS OF ARTICLE 22A OF CHAPTER 163 OF THE GENERAL STATUTES TO ARTICLES 22B, 22D, 22E, AND 22F AS WELL; AND TO EXPRESSLY REQUIRE THAT ORGANIZATIONS EXPENDING FOR "ELECTIONEERING COMMUNICATIONS" MUST DO SO OUT OF A SEGREGATED ACCOUNT THAT CONTAINS NO MONEY FROM PROHIBITED SOURCES AND TO EXPRESSLY PROVIDE FOR DETAILED REPORTING FROM ANY SUCH ACCOUNT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-278.7(e) reads as rewritten:

"(e) Every treasurer of a political committee or referendum committee shall receive, prior to every election in which the political committee or referendum

1 committee is involved, training from the State Board of Elections as to the duties of the
2 office, including the requirements of G.S. 163-278.13(e1), provided that the treasurer
3 may designate an employee or volunteer of the committee to receive the training."

4 **SECTION 2.** G.S. 163-278.14(b) reads as rewritten:

5 "(b) No entity shall give, and no candidate, committee or treasurer shall accept,
6 any monetary contribution in excess of one hundred dollars (\$100.00) unless such
7 contribution be in the form of a check, draft, money order, credit card charge, debit, or
8 other noncash method that can be subject to written verification. The State Board of
9 Elections may prescribe guidelines as to the reporting and verification of any method of
10 contribution payment allowed under this Article. For contributions by money order, the
11 State Board shall prescribe methods to ensure an audit trail for every contribution so
12 that the identity of the contributor can be determined. For a contribution made by credit
13 card, the credit card account number of a contributor is not a public record."

14 **SECTION 3.** G.S. 163-278.8(e) reads as rewritten:

15 "(e) All expenditures for media expenses shall be made by ~~check only~~ a verifiable
16 form of payment. The State Board of Elections shall prescribe methods to ensure an
17 audit trail for every contribution so that the identity of each payee can be determined.
18 All media expenditures in any amount shall be accounted for and reported individually
19 and separately."

20 **SECTION 4.** G.S. 163-278.8(f) reads as rewritten:

21 "(f) All expenditures for nonmedia expenses (except postage) of more than fifty
22 dollars (\$50.00) shall be made by ~~check only~~ a verifiable form of payment. The State
23 Board of Elections shall prescribe methods to ensure an audit trail for every contribution
24 so that the identity of each payee can be determined. All expenditures for nonmedia
25 expenses of fifty dollars (\$50.00) or less may be made by check or by cash payment. All
26 nonmedia expenditures of more than fifty dollars (\$50.00) shall be accounted for and
27 reported individually and separately, but expenditures of fifty dollars (\$50.00) or less
28 may be accounted for and reported in an aggregated amount, but in that case the
29 treasurer shall account for and report that he made expenditures of fifty dollars (\$50.00)
30 or less each, the amounts, dates, and the purposes for which made. In the case of a
31 nonmedia expenditure required to be accounted for individually and separately by this
32 subsection, if the expenditure was to an individual, the report shall list the name and
33 address of the individual."

34 **SECTION 5.** G.S. 163-278.6(6) reads as rewritten:

35 "(6) The terms "contribute" or "contribution" mean any advance,
36 conveyance, deposit, distribution, transfer of funds, loan, payment,
37 gift, pledge or subscription of money or anything of value whatsoever,
38 to a candidate to support or oppose the nomination or election of one
39 or more clearly identified candidates, to a political committee, to a
40 political party, or to a referendum committee, whether or not made in
41 an election year, and any contract, agreement, promise or other
42 obligation, whether or not legally enforceable, to make a contribution.
43 These terms include, without limitation, such contributions as labor or
44 personal services, postage, publication of campaign literature or

1 materials, in-kind transfers, loans or use of any supplies, office
2 machinery, vehicles, aircraft, office space, or similar or related
3 services, goods, or personal or real property. These terms shall also
4 include, without limitation, a debt, or any portion thereof, to pay an
5 expenditure that has been uncollected beyond the three years set in
6 G.S. 1-52 for its collection. These terms also include, without
7 limitation, the proceeds of sale of services, campaign literature and
8 materials, wearing apparel, tickets or admission prices to campaign
9 events such as rallies or dinners, and the proceeds of sale of any
10 campaign-related services or goods. Notwithstanding the foregoing
11 meanings of "contribution," the word shall not be construed to include
12 services provided without compensation by individuals volunteering a
13 portion or all of their time on behalf of a candidate, political
14 committee, or referendum committee. The term "contribution" does
15 not include an "independent expenditure." If:

- 16 a. Any individual, person, committee, association, or any other
17 organization or group of individuals, including but not limited
18 to, a political organization (as defined in section 527(e)(1) of
19 the Internal Revenue Code of 1986) makes, or contracts to
20 make, any disbursement for any electioneering communication,
21 as defined in G.S. 163-278.80(2) and (3) and
22 G.S. 163-278.90(2) and (3); and
23 b. That disbursement is coordinated with a candidate, an
24 authorized political committee of that candidate, a State or local
25 political party or committee of that party, or an agent or official
26 of any such candidate, party, or committee that disbursement or
27 contracting shall be treated as a contribution to the candidate
28 supported by the electioneering communication or that
29 candidate's party and as an expenditure by that candidate or that
30 candidate's party."

31 **SECTION 6.** G.S. 163-278.13(d) reads as rewritten:

32 "(d) For the purposes of this section, the term "an election" means any primary,
33 runoff, second primary, or general election ~~general election~~, or vacancy election in
34 which the candidate or political committee may be involved, without regard to whether
35 the candidate is opposed or unopposed in the election, except that where a candidate is
36 not on the ballot in a runoff or second primary, that runoff or second primary is not "an
37 election" with respect to that candidate."

38 **SECTION 7.** G.S. 163-278.64(c) reads as rewritten:

39 "(c) Certification of Candidates. – Upon receipt of a submittal of the record of
40 demonstrated support by a participating candidate, the Board shall determine whether or
41 not the candidate has complied with all the following requirements, if they apply to that
42 candidate:

- 43 (1) Signed and filed a declaration of intent to participate in this Article.

- 1 (2) Submitted a report itemizing the appropriate number of qualifying
2 contributions received from registered voters, which the Board shall
3 verify through a random sample or other means it adopts. The report
4 shall include the county of residence of each registered voter listed.
5 (3) ~~Qualified to receive votes on the ballot as a candidate for the~~
6 ~~office.~~ Filed a valid notice of candidacy pursuant to Article 25 of this
7 Chapter.
8 (4) Otherwise met the requirements for participation in this Article.

9 The Board shall certify candidates complying with the requirements of this section
10 as soon as possible and no later than five business days after receipt of a satisfactory
11 record of demonstrated support."

12 **SECTION 8.** G.S. 163-278.64(d) reads as rewritten:

13 "(d) Restrictions on Contributions and Expenditures for Participating and Certified
14 Candidates. – The following restrictions shall apply to contributions and expenditures
15 with respect to participating and certified candidates:

- 16 (1) Beginning January 1 of the year before the election and before the
17 filing of a declaration of intent, a candidate for office may accept in
18 contributions up to ten thousand dollars (\$10,000) from sources and in
19 amounts permitted by Article 22A of this Chapter and may expend up
20 to ten thousand dollars (\$10,000) for any campaign purpose. A
21 candidate who exceeds either of these limits shall be ineligible to file a
22 declaration of intent or receive funds from the Public Campaign
23 Financing Fund.
24 (2) From the filing of a declaration of intent through the end of the
25 qualifying period, a candidate ~~shall~~ may accept only qualifying
26 contributions, contributions under ten dollars (\$10.00) from North
27 Carolina voters, and personal and family contributions permitted under
28 subdivision (4) of this subsection. The total contributions the candidate
29 may accept during this period shall not exceed the maximum
30 qualifying contributions for that candidate. In addition to these
31 contributions, the candidate may only expend during this period no
32 ~~more than an amount equal to the maximum qualifying contributions~~
33 ~~for that candidate, not including possible rescue funds or the remaining~~
34 ~~money raised pursuant to subdivision (1) of this subsection. subsection~~
35 and possible rescue funds received pursuant to G.S. 163-278.67.
36 ~~Contributions a candidate may use to expend to that limit shall be~~
37 ~~limited to qualifying contributions, and personal and family~~
38 ~~contributions permitted by subdivision (4) of this subsection.~~
39 (3) After the qualifying period and through the date of the general
40 election, the candidate shall expend only the funds the candidate
41 receives from the Fund pursuant to G.S. 163-278.65(b)(4) plus any
42 funds remaining from the qualifying period and possible rescue funds.
43 (4) During the qualifying period, the candidate may contribute up to one
44 thousand dollars (\$1,000) of that candidate's own money to the

1 ~~campaign and campaign.~~ Debt incurred by the candidate for a
2 campaign expenditure shall count toward that limit. The candidate may
3 accept in contributions one thousand dollars (\$1,000) from each
4 member of that candidate's family consisting of spouse, parent, child,
5 brother, and sister.

6 (5) A candidate and the candidate's committee shall limit the use of all
7 revenues permitted by this subsection to expenditures for
8 campaign-related purposes only. The Board shall publish guidelines
9 outlining permissible campaign-related expenditures. In establishing
10 those guidelines, the Board shall differentiate expenditures that
11 reasonably further a candidate's campaign from expenditures for
12 personal use that would be incurred in the absence of the candidacy. In
13 establishing the guidelines, the Board shall review relevant provisions
14 of G.S. 163-278.42(e), the Federal Election Campaign Act, and rules
15 adopted pursuant to it, and similar provisions in other states.

16 (6) Any contribution received by a participating or certified candidate that
17 falls outside that permitted by this subsection shall be returned to the
18 donor as soon as practicable. Contributions intentionally made,
19 solicited, or accepted in violation of this Article are subject to civil
20 penalties as specified in G.S. 163-278.70. The funds involved shall be
21 forfeited to the Civil Penalty and Forfeiture Fund.

22 (7) A candidate shall return to the Fund any amount distributed for an
23 election that is unspent and uncommitted at the date of the election, or
24 at the time the individual ceases to be a certified candidate, whichever
25 occurs first. For accounting purposes, all qualifying, personal, and
26 family contributions shall be considered spent before revenue from the
27 Fund is spent or committed."

28 **SECTION 9.** G.S. 163-278.69(a) reads as rewritten:

29 "(a) Judicial Voter Guide. – The Board shall publish a Judicial Voter Guide that
30 explains the functions of the appellate courts and the laws concerning the election of
31 appellate judges, the purpose and function of the Public Campaign ~~Financing~~ Fund, and
32 the laws concerning voter registration. The Board shall distribute the Guide to as many
33 voting-age individuals in the State as practical, through a mailing to all residences or
34 other means it deems effective. The distribution shall occur no more than ~~28~~14 days nor
35 fewer than seven days before the one-stop voting period provided in G.S. 163-227.2 for
36 the primary and no more than 2814 days nor fewer than seven days before the one-stop
37 voting period provided in G.S. 163-227.2 for the general election."

38 **SECTION 10.** G.S. 163-278.6(9) reads as rewritten:

39 "(9) The terms "expend" or "expenditure" mean any purchase, advance,
40 conveyance, deposit, distribution, transfer of funds, loan, payment,
41 gift, pledge or subscription of money or anything of value whatsoever,
42 whether or not made in an election year, and any contract, agreement,
43 promise or other obligation, whether or not legally enforceable, to
44 make an expenditure or to incur an obligation to pay an expenditure, to

support or oppose the nomination, election, or passage of one or more clearly identified candidates, or ballot measure. 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. The special definition of "expenditure" in G.S. 163-278.12A applies only in that section."

SECTION 11. G.S. 163-278.5 reads as rewritten:

"§ 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, and 22F of the General Statutes to the same extent that it applies to this Article."

SECTION 12. G.S. 163-278.23 reads as rewritten:

"§ 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.

1 The Executive Director of the Board of Elections shall issue written opinions to
2 candidates, the communications media, political committees, referendum committees, or
3 other entities upon request, regarding filing procedures and compliance with this
4 Article. Any such opinion so issued shall specifically refer to this paragraph. If the
5 candidate, communications media, political committees, referendum committees, or
6 other entities rely on and comply with the opinion of the Executive Director of the
7 Board of Elections, then prosecution or civil action on account of the procedure
8 followed pursuant thereto and prosecution for failure to comply with the statute
9 inconsistent with the written ruling of the Executive Director of the Board of Elections
10 issued to the candidate or committee involved shall be barred. Nothing in this paragraph
11 shall be construed to prohibit or delay the regular and timely filing of reports. The
12 Executive Director shall file all opinions issued pursuant to this section with the
13 Codifier of Rules to be published unedited in the North Carolina Register and the North
14 Carolina Administrative Code.

15 This section applies to Articles 22B, 22D, 22E, and 22F of the General Statutes to
16 the same extent that it applies to this Article."

17 **SECTION 13.(a)** G.S. 163-278.81 reads as rewritten:

18 **"§ 163-278.81. Disclosure of Electioneering Communications.**

19 (a) Statement Required. – Every individual, committee, association, or any other
20 organization or group of individuals that makes a disbursement for the direct costs of
21 producing and airing electioneering communications in an aggregate amount in excess
22 of ten thousand dollars (\$10,000) during any calendar year shall, within 24 hours of
23 each disclosure date, file with the Board a statement containing the information
24 described in subsection (b) of this section.

25 (b) Contents of Statement. – Each statement required to be filed by this section
26 shall be made under the penalty of perjury in G.S. 14-209 and shall contain the
27 following information:

- 28 (1) The identification of the entity making the disbursement, of any entity
29 sharing or exercising direction or control over the activities of that
30 entity, and of the custodian of the books and accounts of the entity
31 making the disbursement.
- 32 (2) The principal place of business of the entity making the disbursement
33 if the entity is not an individual.
- 34 (3) The amount of each disbursement of more than one thousand dollars
35 (\$1,000) during the period covered by the statement and the
36 identification of the entity to whom the disbursement was made.
- 37 (4) The elections to which the electioneering communications pertain and
38 the names, if known, of the candidates identified or to be identified.
- 39 (5) ~~If the disbursements were paid out of a segregated bank account that~~
40 ~~consists of funds contributed solely by individuals directly to that~~
41 ~~account for electioneering communications, the~~ The names and
42 addresses of all contributors who contributed an aggregate amount of
43 more than one thousand dollars (\$1,000) during the period beginning
44 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) ~~If the disbursements were paid out of funds not described in subdivision (5) of this subsection, the names and addresses of all contributors who contributed an aggregate amount of more than one thousand dollars (\$1,000) to the entity making the disbursement during the period beginning on the first day of the preceding calendar year and ending on the disclosure date."~~

SECTION 13.(b) G.S. 163-278.82 reads as rewritten:

"§ 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 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 ~~individuals~~ entities other than prohibited sources directly to that account.

(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."

SECTION 13.(c) G.S. 163-278.91 reads as rewritten:

"§ 163-278.91. Disclosure of Electioneering Communications.

(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) ~~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~~ 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 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) ~~If the disbursements were paid out of funds not described in subdivision (5) of this subsection, the names and addresses of all contributors who contributed an aggregate amount of more than one thousand dollars (\$1,000) to the entity making the disbursement during the period beginning on the first day of the preceding calendar year and ending on the disclosure date."~~

SECTION 13.(d) G.S. 163-278.92 reads as rewritten:

"§ 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 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 individuals ~~entities other than prohibited sources~~ directly to that account.

1 (b) Direct or Indirect Disbursement. – An electioneering communication shall be
2 treated as made by a prohibited source if the prohibited source directly or indirectly
3 disburses any amount for any of the costs of the communication.

4 (c) Segregated Fund. – Any disbursement for an electioneering communication
5 made from an account must be made from a segregated account into which no funds
6 from a prohibited source have been directly or indirectly introduced."

7 **SECTION 14.** This act becomes effective July 1, 2005, and applies to
8 primaries and elections held on or after that date.

VISITOR REGISTRATION SHEET

Election Law and Campaign Finance Reform

April 13, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Chris Heywood	NC Center for Vote Election
Greg O. Bartlett	SBE
Kirk W. Hootch Street	SBE
Johnny McLean	SBE
K. Marie Goff	Staff
Bob Hall	Democracy North Carolina
John G. Goff	ACLU
Michael Houser	NCAE
Lynn Connolly	3926 STARMOUNT DR, GSO, NC 27411
Katherine "Lee" Payne	Freedom Works
Nancy Jones	Freedom Works

VISITOR REGISTRATION SHEET

Election Law and Campaign Finance Reform

April 13, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Mary Bohanus	3609 Henderson Rd. Menstow, NC
Ann Inman	3608 PRIMROSE AVE G. SO NC 27408
Gwyneth Lennane	3805 Katie Dr. GSO NC 27410
Nancy J. R. Wells	3504 OH Ondow Rd G. SO 27407
Mary Elz Lennane	2102 W. Market St G'low 27403
Charles L. R. J.	2102 W. Market St. G'low 27403
Don McSwire	1819 Randolph Ave. G'low, 27406
John Kenyon	USE
Barbara Carter	1611 Oracwood, G'low, 27408

MINUTES
House Committee on Election Law and Campaign Finance Reform
April 20, 2005
1:00 p.m., Room 1425
Representative Moore, Presiding

The House Committee on Election Law and Campaign Finance Reform met at 1:00 p.m. on Tuesday, April 20, 2005, in Room 1425 of the State Legislative Building.

Members present were: Representative Tim Moore, Co-Chair; Representative Deborah Ross, Co-Chair; Representative Joe Kiser, Vice-Chair; Representative Paul Luebke, Vice-Chair; Representative John Blust; Representative Walter Church; Representative Pricey Harrison; Representative Hugh Holliman; Representative George Holmes; Representative David Lewis; Representative Edd Nye; and Representative Edgar Starnes.

There were two bills on the agenda: House Bill 1115, Election Administration Amendments, also know as the Omnibus Act, sponsored by Representatives Tim Moore and Deborah Ross; and House Bill 1128, Campaign Finance Amendments, also sponsored by Representatives Moore and Ross.

Co-Chair Tim Moore called the meeting to order and introduced the pages and sergeants-at-arms.

The Chair asked for a motion to take up a proposed committee substitute for House Bill 1115 that incorporated the amendments adopted at the last meeting (April 13). Representative Lewis so moved and the motion carried.

Mr. Bill Gilkeson, committee staff, was recognized to give an overview of the bill before the committee. He recapped the amendments, and said he believe Representative Starnes wanted to add an amendment that would say the runner may be the precinct party chair or any person named by the county party chair.

There was discussion concerning the runner and Mr. Gary Bartlett, Director of the State Board of Elections, was present to answer questions.

Representative Starnes sent forth his amendment and moved for its adoption. After discussion, the amendment was unanimously adopted.

Representative Ross sent forward an amendment to clarify how winners of elections shall be determined. She said the reason for her amendment was that the election laws do not state that the person with the highest number of votes wins.

Mr. Gilkeson said it was left out in some places, not all. He said it was one of the things left out in 2000 when the general provision about vote counting was recodified and rewritten.

Representative Ross moved that her amendment be adopted and the motion passed.

Representative Ross moved that the amendments be rolled into a new committee substitute and the committee substitute be given a favorable report, unfavorable as to the original bill.

Representative Ross withdrew her motion because she said Representative Ray had an extensive amendment she would like to put in the bill, but the amendment was not ready. If a section of this bill were removed to accommodate Representative Ray, it could be put into the next bill when the amendment was ready. The deadline was past for Representative Ray to introduce a separate bill.

Representative Ross made a motion to amend the bill before the committee by taking out Section 3 and amending the title. The motion carried and the amendment was adopted.

There was further debate on the bill, mostly concerning voter assistance.

Representative Ross moved that the amendments be rolled into a proposed committee substitute bill and the committee substitute bill be given a favorable report, unfavorable as to the original bill.

Representative Starnes made a substitute motion that the bill be amended by removing Sections 5A and 5B of the bill concerning assistance for the handicapped. The vote was taken and division was called for. The amendment was adopted by a vote of five to four.

Representative Luebke expressed concern that the Starnes amendment made North Carolina out of compliance with HAVA. Representative Ross indicated that there would be an amendment to put Section 5A and B back into the Campaign Finance Law.

Representative Ross was recognized to restate her motion to roll the amendments into a committee substitute with a favorable report as to the committee substitute, unfavorable as to the original bill.

Representative Starnes made a substitute motion to conform the title to reflect his former motion. The motion carried.

The Chair returned to Representative Ross' motion, and the motion passed.

The meeting was adjourned at 1:50 p.m.

A verbatim transcript of this meeting is attached hereto along with all pertinent documents and handouts.

Respectfully submitted,

T. Moore
Representative Tim Moore, Presiding Chair

Margie Penven
Margie Penven, Committee Assistant

TRANSCRIPT
House Committee on Election Law and Campaign Finance Reform

1:00 p.m. on April 20, 2005

Room 1425, LOB

Representative Moore, Presiding

Rep. Moore: If the meeting would please come to order. This, of course, is the House Election Law and Campaign Finance Reform Committee in case you're at the wrong place—just to make sure you know where you are.

We do want to recognize my co-chair, Deborah Ross from Wake County, and we have with us two pages today: Adren Underdue and Lauren Patton. Mr. Underdue is sponsored by Representative Ray from Northampton County, as is Miss Patton. Our sergeants-at-arms today are Linda Fuller, Walt Spell, and Charles Williams. We appreciate you all being here today and the good work you do.

The plan for today is this. We have two bills on the calendar. We have House Bill 1115, which is the Election Administration Amendments, or as we have called it the Omnibus Act. It is the intention of the chairs that the committee...that this bill be approved today and sent to the floor for consideration. Based on some conversations I've had with a number of the members of the committee, it does not look like we will get to a vote on 1128, but if we do, that would be great also. But I think there was some more discussion to be had on that.

We have before us a proposed Committee Substitute that incorporates the amendments that were adopted at the last meeting. Is there a motion that we take up the PCS to House Bill 1115?

Rep. Lewis: I so move.

Rep. Moore: Motion made by Representative Lewis. All those in favor please say aye. Opposed no. The ayes have it. We are now considering House Bill 1115, the Election Administration Amendments. It probably would be a good idea at this time to recognize staff, Mr. Gilkeson, to give a very brief overview of where we were and where we are now. Then I know there are some amendments. I know, Representative Starnes, you have an amendment and there may be some other discussion. But hearing now, this is on the Omnibus Act, not on the Campaign Finance Act just yet.

Bill Gilkeson: The committee substitute incorporates the amendments that were adopted at the last meeting to this bill. There were several amendments that were being discussed, but this incorporates the ones that were

adopted. It included a clarifying title change, it included at the bottom of the title on the first page you can see the...to extend for three days the county canvass effort after the general election in November of an even numbered year, and the committee substitute adds the language "and change other related dates." There are several related date changes in the bill, namely to change something from a certain number of days after the canvass to a certain number of business days after the canvass because the canvass is kind of a two-part thing. The canvass occurs on one day during the general election and on a different day during all the other elections. So I think that's all that's been put together. But that's what the committee substitute does. I think we went through and discussed the entire bill last time. Representative Starnes and Representative Lewis were discussing a way to change the provision about runners. And what Representative Starnes had proposed is on page three, line six. It would say, "the runner may be the precinct party chair or any person named by the county party chair." And that was one thing that he had proposed, and I believe he has an amendment for that.

Rep. Moore: Representative Kiser.

Rep. Kiser: Mr. Chairman, can we discuss that just a little bit here?

Rep. Moore: Absolutely.

Rep. Kiser: Your problem here is you're not going to be able to keep a runner there all during...if you just designate one. You know, our workers are really trained inside the polls, and I'm wondering if this will keep them from doing this. You know, you got your list and it's a long list. Our workers bring them out to the Democrats and the Republicans outside and wave them, and we walk up there and get them. We don't go into the polling place. Would this permit them to still do that?

Rep. Moore: I would think so. The State Board of Elections...

Mr. Bartlett: I'm sorry; I was involved in a conversation.

Rep. Kiser: Our precinct workers, once the sheet is filled up, one of them will come out with both the Democrat copy and the Republican copy to the door and hold them up and the party official goes and picks them up and does not go into the polling place.

Rep. Moore: If you would introduce yourself just for the purpose of the minutes.

Mr. Bartlett: Gary Bartlett, State Board of Elections. Traditionally we allow runners to go into the polling place for the sole purpose of picking up a list,

and they must have the name of that person at the Board of Elections by 10:00 a.m. on Thursday before the election.

Rep. Kiser: My question is, can one of the poll workers bring them outside.

Mr. Bartlett: The poll worker is only supposed to go outside to just check on the 50-foot line and also to do curbside voting.

Rep. Moore: Is there a follow-up, Representative Kiser? You had that look on your face.

Rep. Kiser: No. I've said too much.

Rep. Lewis: I was just going to see if Representative Kiser would yield.

Rep. Moore: Representative Kiser, would you yield?

Rep. Kiser: I'll yield.

Rep. Lewis: Is it an actual worker or is it a party observer that brings out the list?

Rep. Kiser: I'm not sure.

Rep. Lewis: If I may then, Mr. Chair. Part of my concern with this change I think has been wiped up because it says that instead of an observer the county party chair may, which the word may I take to mean that if there's not a need for the change, you don't need to make a change. So if that makes any sense to you all.

Rep. Moore: Further debate or discussion. Representative Starnes, did you have an amendment you wanted to make on this section?

Rep. Starnes: I believe Mr. Gilkeson read the amendment.

Rep. Moore: Okay. So you're moving the adoption of the amendment at this time. Okay. Representative Starnes moves adoption of the amendment. Do members have copies, or I don't know if that's even necessary. Do you have copies prepared?

Bill Gilkeson: I don't have copies prepared, but I will.

Rep. Moore: If you would, Mr. Gilkeson, state the amendment again and then Representative Starnes do you want to comment on it? You're recognized for that.

Bill Gilkeson: On line three, line six, the runner may be the precinct party chair or any person named by the county party chair. Well, it would just add the words, "the precinct party chair or" between the words "be" and "any."

Rep. Moore: Representative Starnes. I mean Representative Kiser.

Rep. Kiser: I still have a concern that you're not going to have the same person there all day long. Can you name two people?

Bill Gilkeson: I don't think there's any provision that would prevent that. There's not something in here that says there's only one runner per precinct.

Rep. Moore: Go ahead, Chairman Ross.

Rep. Ross: I was going to say pretty much what Bill said. I think that anybody who's on the runner list qualifies and that the runners don't have to be assigned to one precinct. They could have multiple runners, and as long as you're on the runner list you're allowed to do it.

Rep. Moore: Mr. Barlow, did you have a comment on that also?

Mr. Bartlett: Yes, sir. Traditionally we have allowed those who are on the list to pick it up and it doesn't have to be one official person.

Rep. Moore: Okay. Representative Starnes.

Rep. Starnes: Well, my concerns are very similar to what Rep. Kiser's are. This looks like...I'm not familiar with what the old language is in the law concerning runners. It looks like this was new language concerning runners, and my concern was you might have a runner named for a precinct and he doesn't show up that day or he goes home. So I wanted to make sure that we broaden the scope so that at least if you got a party precinct chair at the precinct, he can go in and get the list on that day. My concern was that even though you might have a runner named, he may not be there. I don't want to put an undue burden on the people in the precincts for getting a list of people that have voted it in to enforce.

Rep. Moore: Mr. Bartlett, relative to that, I guess we would seek some guidance from the State Board on how that this section would be construed on that, in light of that question.

Mr. Bartlett: We would not mind giving instructions out to counties about who can be on the list and how they can pick up the.... For instance who should be on the list submitted to the board of elections and when they can

pick it up and the precinct chair. Those types of things we'll be more than happy to give instructions to the counties on, so it will be uniform or at least we will do everything we can to make it uniform.

Rep. Moore: Representative Kiser.

Rep. Kiser: How will a runner know when a list, a page, has been filled up?

Mr. Bartlett: What will happen is that they will receive what is currently on it that they received before.

Rep. Kiser: You mean that if a runner goes in there and there's sixty names on the list, they got to carry that sheet out and start another list?

Mr. Bartlett: It's done all the time.

Rep. Kiser: They don't in my place.

Rep. Moore: Do we have any further discussion on Representative Starnes' amendment? Seeing not, is the body ready for the question? All those in favor of Representative Starnes' amendment please say aye. Those opposed no. The ayes have it; the amendment is adopted. (Unanimously.)

We are now back in discussion on the full bill. I'm sorry....

Rep. Ross: I was just going to ask to be recognized.

Rep. Moore: Co-chair Ross is recognized for a motion.

Rep. Ross: Well, there was another amendment—one amendment left—that we had had some discussion about. The Attorney General's Office was negotiating this amendment with Mr. Marshall Hurley about how to determine who would be a person who won an election, and so I just wanted to offer this amendment and have the sergeant-at-arms or one of the pages to please distribute the amendment.

Rep. Moore: Representative Ross is recognized to explain the amendment.

Rep. Ross: Okay. Members of the committee, this would move to amend the bill on page one, line 27, because we have to obviously amend the title to say, "to clarify how winners of elections shall be determined." And then after that it would amend the bill on page 13, line 6, and it would add a new Section 15, which would amend G.S. 163-182.15 by adding a subsection (d) that says, "Determining Results. In a primary for party nomination, the results shall be determined in accordance with G.S.

163-111 and the certificate issued accordingly. In a general election the individuals having the highest number of votes for each office shall be declared elected to the office and a 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.” And then on page 12, line 7, we would obviously have to delete the term 15 and substitute the term 14 and 15 and renumber the sections.

The reason for this is that evidently it doesn’t say anything in our election laws that the person with the highest number of votes wins.

Bill Gilkeson: It actually says it in some places, but it doesn’t say it in other places. There’s not a general provision that says in a general election the person who gets the most votes wins. It was in 2000 when the general provision about vote counting was recodified and rewritten and made more general. It was one of the things that was left out. I think it was assumed that everybody knows that that’s how it’s supposed to be, but it does say it specifically in other places in the municipal statute, in the judicial statute, in various other statutes; and so the idea is to say it here.

Rep. Moore: Representative Kiser.

Rep. Kiser: When will this attempt to be issued? This is a new section.

Bill Gilkeson: This adds a new subsection to the section that already says when the certificate will be issued, so it doesn’t change the law about that.

Rep. Kiser: Follow-up?

Rep. Moore: You’re recognized for a follow-up.

Rep. Kiser: Shouldn’t it say the highest number of ballots or votes or something to that effect?

Bill Gilkeson: This tracks the language in the parallel provisions, and there are other provisions in the statutes that say the votes have to be valid. I think that’s pretty much taken care of.

Rep. Moore: Representative Luebke.

Rep. Luebke: I had a question about the primary, line 8, G.S. 163-111. Is that the reference to the forty percent rule?

Bill Gilkeson: Right. That’s how primaries are determined.

Rep. Moore: Representative Starnes.

Rep. Starnes: Following up on what Representative Kiser was asking, I assume there's another part of the statute that we're not seeing here. But the certificate of election would not be issued to someone until after all the challenges have been accepted, or in the case of a contested election....

Bill Gilkeson: Right.

Rep. Starnes: So we don't need clarifying language here that says just because you got the most votes, you're certified the winner notwithstanding a challenge.

Bill Gilkeson: No. The challenge provisions are already still there in the protests and that sort of thing. This just replaces language that used to be there that isn't there any more.

Rep. Moore: My understanding was that Susan Nichols with the Attorney General's Office and Marshall Hurley had gone back. I think originally this was one of Marshall's ideas to include some language like this in the statute to just clear this up. Any more debate or discussion along these lines on this particular amendment? Seeing not, is there a motion for adoption of the Amendment?

Rep. Ross: So moved.

Rep. Moore: The motion's made. All in favor of adoption of the amendment please say aye. Opposed no. Ayes have it. The amendment is adopted.

We're now in discussion on the remainder of the bill. Co-chair Ross.

Rep. Ross: I was going to say if there weren't any further amendments, I would just move that the amendments be rolled into the new proposed committee substitute, give a favorable report to the committee substitute, unfavorable as to the original bill.

The committee was at ease while the staff and chairs talked.

Rep. Ross: I wanted to withdraw my motion because Rep. Ray has a very extensive amendment that she would like for this bill that is not ready, so what we are going to try to do is accommodate her on the next bill that we're going to do, but because this bill includes language that would conflict with her amendment, she has asked that we remove Section 3 from this bill, which is on how to change registration when a

county line is adjusted. So that when we work on the next bill, which we will not finish today, accommodate an amendment she would like on county lines being adjusted, and she has been working with the Board of Elections on that amendment. The bill filing deadline has passed so she couldn't introduce a separate bill, and so as a courtesy to Representative Ray, she would like us to delete Section 3 from this bill and the portion of the title of the bill that goes with Section. And what we will do is when we take up amendments to the next omnibus bill that we're doing, include the amendments she would like on county lines, which she has negotiated with the Board of Elections along with any other amendments that we might do on that omnibus bill. And if that would be all right with the Committee, I am more than happy to offer this amendment to delete Section 3 so that we can accommodate Representative Ray in the next bill that we do.

Rep. Moore: And I told Representative Ray that we would work with her on that. We're going to accept that amendment motion. Representative Ross moves to amend the bill by deleting in its entirety section 3 of the bill, which would be lines 14 through 23 on page 4 of the bill. Do we have further debate...?

Rep. Ross: And the part....

Rep. Moore: And the part of the title, right?

Rep. Ross: Yeah.

Rep. Moore: Do we have further debate or discussion on the amendment? Representative Luebke.

Rep. Luebke: Just a question of the chairs. You're telling us that there is consensus administratively by Rep. Ray and you as chairs as to the preference or the preferable nature of Representative Ray's amendment.

Rep. Moore: Yes.

Rep. Ross: Yes.

Rep. Moore: It just has to do with how the counties and county lines and determining where folks vote. It's pretty pre-developed. Not much to it.

Rep. Ross: Just a little local color. It changes the where is the bedroom in the house rule in some for people whose houses are on the county line to a more exacting way of determining where you're really registered to

vote, and Representative Ray is bringing us into the 21st Century with this. But it will require a little more extensive work.

Rep. Kiser: Mr. Chairman.

Rep. Moore: Yes, sir.

Rep. Kiser: I don't think that's a problem in my county. Our houses are not that big.

Rep. Moore: Well, I don't know. All these problems come up from around Lincoln and Iredell. Something with Lake Norman up there, I think.

Motion has been made to amend the bill. Further debate or discussion? Seeing not, all in favor of the amendment please say aye. Opposed no. The ayes have it. The amendment is adopted.

Representative Kiser.

Rep. Kiser: I have a question on page 3, line 43, where equipment has been put in there, who decides the equipment issue?

Rep. Moore: That might be a good question for the State Board of Elections to address. Mr. Bartlett, you want to try that one?

Mr. Bartlett: I think that we've got some...it goes on to say on the next page that the...that I am the one that allows there to be two different types of equipment in the precinct, and that is to comply with HAVA and also for running two different elections. One might be run on machines and another might be a smaller election, which would be paper.

Rep. Kiser: This doesn't give the State Board authority to tell a county what kind of machines that they must use?

Mr. Bartlett: No, sir.

Mr. Bartlett: Do you want Mr. Gilkeson to explain the rationale for having that provision in the bill? Mr. Gilkeson, if you would please, explain that.

Bill Gilkeson: Well, this is just actually not so much a change to the meaning of whether or not the State Board can provide an adequate amount of equipment because the term equipment is still there so that all voters qualified to vote at the precinct was cleaned off to make it consistent with previous things that we've enacted.

Rep. Moore: Representative Starnes.

Rep. Starnes: I want to go back and open up a discussion on Section 5, talking about the voter assistance on one-stop voting before the election date. I feel very comfortable with the law the way it is now where it says that someone that's working at the board of elections is able to offer the assistance. Now in Caldwell County, we've had some pretty contentious elections and a lot of them revolve around the early voting, and on both sides. I've seen people bring in vanloads of people who get out and they're marching in there and they go vote. I don't think we ought to let the van driver go in there and mark the ballots for the people to make sure that they're voting the right way. And it looks to me like that's the way that's opening that up to, and I think it would be better if we limit the assistance to people that are actually employed by the board of elections. That's totally my thoughts and I'd like to hear other comments.

Rep. Moore: Representative Ross.

Rep. Ross: Well, Representative Starnes, I think that this was supposed to be done in part to accommodate the requirements of HAVA because people who are allowed to have assistance from a friend or a relative at the regular polling place—say if they are disabled—need to be able to have that same kind of assistance at the one-stop site. You can't tell somebody that, well if you're disabled and you show up at the one-stop site you can't have the same kinds of people assist you as you would if you had shown up on election day. So my understanding was that this was to make the law consistent and not discriminate against people who might need assistance based on what day they decided to vote.

Rep. Starnes: Well, I can understand that, but I still think it's a little bit too broad. I think that we can possibly address the concerns of disabled people, but we need to make sure that we're not making it so broad that we give an opportunity for fraud.

Rep. Moore: You're recognized.

Rep. Ross: I also wanted to ask Mr. Gilkeson to explain this because we were under the impression that federal law was basically telling us that our current law had to be consistent, and this was a compliance with federal law. So Mr. Gilkeson, you were going to say something about the Voting Rights Act.

Bill Gilkeson: There is a provision of the Voting Rights Act that says that anybody who is disabled has the right to be assisted by any person of their choice unless it is their employer or an official of their labor union or some agent of one of those two people. The question is, is that...I

think probably when that was enacted, people were thinking of people voting in their polling places on election day. But it doesn't clearly say that that's what it's limited to. So the idea is that with so many people voting at one-stop sites that same rule...you're much safer to have the same rules apply that are consistent with the federal voting rights rules.

Rep. Moore: Representative Blust.

Rep. Blust: Question of staff. Is there any requirement for voting that someone be of a certain capacity, for instance, like they would be for execution will or power of attorney?

Bill Gilkeson: No. There's nothing like that really.

Rep. Blust: I just say that because I know of an instance where there's somebody who's totally not mentally...doesn't have the mental capacity. Basically this person's mother gets two votes because they'll take him to vote and she'll go in with him and vote for him basically. I just noticed the neighbors of this person always beat up on me for that. Why is that allowed?

Bill Gilkeson: I would say that if the person's who is voting is...the person in whose name the vote is being cast is not really doing the voting, then regardless of the fact that there's no statute that says you have to have a certain capacity, still that person is not casting the vote and somebody's casting an illegal vote.

Rep. Moore: Recognized for follow-up.

Rep. Blust: If this change is made, and I understand anybody can do the assisting, could someone who knows there's people who know there are people who don't know or care be able to bring them to the polling place and assist them to vote the way the assister wants them to?

Rep. Moore: Who is your question addressed to, Representative Blust.

Rep. Blust: Staff, I guess.

Rep. Moore: Representative Ross, go ahead.

Rep. Ross: Well, Representative Blust, my understanding is that the person has to request the assistance, and believe me, I've been to some of my polling places and in one situation called the elections officials on a person who was offering unsolicited assistance, and it was not a very happy instance. But I believe the person who wants the assistance has to request the assistance, and if they do not request the assistance then a

person who is trying to help them without authority is committing a criminal offense, is my understanding. Like I said, in one of my polling places during one of my elections I threatened to report that person for a criminal offense and they got away from the voter pretty quickly.

Rep. Blust: They might have been trying to vote for you.

Rep. Ross: I don't care who they were voting for.

Rep. Moore: I have a question. The chair has a question of Mr. Bartlett, and this was just mentioned beforehand by the committee by a member, and I've been sort of percolating on it since the question was posed. Do we have anything in existing law that would prohibit? I think what I am hearing is the concern that you could have folks, say, in a nursing home or an assisted living center or someone could show up and load a bunch of them up and take them to vote and essentially walk them and vote them—folks who might not know what they are doing. Is there anything in existing law right now that would prevent that from happening? I guess what we are doing by this change is we're allowing non-relatives to assist people in voting on one-stop instead of just on election day. But is there something in the law right now that would prevent that scenario under current law on Election Day that would also prevent that scenario from happening on this? Can you shed some light on that for the committee?

Mr. Bartlett: First of all when you're talking about people who have their wits about them one day or there's certain capacity issues, what we do is instruct the counties to tell the precinct officials to follow the law. Like you would state your name. You must state your address. You must, if it's a primary, (you must state) your party affiliation. And you have to go through all of those processes, and if that person cannot go through those processes then you have a problem, and it must be dealt with.

Rep. Moore: Does the voter, in that case, have to say I want Deborah Ross to help me vote or can Deborah Ross stand in and say, I'm here to help the person?

Mr. Bartlett: No, the help has to be requested by the voter.

Rep. Moore: I'll recognize my co-chair to speak on this.

Rep. Ross: I'm just simply going to read the law to you, okay? It says—this is 163-166.8 (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 the chief judge shall request the person indicated to render the assistance. Now just to let you know it says, a person rendering the assistance to a voter shall be admitted to the voting booth with the voter being assisted. The Board of Elections shall promulgate rules governing the assistance, and those rules shall adhere to the following guidelines, which I think now will answer some of your questions. The person rendering assistance shall not in any manner seek to persuade or induce any voter to cast any vote in any particular way. The person rendering assistance shall not make or keep any memorandum of anything that occurs in the voting booth. The person rendering assistance shall not directly or indirectly reveal to any person how the assisted person marked the ballot unless the person rendering assistance is called upon to testify in a judicial proceeding. So it sounds like the bus driver cannot go in and say, hey I'm helping all these people or help the person unless that person specifically asks the chief judge.

Rep. Blust: Well what would stop someone from coaching them before they got off the bus?

Rep. Moore: Who's that question addressed to? Staff? I don't think anything. I guess that falls under the purview of campaigning. We talk to voters as they're going into the poll sites. I don't know that that....

I'm going to ask this question. If there is still a good deal of discussion about this particular provision, it might be in order to put this in the campaign finance bill to move the rest of the bill on, if that's the will of the committee. We can accept an amendment to remove it for now and work this out and make it.... I think the intent here is _____. We'll be candid. There's always a concern when we get to election law. The parties are concerned, and we have worked very hard to make sure that the things in this bill are not controversial. If this is something that it appears will stir up controversy, it may be prudent to withdraw it at this point but look at working out these differences to get resolved and put it in the finance bill along with Rep. Ray's amendment that we're going to be considering, too. I just don't want to see this bill get derailed over something like this. Is that...?

Rep. Ross: So in that case I would like to just move that we roll these amendments that we have agreed in into the proposed committee substitute and give the committee substitute a favorable report, unfavorable as to the original bill.

Rep. Moore: Well let me do this. Is there a motion to remove...just take Section 5 out for now.

Rep. Starnes: Mr. Chairman, I so move.

Rep. Moore: Motion is made to remove Section 5 from the bill which is the.... Is there anything in Section 5...? It's 5A, that's what we're talking about. Well we'd have to take 5B, too.

Bill Gilkeson: 5A and 5B are a pair. They go together.

Rep. Moore: A motion has been made to remove Section 5 from the bill. Any debate or discussion on the amendment?

Rep. Ross: Well, I would argue that if we remove Section 5 from the bill, we will be out of compliance with federal law because we will have different laws for how disabled people can get assistance when they vote on election day from how they will get assistance at a one-stop site. And so I have some pretty serious concerns that we would remove a provision that we're putting in order to comply with federal law.

Rep. Moore: Representative Kiser.

Rep. Kiser: I don't think that Representative Starnes was talking about disabled people. I think he's just talking about hauling people in to vote by the busloads who were not disabled. Am I right, Representative Starnes?

Rep. Starnes: Exactly. I never was recognized to speak a second time.

Rep. Moore: You're recognized now.

Rep. Starnes: We all want to do whatever we can to assist the blind, infirmed or disabled. But the same laws that applies to them is applying to someone that is coming in off the street and they know good and well what to say and they can vote as good as I or you can, and they say I need assistance and so I want this fella to help me. He just happens to be the bus driver, and we all know what's going on. And some people they turn around and they look and the craziness of business going on. Trust me, it's going on.

Rep. Moore: Okay. Representative Ross.

Rep. Ross: I would just like to remind the committee that only people who are entitled to use this...because what we just read to you said that the chief judge has to determine that the assistance is appropriate and the identified person meets the criteria in section A of the section, and the

criteria is disability, blindness, physical disability. I mean those are the criteria for the people who are allowed to get the assistance. So the chief judge at the polls is going to screen the person who asks for assistance based on these disabilities, which are disabilities that are protected by federal law.

Rep. Moore: Further debate or discussion? Representative Luebke. You haven't spoken on this yet.

Rep. Luebke: Well it just seems to me.... I mean the hypothetical case that you are raising, if you appear to be a totally capable person, if I'm understanding Representative Ross right from what she's read, you can't stand and raise a hand and say I want that person over there to come in a vote for me. You can't. And so I would oppose the motion to take 5 out because it seems to me this is clearly related to the federal HAVA law, and it's not related to the things that Representative Starnes is talking about.

Rep. Moore: Representative Starnes is recognized.

Rep. Starnes: Well, it is happening. And you know good and well the people who are precinct officials are enablers or friends or people that live in our community, people we go to church with. When someone walks in and they say I need assistance, they don't put them through a test. They could just say I took medicine this morning, my eyes are blurry, or I don't feel good, or they can give any reason they want and no one's going to deny them assistance when they say I want John over here to help me.

Rep. Moore: Further debate or discussion on the amendment, Representative Starnes. Seeing not, all in favor of the amendment say aye. Opposed no.

Members: Division.

Rep. Moore: Division is called. All in favor please raise your hand. Those opposed. The motion is adopted by a vote of five to four.

Further debate or discussion on the remaining provisions of the bill. Seeing not, the chair recognizes co-chair Ross for a motion.

Rep. Ross: I move that we roll the amendment into a new proposed committee substitute, give the proposed committee substitute a favorable report, unfavorable as to the original bill.

Rep. Moore: Motion has been made. Further debate or discussion? Representative Luebke.

Rep. Luebke: Well, I'm concerned about what's going to happen to that 5A or 5B. So can you tell me, Mr. Chairman, are you pledging that that will be discussed and be inserted into...? (The tape ran out here.) ... the fallout would be.... It does seem that this is required under HAVA, and so we can't move forward without being in violation of federal law. I mean we can move forward today if we have an understanding here among the committee members that we're going to move forward with Section 5 in 1128. And I'm going to tell you what the motion is now. I think that has to be understood.

Rep. Ross: There will be an amendment to put Section 5 A and B back into the Campaign Finance Law.

Rep. Moore: One thing, too, I think we may need on the amendment of Representative Starnes, there may be an amendment necessary to amend the title to make it comply before we consider Representative Ross's motion. Is there a correction amendment that the title also be amended to reflect the amendment made by Representative Starnes. I recognize Representative Starnes for that motion.

Rep. Starnes: I have a question before the chair. We got a title that's 28 lines long. Why don't we just make a simple title?

Rep. Moore: Well, we're going to leave the title the way it is, but I will recognize you, Representative Starnes, for your motion to amend the title to clarify with your amendment.

Rep. Starnes: I so move to amend the title.

Rep. Moore: Further debate or discussion. Seeing none, those in favor of that amendment please say aye. Opposed no. The ayes have it. We're now back on the motion made by Representative Ross to roll the amendments into a committee substitute and give the bill a favorable report. Seeing no further debate or discussion, those in favor please say aye. Opposed no. The ayes have it the bill is adopted.

We've got about three minutes if you want to touch the campaign finance bill, we can do that. But folks look like they're packing up. Very well, we stand adjourned.

Meeting adjourned at 1:50 p.m.

AGENDA

HOUSE OF REPRESENTATIVES ELECTION LAW AND CAMPAIGN FINANCE REFORM COMMITTEE

**April 20, 2005
Representative Moore, Presiding**

HB 1115, Election Administration Amendments, Reps. Moore and Ross

HB 1128, Campaign Finance Amendments, Reps. Moore and Ross

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION**

You are hereby notified that the Committee on Election Law and Campaign Finance Reform will meet as follows:

DAY & DATE: Wednesday, April 20, 2005

TIME: 1:00 p.m.

LOCATION: 1425 LB

The following bills will be considered (Bill # & Short Title & Bill Sponsor):

**HB 1115, Election Administration Amendments, Reps. Moore and Ross
HB 1128, Campaign Finance Amendments, Reps. Moore and Ross**

Respectfully,

Representatives Tim Moore and Deborah Ross
Chairs

I hereby certify this notice was filed by the committee assistant at the following offices at 5:50 a.m. on April 18, 2005.

____Principal Clerk
____Reading Clerk - House Chamber

Margie Penven (Committee Assistant)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

D

HOUSE BILL 1115

PROPOSED COMMITTEE SUBSTITUTE H1115-CSRR-22 [v.1]

4/19/2005 8:36:17 PM

Short Title: Election Administration Amendments.

(Public)

Sponsors:

Referred to:

April 5, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW POLITICAL PARTIES TO USE "RUNNERS" TO PICK UP
VOTER LISTS FROM POLLS; TO PROHIBIT A CANDIDATE FROM BEING
AN OBSERVER OR RUNNER AT THE POLLS; TO AUTHORIZE THE
EXECUTIVE DIRECTOR OF THE STATE BOARD OF ELECTIONS TO
PERMIT DIFFERENT VOTING SYSTEMS IN THE SAME PRECINCT; TO
ALLOW THE CHANGING OF REGISTERED VOTERS BASED ON ADJUSTED
COUNTY LINE; TO CHANGE THE DEADLINE FOR FILING A PROTEST
FROM SIX O'CLOCK P.M. TO FIVE O'CLOCK P.M.; TO PERMIT THE SAME
KIND OF VOTER ASSISTANCE IN ONE-STOP SITES AS AT VOTING
PLACES ON ELECTION DAY; TO CHANGE THE REQUIREMENT FOR A
STATEWIDE UNAFFILIATED CANDIDATE TO CONFORM TO A FEDERAL
COURT DECISION; TO PROHIBIT PIECE PAYMENT FOR VOTER
REGISTRATION DRIVES; TO EXPRESSLY PROVIDE THAT PRECINCT
TRANSFER VOTERS AT ONE-STOP SITES NEED NOT VOTE PROVISIONAL
BALLOTS; TO DELETE THE REQUIREMENT THAT ONE-STOP VOTERS BE
INSTRUCTED IN HOW TO VOTE MAIL ABSENTEE BALLOTS; TO FIX THE
SALARY ON WHICH A FILING FEE FOR AN OFFICE IS BASED; TO
REMOVE THE OUTDATED REFERENCE IN THE FILING FEE STATUTE TO
OFFICES "COMPENSATED ENTIRELY BY FEES"; TO ALLOW FOR THE
CANCELLATION OF A VOTER'S REGISTRATION IN A FORMER COUNTY
WHEN THE VOTER REGISTERS IN A NEW COUNTY; TO UPDATE AND
MAKE MORE TECHNOLOGY-NEUTRAL THE LANGUAGE IN THE
STATUTE PROVIDING FOR ACCESS TO VOTER REGISTRATION DATA; TO
EXTEND FOR THREE DAYS THE COUNTY CANVASS AFTER A GENERAL
ELECTION IN NOVEMBER OF AN EVEN-NUMBERED YEAR AND CHANGE
OTHER RELATED DATES; AND TO EXPRESSLY ALLOW ELECTRONIC
POLLBOOKS.

1 The General Assembly of North Carolina enacts:

2 **SECTION 1.(a)** G.S. 163-45 reads as rewritten:

3 **"§ 163-45. Observers; appointment.**

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

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

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

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

1 observer to inspect election records so that the observer may create a list of persons who
2 have voted in the precinct so far that election day; each observer shall be entitled to
3 make the inspection at times specified by the State Board of Elections, but not less than
4 three times during election day with the spacing not less than one hour apart. Instead of
5 having an observer receive the voting list, the county party chair may send a runner to
6 do so. The runner may be any person named by the county party chair. That party chair
7 must notify the chair of the county board of elections or the board chair's designee of
8 the names of all runners to be used in each precinct before the runner goes to the
9 precinct. The runner may receive a voter list from the precinct on the same schedule as
10 an observer. Whether obtained by observer or runner, each party is entitled to only one
11 voter list at each of the scheduled times. No runner may enter the voting enclosure
12 except when necessary to announce that runner's presence. The runner must leave
13 immediately after being provided with the list."

14 **SECTION 1.(b)** G.S. 163-166.3 reads as rewritten:

15 **"§ 163-166.3. Limited access to the voting enclosure.**

16 During the time allowed for voting in the voting place, only the following persons
17 may enter the voting enclosure:

- 18 (1) An election official.
- 19 (2) An observer appointed pursuant to G.S. 163-45.
- 20 (2a) A runner appointed pursuant to G.S. 163-45, but only to the extent
21 necessary to announce that runner's presence and to receive the voter
22 list as provided in G.S. 163-45.
- 23 (3) A person seeking to vote in that voting place on that day but only
24 while in the process of voting or seeking to vote.
- 25 (4) A voter in that precinct while entering or explaining a challenge
26 pursuant to G.S. 163-87 or G.S. 163-88.
- 27 (5) A person authorized under G.S. 163-166.8 to assist a voter but, except
28 as provided in subdivision (6) of this section, only while assisting that
29 voter.
- 30 (6) Minor children of the voter under the age of 18, or minor children
31 under the age of 18 in the care of the voter, but only while
32 accompanying the voter and while under the control of the voter.
- 33 (7) Persons conducting or participating in a simulated election within the
34 voting place or voting enclosure, if that simulated election is approved
35 by the county board of elections.
- 36 (8) Any other person determined by election officials to have an urgent
37 need to enter the voting enclosure but only to the extent necessary to
38 address that need."

39 **SECTION 2.** G.S. 163-165.10 reads as rewritten:

40 **"§ 163-165.10. Adequacy of voting system for each precinct.**

41 The county board of elections shall make available for each precinct voting place an
42 adequate quantity of official ballots or equipment ~~so that all voters qualified to vote at~~
43 ~~the precinct may do so. equipment.~~ When the board of county commissioners has
44 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."

SECTION 3. Article 7A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-82.15A. Administrative change of registration when county line is adjusted.

When a boundary between counties is changed by legislation, or adjusted by the counties pursuant to G.S. 153A-18, the Executive Director of the State Board of Elections shall direct the county boards of elections involved to administratively change the voter registration of any voter whose residence the change or adjustment places in a different county. The voter shall not be required to submit a new application to register. The Executive Director shall prescribe a method of notifying the voter of the change of county registration, the correct precinct, and other relevant information."

SECTION 4. G.S. 163-182.9(b)(4) reads as rewritten:

"(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 ~~6:00~~ 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 ~~6:00~~ 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."

SECTION 5.(a) G.S. 163-227.2(e) reads as rewritten:

"(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.~~ 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."

SECTION 5.(b) G.S. 163-226.3(a) reads as rewritten:

"(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 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 guardian;~~ 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 ~~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;~~ 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;
- (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."

SECTION 6. G.S. 163-122(a) reads as rewritten:

"(a) Procedure for Having Name Printed on Ballot as Unaffiliated Candidate. – Any qualified voter who seeks to have ~~his~~that voter's 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 ~~registered voters in the State as reflected by the most recent statistical report issued by the State Board of Elections.~~ voters who voted in the most recent general election for Governor. Also the petition must be signed by at least 200 registered voters in 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~~chair of the board of elections of the county in which the signatures were obtained. Provided the petitions are timely submitted, the ~~chairman~~chair 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~~that county and shall attach to the petition ~~his~~the petitioner's 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

1 registered to vote in ~~his~~that county. The ~~chairman~~chair shall return
2 each petition, together with the certificate required in this section, to
3 the person who presented it to ~~him~~ for checking. Verification by the
4 ~~chairman~~chair of the county board of elections shall be completed
5 within two weeks from the date such petitions are presented."

6 **SECTION 7.(a)** Article 7A of Chapter 163 of the General Statutes is
7 amended by adding a new section to read:

8 **"§ 163-82.25A. Piece payment in voter registration drives prohibited.**

9 No person who employs or contracts with another person to register voters or assist
10 or encourage voters to fill out voter registration forms shall pay that person per voter
11 registration application completed. No person shall accept payment per voter
12 registration application. A violation of this section is a Class 2 misdemeanor."

13 **SECTION 7.(b)** G.S. 163-274 is amended by adding a new subdivision to
14 read:

15 "(14) For any person to pay or accept payment per voter registration
16 application completed in violation of G.S. 163-82.25A."

17 **SECTION 8.(a)** G.S. 163-227.2 is amended by adding a new subsection to
18 read:

19 "(e2) A voter who has moved within the county more than 30 days before election
20 day but has not reported the move to the board of elections shall not be required on that
21 account to vote a provisional ballot at the one-stop site, as long as the one-stop site has
22 available all the information necessary to determine whether a voter is registered to vote
23 in the county and which ballot the voter is eligible to vote based on the voter's proper
24 residence address. The voter with that kind of unreported move shall be allowed to vote
25 the same kind of absentee ballot as other one-stop voters."

26 **SECTION 8.(b)** G.S. 163-166.11 is amended by adding a new subdivision
27 to read:

28 "(2a) A voter who has moved within the county more than 30 days before
29 election day but has not reported the move to the board of elections
30 shall not be required on that account to vote a provisional ballot at the
31 one-stop site, as long as the one-stop site has available all the
32 information necessary to determine whether a voter is registered to
33 vote in the county and which ballot the voter is eligible to vote based
34 on the voter's proper residence address. The voter with that kind of
35 unreported move shall be allowed to vote the same kind of absentee
36 ballot as other one-stop voters as provided in G.S. 163-227.2(e2)."

37 **SECTION 9.** G.S. 163-227.2(c) reads as rewritten:

38 "(c) If the application is properly filled out, the authorized member or employee
39 shall enter the voter's name in the register of absentee requests, applications, and ballots
40 issued; shall furnish the voter with the instruction sheets called for by G.S. 163-229(e);
41 and issued and shall furnish the voter with the ballots to which the application for
42 absentee ballots applies. The voter thereupon shall vote in accordance with subsection
43 (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 ~~chairman~~ 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."

SECTION 10. G.S. 163-107(a) reads as rewritten:

"(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~~	~~Forty dollars (\$40.00), plus one percent~~

1	entirely by fees	(1%) of the income of the office above
2		four thousand dollars (\$4,000)
3	Any other county office, if compensated	Twenty dollars (\$20.00), plus one percent
4	entirely by fees	(1%) of the income of the office above
5		two thousand dollars (\$2,000)
6	All county offices compensated partly	One percent (1%) of the first annual
7	by salary and partly by fees	salary to be received (exclusive of
8		fees)

9 The salary of any office that is the basis for calculating the filing fee is the starting
10 salary for the office, rather than the salary received by the incumbent, if different. If no
11 starting salary can be determined for the office, then the salary used for calculation is
12 the salary of the incumbent, as of January 1 of the election year."

13 **SECTION 11.** G.S. 163-82.9 reads as rewritten:

14 **"§ 163-82.9. Cancellation of prior registration.**

15 If an applicant indicates on an application form described in G.S. 163-82.3 a current
16 registration to vote in any other county, municipality, or state, the county board of
17 elections, upon registering the person to vote, shall send a notice to the appropriate
18 officials in the other county, municipality, or state and shall ask them to cancel the
19 person's voter registration there. If an applicant completes an application form described
20 in G.S. 163-82.3 except that the applicant neglects to complete the portion of the form
21 that authorizes cancellation of previous registration in another county, the State Board
22 of Elections shall notify the county board of elections in the previous county of the new
23 registration, and the board in the previous county shall cancel the registration. The State
24 Board of Elections shall adopt rules to prevent disenfranchisement in the
25 implementation of this section. Those rules shall include adequate notice to the person
26 whose previous registration is to be cancelled."

27 **SECTION 12.(a)** G.S. 163-82.10(b) reads as rewritten:

28 **"(b) Access to Registration Records.** – Upon request by that person, the county
29 board of elections shall provide to any person a list of the registered voters of the county
30 or of any precinct or precincts in the county. The county board may furnish selective
31 lists according to party affiliation, gender, race, date of registration, precinct name,
32 precinct identification code, congressional district, senate district, representative district,
33 and, where applicable, county commissioner district, city governing board district, fire
34 district, soil and water conservation district, and voter history including primary,
35 general, and special districts, or any other reasonable category. No list produced under
36 this section shall contain a voter's date of birth. However, lists may be produced
37 according to voters' ages. ~~The Both the following shall apply if a county maintains or~~
38 ~~has its voter registration list maintained on a computer: to all counties:~~

- 39 (1) ~~In addition to the typed, mimeographed, photocopied, computer~~
40 ~~printout or label lists, the~~ The county board of elections shall make the
41 voter registration information available to the public on electronic or
42 magnetic medium. ~~Magnetic medium for the purpose of this section~~
43 ~~shall consist of nine track tape or 3.5 inch diskettes and 5.25 inch~~
44 ~~diskettes readily accessible using MS DOS or Microsoft Windows~~

~~operating systems or both such systems; and~~ 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.~~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)."

SECTION 12.(b) G.S. 163-82.10(c) reads as rewritten:

"(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~~ of all the registered voters in the county to

a. ~~The~~ the State chair of each political party; party and

b. ~~The~~ 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.

- (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 on one of any

1 electronic or magnetic media, but no later than 30 days after written request. Each State
2 party chair shall provide the discs or tapes the information on the media received from
3 the county boards or a copy of the media containing the data itself to candidates of that
4 party who request the discs or tapes data in writing. Each State party chair shall return
5 discs and tapes to the county boards within 30 days after receiving them. As used in this
6 section, "political party" means a political party as defined in G.S. 163-96."

7 **SECTION 13.(a)** G.S. 163-182.5(b) reads as rewritten:

8 "(b) Canvassing by County Board of Elections. – The county board of elections
9 shall meet at 11:00 A.M. on the ~~seventh-tenth~~ day after every election held on the same
10 day as a general election in November of the even-numbered year, and at 11:00 A.M. on
11 the seventh day after every other election, to complete the canvass of votes cast and to
12 authenticate the count in every ballot item in the county by determining that the votes
13 have been counted and tabulated correctly. If, despite due diligence by election officials,
14 the initial counting of all the votes has not been completed by that time, the county
15 board may hold the canvass meeting a reasonable time thereafter. The canvass meeting
16 shall be at the county board of elections office, unless the county board, by unanimous
17 vote of all its members, designates another site within the county. The county board
18 shall examine the returns from precincts, from absentee official ballots, and from
19 provisional official ballots and shall conduct the canvass."

20 **SECTION 13.(b)** G.S. 163-182.7 reads as rewritten:

21 **"§ 163-182.7. Ordering recounts.**

22 (a) Discretionary Recounts. – The county board of elections or the State Board of
23 Elections may order a recount when necessary to complete the canvass in an election.
24 The county board may not order a recount where the State Board of Elections has
25 already denied a recount to the petitioner.

26 (b) Mandatory Recounts for Ballot Items Within the Jurisdiction of the County
27 Board of Elections. – In a ballot item within the jurisdiction of the county board of
28 elections, a candidate shall have the right to demand a recount of the votes if the
29 difference between the votes for that candidate and the votes for a prevailing candidate
30 is not more than one percent (1%) of the total votes cast in the ballot item, or in the case
31 of a multiseat ballot item not more than one percent (1%) of the votes cast for those two
32 candidates. The demand for a recount must be made in writing and must be received by
33 the county board of elections by 5:00 P.M. on the first business day after the canvass.
34 The recount shall be conducted under the supervision of the county board of elections.

35 (c) Mandatory Recounts for Ballot Items Within the Jurisdiction of the State
36 Board of Elections. – In a ballot item within the jurisdiction of the State Board of
37 Elections, a candidate shall have the right to demand a recount of the votes if the
38 difference between the votes for that candidate and the votes for a prevailing candidate
39 are not more than the following:

- 40 (1) For a nonstatewide ballot item, one percent (1%) of the total votes cast
41 in the ballot item, or in the case of a multiseat ballot item, one percent
42 (1%) of the votes cast for those two candidates.
43 (2) For a statewide ballot item, one-half of one percent (0.5%) of the votes
44 cast in the ballot item, or in the case of a multiseat ballot item, one-half

of one percent (0.5%) of the votes cast for those two candidates, 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 ~~Thursday after the election~~ business day after the county canvass. ~~If on that Thursday 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.
- (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. "

SECTION 14. G.S. 163-166.7(c) reads as rewritten:

"(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 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.
- (4) All improperly voted official 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.

1 (9) Party observers are given access as provided by G.S. 163-45 to current
2 information about which voters have voted.

3 (10) The voter, before voting, shall sign that voter's name on the pollbook,
4 other voting record, or voter authorization document. If the voter is
5 unable to sign, a precinct official shall enter the person's name on the
6 same document before the voter votes."

7 **SECTION 15.** Sections 2, 6, 8, 9, 10, 12, and 14 of this act are effective
8 when this act becomes law and apply to all primaries and elections held on or after that
9 date. The remainder of this act becomes effective January 1, 2006, and applies to all
10 primaries and elections held on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

1

HOUSE BILL 1115

Short Title: Election Administration Amendments.

(Public)

Sponsors: Representatives Moore, Ross (Primary Sponsors); and Insko.

Referred to: Election Law and Campaign Finance Reform.

April 5, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW POLITICAL PARTIES TO USE "RUNNERS" TO PICK UP
VOTER LISTS FROM POLLS; TO PROHIBIT A CANDIDATE FROM BEING
AN OBSERVER OR RUNNER AT THE POLLS; TO AUTHORIZE THE
EXECUTIVE DIRECTOR OF THE STATE BOARD OF ELECTIONS TO
PERMIT DIFFERENT VOTING SYSTEMS IN THE SAME PRECINCT; TO
ALLOW THE CHANGING OF REGISTERED VOTERS BASED ON ADJUSTED
COUNTY LINE; TO CHANGE THE DEADLINE FOR FILING A PROTEST
FROM SIX O'CLOCK P.M. TO FIVE O'CLOCK P.M.; TO PERMIT THE SAME
KIND OF VOTER ASSISTANCE IN ONE-STOP SITES AS AT VOTING
PLACES ON ELECTION DAY; TO CHANGE THE REQUIREMENT FOR A
STATEWIDE UNAFFILIATED CANDIDATE TO CONFORM TO A FEDERAL
COURT DECISION; TO PROHIBIT PIECE PAYMENT FOR VOTER
REGISTRATION DRIVES; TO EXPRESSLY PROVIDE THAT PRECINCT
TRANSFER VOTERS AT ONE-STOP SITES NEED NOT VOTE PROVISIONAL
BALLOTS; TO DELETE THE REQUIREMENT THAT ONE-STOP VOTERS BE
INSTRUCTED IN HOW TO VOTE MAIL ABSENTEE BALLOTS; TO FIX THE
SALARY ON WHICH A FILING FEE FOR AN OFFICE IS BASED; TO
REMOVE THE OUTDATED REFERENCE IN THE FILING FEE STATUTE TO
OFFICES "COMPENSATED ENTIRELY BY FEES"; TO ALLOW THE STATE
BOARD OF ELECTIONS TO AUTOMATICALLY CANCEL A VOTER'S
REGISTRATION IN A FORMER COUNTY WHEN THE VOTER REGISTERS
IN A NEW COUNTY; TO UPDATE AND MAKE MORE
TECHNOLOGY-NEUTRAL THE LANGUAGE IN THE STATUTE PROVIDING
FOR ACCESS TO VOTER REGISTRATION DATA; TO EXTEND FOR THREE
DAYS THE COUNTY CANVASS AFTER A GENERAL ELECTION IN
NOVEMBER OF AN EVEN-NUMBERED YEAR; AND TO EXPRESSLY
ALLOW ELECTRONIC POLLBOOKS.

The General Assembly of North Carolina enacts:

1 SECTION 1.(a) G.S. 163-45 reads as rewritten:

2 "**§ 163-45. Observers; appointment.**

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

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

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

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

1 have voted in the precinct so far that election day; each observer shall be entitled to
2 make the inspection at times specified by the State Board of Elections, but not less than
3 three times during election day with the spacing not less than one hour apart. Instead of
4 having an observer receive the voting list, the county party chair may send a runner to
5 do so. The runner may be any person named by the county party chair. That party chair
6 must notify the chair of the county board of elections or the board chair's designee of
7 the names of all runners to be used in each precinct before the runner goes to the
8 precinct. The runner may receive a voter list from the precinct on the same schedule as
9 an observer. Whether obtained by observer or runner, each party is entitled to only one
10 voter list at each of the scheduled times. No runner may enter the voting enclosure
11 except when necessary to announce that runner's presence. The runner must leave
12 immediately after being provided with the list."

13 **SECTION 1.(b)** G.S. 163-166.3 reads as rewritten:

14 **"§ 163-166.3. Limited access to the voting enclosure.**

15 During the time allowed for voting in the voting place, only the following persons
16 may enter the voting enclosure:

- 17 (1) An election official.
- 18 (2) An observer appointed pursuant to G.S. 163-45.
- 19 (2a) A runner appointed pursuant to G.S. 163-45, but only to the extent
20 necessary to announce that runner's presence and to receive the voter
21 list as provided in G.S. 163-45.
- 22 (3) A person seeking to vote in that voting place on that day but only
23 while in the process of voting or seeking to vote.
- 24 (4) A voter in that precinct while entering or explaining a challenge
25 pursuant to G.S. 163-87 or G.S. 163-88.
- 26 (5) A person authorized under G.S. 163-166.8 to assist a voter but, except
27 as provided in subdivision (6) of this section, only while assisting that
28 voter.
- 29 (6) Minor children of the voter under the age of 18, or minor children
30 under the age of 18 in the care of the voter, but only while
31 accompanying the voter and while under the control of the voter.
- 32 (7) Persons conducting or participating in a simulated election within the
33 voting place or voting enclosure, if that simulated election is approved
34 by the county board of elections.
- 35 (8) Any other person determined by election officials to have an urgent
36 need to enter the voting enclosure but only to the extent necessary to
37 address that need."

38 **SECTION 2.** G.S. 163-165.10 reads as rewritten:

39 **"§ 163-165.10. Adequacy of voting system for each precinct.**

40 The county board of elections shall make available for each precinct voting place an
41 adequate quantity of official ballots or ~~equipment so that all voters qualified to vote at~~
42 ~~the precinct may do so. equipment.~~ When the board of county commissioners has
43 decided to adopt and purchase or lease a voting system for voting places under the
44 provisions of G.S. 165-165.8, the board of county commissioners shall, as soon as

1 practical, provide for each of those voting places sufficient equipment of the approved
2 voting system in complete working order. If it is impractical to furnish each voting
3 place with the equipment of the approved voting system, that which has been obtained
4 may be placed in voting places chosen by the county board of elections. In that case, the
5 county board of elections shall choose the voting places and allocate the equipment in a
6 way that as nearly as practicable provides equal access to the voting system for each
7 voter. The county board of elections shall appoint as many voting system custodians as
8 may be necessary for the proper preparation of the system for each election and for its
9 maintenance, storage, and care. The Executive Director of the State Board of Elections
10 may permit a county board of elections to provide more than one type of voting system
11 in a precinct, but only upon a finding that doing so is necessary to comply with federal
12 or State law."

13 **SECTION 3.** Article 7A of Chapter 163 of the General Statutes is amended
14 by adding a new section to read:

15 **"§ 163-82.15A. Administrative change of registration when county line is adjusted.**

16 When a boundary between counties is changed by legislation, or adjusted by the
17 counties pursuant to G.S. 153A-18, the Executive Director of the State Board of
18 Elections shall direct the county boards of elections involved to administratively change
19 the voter registration of any voter whose residence the change or adjustment places in a
20 different county. The voter shall not be required to submit a new application to register.
21 The Executive Director shall prescribe a method of notifying the voter of the change of
22 county registration, the correct precinct, and other relevant information."

23 **SECTION 4.** G.S. 163-182.9(b)(4) reads as rewritten:

24 **"(4)** The timing for filing a protest shall be as follows:

- 25 a. If the protest concerns the manner in which votes were counted
26 or results tabulated, the protest shall be filed before the
27 beginning of the county board of election's canvass meeting.
- 28 b. If the protest concerns the manner in which votes were counted
29 or results tabulated and the protest states good cause for delay
30 in filing, the protest may be filed until 6:00-5:00 P.M. on the
31 second day after the county board of elections has completed its
32 canvass and declared the results.
- 33 c. If the protest concerns an irregularity other than vote counting
34 or result tabulation, the protest shall be filed no later than 6:00
35 5:00 P.M. on the second day after the county board has
36 completed its canvass and declared the results.
- 37 d. If the protest concerns an irregularity on a matter other than
38 vote counting or result tabulation and the protest is filed before
39 election day, the protest proceedings shall be stayed, unless a
40 party defending against the protest moves otherwise, until after
41 election day if any one of the following conditions exists:
 - 42 1. The ballot has been printed.
 - 43 2. The voter registration deadline for that election has
44 passed.

3. Any of the proceedings will occur within 30 days before election day."

SECTION 5.(a) G.S. 163-227.2(e) reads as rewritten:

"(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.~~ 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."

SECTION 5.(b) G.S. 163-226.3(a) reads as rewritten:

"(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 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 guardian;~~ 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 ~~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;~~ 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

1 written request pursuant to G.S. 163-230.1 or an application on behalf
2 of a registered voter who is a patient in any hospital, clinic, nursing
3 home or rest home in this State or for any owner, manager, director,
4 employee, or other person other than the voter's near relative or
5 verifiable legal guardian, to mark the voter's absentee ballot or assist
6 such a voter in marking an absentee ballot;

7 (5) Repealed by Session Laws 1987, c. 583, s. 8.

8 (6) For any person to take into that person's possession for delivery to a
9 voter or for return to a county board of elections the absentee ballot of
10 any voter, provided, however, that this prohibition shall not apply to a
11 voter's near relative or the voter's verifiable legal guardian;

12 (7) Except as provided in subsections (1), (2), (3) and (4) of this section,
13 G.S. 163-231(a), G.S. 163-250(a), and G.S. 163-227.2(e), for any voter
14 to permit another person to assist the voter in marking that voter's
15 absentee ballot, to be in the voter's presence when a voter votes an
16 absentee ballot, or to observe the voter mark that voter's absentee
17 ballot."

18 **SECTION 6.** G.S. 163-122(a) reads as rewritten:

19 "(a) Procedure for Having Name Printed on Ballot as Unaffiliated Candidate. –
20 Any qualified voter who seeks to have ~~his-that~~ voter's name printed on the general
21 election ballot as an unaffiliated candidate shall:

22 (1) If the office is a statewide office, file written petitions with the State
23 Board of Elections supporting ~~his-candidacy~~ for a specified office.
24 These petitions must be filed with the State Board of Elections on or
25 before 12:00 noon on the last Friday in June preceding the general
26 election and must be signed by qualified voters of the State equal in
27 number to two percent (2%) of the total number of ~~registered voters in~~
28 ~~the State as reflected by the most recent statistical report issued by the~~
29 ~~State Board of Elections. voters who voted in the most recent general~~
30 election for Governor. Also the petition must be signed by at least 200
31 registered voters in each of four congressional districts in North
32 Carolina. No later than 5:00 p.m. on the fifteenth day preceding the
33 date the petitions are due to be filed with the State Board of Elections,
34 each petition shall be presented to the ~~chairman-chair~~ of the board of
35 elections of the county in which the signatures were obtained.
36 Provided the petitions are timely submitted, the ~~chairman-chair~~ shall
37 examine the names on the petition and place a check mark on the
38 petition by the name of each signer who is qualified and registered to
39 vote in ~~his-that~~ county and shall attach to the petition ~~his-the~~
40 petitioner's signed certificate. Said certificates shall state that the
41 signatures on the petition have been checked against the registration
42 records and shall indicate the number of signers to be qualified and
43 registered to vote in ~~his-that~~ county. The ~~chairman-chair~~ shall return
44 each petition, together with the certificate required in this section, to

the person who presented it to ~~him~~ for checking. Verification by the ~~chairman~~ chair of the county board of elections shall be completed within two weeks from the date such petitions are presented."

SECTION 7.(a) Article 7A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-82.25A. Piece payment in voter registration drives prohibited.

No person who employs or contracts with another person to register voters or assist or encourage voters to fill out voter registration forms shall pay that person per voter registration application completed. No person shall accept payment per voter registration application. A violation of this section is a Class 2 misdemeanor."

SECTION 7.(b) G.S. 163-274 is amended by adding a new subdivision to read:

"(14) For any person to pay or accept payment per voter registration application completed in violation of G.S. 163-82.25A."

SECTION 8.(a) G.S. 163-227.2 is amended by adding a new subsection to read:

"(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."

SECTION 8.(b) G.S. 163-166.11 is amended by adding a new subdivision to read:

"(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)."

SECTION 9. G.S. 163-227.2(c) reads as rewritten:

"(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; ~~shall furnish the voter with the instruction sheets called for by G.S. 163-229(e); and 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 ~~chairman~~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."

SECTION 10. G.S. 163-107(a) reads as rewritten:

"(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~~	~~Twenty dollars (\$20.00), plus one percent~~

entirely by fees

(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)

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."

SECTION 11. G.S. 163-82.9 reads as rewritten:

"§ 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."

SECTION 12.(a) G.S. 163-82.10(b) reads as rewritten:

"(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 Both the following shall apply if a county maintains or has its voter registration list maintained on a computer to all counties:~~

- (1) ~~In addition to the typed, mimeographed, photocopied, computer printout or label lists, the~~ The county board of elections shall make the voter registration information available to the public on electronic or 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 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, 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)."

SECTION 12.(b) G.S. 163-82.10(c) reads as rewritten:

"(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~~ of all the registered voters in the county to

a. ~~The~~ the State chair of each political party; party and

b. ~~The~~ 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.

- (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 on one of any electronic or magnetic media, but no later than 30 days after written request. Each State party chair shall provide ~~the discs or tapes~~ the information on the media received from the county boards or a copy of the media containing the data itself to candidates of that

1 party who request the ~~disks or tapes~~ data in writing. ~~Each State party chair shall return~~
2 ~~disks and tapes to the county boards within 30 days after receiving them.~~ As used in this
3 section, "political party" means a political party as defined in G.S. 163-96."

4 SECTION 13. G.S. 163-182.5(b) reads as rewritten:

5 "(b) Canvassing by County Board of Elections. – The county board of elections
6 shall meet at 11:00 A.M. on the ~~seventh-tenth~~ day after every election held on the same
7 day as a general election in November of the even-numbered year, and at 11:00 A.M. on
8 the seventh day after every other election, to complete the canvass of votes cast and to
9 authenticate the count in every ballot item in the county by determining that the votes
10 have been counted and tabulated correctly. If, despite due diligence by election officials,
11 the initial counting of all the votes has not been completed by that time, the county
12 board may hold the canvass meeting a reasonable time thereafter. The canvass meeting
13 shall be at the county board of elections office, unless the county board, by unanimous
14 vote of all its members, designates another site within the county. The county board
15 shall examine the returns from precincts, from absentee official ballots, and from
16 provisional official ballots and shall conduct the canvass."

17 SECTION 14. G.S. 163-166.7(c) reads as rewritten:

18 "(c) The State Board of Elections shall promulgate rules for the process of voting.
19 Those rules shall emphasize the appearance as well as the reality of dignity, good order,
20 impartiality, and the convenience and privacy of the voter. Those rules, at a minimum,
21 shall include procedures to ensure that all the following occur:

- 22 (1) The voting system remains secure throughout the period voting is
23 being conducted.
- 24 (2) Only properly voted official ballots are introduced into the voting
25 system.
- 26 (3) Except as provided by G.S. 163-166.9, no official ballots leave the
27 voting enclosure during the time voting is being conducted there.
- 28 (4) All improperly voted official ballots are returned to the precinct
29 officials and marked as spoiled.
- 30 (5) Voters leave the voting place promptly after voting.
- 31 (6) Voters not clearly eligible to vote in the precinct but who seek to vote
32 there are given proper assistance in voting a provisional official ballot
33 or guidance to another voting place where they are eligible to vote.
- 34 (7) Information gleaned through the voting process that would be helpful
35 to the accurate maintenance of the voter registration records is
36 recorded and delivered to the county board of elections.
- 37 (8) The registration records are kept secure. The State Board of Elections
38 shall permit the use of electronic registration records in the voting
39 place in lieu of or in addition to a paper pollbook or other registration
40 record.
- 41 (9) Party observers are given access as provided by G.S. 163-45 to current
42 information about which voters have voted.
- 43 (10) The voter, before voting, shall sign that voter's name on the pollbook,
44 other voting record, or voter authorization document. If the voter is

1 unable to sign, a precinct official shall enter the person's name on the
2 same document before the voter votes."

3 **SECTION 15.** Sections 2, 6, 8, 9, 10, 12, and 14 of this act are effective
4 when this act becomes law and apply to all primaries and elections held on or after that
5 date. The remainder of this act becomes effective January 1, 2006, and applies to all
6 primaries and elections held on or after that date.



HOUSE BILL 1115: Election Administration Amendments.

BILL ANALYSIS

Committee: House Election Law and
Campaign Finance Reform

Date: April 13, 2005

Version: H1115-CSRR-22 [v.1]

Introduced by: Reps. Moore and Ross

Summary by: William R. Gilkeson
Committee Co-Counsel

SUMMARY: *This Proposed Committee Substitute for House Bill 1115 would make several changes to the laws concerning election administration. The changes are based on proposals made by the staff of the State Board of Elections.*

Section 1. Legal Recognition of "Runners"; No Candidate as Observer or Runner. Current law allows county political parties to appoint "observers" to be inside a polling place to monitor what is going on, as long as they do not disrupt. One of the things they may do is pick up lists at certain times of the day of the people who have voted at the precinct. A practice has grown up of parties sending "runners," who have not gone through the process of being appointed observers, to pick up the voter lists and nothing more. The bill would write this function into the law, allowing a party chair to send a runner to precinct and pick up the voter list. The runner could be anyone appointed by the party chair. The party chair must provide the county board of elections a list of which runners will go to which precincts before the runners are sent. The runner may enter the voting enclosure only where necessary to announce his or her presence. Upon receiving the list, they must leave immediately. This section also provides that no candidate in an election may be either an observer or runner. Effective 1-1-06.

Section 2. Allow Different Voting Systems in Same Precinct. Current statute does not expressly address whether a county may provide more than one voting system per precinct. The bill says the Executive Director of the State Board of Elections may permit a county to use more than one voting system in a precinct where doing so would be necessary to comply with State or federal law. It is expected that, to comply with the Help America Vote Act's requirement for a fully disabled-accessible station in every precinct, some counties may need to have two systems in the same precinct. Effective when the bill becomes law.

Sections 3. Allow Administrative Voter Registration Change If County Line Adjusted. Currently counties are authorized to settle between themselves a disputed or uncertain county line. In addition, the General Assembly has the authority to change county lines by legislation. It has been known to happen that such a county line change or adjustment has resulted in a voter residing in a county other than the one in which the voter was registered. Because voter registration in NC is county-based, the voter could be disenfranchised without realizing it. The bill would authorize the Executive Director of the State Board of Elections to move the voter's registration to the correct county administratively. The voter, who has not moved, would not need to submit a new voter registration application. Notice to the voter would be required. Effective 1-1-06.

Section 4. Change Protest Deadline from 6 pm to 5 pm. Current law sets the certain deadlines for filing an election protests at 6 pm on the second day after the county canvass. Most county board of elections offices close at 5 pm. The bill would change the statutory deadline to reflect the boards' regular hours. Effective 1-1-06.

Section 5. Same Voter Assistance Rules for One-Stop as for Election Day. Current law says that at the polls on election day, a voter whose illiteracy or disability requires them to have assistance to vote may receive assistance from anyone other than their employer or union representative. If not illiterate or disabled, a voter may receive assistance from a specified group of relatives. Those provisions reflect federal law. At a one-stop site, however, the law is different: A one-stop voter who needs assistance or who is blind may receive assistance only from a county board of elections member, a county election director, a board employee, a near relative of the voter or the voter's verifiable legal guardian. Anyone else providing assistance to a voter at a one-stop site is subject under G.S. 163-226.3 to prosecution for committing a Class I felony. The bill makes the one-stop rules on assistance the same as those at the polls on election day. It changes the felony statute accordingly.

HOUSE BILL 1115

Page 2

Section 6. Conforming Statewide Unaffiliated Ballot Access to a Court Decision. The current statute regulating how an unaffiliated candidate gets on the general election ballot in a statewide race requires the candidate to collect signatures from voters on petitions equal to 2% of all the registered voters in the State. That is now about 107,000 signatures. To get on the ballot as a new party, a group is required to collect signatures equal to 2% of the turnout in the latest Governor's race. That is now 69,734. Last year a US District Court in Delaney v. Bartlett found the disparity between the two thresholds unconstitutional and held the statewide unaffiliated threshold unconstitutional. The State did not appeal. The bill would make the statewide unaffiliated threshold 2% of the latest Governor's race turnout, the same as the new party threshold. Effective when the bill becomes law. (Note: This Committee last month approved House Bill 88, which would, among other things, drop the both thresholds to 0.5% of the latest Governor's race.)

Section 7. Prohibiting Piecework Payment for Voter Registration Drives. Current law does not regulate how groups doing voter registration drives may pay people doing the registration work. In 2004 some groups doing drives turned in questionable voter registration applications, burdening county boards of elections at the last minute with checking thousands of applicants, some of whom were bogus. It was believed that piecework pay gave an incentive to create bogus applications. The US Supreme Court has ruled, in the similar situation of initiative petition drives, that a State cannot prohibit paying people for doing the petition work. Courts have been less clear on whether payment on a piecework or commission basis can be banned. One such prohibition was struck down when the State offered no evidence that piecework pay resulted in fraud but the petitioners did offer evidence that it hindered their drive. Another such prohibition was upheld when the State offered evidence that piecework pay resulted in fraud but the petitioners offered no evidence of hindrance. The bill prohibits anyone from paying someone to register voters per voter registration application completed. It adds violation to the list of Class 2 misdemeanors. Effective 1-1-06.

Section 8. One-Stop Precinct Transfers Need Not Be Provisionals. Currently, if a person moves more than 30 days before an election within the county where registered to vote but does not notify the board of elections of the move, the person may show up at the new voting place and will be allowed to vote. But, since their name is not on the books there, they must vote a provisional ballot. If such a voter with an unreported move went to vote at a one-stop site, however, most counties allowed that person to vote the same kind of retrievable ballot as other one-stop voters rather than a provisional ballot. The reasoning, endorsed by the State Board of Elections, was that the one-stop site had on-line access to the entire county's voter registration database and had all ballot styles available. And the one-stop vote was retrievable anyway. At least one large county, Wake, felt that even at a one-stop site an unreported-move voter was legally required to vote a provisional ballot. This practice slowed down the one-stop voting process and led to Wake having more provisional ballots to count than even its large size warranted. The bill makes clear that a voter who has not reported a move within the county does not, on that account, need to vote a provisional ballot at a one-stop site. Effective when the bill becomes law.

Section 9. Clean Up One-Stop Statute Requiring Instruction in Voting by Mail. For some reason, the statute on one-stop voting requires officials at a one-stop site to furnish one-stop voters, who are there voting in person, with instructions in how to vote mail absentee. The bill removes the language as inappropriate. Effective when the bill becomes law. Effective when it becomes law.

Section 10. Two Changes to Filing Fee Statute. Currently the statute saying how much is a candidate's filing fee sets the fee at 1% of the annual salary of the office sought, except it sets a raw dollar amount for offices "compensated entirely by fees." The bill specifies that the salary is the starting salary for the office, rather than the incumbent's salary, if the two are different. If no starting salary can be determined, then the salary used for the 1% is the incumbent's salary as of January 1 of the election year. The bill also removes the references to offices compensated entirely by fees, since such offices no longer exist. Effective when bill becomes law.

Section 11. Allow Cancellation of Old Registration When New One Appears. Currently the voter registration form calls for a person registering in a new county to cancel any registration they had in a previous county. Sometimes applicants neglect to complete the cancellation part of the form. The bill would direct the State Board of Elections, which runs the statewide computerized voter registration system, to notify the county board in the old county of the new registration. The board in the old county would then be required to cancel the registration. The State Board is required to adopt rules to prevent disenfranchisement, including adequate notice to the voter whose registration is going to be cancelled. Effective 1-1-06.

HOUSE BILL 1115

Page 3

Section 12. Update Statute About Access to Voter Registration Data. The current statute allowing free and paid access to voter registration data was written in the mid-1990s in language that was specific to the technology of the time. It also contains language implying that a county has an option in having or not having computerized voter registration data. Now all counties are being required to be part of the State computerized voter registration system. The bill updates the access to records statute, removing references old technology and to the option not to have lists on computer. It does not require the county boards to provide its list to county party chairs on paper. Effective when the bill becomes law.

Section 13. Canvass on 10th Day After General Election. Current law requires the county board of elections to hold its canvass on the 7th day after a primary or election. Ten years ago the canvass was the 3rd day after the election. But various federal and State changes in the law have made it difficult for county boards to complete all their pre-canvass work so a succession of extensions have been enacted. After the 2004 presidential election some counties found the 7th day wasn't soon enough. The bill moves the county canvass to the 10th day for even-year general elections only. For other elections ("election" is defined to include primary), the canvass stays on the 7th day. Effective when the bill becomes law. Conforming changes are made to other dates in the statutes.

Section 14. Clarify that Electronic Pollbooks May Be Used. Traditionally, the list of registered voters in the precinct was a paper book called a pollbook. As time went on, computer printouts were used. The 2001 rewrite of the statutes about voting at the polls gave the State Board of Elections broader authority to design a system, following statutory criteria. The bill adds to the State Board's criteria that it must permit to use of electronic registration records in the voting place in lieu of paper pollbooks or other records. Effective when the bill becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 1115 (Second Edition)
SHORT TITLE: Election Administration Amendments.
SPONSOR(S): Representatives Ross and Moore

FISCAL IMPACT

	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>
GENERAL FUND					
Correction	Exact amount cannot be determined; no substantial impact anticipated.				
Judicial	Exact amount cannot be determined; no substantial impact anticipated.				
LOCAL GOVERNMENTS	Exact amount cannot be determined; no substantial impact anticipated.				
COUNTY BOARDS OF ELECTION	No substantial impact estimated/See Assumptions and Methodology				
ADDITIONAL PRISON BEDS*	No additional prison beds anticipated.				
POSITIONS: (cumulative)	No additional positions anticipated.				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch; Local Governments, and County Boards of Election					
EFFECTIVE DATE: Sections 1, 3, 4, 5, 7, 11: January 1, 2006; All other sections: Upon Ratification.					

**This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.*

BILL SUMMARY:¹

This bill would make several changes to the laws concerning election administration. The changes are based on proposals made by the staff of the State Board of Elections. There are three sections that could have a fiscal impact: sections 5 and 7, which have criminal penalties, and section 10, which makes a clarification to the filing fee requirements. These three sections are summarized below.

Section 5: Current law provides that on election day a voter whose illiteracy or disability requires them to have assistance to vote may receive assistance from anyone other than their employer or union representative. If not illiterate or disabled, a voter may receive assistance from an immediate family member. Those provisions reflect federal law regarding assistance at federal elections. Current law also provides that at a one-stop site a voter who needs assistance or who is blind may receive assistance only from a county board of elections member, a county election director, a board employee, a near relative of the voter or the voter's verifiable legal guardian. Section 5 of this bill would amend the one-stop law on voter assistance to be the same as that at the polls on election day.

Section 7: Current law does not regulate how voter registration drives may pay persons conducting the drives. This section of the bill would prohibit anyone from paying someone to register voters per voter registration application completed. A violation would be a Class 2 misdemeanor.

Section 10: Currently, candidate's filing fees are set at 1% of the annual salary of the office sought, except for an office "compensated entirely by fees," which is a flat dollar amount. No offices "compensated entirely by fees" exist today. The bill would remove the references to offices compensated entirely by fees. The bill would also specify that the salary used in calculating the filing fee is the starting salary for the office, rather than the incumbent's salary, if the two are different. If no starting salary can be determined, then the salary used for calculating the filing fee is the incumbent's salary as of January 1ST of the election year.

ASSUMPTIONS AND METHODOLOGY:

Election Administration Changes

The bill provides compliance and/or clarifying legislation to existing statutes. As noted in the bill summary, only sections 5, 7, and 10 could have a fiscal impact. The fiscal impact of sections 5 & 7 are discussed below in the *Modification of Criminal Offenses* subsection.

Section 10 clarifies the filing fee requirement. The bill would remove the statutory references to the filing fees for offices that are compensated entirely by fees. Because no offices compensated entirely by fees exist today, removing these statutory references would not have a fiscal impact. Section 10 also clarifies that the salary to be used in calculating the filing fee, which is a percentage of the annual salary of the office sought, is the starting salary for the office, rather than the incumbent's salary. The State Board of Elections estimates that the clarification of which salary to use in calculating the filing fees could result in a slight reduction in filing fee receipts by boards of elections, assuming that (1) the starting salary is lower than the incumbent's salary and (2) the counties have been using the incumbent's salary. The Board estimates, however, that the reduction would not be significant.

¹ Adopted from May 6, 2005 Bill Analysis prepared by House Finance Committee Counsel

Modification of Criminal Offenses

General

Section 5 of this bill would modify the specified list of individuals authorized to provide assistance to voters at a one-stop voting site and would, thus, alter the types of individuals eligible to commit a Class I felony for illegally providing such assistance. Section 7 of the bill would create a new Class 2 misdemeanor for paying or accepting payment for registering voters on a per voter basis. As these provisions modify criminal offenses, they would be expected to lead to changes in adjudication and incarceration rates and an associated fiscal impact to the Department of Correction and the Judicial Branch. However, as the provisions of both sections would not be expected to lead to a significant number of new felony or misdemeanor charges or convictions, the fiscal impact is not anticipated to be substantial.

Current G.S. 163-274(1) and G.S. 163-274(10) provide that it is a Class 2 misdemeanor for specified officials to fail to perform certain duties related to the administration of elections. As several provisions of the bill would expand the set of duties prescribed for some of these officials, additional Class 2 misdemeanor charges and convictions could result under G.S. 163-274(1) or G.S. 163-274(10) for failure in the performance of those duties as required by law. However, given that the class of eligible offenders is small and the scope of behavior encompassed by these offenses is not expanded significantly, the number of new Class 2 misdemeanor charges and convictions under G.S. 163-274 as a result of this bill is not expected to be substantial.

Department of Correction

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2005 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory group, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon and beyond.*

Section 5: It is unknown whether altering the specified list of individuals allowed to assist voters at the polls under G.S. 163-226.3 would lead to a decrease, no change, or an increase in the number of offenders sentenced as Class I felons for illegally assisting voters. As such, no estimate of the fiscal impact associated with this provision is available. The Administrative Office of the Courts does not maintain an offense code for violations of present G.S. 163-226.3, which is some indication that the current offense is infrequently charged and rarely results in convictions.

Section 7: Because this section would provide for a new Class 2 misdemeanor, the Sentencing Commission has no historical data from which to estimate the impact on local jail populations. As noted in the "General" section, additional Class 2 misdemeanor convictions could also result under G.S. 163-274 for failure in the performance of certain duties for specified officials. In FY 2003-04, 15 percent of Class 2 misdemeanors resulted in active sentences with a maximum length of 60 days and an average length of 23 days. Offenders with active sentences less than thirty days are housed in county jails at county expense, and the Department of Correction (DOC) reimburses the county for housing offenders sentenced to between thirty and ninety days at a rate of \$18 per

offender per day. Because Class 2 misdemeanants serving active time as a result of this offense would be housed in county jails, this provision would not impact prison population.

The remaining 85 percent of Class 2 misdemeanants received non-active sentences. For those offenders sentenced to supervised probation, the Division of Community Corrections (DCC) would incur costs of \$1.87 per offender per day. Offenders sentenced to community service would cost \$0.67 per offender per day, and offenders given unsupervised probation would not impact DCC.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts (AOC) provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Section 5: It is unknown whether the modification to the list of individuals authorized to assist at the polls provided by Section 5 of the bill would lead to a decrease, no change, or an increase in the number of individuals charged with a Class I felony for illegally assisting voters. As such, no estimate is available with respect to the fiscal impact of this provision. As noted in the DOC section, the lack of an offense code for current violations of G.S. 163-226.3 may be some indication that the offense is presently infrequently charged.

Section 7: As this section provides for a new criminal offense, no data is available with which to estimate the number of additional Class 2 misdemeanor charges the Courts would process as a result of this bill. However, AOC anticipates that the majority of voter registration campaigns would comply with the requirements of this legislation and would thus expect relatively few new charges to result from this bill.

As noted in the “General” section, additional Class 2 misdemeanor charges could also result under G.S. 163-274 for failure in the performance of certain duties for specified officials. The number of additional charges, however, is not expected to be substantial as the bill would only refine current law and not greatly expand the scope of behavior encompassed by this offense.

Based on the costs of time in court, attorney preparation time, and indigent defense, the average estimated cost to process a single Class 2 misdemeanor charge via trial is \$2,322. This cost includes an estimated \$1,373 in jury fees, costs of time in court, and attorney costs and an additional \$949 in indigent defense. However, based on prior-year data, the majority of any new Class 2 misdemeanor charges that are not dismissed are likely to be settled by guilty plea at an estimated cost of \$272 per plea.

SOURCES OF DATA: State Board of Elections, Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Aaron Paul and Marilyn Chism

APPROVED BY: James D. Johnson, Director
Fiscal Research Division

DATE: May 9, 2005



Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

1

HOUSE BILL 1128

Short Title: Campaign Finance Amendments.

(Public)

Sponsors: Representatives Moore, Ross (Primary Sponsors); and Rapp.

Referred to: Election Law and Campaign Finance Reform.

April 6, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE TRAINING FOR ALL CAMPAIGN TREASURERS; TO REQUIRE AN AUDIT TRAIL FOR ANY CAMPAIGN CONTRIBUTION MADE BY MONEY ORDER; TO ALLOW CAMPAIGN EXPENDITURES TO BE MADE BY ANY VERIFIABLE FORM OF PAYMENT; TO SET A THREE-YEAR TIME LIMIT BEFORE ANY UNPAID DEBT IN A CAMPAIGN IS DEEMED TO BE A CONTRIBUTION; TO INCLUDE VACANCY ELECTIONS AND NONPARTISAN RUNOFFS IN THE DEFINITION OF "ELECTION" FOR PURPOSES OF CONTRIBUTION LIMITS; TO CLARIFY THE MEANING OF "QUALIFIED TO RECEIVE VOTES ON THE BALLOT AS A CANDIDATE FOR THE OFFICE" AS A PRECONDITION FOR CERTIFICATION UNDER THE PUBLIC CAMPAIGN FINANCING FUND; TO CLARIFY WHAT CANDIDATES UNDER THAT FUND MAY RAISE AND SPEND AFTER FILING NOTICE OF INTENT TO PARTICIPATE; TO PROVIDE FOR EARLIER DISTRIBUTION OF THE JUDICIAL VOTER GUIDE; TO LIMIT THE USE OF CREDIT CARDS FOR PAYMENT OF EXPENDITURES IN PUBLICLY FUNDED JUDICIAL CAMPAIGNS; TO APPLY THE SCOPE AND ADVISORY OPINION SECTIONS OF ARTICLE 22A OF CHAPTER 163 OF THE GENERAL STATUTES TO ARTICLES 22B, 22D, 22E, AND 22F AS WELL; AND TO EXPRESSLY REQUIRE THAT ORGANIZATIONS EXPENDING FOR "ELECTIONEERING COMMUNICATIONS" MUST DO SO OUT OF A SEGREGATED ACCOUNT THAT CONTAINS NO MONEY FROM PROHIBITED SOURCES AND TO EXPRESSLY PROVIDE FOR DETAILED REPORTING FROM ANY SUCH ACCOUNT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-278.7(e) reads as rewritten:

"(e) Every treasurer of a political committee or referendum committee shall receive, prior to every election in which the political committee or referendum

1 committee is involved, training from the State Board of Elections as to the duties of the
2 office, including the requirements of G.S. 163-278.13(e1), provided that the treasurer
3 may designate an employee or volunteer of the committee to receive the training."

4 **SECTION 2.** G.S. 163-278.14(b) reads as rewritten:

5 "(b) No entity shall give, and no candidate, committee or treasurer shall accept,
6 any monetary contribution in excess of one hundred dollars (\$100.00) unless such
7 contribution be in the form of a check, draft, money order, credit card charge, debit, or
8 other noncash method that can be subject to written verification. The State Board of
9 Elections may prescribe guidelines as to the reporting and verification of any method of
10 contribution payment allowed under this Article. For contributions by money order, the
11 State Board shall prescribe methods to ensure an audit trail for every contribution so
12 that the identity of the contributor can be determined. For a contribution made by credit
13 card, the credit card account number of a contributor is not a public record."

14 **SECTION 3.** G.S. 163-278.8(e) reads as rewritten:

15 "(e) All expenditures for media expenses shall be made by ~~check only~~ a verifiable
16 form of payment. The State Board of Elections shall prescribe methods to ensure an
17 audit trail for every contribution so that the identity of each payee can be determined.
18 All media expenditures in any amount shall be accounted for and reported individually
19 and separately."

20 **SECTION 4.** G.S. 163-278.8(f) reads as rewritten:

21 "(f) All expenditures for nonmedia expenses (except postage) of more than fifty
22 dollars (\$50.00) shall be made by ~~check only~~ a verifiable form of payment. The State
23 Board of Elections shall prescribe methods to ensure an audit trail for every contribution
24 so that the identity of each payee can be determined. All expenditures for nonmedia
25 expenses of fifty dollars (\$50.00) or less may be made by check or by cash payment. All
26 nonmedia expenditures of more than fifty dollars (\$50.00) shall be accounted for and
27 reported individually and separately, but expenditures of fifty dollars (\$50.00) or less
28 may be accounted for and reported in an aggregated amount, but in that case the
29 treasurer shall account for and report that he made expenditures of fifty dollars (\$50.00)
30 or less each, the amounts, dates, and the purposes for which made. In the case of a
31 nonmedia expenditure required to be accounted for individually and separately by this
32 subsection, if the expenditure was to an individual, the report shall list the name and
33 address of the individual."

34 **SECTION 5.** G.S. 163-278.6(6) reads as rewritten:

35 "(6) The terms "contribute" or "contribution" mean any advance,
36 conveyance, deposit, distribution, transfer of funds, loan, payment,
37 gift, pledge or subscription of money or anything of value whatsoever,
38 to a candidate to support or oppose the nomination or election of one
39 or more clearly identified candidates, to a political committee, to a
40 political party, or to a referendum committee, whether or not made in
41 an election year, and any contract, agreement, promise or other
42 obligation, whether or not legally enforceable, to make a contribution.
43 These terms include, without limitation, such contributions as labor or
44 personal services, postage, publication of campaign literature or

1 materials, in-kind transfers, loans or use of any supplies, office
2 machinery, vehicles, aircraft, office space, or similar or related
3 services, goods, or personal or real property. These terms shall also
4 include, without limitation, a debt, or any portion thereof, to pay an
5 expenditure that has been uncollected beyond the three years set in
6 G.S. 1-52 for its collection. These terms also include, without
7 limitation, the proceeds of sale of services, campaign literature and
8 materials, wearing apparel, tickets or admission prices to campaign
9 events such as rallies or dinners, and the proceeds of sale of any
10 campaign-related services or goods. Notwithstanding the foregoing
11 meanings of "contribution," the word shall not be construed to include
12 services provided without compensation by individuals volunteering a
13 portion or all of their time on behalf of a candidate, political
14 committee, or referendum committee. The term "contribution" does
15 not include an "independent expenditure." If:

- 16 a. Any individual, person, committee, association, or any other
17 organization or group of individuals, including but not limited
18 to, a political organization (as defined in section 527(e)(1) of
19 the Internal Revenue Code of 1986) makes, or contracts to
20 make, any disbursement for any electioneering communication,
21 as defined in G.S. 163-278.80(2) and (3) and
22 G.S. 163-278.90(2) and (3); and
23 b. That disbursement is coordinated with a candidate, an
24 authorized political committee of that candidate, a State or local
25 political party or committee of that party, or an agent or official
26 of any such candidate, party, or committee that disbursement or
27 contracting shall be treated as a contribution to the candidate
28 supported by the electioneering communication or that
29 candidate's party and as an expenditure by that candidate or that
30 candidate's party."

31 **SECTION 6.** G.S. 163-278.13(d) reads as rewritten:

32 "(d) For the purposes of this section, the term "an election" means any primary,
33 runoff, second primary, or general election ~~general election~~, or vacancy election in
34 which the candidate or political committee may be involved, without regard to whether
35 the candidate is opposed or unopposed in the election, except that where a candidate is
36 not on the ballot in a runoff or second primary, that runoff or second primary is not "an
37 election" with respect to that candidate."

38 **SECTION 7.** G.S. 163-278.64(c) reads as rewritten:

39 "(c) Certification of Candidates. – Upon receipt of a submittal of the record of
40 demonstrated support by a participating candidate, the Board shall determine whether or
41 not the candidate has complied with all the following requirements, if they apply to that
42 candidate:

- 43 (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) ~~Qualified to receive votes on the ballot as a candidate for the office.~~ 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."

SECTION 8. G.S. 163-278.64(d) reads as rewritten:

"(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 Financing Fund.

(2) From the filing of a declaration of intent through the end of the qualifying period, a candidate shall 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 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. subsection and possible rescue funds received pursuant to G.S. 163-278.67. 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.

(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 rescue 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

1 ~~campaign and campaign.~~ Debt incurred by the candidate for a
2 campaign expenditure shall count toward that limit. The candidate may
3 accept in contributions one thousand dollars (\$1,000) from each
4 member of that candidate's family consisting of spouse, parent, child,
5 brother, and sister.

6 (5) A candidate and the candidate's committee shall limit the use of all
7 revenues permitted by this subsection to expenditures for
8 campaign-related purposes only. The Board shall publish guidelines
9 outlining permissible campaign-related expenditures. In establishing
10 those guidelines, the Board shall differentiate expenditures that
11 reasonably further a candidate's campaign from expenditures for
12 personal use that would be incurred in the absence of the candidacy. In
13 establishing the guidelines, the Board shall review relevant provisions
14 of G.S. 163-278.42(e), the Federal Election Campaign Act, and rules
15 adopted pursuant to it, and similar provisions in other states.

16 (6) Any contribution received by a participating or certified candidate that
17 falls outside that permitted by this subsection shall be returned to the
18 donor as soon as practicable. Contributions intentionally made,
19 solicited, or accepted in violation of this Article are subject to civil
20 penalties as specified in G.S. 163-278.70. The funds involved shall be
21 forfeited to the Civil Penalty and Forfeiture Fund.

22 (7) A candidate shall return to the Fund any amount distributed for an
23 election that is unspent and uncommitted at the date of the election, or
24 at the time the individual ceases to be a certified candidate, whichever
25 occurs first. For accounting purposes, all qualifying, personal, and
26 family contributions shall be considered spent before revenue from the
27 Fund is spent or committed."

28 **SECTION 9.** G.S. 163-278.69(a) reads as rewritten:

29 "(a) Judicial Voter Guide. – The Board shall publish a Judicial Voter Guide that
30 explains the functions of the appellate courts and the laws concerning the election of
31 appellate judges, the purpose and function of the Public Campaign ~~Financing~~ Fund, and
32 the laws concerning voter registration. The Board shall distribute the Guide to as many
33 voting-age individuals in the State as practical, through a mailing to all residences or
34 other means it deems effective. The distribution shall occur no more than ~~28~~14 days nor
35 fewer than seven days before the one-stop voting period provided in G.S. 163-227.2 for
36 the primary and no more than 2814 days nor fewer than seven days before the one-stop
37 voting period provided in G.S. 163-227.2 for the general election."

38 **SECTION 10.** G.S. 163-278.6(9) reads as rewritten:

39 "(9) The terms "expend" or "expenditure" mean any purchase, advance,
40 conveyance, deposit, distribution, transfer of funds, loan, payment,
41 gift, pledge or subscription of money or anything of value whatsoever,
42 whether or not made in an election year, and any contract, agreement,
43 promise or other obligation, whether or not legally enforceable, to
44 make an expenditure or to incur an obligation to pay an expenditure, to

support or oppose the nomination, election, or passage of one or more clearly identified candidates, or ballot measure. 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. The special definition of "expenditure" in G.S. 163-278.12A applies only in that section."

SECTION 11. G.S. 163-278.5 reads as rewritten:

"§ 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, and 22F of the General Statutes to the same extent that it applies to this Article."

SECTION 12. G.S. 163-278.23 reads as rewritten:

"§ 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.

1 The Executive Director of the Board of Elections shall issue written opinions to
2 candidates, the communications media, political committees, referendum committees, or
3 other entities upon request, regarding filing procedures and compliance with this
4 Article. Any such opinion so issued shall specifically refer to this paragraph. If the
5 candidate, communications media, political committees, referendum committees, or
6 other entities rely on and comply with the opinion of the Executive Director of the
7 Board of Elections, then prosecution or civil action on account of the procedure
8 followed pursuant thereto and prosecution for failure to comply with the statute
9 inconsistent with the written ruling of the Executive Director of the Board of Elections
10 issued to the candidate or committee involved shall be barred. Nothing in this paragraph
11 shall be construed to prohibit or delay the regular and timely filing of reports. The
12 Executive Director shall file all opinions issued pursuant to this section with the
13 Codifier of Rules to be published unedited in the North Carolina Register and the North
14 Carolina Administrative Code.

15 This section applies to Articles 22B, 22D, 22E, and 22F of the General Statutes to
16 the same extent that it applies to this Article."

17 **SECTION 13.(a)** G.S. 163-278.81 reads as rewritten:

18 **"§ 163-278.81. Disclosure of Electioneering Communications.**

19 (a) Statement Required. – Every individual, committee, association, or any other
20 organization or group of individuals that makes a disbursement for the direct costs of
21 producing and airing electioneering communications in an aggregate amount in excess
22 of ten thousand dollars (\$10,000) during any calendar year shall, within 24 hours of
23 each disclosure date, file with the Board a statement containing the information
24 described in subsection (b) of this section.

25 (b) Contents of Statement. – Each statement required to be filed by this section
26 shall be made under the penalty of perjury in G.S. 14-209 and shall contain the
27 following information:

- 28 (1) The identification of the entity making the disbursement, of any entity
29 sharing or exercising direction or control over the activities of that
30 entity, and of the custodian of the books and accounts of the entity
31 making the disbursement.
- 32 (2) The principal place of business of the entity making the disbursement
33 if the entity is not an individual.
- 34 (3) The amount of each disbursement of more than one thousand dollars
35 (\$1,000) during the period covered by the statement and the
36 identification of the entity to whom the disbursement was made.
- 37 (4) The elections to which the electioneering communications pertain and
38 the names, if known, of the candidates identified or to be identified.
- 39 (5) ~~If the disbursements were paid out of a segregated bank account that~~
40 ~~consists of funds contributed solely by individuals directly to that~~
41 ~~account for electioneering communications, the~~ The names and
42 addresses of all contributors who contributed an aggregate amount of
43 more than one thousand dollars (\$1,000) during the period beginning
44 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) ~~If the disbursements were paid out of funds not described in subdivision (5) of this subsection, the names and addresses of all contributors who contributed an aggregate amount of more than one thousand dollars (\$1,000) to the entity making the disbursement during the period beginning on the first day of the preceding calendar year and ending on the disclosure date."~~

SECTION 13.(b) G.S. 163-278.82 reads as rewritten:

"§ 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 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 ~~individuals~~ entities other than prohibited sources directly to that account.

(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."

SECTION 13.(c) G.S. 163-278.91 reads as rewritten:

"§ 163-278.91. Disclosure of Electioneering Communications.

(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) ~~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~~ 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. ~~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) ~~If the disbursements were paid out of funds not described in subdivision (5) of this subsection, the names and addresses of all contributors who contributed an aggregate amount of more than one thousand dollars (\$1,000) to the entity making the disbursement during the period beginning on the first day of the preceding calendar year and ending on the disclosure date."~~

SECTION 13.(d) G.S. 163-278.92 reads as rewritten:

"§ 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 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 individuals ~~entities~~ other than prohibited sources directly to that account.

(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."

SECTION 14. This act becomes effective July 1, 2005, and applies to primaries and elections held on or after that date.

VISITOR REGISTRATION SHEET

Election Law and Campaign Finance Reform

April 20, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Ln Strach	SBE
Cherie Concher	Wake Co. BOE
Gary Bartlett	SBE
Paul Mayer	NCACC
Hunter Davidson	east surry high school
Jayson Crosby	East Duncraig H.S.
Will Davis	East Surry High School
Lucas Fowler	East Surry High School
John Phelps	NCLM
Bob Hall	Democracy North Carolina
K Marie Goff	Staff

VISITOR REGISTRATION SHEET

Election Law and Campaign Finance Reform

Name of Committee

April 20, 2005

Date _____

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME _____

FIRM OR AGENCY AND ADDRESS

WILLIAM GUILLET

SPEAKER BLACK'S OFFICE

MINUTES
House Committee on Election Law and Campaign Finance Reform
April 27, 2005
1:00 p.m., Room 1425
Representative Ross, Presiding

The House Committee on Election Law and Campaign Finance Reform met at 1:00 p.m. on Tuesday, April 27, 2005, in Room 1425 of the State Legislative Building.

Members present were: Representative Tim Moore, Co-Chair; Representative Deborah Ross, Co-Chair; Vice-Chair; Representative Paul Luebke, Representative Mickey Michaux, Vice-Chair; Representative John Blust; Representative Walter Church; Representative Pricey Harrison; Representative Hugh Holliman; Representative George Holmes; Representative David Lewis; Representative Edd Nye, and Representative Edgar Starnes.

There were two bills on the agenda: House Bill 1128, Campaign Finance Amendments, sponsored by Representatives Tim Moore and Deborah Ross; and House Bill 4, Abolish Second Primary, sponsored by Representative Paul Miller.

Co-Chair Deborah Ross called the meeting to order and introduced the pages and sergeants-at-arms.

The Chair recognized Representative Church for a motion. Representative Church moved that the committee reconsider the vote for House Bill 1115, Election Administration Amendments.

The Chair said Representative Church was on the prevailing side at the last meeting. Representative Church's motion carried.

Representative Church moved to place a new proposed committee substitute for House Bill 1115 before the committee for consideration, and the motion carried.

Representative Erika Church, committee staff member, was asked to explain two changes made to the bill since the last meeting. One was to say that where your bedroom is would be your residency with respect to the state, the county, the municipality, precinct board, or other election district in which you reside. The other change was to put Section 5 back into the bill, which contained language with respect to voter assistance for the disabled.

After discussion Representative Moore was recognized for a motion. He moved to give the proposed committee substitute a favorable report unfavorable as to the original bill. The motion carried.

The committee moved on to a proposed committee substitute for House Bill 1128, Campaign Finance Amendments.

Mr. Bill Gilkeson, committee staff member, explained the bill section by section, and Ms. Kim Strach and Mr. Gary Bartlett from the State Board of Elections were present and answered questions of the members.

There was considerable discussion concerning the section that treated an uncollected debt as a campaign contribution.

Representative Lewis was recognized to send forth an amendment on the section of the bill dealing with training for campaign treasurers.

After much discussion, Representative Holmes asked that the amendment be held over until the next meeting, and Representative Lewis agreed.

The meeting was adjourned at 1:55 p.m.

A verbatim transcript of this meeting is attached hereto along with all pertinent documents and handouts.

Respectfully submitted,



Representative Deborah Ross, Presiding Chair



Margie Penven, Committee Assistant

TRANSCRIPT
House Committee on Election Law and Campaign Finance Reform

1:00 p.m. on April 27, 2005

Room 1425, LOB

Representative Ross, Presiding

Rep. Ross: Welcome to Election Law and Campaign Finance Reform. We have some pages with us today: Brit Stickler from Durham. Brit will you wave for everybody? She's sponsored by Representative Luebke. We have Sam Baynes from Wake County, sponsored by Representative McComas. We have Thomas Harper from Nash County, sponsored by Speaker Black. And then we have Elizabeth Corney from Wake County, sponsored by Representative Ross. So that's great. We're glad that you're all here with us today.

Representative Church.

Rep. Church: I'd like to be recognized for a motion, madam.

Rep. Ross: Okay. We'll take that motion in just one second. I just want to remind you that we've got Bill Freeman and Willie Dixon here. And then, Representative Church.

Rep. Church: Madam Chairman, thank you. I move that we reconsider the vote of the committee substitute for House Bill 1115, Election Administration Amendments.

Rep. Ross: Okay. Gentlemen, we have a motion before us. We had voted on a proposed committee substitute for that bill last time. Representative Church voted on the prevailing side, and he'd like to reconsider that vote. All in favor of that motion please say aye. Opposed. Okay the motion carries. Thank you, Representative Church.

Rep. Church: I have another motion, Madam Chair.

Rep. Ross: You are recognized for your other motion.

Rep. Church: I move to place a new proposed committee substitute for House Bill 1115 before the committee for consideration.

Rep. Ross: Okay, and all in favor of the motion to put the new proposed committee substitute before the committee please say aye. Anybody opposed. Okay the new proposed committee substitute is before the committee. My understanding that there are only two changes that have been made to this bill since the last proposed committee substitute, and so I'd like to recognize Erika Churchill to come up and

tell the committee about the two changes. We want to try to move this bill today so that we can get on to the Campaign Finance Amendments, which is quite a big bill to also take up. So, Erika, please explain the two changes to the committee.

E. Churchill: All of the changes that the committee voted on are incorporated with the exception of two—the first one being the deletion of Section 3 of the original bill, which was relating to how to deal with an administrative change of county residence when county lines are established. That language has been put back in on page 4, line 16, and additional language was added on page 4, line 27, to try to clarify the law in North Carolina with how to establish a residency. The new language would basically say that where your bedroom is would be your residency with respect to the state, the county, the municipality, precinct board or other election district in which you reside.

Rep. Ross: Just let me interrupt. This change was the change that Representative Ray came and told the committee about last time because Iredell County, evidently, has had some issues about that.

Representative Starnes, do you have a question about that?

Rep. Starnes: Yes, a question on this provision. We're going to establish a person's voting residence according to where their bedroom will be. Would that necessarily be.... Would their voting address be different than their residence address?

Ms. Churchill: I'll have to defer to Gary Bartlett or Representative Nye on that one.

Rep. Nye: It can be. I know of a home that it's residence address, of course, is on the street; and the county line goes between the house so that part of the house is in one county and part of it is in another county so the bedroom is where the voting is.

Rep. Ross: Representative Starnes, I believe Gary Bartlett has stood up because he feels compelled to speak, so why don't we see if he answers your question.

Mr. Bartlett: I just want to say that Representative Nye is correct.

Rep. Ross: Representative Starnes, do you have another question about this?

Rep. Starnes: It just looks to me like...there's nothing wrong with trying to fix it, but I'm just wondering.... It looks to me like a person's voting address really should be the same as the resident address because they may change their bedroom. Between primaries and between elections, they

may move from the first bedroom to the second bedroom and cross the county line in the process. It looks like they ought to have a little more permanence, and it looks like their legal street address would be the county that they would register to vote in.

Ms. Churchill: That's what the intent is to try to clarify. If your street address literally falls in two counties or two precincts, which one you would be registered to vote in. And the concept is where you eat and sleep is where your true residence is.

Rep. Ross: I don't want to belabor this, but just out of curiosity, are these property owners paying taxes in two counties on half a house?

Ms. Churchill: I think the general practice is for the counties to make an agreement amongst themselves as to which county will get the taxes.

Rep. Ross: Okay, Erika, I think there is only one other change to this bill and then we'll be looking for a motion.

Ms. Churchill: The only other change is the inclusion of Section 5, which begins on page 7, line 11. There're no changes to that section; it was just put back in.

Rep. Ross: And Representative Moore would like to be recognized for a motion.

Rep. Moore: Thank you. I move that the proposed committee substitute for House Bill 1115, that has been presented, be given a favorable report, unfavorable to the original bill. And just wanted to say briefly along those lines in support of my motion, we had a question that came up last week, we pulled a section out to accommodate some members to give folks time to realize that there was nothing wrong with it. I looked into it; Co-chair Ross looked at it. There was really nothing wrong with that section. It clarifies some language with respect to voter assistance for the disabled. It just basically says that that same assistance is available on one-stop voting that's available on Election Day. It makes sense. So that has been put back in, and I would urge the members of the committee to support the bill.

Rep. Ross: Okay. So we have a motion that the proposed committee substitute for House Bill 1115 be given a favorable report, unfavorable to the original bill. And this committee substitute needs to just make a brief trip to Finance—we hope it's a brief trip—because there's a filing fee change in it that requires it be referred to Finance. All those in favor please signify by saying aye. Those opposed no. The motion carries. Thank you very much, members of the committee.

We are now going to move on to our next omnibus bill—House Bill 1128, Campaign Finance Amendments. Do members have copies of the bill? There is the original bill, there is no...

Bill Gilkeson: There actually is a committee substitute.

Rep. Ross: Oh, there is a committee substitute. Okay, I apologize. The committee substitute and the bill summary will be handed out. And who will be explaining the bill to the committee? Bill Gilkeson will be explaining this bill to the committee. Just by way of background for this bill, much like the last bill that we did, this bill came to us as a recommendation from the State Board of Elections, so the provisions of this bill were recommended by the State Board of Elections, and they will be able to answer a lot of questions about it. And this is another one of the bills where the chairs of this committee and Senator Clodfelter sat down and worked out the provisions that would be in this bill.

Bill Gilkeson: As Representative Ross said, this is based on proposals by the staff of the Board of Elections. The first one, in Section 1 of the bill, would expand the current requirement that all treasurers of referendum committees receive training from the State Board of Elections through a requirement that all treasurers of political committees and candidate committees receive training the State Board of Elections.

Section 2 would provide.... Current law says that all contributions must be made in the form of a check, draft, money order, credit card charge, debit or other non-cash method that can be subject to written verification. The staff of the State Board of Elections has found that they have had problems with money orders because it's sometimes not easy to tell where the money comes from. So they want a provision that says they have the authority to prescribe methods to ensure an audit for trail for contributions by money so that the identity of the contributor can be determined.

Sections 3 and 4 of the bill deal with how expenses of a campaign can be paid. Currently the law says that all media expenses and all other expenses that are more than \$50 have to be paid by check only, and the State Board has noticed that there are lots of other forms of payment out there that are legitimate and that people use so they want to expand this both media expenses and expenses over \$50 from just being payable by check to being payable by any verifiable form of payment, and they want to have the authority to determine what the audit trail can be, similarly to what they say for a money order on contributions.

Section 5 deals with what.... Sometimes what will happen is that a campaign will purchase goods or services as expenses and they won't be able to pay for it immediately, and then the payment will be out there...the unpaid good or service...the bill will be out there for a long time, and it begins to look like an in-kind contribution by the whoever the vendor is to the campaign. So this would amend the definition of contribution to include a debt to play an expenditure that's been uncollected beyond the three-year statute of limitations on a lawsuit to collect that debt.

Rep. Ross: Representative Luebke.

Rep. Luebke: Is it saying that after three years and you haven't gotten any money that it's becoming an in-kind contribution?

Bill Gilkeson: Right.

Rep. Ross: Representative Michaux, did you have a question on that before we move on?

Rep. Michaux: There's trouble with that. We can get in trouble tax wise with that.

Rep. Ross: Would you like to hear an explanation from the State Board of Elections on this point before we move on? Or do you just want to ruminate on it and then we'll... Okay. We'll let Mr. Gilkeson continue.

Bill Gilkeson: Section 6 of the bill, there is in the campaign limitation provision; it says there can only be a \$4,000 contribution to one donor or to one donee per election. Elections are defined as a primary election, a second primary election, or a general election. And the State Board felt that there are other kinds of elections out there including non-partisan runoffs and vacancy elections that should be included there. So the non-partisan runoffs and vacancy elections are included there.

The next Section 7 through 10, I label here debugging the Judicial Campaign Finance Act. These were things that the State Board and others found when the Judicial Campaign Finance Act had its first run in 2004, where you had the possibility the candidates...the opportunity for candidates who were willing to limit their...have stripped campaign and expenditure limits could get public funds for their campaigns. There were just certain things that didn't work clearly in the law or that were maybe clear but didn't work very well. So the first one in Section 7 is a provision...this is one that the qualifications that a person has to meet in order to...the hoops a person has to jump through in order to be certified to get the funds. One of them said that

the person has to be qualified to receive votes on the ballot as a candidate for the office, and the question was does mean they...they're running for Supreme Court and Court of Appeals, does that just mean they have to 21 years old and an attorney and a citizen of the state or does it mean they have to have filed a notice of candidacy, and this clarifies that by saying they have to have filed a notice of candidacy.

Section 8 deals with what a candidate may raise and spend. A candidate who is opting into the judicial public financing fund may raise and spend during the period beginning with the filing of their declaration of intent to participate and the primary—that is the end of the qualifying period. And this was a little unclear for some judicial candidates. For one thing, they were wondering whether they could spend contributions of under \$10. Those were not qualifying contributions because qualifying contributions were from \$10 to \$500. So these were small contributions that they received. They knew who they received them from, they weren't anonymous, but they weren't sure that they could spend them. And then also, leftover money from the period before they filed their declaration of intent that they could raise under the law. This says that they can spend both of those things. From the declaration of intent until primary day a candidate may accept in contributions only qualifying contributions, contributions under \$10 from voters, personal and family contributions of \$1000 a person, and they may spend all of that. In addition they may only spend leftover money from the previous period and any rescue funds that they could get from the state that would be triggered by overspending by their opponents.

The same Section 8 of the bill says that the debt of a candidate for a campaign expenditure counts toward the candidate's \$1000 limit on contributing to their own campaign. One of the things that a candidate agrees to is that they don't contribute more than \$1000 to their own campaign, and this says that a debt by the candidate for an expenditure counts beyond that limit. It makes sense to look at that provision and to Section 10, which deals with use of a credit card by a candidate. The State Board found that some candidates were using their credit cards to pay bills after they had already maxed out on the \$1000, and this adds to the definition of expenditures, Section 10 does, ...to make an expenditure to incur an obligation to pay an expenditure, which is what a credit card basically is.

Section 9 has to do with the timing of the distribution of the judicial voter guide. The voter guide was sent out to every household by the State Board of Elections, and many voters apparently found it useful in figuring out who to vote for the Supreme Court and Court of Appeals, but a lot of people didn't get it in the mail until after the one-stop, the

early voting period, had already begun. And so they had already voted by the time they saw it. This says that...the current law says that the voter guide must be distributed no more than 28 days and no fewer than 7 days before the election. This changes it to tag the distribution dates to the beginning of the one-stop period so that it's distributed no more than 14 days and no fewer than 7 days before the beginning of the early voting period.

Down to Sections 11 and 12, there are two sections of Article 22A, which is the main campaign finance statute that apply to the campaign finance statute. One of them just states what the scope of the campaign finance statute is so that it doesn't apply to federal elections and various other things. And the other provision is something that gives the executive director of the State Board of Elections the authority to issue advisory opinions to anybody who wants to ask about...is what I'm about to do in my campaign in compliance with the campaign finance act. And they can get this letter, this opinion, and it's a public opinion. It will be printed in the North Carolina Register, but it tells them the following things in your situation would comply with the act, and if they do those things, then they can't be prosecuted either civilly or criminally. What Sections 11 and 12 would do would be to apply the two sections, the scope section and the advisory opinion section to all the other campaign-related articles in Chapter 163, the political parties financing fund, the public campaign financing act, which is the judicial one, and the two electioneering communication statutes that were enacted last year so they would only apply to North Carolina elections and the executive director could issue advisory opinions that would carry weight with those.

Section 13 has to do with the new statute about electioneering communications. It says that if money is spent on radio or television or phone banks or mass mailings within 60 days before an election or 30 days before a primary that refers to a candidate, that corporate and union money can't be a part of that and that there are certain reporting that must be made after a certain amount of money is spent. In enforcing this in 2004, the State Board of Elections found that there was a loophole in there about reporting, and perhaps they could explain it better than I could.

Rep. Ross: Okay, Kim Westbrook (actually Kim Strach), from the State Board.

Kim Strach: What we have this year, is we had a national 5.7 that went with...engaged an electioneering communication, and what they said they provided to us was a report of \$3 million on their contributions. That is not the intent, we believe, of this statute. It was to provide the money from a segregated account, that would comply with North

Carolina law, those contributors. Because when we received that report with \$3 million worth of contributions, the greatest amount of those were from unions and corporations. We were unable to determine whether or not they had complied with the law. We need to amend that so that these groups would have to establish separate accounts and report all individual or other entities that are allowed to contribute. And if they've given over \$1000, that they be able to report that to our office, that's what we need to provide to you.

Rep. Ross: Okay. We do have one amendment before we get to questions on the bill. This is to add a Section 14, which would be the effective date, and Representative Moore will send forth this amendment and all this does is it moves to amend the bill on page 10, line 10 and 11, by rewriting those lines to read, "Section 14. This Act becomes effective on July 1, 2005, and applies to all contributions and expenditures made or accepted after that date." So Representative Moore makes the motion for this amendment. All those in favor please say aye; opposed, no. The amendment carries.

Now, members of the committee, any questions on this bill?
Representative Michaux.

Rep. Michaux: I want to go back to Section 5. Explain that to me again.

Rep. Ross: This is the debt section.

Rep. Michaux: Uncollected debt.

Rep. Ross: And it might be good.... Representative Michaux, would you like the folks from the State Board of Elections to explain they've made this request in the first place?

Rep. Michaux: Just so somebody can explain it to me so I can understand it.

Rep. Ross: Okay. Why don't we have Mr. Bartlett or Kim, somebody to explain what you've seen that's been problematic that we're trying to deal with?

Kim Strach: What we have encountered when we're reviewing campaign reports, we have a lot of committees that continue to stay open. There is no activity, but what they'll be disclosing is debt that may still be showing. It may be as old as ten years that has never been repaid. At some point, right now we have nothing that would.... As long as they can keep that committee open, they can continue to have that debt. We wanted something to show that at some point if the vendor had not been repaid or credited...or resulting in ____; or if they forgave a

debt that at some point it would appear that they need to consider it a contribution from that vendor. We just had a vendor say the other day that they had written off that debt. They had said we're not trying to collect that debt anymore. And if that person is still showing that as a debt to the committee, then we plan to find a way to make sure that that's disclosed properly.

Rep. Ross: Representative Michaux.

Rep. Michaux: My first question is with a ban against corporate contributions, how do you square that?

Kim Strach: That's what our problem is. We have a ban on corporate contributions, but if the person is showing it as a debt they intend to repay, it's hard for us to determine that it is a contribution.

Rep. Ross: Representative Michaux.

Rep. Michaux: But what you're saying in here is that you're going to consider it as a contribution after the applicable period—after the limitation has expired.

Rep. Ross: Is that correct?

Kim Strach: Yes, that's correct.

Rep. Michaux: Then who's in violation? Do you understand what I'm saying?

Gary Bartlett: I understand where you're coming from.

Rep. Ross: Representative Blust, do you have a question or was that your question?

Rep. Blust: Mine was the same one. On that line, why would it be a problem to just let it sit there in perpetuity as an unpaid debt? I mean why is it important to get it off the books of the campaign committee?

Rep. Ross: Ms. Westbrook.

Kim Strach: Well the reason why we think that.... If it's actually not going to be repaid, then it's not a debt. It is a contribution that businesses are prohibited from making to that committee, and in actuality the public is seeing it as a debt. And in fact, it's not. It's a contribution, and that's why _____ so the public has a true accounting of exactly.... If a business made a contribution, they have written that

off. The public needs to know that that committee received that contribution of the business.

Rep. Ross: Representative Blust and then Starnes and then Holliman.

Rep. Blust: Whichever way you handle it, it's really just an accounting entity or entry at that point. It's just semantics, and this is so long later after the fact, would the public...? For example, if there was some campaigns from 2002 and this was the law then, how many people are going to care that in 2002 Representative Luebke didn't pay his printer.

Rep. Ross: Representative Blust, we're going to go to Representative Starnes, Holliman, and Michaux; but I wanted to say one thing. If your printer has a \$2,000 bill that you haven't paid, then you have been able to communicate with the public and have campaign in an election year with printed material for your campaign that may affect the outcome of the election. Never pay for it. Never have the public know where you got the money from, and basically have a business subsidize your campaign without anybody having any accountability for it.

Rep. Blust: Well I understand that, but I think I look worse as a candidate if I don't pay my campaign bills than if I'm counted as having been...that printer giving me a contribution. I think I look like a deadbeat, and that's going to hold me up to more public scorn than if the final report shows that it was a contribution.

Rep. Ross: Well, Representative Blust, you also might have succeeded in your campaign by virtue of the stuff that you got for free, and that's another issue.

Let's go to Representative Starnes.

Rep. Starnes: Well, I've got several questions, madam chair. First of all, Miss Westbrook, what is the statute of limitations on which a person can be prosecuted for violations as a candidate? Is it three years?

Kim Strach: It's two years past the current election cycle for the violation. The election cycle that the violation allegedly occurred in, it's two years past that.

Rep. Starnes: Well would...

Rep. Ross: Representative Starnes, please come through the chair. Follow-up question.

Rep. Starnes: Follow-up question. Can I ask for a follow-up?

Rep. Ross: Yes.

Rep. Starnes: Does this portion of the bill apply only to corporate contributions or could it be individual contributions as well? Or a loan?

Kim Strach: Actually a loan would not be a problem because these are not allowed. An individual or any other organization couldn't loan any more than they could contribute. So if it were to turn into a contribution, it still would not be a violation for that individual or the committee. A corporation is never allowed to contribute or to loan so that's the reason that has been a problem.

Rep. Ross: Representative Starnes. Last question because we have a couple of people on this same issue.

Rep. Starnes: Well we can have, you say a corporation...a political consultant could run up a debt of thousands of dollars and after three years he just declares the debt as not collected and the person can write it off without penalty?

Kim Strach: We would consider that then the political consultant had given you or a candidate political or a business contribution and then that would be an illegal contribution that would be subject to treble damages.

Rep. Ross: Representative Holliman had a question.

Rep. Holliman: Thank you, madam chair. Being a printer, you didn't get a _____? I've got a question. How many accounts do we have such as this? Give me an idea of the volume.

Kim Strach: I know that we had well over a hundred committees, probably, that had outstanding debt, and it would be very big figure like how long some of this has been outstanding. But I do know of some particular committees but not by name, but if you look at it you would see that they are still open—they're not having activity. You look back at that activity; the only thing that's keeping that committee alive is the debt.

Rep. Ross: Do you have a follow-up question. Representative Michaux.

Rep. Michaux: You are saying that an uncollected debt is deemed a contribution after the statute of limitation runs. All right. If it's a corporate debt that's owed, that results in an illegal contribution to your campaign. If the debt is more than \$4,000, that's the second illegal act that your campaign.... Well what's going to happen to me?

Kim Strach: Well, illegal contributions are subject to being fined and the State Board can award treble damage, once again, for illegal contributions. And to give you an example, Representative, we had one committee that had a debt for several years to a consultant saying I just kept trying to bring _____ to pay it back. We contacted the consultant who said, I have that as a contribution. I wanted to give that as a gift to that committee. It was never a debt. It was a contribution. That's been at least one _____ of how that's been abused.

Rep. Ross: Yes, Representative Michaux.

Rep. Michaux: The problem is, you're putting people in a position where they're violating the law. That's really what you're doing because it's illegal for corporations to give a campaign contribution. It's illegal for you to take more than \$4000 per election, and if the bill I owe my printer is over \$5000, and he hasn't sued me yet, the statute of limitations has run, you're going to make it a contribution, and you're going to make me more of a criminal than I already am.

Rep. Ross: We have questions from Representative Blust and Representative Holliman, and then Representative Luebke. I would say that if there was never an intent for that to be paid, then it would be an illegal in-kind contribution in the first place that should have been reported. Or if there was never intent to pay it, there should have been some reporting as an in-kind contribution because people are not supposed to be doing free professional services for your campaign. That's illegal right now. So I just wanted to point that out for the committee while we're having this discussion.

Rep. Michaux: But, madam chair, intent ain't nowhere in the statute on that. If you do it, you're wrong.

Rep. Ross: Representative Blust.

Rep. Blust: I think Representative Michaux has a point. For instance, if in my next campaign I use Mr. Holliman's service for \$10,000, and he's probably be smart enough to make me pay up front like everybody else does, but if I used him for \$10,000 of credit and then I don't pay him, and he thinks that I just don't want to sue you, then after three years he's made an illegal \$4000 campaign contribution to me and further...I think there's a second crime he would have committed, wouldn't it? A corporate contribution and an illegal \$6,000 contribution so what we need is an intent. I agree with you, if we were allies and he were going to slip me greater than the amount allowed by doing something free, then that ought to be reported. But if he's an innocent vendor, then we are punishing an innocent vendor who's already out \$10,000.

Rep. Ross: Representative Holliman and then Representative Luebke.

Rep. Holliman: Representative Blust just made my point. I don't think we can go back on the vendor who on good intentions supplied the product but just didn't get paid. I can see that.

Rep. Ross: It sounds like somebody might have an idea for an amendment to address this issue. Representative Luebke.

Rep. Luebke: I would like to have somebody explain, either our staff or the staff of the State Board, to differentiate between the person who honestly thought that she or he was going to be paid off for the service provided and the person who's winking at the law and saying I'm going to bill you for \$4000 of printing services, but let's fully understand that I really don't expect you to pay it off. How do you decide whom to fine?

Kim Strach: When the State Board has dealt with people in the past, they required the element of intent. And if someone has appeared before the Board and the State Board believes that they intended to accept an illegal business contribution, then that is when the fine has been imposed.

Rep. Luebke: On the candidate.

Kim Strach: On the candidate.

Rep. Ross: Bill Gilkeson had something to add to that.

Bill Gilkeson: Just that the criminal penalty statute in the Campaign Finance Act has intent as an element. It says "Any individual candidate, political committee, referendum committee, treasurer, person or media who intentionally violates the applicable provisions of..." and then it has a list of all of those things, ..."is guilty of a class 2 misdemeanor." So the criminal penalty is a....

Rep. Ross: One second. I believe that Mr. Bartlett has something to add to that. Representative Luebke for a follow-up and then Representative Starnes.

Mr. Bartlett: The State Board cannot issue a fine without consulting with the DA of that jurisdiction and the DA signing off on it.

Rep. Ross: Representative Luebke, do you still have a follow-up question to that?

Rep. Luebke: Well, my follow-up is really that.... The question that I have is this. You would have to prove intent and if I'm the service provider to my

friend, Representative Michaux, and I lie to him and we just lie, lie, lie then essentially we've found a way to make corporate contributions. Is that correct?

Mr. Bartlett: That's correct. But if I had money for every time that we have been told a lie, we would not have to ask for appropriations. Seriously, there is not any way that we can deal with this except by putting someone under oath and getting them to give testimony. But if someone wants to deceive us, it happens. And whenever we find out that they deceived us, we give it to the appropriate district attorney, if it warrants that kind of action.

Rep. Ross: Representative Starnes, then Representative Lewis, then Representative Michaux.

Rep. Starnes: Well, I'll let Mr. Bartlett or Ms. Westbrook correct me if I'm wrong, but the way I read this, if the debt is on the books after three years, the State Board then has the arbitrary authority to deem it the debt as uncollectible and they may call me as a candidate or a former candidate and say, "Have you written this off? And I might say, "No, I'm still trying to pay them." But they may call the vendor and he'll say, "Well go ahead and write it off." So then unwittingly, somebody may be guilty of a crime. I'm not real comfortable with this.

Rep. Ross: Representative Starnes, Bill Gilkeson had another point to make about this intent requirement. So, Bill.

Bill Gilkeson: There's also a statute for civil penalties for making and accepting illegal contributions, and in order to impose that there's an intent requirement as well. So to impose either a criminal penalty or a civil penalty and get somebody who left the debt out there for all that time, the State Board or the DA would have to prove intent.

Rep. Ross: Representative Lewis.

Rep. Lewis: What requirement exists that the final campaign report be filed?

Rep. Ross: Anybody from the State Board of Elections. What requirements exist that the final campaign report be filed?

Kim Strach: In order to close the committee, the statute is specific that a final report must show a zero balance on the committee and that there may not be any outstanding debt owed by that committee in order to close.

Rep. Lewis: Madam chair, may I follow-up?

Rep. Ross: Yes, you may.

Rep. Lewis: Do you have an idea how many open committees remain that are not filing timely reports?

Kim Strach: Timely final reports or...

Rep. Lewis: Let me clarify. My concern is that there are a certain (tape changed)... How large is the number who have not, and how do we prevent that?

Kim Strach: They're failing to comply by not filing. We want to correspond with them and let them realize their obligation to file. Also, it is a policy and the practice of our office, if we have a committee that is open that has not filed a final report, and there is no activity, we do call that treasurer and ask are you staying open for a reason? So, there are committees that in that situation, but we certainly try to address these individually to find out why they remain open, and if they are trying to pay off debts, and they are keeping the committee open because there is a debt and they can't close.

Rep. Ross: Members of the committee, it is approaching ten till two, and it sounds like there is some thought that needs to go on about this particular provision and maybe whether or not it might need to be amended in some way to give some more comfort to the members of the committee. Representative Michaux, I'm going to recognize you in just one second on this. But what I would like to do is I'd like to remain with Representative Lewis right now because he does have an amendment to another part of the bill that I thought maybe we should get before the committee and either vote it up or down to have the committee be aware of it because it looks like we're going to be dealing with this bill the next time around—so all issues can be on the table. Representative Lewis, would you like me to read the amendment?

Representative Lewis.... This has to do with the issue of treasurers and training of treasurers. And Representative Lewis moves to amend the bill on page 1, line 2, by deleting the word "all," which would mean we are talking about training for just some treasurers but not all treasurers. And then on page 2, line 1, by deleting the phrase "political committee" and substituting the phrase "political committee who is not a certified public accountant or has not previously completed a training conducted by the State Board of Elections." And Representative Lewis, you're recognized to explain your amendment and for a motion on it.

Rep. Lewis: Thank you, madam chair. My point was that if someone is a licensed CPA, they probably know how to complete the forms and someone who has already been through the training, they probably don't need to go through the training each time.

Rep. Michaux: Madam chairman, I think you ought to read that amendment over. I've got a question about the word "all." What does that encompass? Does that mean...what does it encompass, and who makes the decision as to all....

Rep. Ross: Representative Michaux, the word "all" is being deleted, so what would be going on under Representative Lewis's amendment is that if you are not a CPA or you have never had campaign training, you would have to have campaign training. He is exempting CPAs and people who never (sic) had campaign training from the requirement of having additional campaign training.

Rep. Michaux: So that means that a candidate's campaign where the candidate is the treasurer has to come over here and take a course. Is that what that means?

Rep. Ross: Folks from the State Board of Elections.

Kim Strach: Well, it wouldn't have to be the candidate. It could be someone that the candidate designates.

Rep. Michaux: But the candidate designates himself. I do that. I do that.

Kim Strach: Right. But even if you're the treasurer, you could designate someone to...

Rep. Michaux: No, no, no.

Rep. Ross: Representative Michaux.

Kim Strach: ...but as the treasurer you can still designate. But if not, if you did designate yourself, it would not necessarily be at our office, it would be at some regional location that would be in close proximity to you.

Rep. Ross: Representative Starnes then Representative Holmes.

Rep. Starnes: Well, Representative Lewis is making an attempt to fix the problems with this bill, but he's misguided in my opinion. I don't think that a person that serves as his own treasurer has to do his own training. I can do my own taxes and Internal Revenue Service doesn't require me to take a course or a class to do my own taxes, and doing these reports

interest, and you always have a lot of people wondering why are coming to vote for...very few people come out and vote. But you have a side of that...is, I want to take you down a little trip of alternative history. I feel I have to point this out because I want to represent this fairly. There are several cases where the second primary winner is actually the actual winner and did not have the most votes on the first primary ballot, as has been mentioned. We would have had Democratic Congress Walter Jones, Jr. representing the first district in the 1992 election. We would have had GOP representative David Balmer representing the ninth district down in Charlotte in the 1992 election. For Congress Patrick McHenry was mentioned. He would have lost, and you would have had David Huffman in the U.S. Senate and in the U.S. House you would have had from Winston-Salem Vernon Robinson representing the North Carolina fifth district as the GOP congressman in the U.S. Congress. So you see in these statewide races, it really is a problem, and it is tremendously expensive. In the congressional races it really can make a significant difference. As you consider which way you want to go on this bill, you might want to consider the many differences in some of these offices in some of these races. Thank you.

Rep. Ross: Let me let Representative Miller respond, then Representative Starnes, and then we're going to do this amendment and try to wrap up our dealing with this bill so that we can move on to Representative Luebke's bill.

Rep. Miller: Just two comments. As you said, this bill saves money. Doing it a different way will cost money whether it's by instant primary or by keeping a second primary. That will actually cost more money. I'll just share my experience with second primaries. I had experience with a second primary when I was eight years old, believe it or not. I lived in Mississippi. We lived across the street from Charles Evers. Charles Evers was the brother of slain civil rights leader Medgar Evers. My father was his campaign manager when he was running for Congress in 1968. Charles Evers ran and won the first primary. If we had one primary like most other states do in the union, he would have been the first black elected to Congress from Mississippi in 1968 instead of 1990+. And so, there was a second primary.... (Tape ran out here)...and this issue has stayed with me for thirty-some years hence this bill.

The instant primary is just a way to maintain status quo and not really go forward with the rest of the U.S. And so, I would just say for financial reasons for democratic reasons, to support elimination of the second primary.

isn't any more difficult than doing my income tax. So I think we need an amendment that will exempt a person if they serve...any candidate who serves as their own treasurer.

Rep. Ross: Okay. Representative Holmes and then Representative Blust.

Rep. Holmes: I'd like to ask Ms. Westmoreland a question.

Kim Strach: My name is Strach.

Rep. Ross: Okay. It's Ms. Strach.

Rep. Holmes: Is it your intent here... I am my own treasurer...that every candidate who is his own treasurer must take this training?

Kim Strach: Let me briefly try to tell you why we are doing this. It's an effort.... We believe that... We never sought fully to educate campaign treasurers because of the criminal sanctions that can be imposed on a treasurer for failure to comply with these laws. We conduct these trainings voluntarily in my office every month, and every time we have the training, we have candidates that serve as their own treasurers, we have other people, we have CPAs, we have attorneys that serve as their own treasurers that are amazed at the things that they have not been doing and did not realize that they should have been doing. Didn't realize that anonymous contributions didn't mean that you couldn't pass the hat at fundraisers. Those are the kinds of things that we felt like we had an obligation...and we've been told by the public that they think we have an obligation to make sure all committees know the rules and the fairness issues so that if one committee is learning these things and they are disclosing...they should...their opponent's committee...they want to make sure that they know the rules and that they are disclosing the same information. And that's our purpose. It's not to be seen as punitive; it's only a way to try to educate so that everybody knows the rules.

Rep. Ross: Representative Blust, then Representative Holliman. And then we're going to have to make a decision about this amendment to get out of here.

Rep. Blust: I don't think Representative Starnes' concern really applies just to the amendment because the bill is before the amendment, which still requires all treasurers to go anyway. So it shouldn't affect Representative Lewis' amendment.

Rep. Ross: Okay, Representative Holliman.

Rep. Holliman: I just don't feel like CPAs should be excluded from this. A lot of this is campaign election law that they may not know.

Rep. Ross: Okay. Representative Holmes.

Rep. Holmes: May I make a motion....

Rep. Ross: Yes, Representative Holmes.

Rep. Holmes: ...that we hold this amendment until the next meeting along with the bill.

Rep. Ross: That is at the pleasure of Representative Lewis. Would you like to withdraw your amendment for this...? Okay.
So members of the committee, next time we're going to come back. Please be thinking about the treasurer issue and about the debt issue. We're going to need to move this bill fairly quickly because we have about 15 other bills that we're supposed to hear before crossover including Representative Miller's bill, and he's been so patient.

The committee meeting's adjourned.

(Adjourned at 1:55.)

AGENDA

HOUSE OF REPRESENTATIVES ELECTION LAW AND CAMPAIGN FINANCE REFORM COMMITTEE

**April 27, 2005
Representative Ross, Presiding**

HB 1128, Campaign Finance Amendments, Reps. Moore and Ross

HB 4, Abolish Second Primary, Rep. Miller

Nancy Garriss (Rep. Tim Moore)

From: Margie Penven (Rep. Ross)

Sent: Tuesday, April 26, 2005 9:00 AM

To: Rep. Paul Miller

Subject: Corrected 4-27-05 Meeting Notice for Election Law and Campaign Finance Reform

**CORRECTED
HB 4 added to agenda
NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION**

You are hereby notified that the Committee on Election Law and Campaign Finance Reform will meet as follows:

DAY & DATE: Wednesday, April 27, 2005

TIME: 1:00 p.m.

LOCATION: 1425 LB

The following bills will be considered (Bill # & Short Title & Bill Sponsor):

**HB 1128, Campaign Finance Amendments, Reps. Moore and Ross
HB 4, Abolish Second Primary, Rep. Miller**

Respectfully,

Representatives Tim Moore and Deborah Ross
Chairs

I hereby certify this notice was filed by the committee assistant at the following offices at 9:00 a.m. on April 26, 2005.

____ Principal Clerk
____ Reading Clerk - House Chamber

Margie Penven (Committee Assistant)

4/26/2005

**2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative Moore, Ross (Chairs) for the Committee on ELECTION LAW AND
CAMPAIGN FINANCE REFORM.

☒ Committee Substitute for

HB 1115 A BILL TO BE ENTITLED AN ACT TO ALLOW POLITICAL PARTIES TO USE "RUNNERS" TO PICK UP VOTER LISTS FROM POLLS; TO PROHIBIT A CANDIDATE FROM BEING AN OBSERVER OR RUNNER AT THE POLLS; TO AUTHORIZE THE EXECUTIVE DIRECTOR OF THE STATE BOARD OF ELECTIONS TO PERMIT DIFFERENT VOTING SYSTEMS IN THE SAME PRECINCT; TO ALLOW THE CHANGING OF REGISTERED VOTERS BASED ON ADJUSTED COUNTY LINE; TO CHANGE THE DEADLINE FOR FILING A PROTEST FROM SIX O'CLOCK P.M. TO FIVE O'CLOCK P.M.; TO PERMIT THE SAME KIND OF VOTER ASSISTANCE IN ONE-STOP SITES AS AT VOTING PLACES ON ELECTION DAY; TO CHANGE THE REQUIREMENT FOR A STATEWIDE UNAFFILIATED CANDIDATE TO CONFORM TO A FEDERAL COURT DECISION; TO PROHIBIT PIECE PAYMENT FOR VOTER REGISTRATION DRIVES; TO EXPRESSLY PROVIDE THAT PRECINCT TRANSFER VOTERS AT ONE-STOP SITES NEED NOT VOTE PROVISIONAL BALLOTS; TO DELETE THE REQUIREMENT THAT ONE-STOP VOTERS BE INSTRUCTED IN HOW TO VOTE MAIL ABSENTEE BALLOTS; TO FIX THE SALARY ON WHICH A FILING FEE FOR AN OFFICE IS BASED; TO REMOVE THE OUTDATED REFERENCE IN THE FILING FEE STATUTE TO OFFICES "COMPENSATED ENTIRELY BY FEES"; TO ALLOW THE STATE BOARD OF ELECTIONS TO AUTOMATICALLY CANCEL A VOTER'S REGISTRATION IN A FORMER COUNTY WHEN THE VOTER REGISTERS IN A NEW COUNTY; TO UPDATE AND MAKE MORE TECHNOLOGY-NEUTRAL THE LANGUAGE IN THE STATUTE PROVIDING FOR ACCESS TO VOTER REGISTRATION DATA; TO EXTEND FOR THREE DAYS THE COUNTY CANVASS AFTER A GENERAL ELECTION IN NOVEMBER OF AN EVEN-NUMBERED YEAR; AND TO EXPRESSLY ALLOW ELECTRONIC POLLBOOKS.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House) committee substitute bill/(joint) resolution (No. _____) is placed on the Calendar of _____. (The original bill resolution No. _____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. _____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. _____) is placed on the Unfavorable Calendar.

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

H

D

**HOUSE BILL 1115
PROPOSED COMMITTEE SUBSTITUTE H1115-PCS70406-ST-26**

Short Title: Election Administration Amendments.

(Public)

Sponsors:

Referred to:

April 5, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW POLITICAL PARTIES TO USE "RUNNERS" TO PICK UP VOTER LISTS FROM POLLS; TO PROHIBIT A CANDIDATE FROM BEING AN OBSERVER OR RUNNER AT THE POLLS; TO AUTHORIZE THE EXECUTIVE DIRECTOR OF THE STATE BOARD OF ELECTIONS TO PERMIT DIFFERENT VOTING SYSTEMS IN THE SAME PRECINCT; TO ALLOW THE CHANGING OF REGISTERED VOTERS BASED ON ADJUSTED COUNTY LINE; TO CHANGE THE DEADLINE FOR FILING A PROTEST FROM SIX O'CLOCK P.M. TO FIVE O'CLOCK P.M.; TO PERMIT THE SAME KIND OF VOTER ASSISTANCE IN ONE-STOP SITES AS AT VOTING PLACES ON ELECTION DAY; TO CHANGE THE REQUIREMENT FOR A STATEWIDE UNAFFILIATED CANDIDATE TO CONFORM TO A FEDERAL COURT DECISION; TO PROHIBIT PIECE PAYMENT FOR VOTER REGISTRATION DRIVES; TO EXPRESSLY PROVIDE THAT PRECINCT TRANSFER VOTERS AT ONE-STOP SITES NEED NOT VOTE PROVISIONAL BALLOTS; TO DELETE THE REQUIREMENT THAT ONE-STOP VOTERS BE INSTRUCTED IN HOW TO VOTE MAIL ABSENTEE BALLOTS; TO FIX THE SALARY ON WHICH A FILING FEE FOR AN OFFICE IS BASED; TO REMOVE THE OUTDATED REFERENCE IN THE FILING FEE STATUTE TO OFFICES "COMPENSATED ENTIRELY BY FEES"; TO ALLOW FOR THE CANCELLATION OF A VOTER'S REGISTRATION IN A FORMER COUNTY WHEN THE VOTER REGISTERS IN A NEW COUNTY; TO UPDATE AND MAKE MORE TECHNOLOGY-NEUTRAL THE LANGUAGE IN THE STATUTE PROVIDING FOR ACCESS TO VOTER REGISTRATION DATA; TO EXTEND FOR THREE DAYS THE COUNTY CANVASS AFTER A GENERAL ELECTION IN NOVEMBER OF AN EVEN-NUMBERED YEAR AND CHANGE OTHER RELATED DATES; TO CLARIFY HOW WINNERS OF ELECTIONS SHALL BE DETERMINED; AND TO EXPRESSLY ALLOW ELECTRONIC

POLLBOOKS, AS RECOMMENDED BY THE HOUSE COMMITTEE ON ELECTION LAWS AND CAMPAIGN FINANCE REFORM.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 163-45 reads as rewritten:

"§ 163-45. Observers; appointment.

The ~~chairman~~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 ~~chairman~~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 ~~chairman~~chair contains the names of all persons authorized to represent such ~~chairman's~~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 ~~chairman~~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 ~~chairman~~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 ~~chairman~~chair shall deliver one copy of the list to the chief judge for each affected precinct. ~~He~~The chair shall retain the other copy. The ~~chairman~~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 ~~chairman~~chair of the county board of elections or the person making the substitute appointment.

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

1 that election day. Counties that use an "authorization to vote document" instead of poll
2 books may comply with the requirement in the previous sentence by permitting each
3 observer to inspect election records so that the observer may create a list of persons who
4 have voted in the precinct so far that election day; each observer shall be entitled to
5 make the inspection at times specified by the State Board of Elections, but not less than
6 three times during election day with the spacing not less than one hour apart. Instead of
7 having an observer receive the voting list, the county party chair may send a runner to
8 do so. The runner may be the precinct party chair or any person named by the county
9 party chair. That party chair must notify the chair of the county board of elections or the
10 board chair's designee of the names of all runners to be used in each precinct before the
11 runner goes to the precinct. The runner may receive a voter list from the precinct on the
12 same schedule as an observer. Whether obtained by observer or runner, each party is
13 entitled to only one voter list at each of the scheduled times. No runner may enter the
14 voting enclosure except when necessary to announce that runner's presence. The runner
15 must leave immediately after being provided with the list."

16 **SECTION 1.(b)** G.S. 163-166.3 reads as rewritten:

17 **"§ 163-166.3. Limited access to the voting enclosure.**

18 During the time allowed for voting in the voting place, only the following persons
19 may enter the voting enclosure:

- 20 (1) An election official.
- 21 (2) An observer appointed pursuant to G.S. 163-45.
- 22 (2a) A runner appointed pursuant to G.S. 163-45, but only to the extent
23 necessary to announce that runner's presence and to receive the voter
24 list as provided in G.S. 163-45.
- 25 (3) A person seeking to vote in that voting place on that day but only
26 while in the process of voting or seeking to vote.
- 27 (4) A voter in that precinct while entering or explaining a challenge
28 pursuant to G.S. 163-87 or G.S. 163-88.
- 29 (5) A person authorized under G.S. 163-166.8 to assist a voter but, except
30 as provided in subdivision (6) of this section, only while assisting that
31 voter.
- 32 (6) Minor children of the voter under the age of 18, or minor children
33 under the age of 18 in the care of the voter, but only while
34 accompanying the voter and while under the control of the voter.
- 35 (7) Persons conducting or participating in a simulated election within the
36 voting place or voting enclosure, if that simulated election is approved
37 by the county board of elections.
- 38 (8) Any other person determined by election officials to have an urgent
39 need to enter the voting enclosure but only to the extent necessary to
40 address that need."

41 **SECTION 2.** G.S. 163-165.10 reads as rewritten:

42 **"§ 163-165.10. Adequacy of voting system for each precinct.**

43 The county board of elections shall make available for each precinct voting place an
44 adequate quantity of official ballots or ~~equipment so that all voters qualified to vote at~~

1 ~~the precinct may do so.~~ equipment. When the board of county commissioners has
2 decided to adopt and purchase or lease a voting system for voting places under the
3 provisions of G.S. 165-165.8, the board of county commissioners shall, as soon as
4 practical, provide for each of those voting places sufficient equipment of the approved
5 voting system in complete working order. If it is impractical to furnish each voting
6 place with the equipment of the approved voting system, that which has been obtained
7 may be placed in voting places chosen by the county board of elections. In that case, the
8 county board of elections shall choose the voting places and allocate the equipment in a
9 way that as nearly as practicable provides equal access to the voting system for each
10 voter. The county board of elections shall appoint as many voting system custodians as
11 may be necessary for the proper preparation of the system for each election and for its
12 maintenance, storage, and care. The Executive Director of the State Board of Elections
13 may permit a county board of elections to provide more than one type of voting system
14 in a precinct, but only upon a finding that doing so is necessary to comply with federal
15 or State law."

16 **SECTION 3.(a)** Article 7A of Chapter 163 of the General Statutes is
17 amended by adding a new section to read:

18 **"§ 163-82.15A. Administrative change of registration when county line is adjusted.**

19 When a boundary between counties is established by legislation or under
20 G.S. 153A-18, the Executive Director shall direct the county boards of elections
21 involved to administratively change the voter registration of any voter whose county of
22 residence is altered by the establishment of the boundary. The voter shall not be
23 required to submit a new application to register, and the provisions of G.S. 163-57 shall
24 apply to the determination of residency. The Executive Director shall prescribe a
25 method of notifying the voter of the change of county registration, the correct precinct,
26 and other relevant information."

27 **SECTION 3.(b)** G.S. 163-57 reads as rewritten:

28 **"§ 163-57. Residence defined for registration and voting.**

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

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

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

39 b. If the person disputes the determination of residency, the person
40 may request a hearing before the county board of elections
41 making the determination of residency. The procedures for
42 notice of hearing and the conduct of the hearing shall be as
43 provided in G.S. 163-86. The presentation of an accurate and
44 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.

- (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~~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~~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~~county, municipality, precinct, ward, or other election district a permanent place of abode.
- (4) If a person removes to another ~~state or county~~state, county, municipality, precinct, ward, or other election district within this State, with the intention of making that ~~state or county~~state, county, municipality, precinct, ward, or other election district a permanent residence, that person shall be considered to have lost residence in the ~~state or county~~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~~state, county, municipality, precinct, ward, or other election district within this State, with the intention of remaining there an indefinite time and making that ~~state or county~~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 or the county~~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 or county~~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 this ~~State or county~~State, county, municipality, precinct, ward, or other election district.
- (7) School teachers who remove to a ~~county~~county, municipality, precinct, ward, or other election district 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~~state, county, municipality, precinct, ward, or other election district in which their parents or other relatives reside, and who do not have the intention of becoming residents of the ~~county~~state, 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~~state, 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~~ 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~~ 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."

SECTION 4. G.S. 163-182.9(b)(4) reads as rewritten:

"(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 ~~6:00~~ 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 ~~6:00~~ 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."

SECTION 5.(a) G.S. 163-227.2(e) reads as rewritten:

"(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. 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.~~"

SECTION 5.(b) G.S. 163-226.3(a) reads as rewritten:

"(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 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 guardian; 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

1 receive assistance in getting to and from the voting booth or private
2 room and in preparing and marking that voter's ballots from any
3 person other than a member of the county board of elections, the
4 director of elections, an employee of the board of elections authorized
5 by the board, a near relative of the voter or the voter's verifiable legal
6 guardian; except as provided in G.S. 163-227.2;

7 (4) For any owner, manager, director, employee, or other person, other
8 than the voter's near relative or verifiable legal guardian, to make a
9 written request pursuant to G.S. 163-230.1 or an application on behalf
10 of a registered voter who is a patient in any hospital, clinic, nursing
11 home or rest home in this State or for any owner, manager, director,
12 employee, or other person other than the voter's near relative or
13 verifiable legal guardian, to mark the voter's absentee ballot or assist
14 such a voter in marking an absentee ballot;

15 (5) Repealed by Session Laws 1987, c. 583, s. 8.

16 (6) For any person to take into that person's possession for delivery to a
17 voter or for return to a county board of elections the absentee ballot of
18 any voter, provided, however, that this prohibition shall not apply to a
19 voter's near relative or the voter's verifiable legal guardian;

20 (7) Except as provided in subsections (1), (2), (3) and (4) of this section,
21 G.S. 163-231(a), G.S. 163-250(a), and G.S. 163-227.2(e), for any voter
22 to permit another person to assist the voter in marking that voter's
23 absentee ballot, to be in the voter's presence when a voter votes an
24 absentee ballot, or to observe the voter mark that voter's absentee
25 ballot."

26 **SECTION 6.** G.S. 163-122(a) reads as rewritten:

27 "(a) Procedure for Having Name Printed on Ballot as Unaffiliated Candidate. –
28 Any qualified voter who seeks to have ~~his~~ that voter's name printed on the general
29 election ballot as an unaffiliated candidate shall:

30 (1) If the office is a statewide office, file written petitions with the State
31 Board of Elections supporting ~~his~~ candidacy for a specified office.
32 These petitions must be filed with the State Board of Elections on or
33 before 12:00 noon on the last Friday in June preceding the general
34 election and must be signed by qualified voters of the State equal in
35 number to two percent (2%) of the total number of ~~registered voters in~~
36 ~~the State as reflected by the most recent statistical report issued by the~~
37 ~~State Board of Elections. voters who voted in the most recent general~~
38 election for Governor. Also the petition must be signed by at least 200
39 registered voters in each of four congressional districts in North
40 Carolina. No later than 5:00 p.m. on the fifteenth day preceding the
41 date the petitions are due to be filed with the State Board of Elections,
42 each petition shall be presented to the ~~chairman~~ chair of the board of
43 elections of the county in which the signatures were obtained.
44 Provided the petitions are timely submitted, the ~~chairman~~ chair shall

1 examine the names on the petition and place a check mark on the
2 petition by the name of each signer who is qualified and registered to
3 vote in ~~his~~that county and shall attach to the petition ~~his~~the
4 petitioner's signed certificate. Said certificates shall state that the
5 signatures on the petition have been checked against the registration
6 records and shall indicate the number of signers to be qualified and
7 registered to vote in ~~his~~that county. The ~~chairman~~chair shall return
8 each petition, together with the certificate required in this section, to
9 the person who presented it ~~to him~~ for checking. Verification by the
10 ~~chairman~~chair of the county board of elections shall be completed
11 within two weeks from the date such petitions are presented."

12 SECTION 7.(a) Article 7A of Chapter 163 of the General Statutes is
13 amended by adding a new section to read:

14 **"§ 163-82.25A. Piece payment in voter registration drives prohibited.**

15 No person who employs or contracts with another person to register voters or assist
16 or encourage voters to fill out voter registration forms shall pay that person per voter
17 registration application completed. No person shall accept payment per voter
18 registration application. A violation of this section is a Class 2 misdemeanor."

19 SECTION 7.(b) G.S. 163-274 is amended by adding a new subdivision to
20 read:

21 "(14) For any person to pay or accept payment per voter registration
22 application completed in violation of G.S. 163-82.25A."

23 SECTION 8.(a) G.S. 163-227.2 is amended by adding a new subsection to
24 read:

25 "(e2) A voter who has moved within the county more than 30 days before election
26 day but has not reported the move to the board of elections shall not be required on that
27 account to vote a provisional ballot at the one-stop site, as long as the one-stop site has
28 available all the information necessary to determine whether a voter is registered to vote
29 in the county and which ballot the voter is eligible to vote based on the voter's proper
30 residence address. The voter with that kind of unreported move shall be allowed to vote
31 the same kind of absentee ballot as other one-stop voters."

32 SECTION 8.(b) G.S. 163-166.11 is amended by adding a new subdivision
33 to read:

34 "(2a) A voter who has moved within the county more than 30 days before
35 election day but has not reported the move to the board of elections
36 shall not be required on that account to vote a provisional ballot at the
37 one-stop site, as long as the one-stop site has available all the
38 information necessary to determine whether a voter is registered to
39 vote in the county and which ballot the voter is eligible to vote based
40 on the voter's proper residence address. The voter with that kind of
41 unreported move shall be allowed to vote the same kind of absentee
42 ballot as other one-stop voters as provided in G.S. 163-227.2(e2)."

43 SECTION 9. G.S. 163-227.2(c) reads as rewritten:

"(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; shall furnish the voter with the instruction sheets called for by G.S. 163-229(e); and 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 ~~chairman~~ 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."

SECTION 10. G.S. 163-107(a) reads as rewritten:

"(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)~~

1	Sheriff, if compensated entirely by fees	Forty dollars (\$40.00), plus one percent
2		(1%) of the income of the office above
3		four thousand dollars (\$4,000)
4	Clerk of superior court, if compensated	Forty dollars (\$40.00), plus one percent
5	entirely by fees	(1%) of the income of the office above
6		four thousand dollars (\$4,000)
7	Register of deeds, if compensated	Forty dollars (\$40.00), plus one percent
8	entirely by fees	(1%) of the income of the office above
9		four thousand dollars (\$4,000)
10	Any other county office, if compensated	Twenty dollars (\$20.00), plus one percent
11	entirely by fees	(1%) of the income of the office above
12		two thousand dollars (\$2,000)
13	All county offices compensated partly	One percent (1%) of the first annual
14	by salary and partly by fees	salary to be received (exclusive of
15		fees)

16 The salary of any office that is the basis for calculating the filing fee is the starting
 17 salary for the office, rather than the salary received by the incumbent, if different. If no
 18 starting salary can be determined for the office, then the salary used for calculation is
 19 the salary of the incumbent, as of January 1 of the election year."

20 **SECTION 11.** G.S. 163-82.9 reads as rewritten:

21 **"§ 163-82.9. Cancellation of prior registration.**

22 If an applicant indicates on an application form described in G.S. 163-82.3 a current
 23 registration to vote in any other county, municipality, or state, the county board of
 24 elections, upon registering the person to vote, shall send a notice to the appropriate
 25 officials in the other county, municipality, or state and shall ask them to cancel the
 26 person's voter registration there. If an applicant completes an application form described
 27 in G.S. 163-82.3 except that the applicant neglects to complete the portion of the form
 28 that authorizes cancellation of previous registration in another county, the State Board
 29 of Elections shall notify the county board of elections in the previous county of the new
 30 registration, and the board in the previous county shall cancel the registration. The State
 31 Board of Elections shall adopt rules to prevent disenfranchisement in the
 32 implementation of this section. Those rules shall include adequate notice to the person
 33 whose previous registration is to be cancelled."

34 **SECTION 12.(a)** G.S. 163-82.10(b) reads as rewritten:

35 **"(b) Access to Registration Records.** – Upon request by that person, the county
 36 board of elections shall provide to any person a list of the registered voters of the county
 37 or of any precinct or precincts in the county. The county board may furnish selective
 38 lists according to party affiliation, gender, race, date of registration, precinct name,
 39 precinct identification code, congressional district, senate district, representative district,
 40 and, where applicable, county commissioner district, city governing board district, fire
 41 district, soil and water conservation district, and voter history including primary,
 42 general, and special districts, or any other reasonable category. No list produced under
 43 this section shall contain a voter's date of birth. However, lists may be produced

1 according to voters' ages. ~~The Both the following shall apply if a county maintains or~~
2 ~~has its voter registration list maintained on a computer to all counties:~~

3 (1) ~~In addition to the typed, mimeographed, photocopied, computer~~
4 ~~printout or label lists, the~~ The county board of elections shall make the
5 voter registration information available to the public on electronic or
6 magnetic medium. Magnetic medium for the purpose of this section
7 shall consist of nine track tape or 3.5 inch diskettes and 5.25 inch
8 diskettes readily accessible using MS-DOS or Microsoft Windows
9 operating systems or both such systems; and For purposes of this
10 section, "electronic or magnetic medium" means any of the media in
11 use by the State Board of Elections at the time of the request.

12 (2) Information requested on electronic or magnetic medium shall contain
13 the following: voter name, county voter identification number,
14 residential address, mailing address, sex, race, age but not date of
15 birth, party affiliation, precinct name, precinct identification code,
16 congressional district, senate district, representative district, and,
17 where applicable, county commissioner district, city governing board
18 district, fire district, soil and water conservation district, and any other
19 district information available, and voter history including primary,
20 general, and special districts, or any other reasonable
21 category, category.

22 ~~provided that this subsection shall not require a county to computerize its lists, but if a~~
23 ~~county does computerize it shall comply with subdivisions (1) and (2) of this~~
24 ~~subsection. The county board shall require each person to whom a list is furnished to~~
25 ~~reimburse the board for the actual cost incurred in preparing it, except as provided in~~
26 ~~subsection (c) of this section. Actual cost for the purpose of this section shall not~~
27 ~~include the cost of any equipment or any imputed overhead expenses. It may include the~~
28 ~~actual cost of paper, labels, and magnetic medium. The purchaser at its discretion may~~
29 ~~provide the magnetic medium. When furnishing information under this subsection to a~~
30 ~~purchaser on a magnetic medium provided by the county board or the purchaser, the~~
31 ~~county board may impose a service charge of up to twenty-five dollars (\$25.00)."~~

32 **SECTION 12.(b)** G.S. 163-82.10(c) reads as rewritten:

33 "(c) Free Lists. ~~Free lists of all registered voters in the county shall be provided~~
34 ~~in the following cases:~~

35 (1) A county board that maintains voter records on computer shall
36 provide, upon written request, one free list ~~to~~ of all the registered
37 voters in the county to

38 a. ~~The~~ the State chair of each political party; party and

39 b. ~~Theto~~ the county chair of each political party once in every
40 odd-numbered year, once during the first six calendar months of
41 every even-numbered year, and once during the latter six
42 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 on one of any electronic or magnetic media, but no later than 30 days after written request. Each State party chair shall ~~provide the discs or tapes 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 ~~discs or tapes data~~ 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."

SECTION 13.(a) G.S. 163-182.5(b) reads as rewritten:

"(b) Canvassing by County Board of Elections. – The county board of elections shall meet at 11:00 A.M. on the ~~seventh-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, and from provisional official ballots and shall conduct the canvass."

SECTION 13.(b) G.S. 163-182.7 reads as rewritten:

"§ 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 in the case of a multiseat ballot item, one-half of one percent (0.5%) of the votes cast for those two candidates, 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 ~~Thursday after the election~~ business day after the county canvass. ~~If on that Thursday 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.
- (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. "

SECTION 14. G.S. 163-166.7(c) reads as rewritten:

"(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 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.
- (4) All improperly voted official ballots are returned to the precinct officials and marked as spoiled.
- (5) Voters leave the voting place promptly after voting.

- 1 (6) Voters not clearly eligible to vote in the precinct but who seek to vote
2 there are given proper assistance in voting a provisional official ballot
3 or guidance to another voting place where they are eligible to vote.
4 (7) Information gleaned through the voting process that would be helpful
5 to the accurate maintenance of the voter registration records is
6 recorded and delivered to the county board of elections.
7 (8) The registration records are kept secure. The State Board of Elections
8 shall permit the use of electronic registration records in the voting
9 place in lieu of or in addition to a paper pollbook or other registration
10 record.
11 (9) Party observers are given access as provided by G.S. 163-45 to current
12 information about which voters have voted.
13 (10) The voter, before voting, shall sign that voter's name on the pollbook,
14 other voting record, or voter authorization document. If the voter is
15 unable to sign, a precinct official shall enter the person's name on the
16 same document before the voter votes."

17 **SECTION 15.** G.S. 163-182.15 is amended by adding a subsection to read:

18 "(d) Determining Results. – In a primary for party nomination, the results shall be
19 determined in accordance with G.S. 163-111 and the certificate issued accordingly. In a
20 general election, the individuals having the highest number of votes for each office shall
21 be declared elected to the office, and the certificate shall be issued accordingly. In a
22 referendum, the ballot proposal receiving the highest number of votes shall be declared
23 to have prevailed, and the certificate shall be issued accordingly."

24 **SECTION 16.** Sections 2, 6, 8, 9, 10, 12, and 14 of this act are effective
25 when this act becomes law and apply to all primaries and elections held on or after that
26 date. The remainder of this act becomes effective January 1, 2006, and applies to all
27 primaries and elections held on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 1115 (First Edition)

SHORT TITLE: Election Administration Amendments.

SPONSOR(S): Representatives Ross and Moore

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>
GENERAL FUND					
Correction	Exact amount cannot be determined; no substantial impact anticipated.				
Judicial	Exact amount cannot be determined; no substantial impact anticipated.				
LOCAL GOVERNMENTS					
	Exact amount cannot be determined; no substantial impact anticipated.				
ADDITIONAL PRISON BEDS*					
	No additional prison beds anticipated.				
POSITIONS:					
(cumulative)	No additional positions anticipated.				
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch; Local Governments					
EFFECTIVE DATE: Sections 1, 3, 4, 5, 7, 11: January 1, 2006; All other sections: Upon Ratification.					
<i>*This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.</i>					

BILL SUMMARY:¹ This bill would amend Chapter 163 of the General Statutes to modify provisions relating to the administration and conduct of elections.

¹ Adapted from "Bill Analysis," William R. Gilkeson. Research Division. April 13, 2005.

Section 1 Political party chairs would be allowed to designate runners to pick up voting lists in polling locations. Candidates and official polling place observers would be prohibited from being designated as runners.

Section 2 Current statutes do not expressly address whether a county may provide more than one voting system per precinct. This bill provides that the Executive Director of the State Board of Elections may permit a county to use more than one voting system in a precinct where doing so would be necessary to comply with state or federal law.

Section 3 The Executive Director of the State Board of Elections would be authorized to move a voter's registration to the appropriate county administratively, with notice to the voter, if the voting county has changed due to a county line adjustment. The voter, who has not moved, would not need to submit a new voter registration application.

Section 4 Current law sets certain deadlines for filing an election protest at 6 p.m. on the second day after the county canvass. Most county board of elections offices close at 5 p.m. and this bill would change the statutory deadline to 5 p.m. to reflect the regular office hours.

Section 5 Under current law, a voter at the polls on election day, whose illiteracy or disability requires them to have assistance to vote, may receive assistance from anyone other than their employer or union representative. If not illiterate or disabled, a voter may receive assistance from a specified group of relatives. At a one-stop site, however, a voter may receive assistance only from a county board of elections member, an election director, a board employee, a near relative of the voter, or the voter's legal guardian. Any other individual providing assistance to a voter at a one-stop site would be guilty of a Class I felony under G.S. 163-226.3. This bill would amend the rules pertaining to a one-stop voting site to be equivalent to those at the polls on election day.

Section 6 Presently an unaffiliated candidate must collect signatures from voters on a petition in number equal to two percent of all of the registered voters in the State. This bill would make the statewide unaffiliated threshold two percent of the latest Governor's race turnout, which is identical to the requirement for a new party petition.

Section 7 Current law does not regulate how individuals may be paid for registering voters during a voter registration drive. This bill would make it a Class 2 misdemeanor to pay or accept payment for registering voters when the pay is made on a per voter basis.

Section 8 Currently, if a person moves more than 30 days before an election within the county where registered to vote but does not notify the board of elections of the move, the person may show up at a one-stop voting place and vote a traditional ballot. This bill clarifies that a voter who has not reported a move within the county does not, on that account, need to vote a provisional ballot at a one-stop site.

Section 9 The current statute regulating one-stop voting requires that officials at a one-stop site furnish voters, who are there voting in person, with instructions on how to vote mail absentee. The bill removes the language as inapt.

Section 10 This section amends G.S. 163-107(a) to specify that a candidate's filing fee is one percent of the annual starting salary of the office sought.

Section 11 When a voter changes his or her county of registration, the State Board of Elections would be required to notify the county election board in the old county of the registration change. The board in the old county would then be required to cancel the previous registration.

Section 12 This section of the bill would amend G.S. 163-82.10(b), which addresses access to voter registration records, to reflect technological changes since the statute was originally codified.

Section 13 Current law requires the county board of elections to hold its canvass on the 7th day after a primary or election. This bill would move the county canvass to the 10th day for even-year general elections.

Section 14 This section of the bill clarifies that the State Board of Elections must permit the use of electronic registration records in the voting place in lieu of paper pollbooks or other records.

ASSUMPTIONS AND METHODOLOGY:

General

Section 5 of this bill would modify the specified list of individuals authorized to provide assistance to voters at a one-stop voting site and would, thus, alter the types of individuals eligible to commit a Class I felony for illegally providing such assistance. Section 7 of the bill would create a new Class 2 misdemeanor for paying or accepting payment for registering voters on a per voter basis. As these provisions modify criminal offenses, they would be expected to lead to changes in adjudication and incarceration rates and an associated fiscal impact to the Department of Correction and the Judicial Branch. However, as the provisions of both sections would not be expected to lead to a significant number of new felony or misdemeanor charges or convictions, the fiscal impact is not anticipated to be substantial.

Current G.S. 163-274(1) and G.S. 163-274(10) provide that it is a Class 2 misdemeanor for specified officials to fail to perform certain duties related to the administration of elections. As several provisions of the bill would expand the set of duties prescribed for some of these officials, additional Class 2 misdemeanor charges and convictions could result under G.S. 163-274(1) or G.S. 163-274(10) for failure in the performance of those duties as required by law. However, given that the class of eligible offenders is small and the scope of behavior encompassed by these offenses is not expanded significantly, the number of new Class 2 misdemeanor charges and convictions under G.S. 163-274 as a result of this bill is not expected to be substantial.

Department of Correction

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2005 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory group, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon and beyond.*

Section 5 It is unknown whether altering the specified list of individuals allowed to assist voters at the polls under G.S. 163-226.3 would lead to a decrease, no change, or an increase in the number of offenders sentenced as Class I felons for illegally assisting voters. As such, no estimate of the fiscal impact associated with this provision is available. The Administrative Office of the Courts does not maintain an offense code for violations of present G.S. 163-226.3, which is some indication that the current offense is infrequently charged and rarely results in convictions.

Section 7 Because this section would provide for a new Class 2 misdemeanor, the Sentencing Commission has no historical data from which to estimate the impact on local jail populations. As noted in the "General" section, additional Class 2 misdemeanor convictions could also result under G.S. 163-274 for failure in the performance of certain duties for specified officials. In FY 2003-04, 15 percent of Class 2 misdemeanors resulted in active sentences with a maximum length of 60 days and an average length of 23 days. Offenders with active sentences less than thirty days are housed in county jails at county expense, and the Department of Correction (DOC) reimburses the county for housing offenders sentenced to between thirty and ninety days at a rate of \$18 per offender per day. Because Class 2 misdemeanants serving active time as a result of this offense would be housed in county jails, this provision would not impact prison population.

The remaining 85 percent of Class 2 misdemeanants received non-active sentences. For those offenders sentenced to supervised probation, the Division of Community Corrections (DCC) would incur costs of \$1.87 per offender per day. Offenders sentenced to community service would cost \$0.67 per offender per day, and offenders given unsupervised probation would not impact DCC.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts (AOC) provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Section 5 It is unknown whether the modification to the list of individuals authorized to assist at the polls provided by Section 5 of the bill would lead to a decrease, no change, or an increase in the number of individuals charged with a Class I felony for illegally assisting voters. As such, no estimate is available with respect to the fiscal impact of this provision. As noted in the DOC section, the lack of an offense code for current violations of G.S. 163-226.3 may be some indication that the offense is presently infrequently charged.

Section 7 As this section provides for a new criminal offense, no data is available with which to estimate the number of additional Class 2 misdemeanor charges the Courts would process as a result of this bill. However, AOC anticipates that the majority of voter registration campaigns would comply with the requirements of this legislation and would thus expect relatively few new charges to result from this bill.

As noted in the "General" section, additional Class 2 misdemeanor charges could also result under G.S. 163-274 for failure in the performance of certain duties for specified officials. The number of

additional charges, however, is not expected to be substantial as the bill would only refine current law and not greatly expand the scope of behavior encompassed by this offense.

Based on the costs of time in court, attorney preparation time, and indigent defense, the average estimated cost to process a single Class 2 misdemeanor charge via trial is \$2,322. This cost includes an estimated \$1,373 in jury fees, costs of time in court, and attorney costs and an additional \$949 in indigent defense. However, based on prior-year data, the majority of any new Class 2 misdemeanor charges that are not dismissed are likely to be settled by guilty plea at an estimated cost of \$272 per plea.

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Aaron Paul and Jim Mills

Official
Fiscal Research Division
Publication

APPROVED BY: James D. Johnson, Director
Fiscal Research Division

DATE: April 26, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

D

HOUSE BILL 1128
PROPOSED COMMITTEE SUBSTITUTE H1128-CSRR-17 [v.2]

4/11/2005 5:42:17 PM

Short Title: Campaign Finance Amendments.

(Public)

Sponsors:

Referred to:

April 6, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE TRAINING FOR ALL CAMPAIGN TREASURERS; TO
3 REQUIRE AN AUDIT TRAIL FOR ANY CAMPAIGN CONTRIBUTION MADE
4 BY MONEY ORDER; TO ALLOW CAMPAIGN EXPENDITURES TO BE
5 MADE BY ANY VERIFIABLE FORM OF PAYMENT; TO SET A
6 THREE-YEAR TIME LIMIT BEFORE ANY UNPAID DEBT IN A CAMPAIGN
7 IS DEEMED TO BE A CONTRIBUTION; TO INCLUDE VACANCY
8 ELECTIONS AND NONPARTISAN RUNOFFS IN THE DEFINITION OF
9 "ELECTION" FOR PURPOSES OF CONTRIBUTION LIMITS; TO CLARIFY
10 THE MEANING OF "QUALIFIED TO RECEIVE VOTES ON THE BALLOT AS
11 A CANDIDATE FOR THE OFFICE" AS A PRECONDITION FOR
12 CERTIFICATION UNDER THE PUBLIC CAMPAIGN FINANCING FUND; TO
13 CLARIFY WHAT CANDIDATES UNDER THAT FUND MAY RAISE AND
14 SPEND AFTER FILING NOTICE OF INTENT TO PARTICIPATE; TO
15 PROVIDE FOR EARLIER DISTRIBUTION OF THE JUDICIAL VOTER GUIDE;
16 TO LIMIT THE USE OF CREDIT CARDS FOR PAYMENT OF
17 EXPENDITURES IN PUBLICLY FUNDED JUDICIAL CAMPAIGNS; TO
18 APPLY THE SCOPE AND ADVISORY OPINION SECTIONS OF ARTICLE 22A
19 OF CHAPTER 163 OF THE GENERAL STATUTES TO ARTICLES 22B, 22D,
20 22E, AND 22F AS WELL; AND TO EXPRESSLY REQUIRE THAT
21 ORGANIZATIONS EXPENDING FOR "ELECTIONEERING
22 COMMUNICATIONS" MUST DO SO OUT OF A SEGREGATED ACCOUNT
23 THAT CONTAINS NO MONEY FROM PROHIBITED SOURCES AND TO
24 EXPRESSLY PROVIDE FOR DETAILED REPORTING FROM ANY SUCH
25 ACCOUNT.

26 The General Assembly of North Carolina enacts:

27 SECTION 1. G.S. 163-278.7(e) reads as rewritten:

1 "(e) Every treasurer of a political committee or referendum committee shall
2 receive, prior to every election in which the political committee or referendum
3 committee is involved, training from the State Board of Elections as to the duties of the
4 office, including the requirements of G.S. 163-278.13(e1), provided that the treasurer
5 may designate an employee or volunteer of the committee to receive the training."

6 **SECTION 2.** G.S. 163-278.14(b) reads as rewritten:

7 "(b) No entity shall give, and no candidate, committee or treasurer shall accept,
8 any monetary contribution in excess of one hundred dollars (\$100.00) unless such
9 contribution be in the form of a check, draft, money order, credit card charge, debit, or
10 other noncash method that can be subject to written verification. The State Board of
11 Elections may prescribe guidelines as to the reporting and verification of any method of
12 contribution payment allowed under this Article. For contributions by money order, the
13 State Board shall prescribe methods to ensure an audit trail for every contribution so
14 that the identity of the contributor can be determined. For a contribution made by credit
15 card, the credit card account number of a contributor is not a public record."

16 **SECTION 3.** G.S. 163-278.8(e) reads as rewritten:

17 "(e) All expenditures for media expenses shall be made by ~~check only~~ a verifiable
18 form of payment. The State Board of Elections shall prescribe methods to ensure an
19 audit trail for every expenditure so that the identity of each payee can be determined.
20 All media expenditures in any amount shall be accounted for and reported individually
21 and separately."

22 **SECTION 4.** G.S. 163-278.8(f) reads as rewritten:

23 "(f) All expenditures for nonmedia expenses (except postage) of more than fifty
24 dollars (\$50.00) shall be made by ~~check only~~ a verifiable form of payment. The State
25 Board of Elections shall prescribe methods to ensure an audit trail for every expenditure
26 so that the identity of each payee can be determined. All expenditures for nonmedia
27 expenses of fifty dollars (\$50.00) or less may be made by check or by cash payment. All
28 nonmedia expenditures of more than fifty dollars (\$50.00) shall be accounted for and
29 reported individually and separately, but expenditures of fifty dollars (\$50.00) or less
30 may be accounted for and reported in an aggregated amount, but in that case the
31 treasurer shall account for and report that he made expenditures of fifty dollars (\$50.00)
32 or less each, the amounts, dates, and the purposes for which made. In the case of a
33 nonmedia expenditure required to be accounted for individually and separately by this
34 subsection, if the expenditure was to an individual, the report shall list the name and
35 address of the individual."

36 **SECTION 5.** G.S. 163-278.6(6) reads as rewritten:

37 "(6) The terms "contribute" or "contribution" mean any advance,
38 conveyance, deposit, distribution, transfer of funds, loan, payment,
39 gift, pledge or subscription of money or anything of value whatsoever,
40 to a candidate to support or oppose the nomination or election of one
41 or more clearly identified candidates, to a political committee, to a
42 political party, or to a referendum committee, whether or not made in
43 an election year, and any contract, agreement, promise or other
44 obligation, whether or not legally enforceable, to make a contribution.

1 These terms include, without limitation, such contributions as labor or
2 personal services, postage, publication of campaign literature or
3 materials, in-kind transfers, loans or use of any supplies, office
4 machinery, vehicles, aircraft, office space, or similar or related
5 services, goods, or personal or real property. These terms shall also
6 include, without limitation, a debt, or any portion thereof, to pay an
7 expenditure that has been uncollected beyond the three years set in
8 G.S. 1-52 for its collection. These terms also include, without
9 limitation, the proceeds of sale of services, campaign literature and
10 materials, wearing apparel, tickets or admission prices to campaign
11 events such as rallies or dinners, and the proceeds of sale of any
12 campaign-related services or goods. Notwithstanding the foregoing
13 meanings of "contribution," the word shall not be construed to include
14 services provided without compensation by individuals volunteering a
15 portion or all of their time on behalf of a candidate, political
16 committee, or referendum committee. The term "contribution" does
17 not include an "independent expenditure." If:

- 18 a. Any individual, person, committee, association, or any other
19 organization or group of individuals, including but not limited
20 to, a political organization (as defined in section 527(e)(1) of
21 the Internal Revenue Code of 1986) makes, or contracts to
22 make, any disbursement for any electioneering communication,
23 as defined in G.S. 163-278.80(2) and (3) and
24 G.S. 163-278.90(2) and (3); and
25 b. That disbursement is coordinated with a candidate, an
26 authorized political committee of that candidate, a State or local
27 political party or committee of that party, or an agent or official
28 of any such candidate, party, or committee that disbursement or
29 contracting shall be treated as a contribution to the candidate
30 supported by the electioneering communication or that
31 candidate's party and as an expenditure by that candidate or that
32 candidate's party."

33 **SECTION 6.** G.S. 163-278.13(d) reads as rewritten:

34 "(d) For the purposes of this section, the term "an election" means any primary,
35 runoff, second primary, or general election ~~general election~~, or vacancy election in
36 which the candidate or political committee may be involved, without regard to whether
37 the candidate is opposed or unopposed in the election, except that where a candidate is
38 not on the ballot in a runoff or second primary, that runoff or second primary is not "an
39 election" with respect to that candidate."

40 **SECTION 7.** G.S. 163-278.64(c) reads as rewritten:

41 "(c) Certification of Candidates. – Upon receipt of a submittal of the record of
42 demonstrated support by a participating candidate, the Board shall determine whether or
43 not the candidate has complied with all the following requirements, ~~if they apply to that~~
44 candidate 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) ~~Qualified to receive votes on the ballot as a candidate for the office.~~ 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."

SECTION 8. G.S. 163-278.64(d) reads as rewritten:

"(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 Financing Fund.
- (2) From the filing of a declaration of intent through the end of the qualifying period, a candidate ~~shall~~ 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 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. subsection and possible rescue funds received pursuant to G.S. 163-278.67. 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.
- (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 rescue funds.

- 1 (4) During the qualifying period, the candidate may contribute up to one
2 thousand dollars (\$1,000) of that candidate's own money to the
3 ~~campaign and campaign~~. Debt incurred by the candidate for a
4 campaign expenditure shall count toward that limit. The candidate may
5 accept in contributions one thousand dollars (\$1,000) from each
6 member of that candidate's family consisting of spouse, parent, child,
7 brother, and sister.
- 8 (5) A candidate and the candidate's committee shall limit the use of all
9 revenues permitted by this subsection to expenditures for
10 campaign-related purposes only. The Board shall publish guidelines
11 outlining permissible campaign-related expenditures. In establishing
12 those guidelines, the Board shall differentiate expenditures that
13 reasonably further a candidate's campaign from expenditures for
14 personal use that would be incurred in the absence of the candidacy. In
15 establishing the guidelines, the Board shall review relevant provisions
16 of G.S. 163-278.42(e), the Federal Election Campaign Act, and rules
17 adopted pursuant to it, and similar provisions in other states.
- 18 (6) Any contribution received by a participating or certified candidate that
19 falls outside that permitted by this subsection shall be returned to the
20 donor as soon as practicable. Contributions intentionally made,
21 solicited, or accepted in violation of this Article are subject to civil
22 penalties as specified in G.S. 163-278.70. The funds involved shall be
23 forfeited to the Civil Penalty and Forfeiture Fund.
- 24 (7) A candidate shall return to the Fund any amount distributed for an
25 election that is unspent and uncommitted at the date of the election, or
26 at the time the individual ceases to be a certified candidate, whichever
27 occurs first. For accounting purposes, all qualifying, personal, and
28 family contributions shall be considered spent before revenue from the
29 Fund is spent or committed."

30 **SECTION 9.** G.S. 163-278.69(a) reads as rewritten:

31 "(a) Judicial Voter Guide. – The Board shall publish a Judicial Voter Guide that
32 explains the functions of the appellate courts and the laws concerning the election of
33 appellate judges, the purpose and function of the Public Campaign ~~Financing~~ Fund, and
34 the laws concerning voter registration. The Board shall distribute the Guide to as many
35 voting-age individuals in the State as practical, through a mailing to all residences or
36 other means it deems effective. The distribution shall occur no more than ~~28~~14 days nor
37 fewer than seven days before the one-stop voting period provided in G.S. 163-227.2 for
38 the primary and no more than 2814 days nor fewer than seven days before the one-stop
39 voting period provided in G.S. 163-227.2 for the general election."

40 **SECTION 10.** G.S. 163-278.6(9) reads as rewritten:

41 "(9) The terms "expend" or "expenditure" mean any purchase, advance,
42 conveyance, deposit, distribution, transfer of funds, loan, payment,
43 gift, pledge or subscription of money or anything of value whatsoever,
44 whether or not made in an election year, and any contract, agreement,

promise or other obligation, whether or not legally enforceable, to make an expenditure or to incur an obligation to pay an expenditure, to support or oppose the nomination, election, or passage of one or more clearly identified candidates, or ballot measure. 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. The special definition of "expenditure" in G.S. 163-278.12A applies only in that section."

SECTION 11. G.S. 163-278.5 reads as rewritten:

"§ 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, and 22F of the General Statutes to the same extent that it applies to this Article."

SECTION 12. G.S. 163-278.23 reads as rewritten:

"§ 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.

1 The entity that is the subject of the complaint will be given an opportunity to
2 respond to the complaint before any action is taken requiring compliance.

3 The Executive Director of the Board of Elections shall issue written opinions to
4 candidates, the communications media, political committees, referendum committees, or
5 other entities upon request, regarding filing procedures and compliance with this
6 Article. Any such opinion so issued shall specifically refer to this paragraph. If the
7 candidate, communications media, political committees, referendum committees, or
8 other entities rely on and comply with the opinion of the Executive Director of the
9 Board of Elections, then prosecution or civil action on account of the procedure
10 followed pursuant thereto and prosecution for failure to comply with the statute
11 inconsistent with the written ruling of the Executive Director of the Board of Elections
12 issued to the candidate or committee involved shall be barred. Nothing in this paragraph
13 shall be construed to prohibit or delay the regular and timely filing of reports. The
14 Executive Director shall file all opinions issued pursuant to this section with the
15 Codifier of Rules to be published unedited in the North Carolina Register and the North
16 Carolina Administrative Code.

17 This section applies to Articles 22B, 22D, 22E, and 22F of the General Statutes to
18 the same extent that it applies to this Article."

19 **SECTION 13.(a) G.S. 163-278.81 reads as rewritten:**

20 **"§ 163-278.81. Disclosure of Electioneering Communications.**

21 (a) Statement Required. – Every individual, committee, association, or any other
22 organization or group of individuals that makes a disbursement for the direct costs of
23 producing and airing electioneering communications in an aggregate amount in excess
24 of ten thousand dollars (\$10,000) during any calendar year shall, within 24 hours of
25 each disclosure date, file with the Board a statement containing the information
26 described in subsection (b) of this section.

27 (b) Contents of Statement. – Each statement required to be filed by this section
28 shall be made under the penalty of perjury in G.S. 14-209 and shall contain the
29 following information:

- 30 (1) The identification of the entity making the disbursement, of any entity
31 sharing or exercising direction or control over the activities of that
32 entity, and of the custodian of the books and accounts of the entity
33 making the disbursement.
- 34 (2) The principal place of business of the entity making the disbursement
35 if the entity is not an individual.
- 36 (3) The amount of each disbursement of more than one thousand dollars
37 (\$1,000) during the period covered by the statement and the
38 identification of the entity to whom the disbursement was made.
- 39 (4) The elections to which the electioneering communications pertain and
40 the names, if known, of the candidates identified or to be identified.
- 41 (5) ~~If the disbursements were paid out of a segregated bank account that~~
42 ~~consists of funds contributed solely by individuals directly to that~~
43 ~~account for electioneering communications, the~~ The names and
44 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 ~~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) ~~If the disbursements were paid out of funds not described in subdivision (5) of this subsection, the names and addresses of all contributors who contributed an aggregate amount of more than one thousand dollars (\$1,000) to the entity making the disbursement during the period beginning on the first day of the preceding calendar year and ending on the disclosure date."~~

SECTION 13.(b) G.S. 163-278.82 reads as rewritten:

"§ 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 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 ~~individuals~~ entities other than prohibited sources directly to that account.

(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."

SECTION 13.(c) G.S. 163-278.91 reads as rewritten:

"§ 163-278.91. Disclosure of Electioneering Communications.

(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) ~~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~~ 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 ~~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) ~~If the disbursements were paid out of funds not described in subdivision (5) of this subsection, the names and addresses of all contributors who contributed an aggregate amount of more than one thousand dollars (\$1,000) to the entity making the disbursement during the period beginning on the first day of the preceding calendar year and ending on the disclosure date."~~

SECTION 13.(d) G.S. 163-278.92 reads as rewritten:

"§ 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 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

1 disbursements for costs of producing and airing the communication are paid out of a
2 segregated bank account that consists of funds contributed solely by ~~individuals~~ entities
3 other than prohibited sources directly to that account.

4 (b) Direct or Indirect Disbursement. – An electioneering communication shall be
5 treated as made by a prohibited source if the prohibited source directly or indirectly
6 disburses any amount for any of the costs of the communication.

7 (c) Segregated Fund. – Any disbursement for an electioneering communication
8 made from an account must be made from a segregated account into which no funds
9 from a prohibited source have been directly or indirectly introduced."

10 **SECTION 14.** This act becomes effective July 1, 2005, and applies to
11 primaries and elections held on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

1

HOUSE BILL 1128

Short Title: Campaign Finance Amendments.

(Public)

Sponsors: Representatives Moore, Ross (Primary Sponsors); and Rapp.

Referred to: Election Law and Campaign Finance Reform.

April 6, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE TRAINING FOR ALL CAMPAIGN TREASURERS; TO REQUIRE AN AUDIT TRAIL FOR ANY CAMPAIGN CONTRIBUTION MADE BY MONEY ORDER; TO ALLOW CAMPAIGN EXPENDITURES TO BE MADE BY ANY VERIFIABLE FORM OF PAYMENT; TO SET A THREE-YEAR TIME LIMIT BEFORE ANY UNPAID DEBT IN A CAMPAIGN IS DEEMED TO BE A CONTRIBUTION; TO INCLUDE VACANCY ELECTIONS AND NONPARTISAN RUNOFFS IN THE DEFINITION OF "ELECTION" FOR PURPOSES OF CONTRIBUTION LIMITS; TO CLARIFY THE MEANING OF "QUALIFIED TO RECEIVE VOTES ON THE BALLOT AS A CANDIDATE FOR THE OFFICE" AS A PRECONDITION FOR CERTIFICATION UNDER THE PUBLIC CAMPAIGN FINANCING FUND; TO CLARIFY WHAT CANDIDATES UNDER THAT FUND MAY RAISE AND SPEND AFTER FILING NOTICE OF INTENT TO PARTICIPATE; TO PROVIDE FOR EARLIER DISTRIBUTION OF THE JUDICIAL VOTER GUIDE; TO LIMIT THE USE OF CREDIT CARDS FOR PAYMENT OF EXPENDITURES IN PUBLICLY FUNDED JUDICIAL CAMPAIGNS; TO APPLY THE SCOPE AND ADVISORY OPINION SECTIONS OF ARTICLE 22A OF CHAPTER 163 OF THE GENERAL STATUTES TO ARTICLES 22B, 22D, 22E, AND 22F AS WELL; AND TO EXPRESSLY REQUIRE THAT ORGANIZATIONS EXPENDING FOR "ELECTIONEERING COMMUNICATIONS" MUST DO SO OUT OF A SEGREGATED ACCOUNT THAT CONTAINS NO MONEY FROM PROHIBITED SOURCES AND TO EXPRESSLY PROVIDE FOR DETAILED REPORTING FROM ANY SUCH ACCOUNT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-278.7(e) reads as rewritten:

"(e) Every treasurer of a political committee or referendum committee shall receive, prior to every election in which the political committee or referendum

1 committee is involved, training from the State Board of Elections as to the duties of the
2 office, including the requirements of G.S. 163-278.13(e1), provided that the treasurer
3 may designate an employee or volunteer of the committee to receive the training."

4 **SECTION 2.** G.S. 163-278.14(b) reads as rewritten:

5 "(b) No entity shall give, and no candidate, committee or treasurer shall accept,
6 any monetary contribution in excess of one hundred dollars (\$100.00) unless such
7 contribution be in the form of a check, draft, money order, credit card charge, debit, or
8 other noncash method that can be subject to written verification. The State Board of
9 Elections may prescribe guidelines as to the reporting and verification of any method of
10 contribution payment allowed under this Article. For contributions by money order, the
11 State Board shall prescribe methods to ensure an audit trail for every contribution so
12 that the identity of the contributor can be determined. For a contribution made by credit
13 card, the credit card account number of a contributor is not a public record."

14 **SECTION 3.** G.S. 163-278.8(e) reads as rewritten:

15 "(e) All expenditures for media expenses shall be made by ~~check only~~ a verifiable
16 form of payment. The State Board of Elections shall prescribe methods to ensure an
17 audit trail for every contribution so that the identity of each payee can be determined.
18 All media expenditures in any amount shall be accounted for and reported individually
19 and separately."

20 **SECTION 4.** G.S. 163-278.8(f) reads as rewritten:

21 "(f) All expenditures for nonmedia expenses (except postage) of more than fifty
22 dollars (\$50.00) shall be made by ~~check only~~ a verifiable form of payment. The State
23 Board of Elections shall prescribe methods to ensure an audit trail for every contribution
24 so that the identity of each payee can be determined. All expenditures for nonmedia
25 expenses of fifty dollars (\$50.00) or less may be made by check or by cash payment. All
26 nonmedia expenditures of more than fifty dollars (\$50.00) shall be accounted for and
27 reported individually and separately, but expenditures of fifty dollars (\$50.00) or less
28 may be accounted for and reported in an aggregated amount, but in that case the
29 treasurer shall account for and report that he made expenditures of fifty dollars (\$50.00)
30 or less each, the amounts, dates, and the purposes for which made. In the case of a
31 nonmedia expenditure required to be accounted for individually and separately by this
32 subsection, if the expenditure was to an individual, the report shall list the name and
33 address of the individual."

34 **SECTION 5.** G.S. 163-278.6(6) reads as rewritten:

35 "(6) The terms "contribute" or "contribution" mean any advance,
36 conveyance, deposit, distribution, transfer of funds, loan, payment,
37 gift, pledge or subscription of money or anything of value whatsoever,
38 to a candidate to support or oppose the nomination or election of one
39 or more clearly identified candidates, to a political committee, to a
40 political party, or to a referendum committee, whether or not made in
41 an election year, and any contract, agreement, promise or other
42 obligation, whether or not legally enforceable, to make a contribution.
43 These terms include, without limitation, such contributions as labor or
44 personal services, postage, publication of campaign literature or

1 materials, in-kind transfers, loans or use of any supplies, office
2 machinery, vehicles, aircraft, office space, or similar or related
3 services, goods, or personal or real property. These terms shall also
4 include, without limitation, a debt, or any portion thereof, to pay an
5 expenditure that has been uncollected beyond the three years set in
6 G.S. 1-52 for its collection. These terms also include, without
7 limitation, the proceeds of sale of services, campaign literature and
8 materials, wearing apparel, tickets or admission prices to campaign
9 events such as rallies or dinners, and the proceeds of sale of any
10 campaign-related services or goods. Notwithstanding the foregoing
11 meanings of "contribution," the word shall not be construed to include
12 services provided without compensation by individuals volunteering a
13 portion or all of their time on behalf of a candidate, political
14 committee, or referendum committee. The term "contribution" does
15 not include an "independent expenditure." If:

- 16 a. Any individual, person, committee, association, or any other
17 organization or group of individuals, including but not limited
18 to, a political organization (as defined in section 527(e)(1) of
19 the Internal Revenue Code of 1986) makes, or contracts to
20 make, any disbursement for any electioneering communication,
21 as defined in G.S. 163-278.80(2) and (3) and
22 G.S. 163-278.90(2) and (3); and
23 b. That disbursement is coordinated with a candidate, an
24 authorized political committee of that candidate, a State or local
25 political party or committee of that party, or an agent or official
26 of any such candidate, party, or committee that disbursement or
27 contracting shall be treated as a contribution to the candidate
28 supported by the electioneering communication or that
29 candidate's party and as an expenditure by that candidate or that
30 candidate's party."

31 **SECTION 6.** G.S. 163-278.13(d) reads as rewritten:

32 "(d) For the purposes of this section, the term "an election" means any primary,
33 runoff, second primary, or general election-general election, or vacancy election in
34 which the candidate or political committee may be involved, without regard to whether
35 the candidate is opposed or unopposed in the election, except that where a candidate is
36 not on the ballot in a runoff or second primary, that runoff or second primary is not "an
37 election" with respect to that candidate."

38 **SECTION 7.** G.S. 163-278.64(c) reads as rewritten:

39 "(c) Certification of Candidates. – Upon receipt of a submittal of the record of
40 demonstrated support by a participating candidate, the Board shall determine whether or
41 not the candidate has complied with all the following requirements, if they apply to that
42 candidate:

- 43 (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) ~~Qualified to receive votes on the ballot as a candidate for the office.~~ 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."

SECTION 8. G.S. 163-278.64(d) reads as rewritten:

"(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 Financing Fund.
- (2) From the filing of a declaration of intent through the end of the qualifying period, a candidate ~~shall~~ 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 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. subsection and possible rescue funds received pursuant to G.S. 163-278.67. 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.
- (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 rescue 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

1 ~~campaign and campaign.~~ Debt incurred by the candidate for a
2 campaign expenditure shall count toward that limit. The candidate may
3 accept in contributions one thousand dollars (\$1,000) from each
4 member of that candidate's family consisting of spouse, parent, child,
5 brother, and sister.

6 (5) A candidate and the candidate's committee shall limit the use of all
7 revenues permitted by this subsection to expenditures for
8 campaign-related purposes only. The Board shall publish guidelines
9 outlining permissible campaign-related expenditures. In establishing
10 those guidelines, the Board shall differentiate expenditures that
11 reasonably further a candidate's campaign from expenditures for
12 personal use that would be incurred in the absence of the candidacy. In
13 establishing the guidelines, the Board shall review relevant provisions
14 of G.S. 163-278.42(e), the Federal Election Campaign Act, and rules
15 adopted pursuant to it, and similar provisions in other states.

16 (6) Any contribution received by a participating or certified candidate that
17 falls outside that permitted by this subsection shall be returned to the
18 donor as soon as practicable. Contributions intentionally made,
19 solicited, or accepted in violation of this Article are subject to civil
20 penalties as specified in G.S. 163-278.70. The funds involved shall be
21 forfeited to the Civil Penalty and Forfeiture Fund.

22 (7) A candidate shall return to the Fund any amount distributed for an
23 election that is unspent and uncommitted at the date of the election, or
24 at the time the individual ceases to be a certified candidate, whichever
25 occurs first. For accounting purposes, all qualifying, personal, and
26 family contributions shall be considered spent before revenue from the
27 Fund is spent or committed."

28 **SECTION 9.** G.S. 163-278.69(a) reads as rewritten:

29 "(a) Judicial Voter Guide. – The Board shall publish a Judicial Voter Guide that
30 explains the functions of the appellate courts and the laws concerning the election of
31 appellate judges, the purpose and function of the Public Campaign ~~Financing~~ Fund, and
32 the laws concerning voter registration. The Board shall distribute the Guide to as many
33 voting-age individuals in the State as practical, through a mailing to all residences or
34 other means it deems effective. The distribution shall occur no more than ~~28~~14 days nor
35 fewer than seven days before the one-stop voting period provided in G.S. 163-227.2 for
36 the primary and no more than 2814 days nor fewer than seven days before the one-stop
37 voting period provided in G.S. 163-227.2 for the general election."

38 **SECTION 10.** G.S. 163-278.6(9) reads as rewritten:

39 "(9) The terms "expend" or "expenditure" mean any purchase, advance,
40 conveyance, deposit, distribution, transfer of funds, loan, payment,
41 gift, pledge or subscription of money or anything of value whatsoever,
42 whether or not made in an election year, and any contract, agreement,
43 promise or other obligation, whether or not legally enforceable, to
44 make an expenditure or to incur an obligation to pay an expenditure, to

support or oppose the nomination, election, or passage of one or more clearly identified candidates, or ballot measure. 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. The special definition of "expenditure" in G.S. 163-278.12A applies only in that section."

SECTION 11. G.S. 163-278.5 reads as rewritten:

"§ 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, and 22F of the General Statutes to the same extent that it applies to this Article.

SECTION 12. G.S. 163-278.23 reads as rewritten:

"§ 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.

1 The Executive Director of the Board of Elections shall issue written opinions to
2 candidates, the communications media, political committees, referendum committees, or
3 other entities upon request, regarding filing procedures and compliance with this
4 Article. Any such opinion so issued shall specifically refer to this paragraph. If the
5 candidate, communications media, political committees, referendum committees, or
6 other entities rely on and comply with the opinion of the Executive Director of the
7 Board of Elections, then prosecution or civil action on account of the procedure
8 followed pursuant thereto and prosecution for failure to comply with the statute
9 inconsistent with the written ruling of the Executive Director of the Board of Elections
10 issued to the candidate or committee involved shall be barred. Nothing in this paragraph
11 shall be construed to prohibit or delay the regular and timely filing of reports. The
12 Executive Director shall file all opinions issued pursuant to this section with the
13 Codifier of Rules to be published unedited in the North Carolina Register and the North
14 Carolina Administrative Code.

15 This section applies to Articles 22B, 22D, 22E, and 22F of the General Statutes to
16 the same extent that it applies to this Article."

17 **SECTION 13.(a) G.S. 163-278.81 reads as rewritten:**

18 **"§ 163-278.81. Disclosure of Electioneering Communications.**

19 (a) Statement Required. – Every individual, committee, association, or any other
20 organization or group of individuals that makes a disbursement for the direct costs of
21 producing and airing electioneering communications in an aggregate amount in excess
22 of ten thousand dollars (\$10,000) during any calendar year shall, within 24 hours of
23 each disclosure date, file with the Board a statement containing the information
24 described in subsection (b) of this section.

25 (b) Contents of Statement. – Each statement required to be filed by this section
26 shall be made under the penalty of perjury in G.S. 14-209 and shall contain the
27 following information:

- 28 (1) The identification of the entity making the disbursement, of any entity
29 sharing or exercising direction or control over the activities of that
30 entity, and of the custodian of the books and accounts of the entity
31 making the disbursement.
- 32 (2) The principal place of business of the entity making the disbursement
33 if the entity is not an individual.
- 34 (3) The amount of each disbursement of more than one thousand dollars
35 (\$1,000) during the period covered by the statement and the
36 identification of the entity to whom the disbursement was made.
- 37 (4) The elections to which the electioneering communications pertain and
38 the names, if known, of the candidates identified or to be identified.
- 39 (5) ~~If the disbursements were paid out of a segregated bank account that~~
40 ~~consists of funds contributed solely by individuals directly to that~~
41 ~~account for electioneering communications, the~~ The names and
42 addresses of all contributors who contributed an aggregate amount of
43 more than one thousand dollars (\$1,000) during the period beginning
44 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) ~~If the disbursements were paid out of funds not described in subdivision (5) of this subsection, the names and addresses of all contributors who contributed an aggregate amount of more than one thousand dollars (\$1,000) to the entity making the disbursement during the period beginning on the first day of the preceding calendar year and ending on the disclosure date."~~

SECTION 13.(b) G.S. 163-278.82 reads as rewritten:

"§ 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 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 individuals/entities other than prohibited sources directly to that account.

(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."

SECTION 13.(c) G.S. 163-278.91 reads as rewritten:

"§ 163-278.91. Disclosure of Electioneering Communications.

(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) ~~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~~ 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) ~~If the disbursements were paid out of funds not described in subdivision (5) of this subsection, the names and addresses of all contributors who contributed an aggregate amount of more than one thousand dollars (\$1,000) to the entity making the disbursement during the period beginning on the first day of the preceding calendar year and ending on the disclosure date."~~

SECTION 13.(d) G.S. 163-278.92 reads as rewritten:

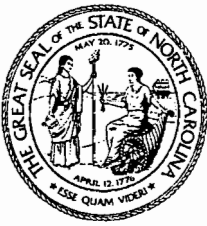
"§ 163-278.92. Prohibition of corporate and labor disbursements for electioneering communications.

(a) Prohibition. – No prohibited source may make any disbursement for the costs of producing or 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 ~~individuals~~ entities other than prohibited sources directly to that account.

1 (b) Direct or Indirect Disbursement. – An electioneering communication shall be
2 treated as made by a prohibited source if the prohibited source directly or indirectly
3 disburses any amount for any of the costs of the communication.

4 (c) Segregated Fund. – Any disbursement for an electioneering communication
5 made from an account must be made from a segregated account into which no funds
6 from a prohibited source have been directly or indirectly introduced."

7 **SECTION 14.** This act becomes effective July 1, 2005, and applies to
8 primaries and elections held on or after that date.



HOUSE BILL 1128: Campaign Finance Amendments.

BILL ANALYSIS

Committee: House Election Law and
Campaign Finance Reform

Date: April 12, 2005

Version: H1128-CSRR-17 [v.2]

Introduced by: Reps. Moore and Ross

Summary by: William R. Gilkeson
Committee Co-Counsel

SUMMARY: *This Proposed Committee Substitute for House Bill 1128 would make several changes to the campaign finance laws. The changes are based on proposals made by the staff of the State Board of Elections.*

Section 1. Training for All Treasurers. Current law requires that all treasurers of referendum committees must be receive training from the State Board of Elections. The law specifically says the training must include instruction that referendum committees that have received corporate or union contributions may not in turn contribute to political committees or candidates. The State Board staff would like to train treasurers of political committees as well, feeling that training would prevent many of the most common mistakes treasurers make. The PCS provides that all treasurers must receive State Board training.

Section 2. Audit Trail for Contribution by Money Order. Current law allows contributions to be made 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 staff of the State Board reports that money orders are the form of contribution they find most often associated with questionable practices. The problem, they say, is the difficulty of tracing the original source of the money. The PCS directs the State Board to prescribe methods to ensure an audit trail for contributions by money order so that the identity of the contributor can be determined.

Sections 3 and 4. Payment of Expenses by "Any Verifiable Form." Current law says a campaign must pay all media expenses and all other expenses over \$50 by check only. The State Board staff says the law should recognize other forms of payment. The PCS says the expenses now payable only by check may be paid by "a verifiable form of payment." Mirroring the language about money orders, this section directs the State Board to prescribe methods to ensure an audit trail for every expenditure so that the identity of each payee can be determined.

Section 5. Uncollected Debt Deemed Contribution. Current law defines a "contribution" to include many forms of gift, including a loan and the in-kind provision of goods or services for free. Campaigns will purchase goods or services and won't always have the money to pay up front. The State Board staff says it has found that some expenditures go unpaid for such a long time that they begin to look very much like an in-kind contribution of the good or service from the vendor to the campaign. This section of the PCS amends the definition of "contribution" to include a debt to pay an expenditure that has been uncollected beyond the 3-year statute of limitations on a lawsuit to collect the debt.

Section 6. Runoff and Vacancy Election as "an election" for the \$4,000 Limit. Current law sets the limit on contributions at \$4,000 per donor per donee per an election. For purposes of that limit, "an election" is defined as a primary, a second primary, or a general election in which the candidate or political committee is involved. So, a candidate may receive from the same donor \$4,000 for the primary, another \$4,000 for the second primary (but only if the candidate is on the ballot), and another \$4,000 for the general election. The State Board staff says there are two other kinds of election involving candidates that aren't mentioned: nonpartisan runoffs (used in some municipal elections) and elections to fill vacancies. This section of the PCS adds runoff and vacancy election those to the definition of "an election," thereby allowing a contributor to give a candidate \$4,000 for each.

Sections 7 through 10. Debugging the Judicial Campaign Act. In 2002 the General Assembly established the Public Campaign Financing Fund to support campaigns of candidates for Supreme Court and Court of Appeals who agree to certain limitation on contributions and expenditures. The new system was first implemented in the 2004 election. These sections are the result of bugs the State Board, and judicial candidates, found in that initial implementation.

HOUSE BILL 1128

Page 2

Section 7. Eligibility for Certification to Receive Funds. Current law says that to certify a candidate to receive funds, the State Board must determine whether a candidate meets certain criteria including whether the candidate is "qualified to receive votes on the ballot as a candidate for the office." The State Board, and judicial candidates, were uncertain what that language meant: Did it mean simply the candidate met the constitutional qualifications for the office, being 21, a NC citizen, and an attorney? Or did it mean the person had to have filed a notice of candidacy? This section specifies that it means the person must have filed a notice of candidacy. (The section also cleans up some language left over from an early draft of the act.)

Section 8. What a Candidate May Raise and Spend During Qualifying Period. After a candidate is certified and the date of the nonpartisan primary (which marks the end of the qualifying period), it is clear that a candidate may spend only money received from the public Fund plus any money leftover from the qualifying period. But the State Board, and some judicial candidates, found the law unclear as to what could be raised and spent during the period that begins when the candidate files a declaration of intent to participate in the program and ends on primary day, when the qualifying period ends. Particularly uncertain were whether candidates could spend leftover money they raised before they filed their intent and whether they could raise or spend amounts under \$10. (Qualifying contributions must come in amounts from \$10 to \$500. This section rewrites the law to make clear that from the declaration of intent to the primary day, a candidate may accept in contributions only:

- Qualifying contributions.
- Contributions under \$10 from NC voters.
- Personal and family contributions of \$1,000 per person.

Those contributions may not exceed the maximum amount a candidate may receive in qualifying contributions. In addition to those contributions, during this period a candidate may spend only:

- Leftover money of that raised from September 1 before the election year through the filing of intent. During that time a candidate may raise up to \$10,000 from any otherwise legal source without foreclosing the chance to be certified under the Fund.
- Any rescue funds triggered by spending by opponents.

Section 8 also provides, reflecting Section 5 of the PCS, that debt by a candidate for a campaign expenditure counts toward the candidate's \$1,000 limit over contributing to his or her own campaign. (See also Section 10, concerning a candidate's use of a credit card.)

Section 9. Timing of Voter Guide Distribution. Current law calls for the State Board to distribute to as many voters as possible a Voter Guide telling about the nonpartisan candidates for Supreme Court and Court of Appeals. It says this must be done no more than 28 days and no fewer than 7 days before the election. In 2004, many people received the guides after they had already voted during the one-stop (early voting) period, which begins 20 days before the election. This section would change the distribution dates to no more than 14 days and no fewer than 7 days before the beginning of the early voting period.

Section 10. Use of Credit Card by Candidate. Current law limits the candidate to a \$1,000 contribution to his or her own campaign. The State Board found that some candidates were using their credit cards to pay bills after they had already maxed out on the \$1,000. This section amends the definition of "expenditure" to add "incur an obligation to pay an expenditure," making clear that paying a campaign bill with a credit card comes under the definition of "expenditure" and the \$1,000 limit on candidates making such in-kind contributions to their own campaigns. (Although this section amends the definition of "expenditure" that applies to all campaigns, appellate judicial campaigns are the only ones that have any dollar limit on candidates contributing to their own campaigns.)

Sections 11 and 12. Applying Scope and Opinion Provisions to All Campaign Finance Articles. Current law has provisions that limit the scope of Article 22A, the main campaign finance act, to elections to State and local offices in North Carolina and that give the Executive Director of the State Board the duty to provide written opinions about whether an inquired-about practice complies with Article 22A. If a person receives such an opinion and complies with it, that person cannot be prosecuted for an Article 22A violation. In addition to Article 22A, four other Articles in Chapter 163 regulate campaign finance:

- 22B The Political Parties Financing Fund.

HOUSE BILL 1128

Page 3

- 22D The Public Campaign Financing Act (for Supreme Court and Court of Appeals).
- 22E Electioneering Communications on television and radio.
- 22F Electioneering Communications through mass mailings and phone banks.

The State Board staff requested that the scope and written opinion statutes be applied to the other four Articles as well as to 22A. These sections do that.

Section 13. Reporting Contributions for Electioneering Communications. In 2004 the General Assembly prohibited the use of corporate or union money for an "electioneering communication," a message sent 30 days before a primary or 60 days before a general election where the message targets the relevant electorate through radio, television, mass mailing, or phone bank and where the message refers to a candidate for statewide office or General Assembly. That act, patterned after the federal McCain-Feingold Act, also requires an organization doing electioneering communications to report contributions and expenditures for them. During its initial implementation of the act in 2004, the State Board staff found that one national organization used the wording of the act to argue that it was not required to report contributions to a separate segregated fund. Instead the organization insisted it was only required to make a large, unrevealing report of contributions from all over the nation. This section clarifies that if an organization makes electioneering communications, it must pay for them out of a separate segregated account into which goes only money from legally acceptable sources, and it must report contributions to and spending from that fund.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1128

H1128-ARR-47 [v.1]

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

Page 1 of 1

Date 4-21-05, 2005

Comm. Sub. [YES]
Amends Title [NO]
H1128-CSR-17[v.2]

Representative Moore

- 1 moves to amend the bill on page 10, lines 10 and 11,
2 by rewriting those lines to read:
3 "SECTION 14. This act becomes effective July 1, 2005, and applies to all
4 contributions and expenditures made or accepted on or after that date."
5

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1128

DATE 4/27

S. B. No. _____

Amendment No. _____

COMMITTEE SUBSTITUTE _____

(to be filled in by
Principal Clerk)

Rep.) Lewis
)
Sen.)

1 moves to amend the bill on page 1, line 2

2 () WHICH CHANGES THE TITLE

3 by deleting the word "ALL";

4 _____

5 and on page 2, line 1 by deleting the phrase

6 _____

7 "political committee" and substituting the phrase

8 "political committee who ~~has not been certified as~~

9 ~~a political committee~~ is not a certified public

10 accountant or has not previously completed a

11 training conducted by the State Board of Elections"

12 _____

13 _____

14 _____

15 _____

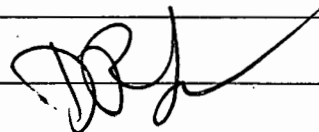
16 _____

17 _____

18 _____

19 _____

SIGNED _____



ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

1

HOUSE BILL 4

Short Title: Abolish Second Primary.

(Public)

Sponsors: Representative Miller.

Referred to: Election Law and Campaign Finance Reform.

January 27, 2005

A BILL TO BE ENTITLED
AN ACT TO ABOLISH THE SECOND PRIMARY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-111 reads as rewritten:

"§ 163-111. **Determination of primary results; second primaries.**~~results.~~

(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

1 written notice of withdrawal with the State Board of Elections within
2 three days after the result of the first primary has been officially
3 declared and published. Should that be done, the remaining aspirant
4 shall be declared the nominee. In the event of a tie for the highest
5 number of votes in a first primary among more than two candidates for
6 party nomination for one of the offices mentioned in this subdivision,
7 no recount shall be held, but all of the tied candidates shall be entered
8 in a second primary.

- 9 (3) In the event one candidate receives the highest number of votes cast in
10 a first primary, but short of a substantial plurality, and two or more of
11 the other candidates receive the second highest number of votes cast in
12 an equal number, the proper board of elections shall declare the
13 candidate having the highest vote to be the party nominee, unless all
14 but one of the tied candidates give written notice of withdrawal to the
15 proper board of elections within three days after the result of the first
16 primary has been officially declared. If all but one of the tied
17 candidates withdraw within the prescribed three day period, and the
18 remaining candidate demands a second primary in accordance with the
19 provisions of subsection (c) of this section, a second primary shall be
20 held between the candidate who received the highest vote and the
21 remaining candidate who received the second highest vote.

22 (e) Date of Second Primary; Procedures. If a second primary is required under
23 the provisions of this section, the appropriate board of elections, State or county, shall
24 order that it be held four weeks after the first primary.

25 There shall be no registration of voters between the dates of the first and second
26 primaries. Persons whose qualifications to register and vote mature after the day of the
27 first primary and before the day of the second primary may register on the day of the
28 second primary and, when thus registered, shall be entitled to vote in the second
29 primary. The second primary is a continuation of the first primary and any voter who
30 files a proper and timely affidavit of transfer of precinct, under the provisions of
31 G.S. 163-82.15, before the first primary may vote in the second primary without having
32 to refile the affidavit of transfer if he is otherwise qualified to vote in the second
33 primary. Subject to this provision for registration, the second primary shall be held
34 under the laws, rules, and regulations provided for the first primary.

35 (f) No Third Primary Permitted. In no case shall there be a third primary. The
36 candidates receiving the highest number of votes in the second primary shall be
37 nominated. If in a second primary there is a tie for the highest number of votes between
38 two candidates, the proper party executive committee shall select the party nominee for
39 the office in accordance with the provisions of G.S. 163-114.

40 (g) Nominations in primary elections shall be determined as follows:

- 41 (1) When more than one person is seeking election to a single office, the
42 candidate who receives the highest number of votes shall be declared
43 the nominee.

(2) When more persons are seeking nomination to two or more offices (constituting a group) than there are offices to be filled, those candidates receiving the highest numbers of votes, equal in number to the number of offices to be filled, shall be declared the nominees.

(h) When more than one person is seeking election to a single office, and two or more candidates receiving the highest numbers of votes each receive the same number of votes, the proper party executive committee shall, from among those candidates receiving the same numbers of votes, select the party nominee in accordance with G.S. 163-114.

(i) When more persons are seeking nomination to two or more offices (constituting a group) than there are offices to be filled, and two or more candidates receiving the lowest numbers of votes necessary for nomination each receive the same number of votes, the proper party executive committee shall, from among those candidates receiving the same numbers of votes, select the party nominee in accordance with G.S. 163-114.

(j) This section prevails over any local act."

SECTION 2. G.S. 163-82.6(d) reads as rewritten:

"(d) Instances When Person May Register and Vote on Election Day. – If a person has become qualified to register and vote between the twenty-fifth day before an election and election day, then that person may apply to register on 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 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 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."~~

SECTION 3. G.S. 163-82.17(a) reads as rewritten:

"(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

1 candidacy for one office with the county board of elections under this
2 section, then a notice of candidacy may not later be filed for any other
3 municipal office for that election unless the notice of candidacy for the
4 first office is withdrawn first.

5 (3) The filing fee for municipal and district primaries shall be fixed by the
6 governing board not later than the day before candidates are permitted
7 to begin filing notices of candidacy. There shall be a minimum filing
8 fee of five dollars (\$5.00). The governing board shall have the
9 authority to set the filing fee at not less than five dollars (\$5.00) nor
10 more than one percent (1%) of the annual salary of the office sought
11 unless one percent (1%) of the annual salary of the office sought is less
12 than five dollars (\$5.00), in which case the minimum filing fee of five
13 dollars (\$5.00) will be charged. The fee shall be paid to the board of
14 elections at the time notice of candidacy is filed.

15 (4) The municipal ballot may not be combined with any other ballot.

16 (5) The canvass of the primary ~~and second primary~~ shall be held on the
17 seventh day following the ~~primary or second primary~~ primary. In
18 accepting the filing of complaints concerning the conduct of an
19 election, a board of elections shall be subject to the rules concerning
20 Sundays and holidays set forth in G.S. 103-5.

21 (6) ~~Candidates having the right to demand a second primary shall do so~~
22 ~~not later than 12:00 noon on the Thursday following the canvass of the~~
23 ~~first primary."~~

24 SECTION 14. G.S. 115C-37 is amended by adding a new subsection to
25 read:

26 "(j) The election of any county board of education held at the time of the primary,
27 whether under this section, a local act, or any merger plan adopted under Article 7 of
28 this Chapter, shall be determined by a plurality under G.S. 163-292. No runoff election
29 shall be held."

30 SECTION 15. This act is effective when it becomes law and applies to all
31 elections held on or after that date.

VISITOR REGISTRATION SHEET

Election Law & Campaign Reform

Name of Committee

4/27/05

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

ROBBIE WILLMARTH	5 ONTARIO CT LWW DURHAM NC 27713
Jane Richmond	League of Women Voters Orange/Durham/Chatham
Kathleen Edwards	UNC-CH Legis. Reporting Service
John Phelps	NCLM
Gary Bartlett	SBE
Kim Strach	SBE
Paul Meyer	NCAAC
Mary Klenz	League of Women Voters of NC
Bob Hall	Democracy North Carolina
Jeanne Bonds	Electric Cities
Joyce Peters	LI

MINUTES
House Committee on Election Law and Campaign Finance Reform
May 4, 2005
1:00 p.m., Room 1425
Representative Ross, Presiding

The House Committee on Election Law and Campaign Finance Reform met at 1:00 p.m. on Tuesday, May 4, 2005, in Room 1425 of the State Legislative Building.

Members present were: Representative Deborah Ross, Co-Chair; Representative Joe Kiser, Vice-Chair; Representative Paul Luebke, Vice-Chair; Representative Mickey Michaux, Vice-Chair; Representative John Blust; Representative Walter Church; Representative Pricey Harrison; Representative Hugh Holliman; Representative George Holmes; Representative David Lewis; Representative Edd Nye, and Representative Edgar Starnes.

There were three bills on the agenda: House Bill 1128, Campaign Finance Amendments, sponsored by Representatives Tim Moore and Deborah Ross; House Bill 4, Abolish Second Primary, sponsored by Representative Paul Miller; and House Bill 1024, Instant Runoff Voting, sponsored by Representative Paul Luebke.

Co-Chair Deborah Ross called the meeting to order and introduced the pages and sergeants-at-arms.

The committee had before a proposed committee substitute for House Bill 1128, which had been discussed at the last meeting. The chair recognized Representative Michaux to send forth an amendment to the debt provision of the bill. Representative Michaux asked that Mr. Bill Gilkeson, committee staff, explain the amendment.

Mr. Gilkeson said that a campaign debt would become a contribution if it is uncollected beyond the three years set in the statute of limitations for its collection. The amendment added, "Although no civil or criminal liability will attach without evidence that the debtor intended to accept the contribution or the creditor intended to make a contribution and that the contribution was unlawful." The amendment passed.

Representative Lewis sent forth an amendment to address concerns raised at the last meeting about treasurers. The amendment would exempt treasurers from training if they had gone through training in a previous election year.

The committee discussed the amendment, and Representative Michaux said he had a problem with it until something happened with his own amendment, which would exclude a candidate from training when acting as his own treasurer.

Representative Lewis withdrew his amendment.

The chair recognized Mr. Bob Hawke from Democracy North Carolina who spoke on the value of the course for treasurers, which is given by the State Board of Elections. He said the laws change every two or three years and the Board is trying to provide a constructive service to candidates and election committees.

After discussion, Representative Michaux sent forth his amendment to except candidates who serve as their own treasurer. The amendment passed.

Representative Lewis again sent forth his amendment and it passed.

Representative Starnes asked if a candidate's spouse was prohibited from acting as treasurer, and Ms. Kim Strach from the State Board said that was true.

Upon a motion by Representative Michaux, the amendments were incorporated into a new committee substitute, the committee substitute was given a favorable report, and the original bill was given an unfavorable report.

Representative Paul Miller was recognized to present House Bill 4, Abolish Second Primary.

The committee discussed House Bill 4 and there was discussion about Representative Luebke's bill, House Bill 1024, Instant Runoff Voting, as an alternative.

Mr. Paul Meyer, representing the County Commissioners Association, said his clients were on record supporting the abolishment of the second primary.

Mr. Jeff Rau with Grassroots North Carolina said his organization opposed House Bill 4. He said the bill reduces the value of the individual votes, especially when there are a lot of candidates and the nomination goes to a candidate with a very small percentage of the votes.

Mr. Warren Murphy, State Chair of the Governing Board of Common Cause North Carolina, said his organization had not had an actual vote on Representative Miller's bill, but he said they would like to see less expensive elections and would tend to favor an instant runoff as the best way of getting rid of the expensive second primary.

Mr. Chris Heagarty with the North Carolina Center for Voter Education said his organization had looked at the issue of expensive runoffs in the past and it was a tough call.

Representative Starnes sent forth an amendment that would give each State party the option to have a second primary or to opt out.

Representative Michaux suggested a perfecting amendment that would require the party to bear the expense of the second primary if the chose to have one. Representative Starnes suggested Representative Michaux run his own amendment.

Following discussion, Co-Chair Ross said the time had expired and asked Representative Starnes if he wanted a vote on his amendment or if he wanted to carry it over to the next meeting. Representative Starnes said he would rather carry it over.

The meeting adjourned at 1:55 p.m.

A verbatim transcript of this meeting is attached hereto along with all pertinent documents and handouts.

Respectfully submitted,



Representative Deborah Ross, Presiding Chair



Margie Penven, Committee Assistant

TRANSCRIPT
House Committee on Election Law and Campaign Finance Reform
1:00 p.m. on May 4, 2005
Room 1425, LOB
Representative Ross, Presiding

Rep. Ross: We're going to begin. Representative Moore is not with us today, so aren't you happy? You have me again. We have some pages with us today. Ashley Winders. She is from Wayne County and sponsored by Representative Pate. And then we have Ariel Butters from Wake County sponsored by Representative Capps. And our sergeants-at-arms are Willie Dixon, Leslie Oakley, and James Worth.

Members of the Committee, we're back on House Bill 1128, which is Campaign Finance Amendments. There were two issues that the committee spent a fair amount of time talking about the last time. One was this issue of debts that remain on the books of a campaign PAC and then what happens if they are on the books for more than three years and how that gets resolved. The other issue was the issue of treasurer training. And we have a proposed amendment on the issue of the debts that the sergeant-at-arms will be passing out for members of the committee to look at. Representative Michaux.

Rep. Michaux: Well, I'm just saying that I'm offering an amendment to that.

Rep. Ross: Okay. Representative Michaux will be offering this amendment and so if the Sergeant-at-arms and the pages could pass it out, we'll have Representative Michaux explain the amendment. The amendment is going to be on page 3, line 6, and on page 3, line 8

Bill Gilkeson: Does everyone have copies of the PCS?

Rep. Ross: Does everybody have copies of the PCS that we were working from? It should be in your folder. Representative Luebke, we're considering an amendment to the debt provision of this bill, and Representative Michaux is offering that amendment. And Representative Michaux is recognized to explain his amendment.

Rep. Michaux: Let Bill do it.

Rep. Ross: Okay. Bill Gilkeson is recognized to explain Representative Michaux's amendment.

Bill Gilkeson: This leaves the current language in the bill on page 3, lines 5 through 8 in place, except it takes out the words without limitation, and at the end of that sentence, which says that a debt becomes a contribution, if

it's uncollected beyond the three years set in the statute of limitations for its collection, it adds this language: "Although no civil or criminal liability will attach without evidence that the debtor intended to accept the contribution or the creditor intended to make a contribution and that the contribution was unlawful."

Rep. Michaux: Actually what this does is it basically makes it clear that there has to be intent, and you have to show that intent, that it was for a contribution; and when you do that, it's unlawful anyway depending on the amount that's involved. So it just clears it up and makes it clear that that's what it does.

Rep. Ross: Okay. Are there any questions on the amendment? If not, all those in favor of the amendment please signify by saying aye. Those opposed no. The amendment passes.

Now I understand that Representative Lewis has an amendment to address some of the concerns that were raised about treasurers.

Rep. Lewis: Madam chair, may I explain the bill?

Rep. Ross: You are recognized to explain your amendment.

Rep. Lewis: Thank you, madam chair. Basically this amendment, all it does, and I did talk with the State Board on this. Be glad to let them verify that or not, but this amendment would amend the bill on page 2, line 1, inserting between the phrase "committee" and the phrase "or" the following words: "Who has not previously attended a training conducted by the State Board of Elections," which means if have gone through it once, you don't have to go through each time—each year, each of the election cycles—which the way the bill is written now it would require you to go through and be retrained each time.

Rep. Ross: Okay. Questions on the amendment? Representative Holmes and then Representative Michaux.

Rep. Holmes: Can I ask the representative a question?

Rep. Lewis: Yes, ma'am.

Rep. Holmes: Does that mean there that I as a treasurer of my campaign, if I have never had a training session, that I would be required to go to a training session?

Rep. Lewis: Representative Holmes, as the bill is written now you would be required to go each time you ran from this point forward.

Rep. Holmes: Yes, I understand that.

Rep. Lewis: What my amendment does is say that you only have to go once. And yes sir, as the bill is written you as both the candidate and the treasurer would have to go.

Rep. Holmes: Another question.

Rep. Lewis: Yes, ma'am.

Rep. Ross: Go ahead.

Rep. Holmes: Well if...let me give you an example. You're your own treasurer. You serve two terms, and you haven't had a training session. You're going to have to go in to a training session. And I've been here fifteen terms, and I've been my treasurer for thirty years. That means I'm going to have to go.

Rep. Blust: We need a time on this bill _____(unintelligible and laughter)

Rep. Lewis: Representative Holmes, I'll just say that I understand what you're saying. I think your concern is with the bill. I think my amendment helps your concerns. I think your concern is with that part of the bill.

Rep. Holmes: I'm concerned about the bill, but your amendment also involves this bill.

Rep. Ross: Erika Churchill had something to say, and then we have Representative Michaux and then Representative Starnes.

Erika Churchill: Representative Holmes, currently you would be able to designate someone to attend that training for you—either an employee of your campaign or a volunteer of your campaign.

Rep. Ross: Under the bill. Okay, Representative Michaux.

Rep. Michaux: What's the difference between a political committee, a referendum committee, and a campaign committee.

Bill Gilkeson: I believe a campaign committee is not really a defined term. Political committee is a defined term. As I understand it, the State Board of Elections treats a candidate running their own campaign as a political committee. So the world is divided into political committees and referendum committees. Referendum committees don't deal with candidates but just with ballot measure, and political committees deal with candidates.

Rep. Ross: Representative Michaux. Is there somebody from the State Board of Elections who might be able to either add to that or confirm.

Kim Strach: I'm Kim Strach from the State Board of Elections and what Bill Gilkeson said is correct. I mean there are either referendum committees or political committees. Candidates are not separately defined.

Rep. Ross: A follow-up question, Representative Michaux.

Rep. Michaux: Yes, ma'am. My next question is can we not exclude campaigns where the candidate is the treasurer? And I would offer an amendment.

Rep. Ross: Well why don't you work with staff on that amendment. We are still, let me just say, on Representative Lewis's amendment and not on the bill, so I would appreciate it if members of the committee would comment on Representative Lewis's amendment out of courtesy to him, and then we can consider other amendments afterwards.

Rep. Michaux: Well, madam chair.

Rep. Ross: Yes.

Rep. Michaux: I would have a problem with Representative Lewis's amendment until something happens with my amendment.

Rep. Ross: Representative Lewis, would you like to displace your amendment for...

Rep. Lewis: No, ma'am. I'd like to withdraw it.

Rep. Ross: Okay. Representative Lewis's amendment is withdrawn. Representative Starnes.

Rep. Starnes: Thank you, madam chair. Representative Lewis's amendment has a great deal of merit, but it's not the highest priority right now. We want to make sure that the campaign treasurers, the candidate, can be exempt. But my position is this: Internal Revenue Service does not require you to take a class before you can fill out your own tax forms. And I've done my campaign committee reports; I've done my tax forms. And the campaign reports is easier than the taxes.

Rep. Ross: Representative Michaux, I believe your amendment is eminent.

Rep. Michaux: Yes. I did want to say to David, I think your amendment was a good one.

Rep. Starnes: It is.

Rep. Michaux: I think your amendment is a good one, and I think if we pass this one, then we ought to take yours up and pass that one, too.

Rep. Ross: Okay. We'll see if Representative Lewis wishes to be recognized again afterward. Okay. Is the amendment ready? Okay. Is there anybody outside the committee who has a comment on this provision? This is the provision on treasurer training for political committees and referendum committees. Does the State Board want to be recognized to comment on whether or not this training is essential and why? No. Okay. Are there any other comments on the bill before we get to Representative Michaux's amendment? I think these were the only two issues, and we do have Representative Miller patiently waiting for his bill to be heard.

Bob Hawke. Bob please state your name and identify yourself for the committee.

Bob Hawke: Bob Hawke from Democracy North Carolina. I don't know, how many of you have had a Treasurer take the course? Well, I really would encourage you if it doesn't become...if it gets amended, you know, it's not going to have a lot of value to it. But I do think that what the State Board is trying to provide is a service to candidates and committees and it is very constructive. The laws do change every two to three years, and it would be helpful to have a person go back and get a refresher course. So I just want to speak... And they offer it repeatedly during the year and they're now doing it _____ settings. You don't have to come to Raleigh. It's an important service. You know that Democracy North Carolina is not here to grade your reports, so it would be of benefit having somebody to learn lessons.

Rep. Ross: Okay. Representative Blust and then we're going to take up Representative Michaux's amendment.

Rep. Blust: Maybe a suggestion that just came to me. All campaign committees are not alike. I mean there's people down here that are raising over a million, and then there's many that might raise five thousand or ten thousand. And so many times, for example myself, it's going to depend on what the opposition's looking like. I wonder if we could put in a dollar amount cap so if you don't raise this much, you don't have to have the training. It seems like there's a lot of wording. And I know one campaign was investigated. The poor guy didn't even raise five

thousand dollars for a school board campaign and they threw the book at him, and there's people that raise over a million and nothing happens to them. It just seems like we're wasting resources on minor matters.

Rep. Ross: Well why don't we deal with Representative Michaux's amendment first and then we'll see if Representative Lewis wants to do his amendment, and then we'll see where we are in the bill. So, Representative Michaux, would you like me to read your amendment?

Rep. Michaux: Yes, ma'am.

Rep. Ross: Representative Michaux moves to amend the bill on page 1, line 2, so that's in the title, by deleting the word "all" and on page 2, line 5, by inserting at the end of that line, "This subsection shall not apply to a political committee where the candidate is the treasurer."
Representative Michaux, do you desire any further comment on this?

Rep. Michaux: Not other than the fact that it does what it says that it does, and I just made a comment on.... I thought about what you said, John, about a cap on that it. But I figure that anybody who's got a campaign that's going to raise that kind of money is going to have a treasurer anyway. My campaigns don't cost me too much money. I think I raised about fifteen hundred dollars, and about two hundred dollars. Something like that.

Rep. Ross: Okay. Any further comment on the amendment? All those in favor of the amendment signify by saying aye. Those opposed no. The amendment passes. Representative Lewis, is your amendment permanently withdrawn, or would you like it to be reconsidered?

Rep. Lewis: Would Representative Holmes yield for a question?

Rep. Ross: Representative Holmes, do you yield?

Rep. Holmes: I yield.

Rep. Lewis: Should my amendment be withdrawn permanently, or should we resubmit it?

Rep. Holmes: If you'll get the chair to give me permission to make a motion, yes I'll agree.

Rep. Lewis: Madam chair, I'll move the amendment _____.

Rep. Ross: Okay, so just to review Representative Lewis's amendment, Representative Lewis moves to amend the bill on page 2, line 1, by inserting between the phrase "committee" and the phrase "or" the following: who has not previously attended a training conducted by the State Board of Elections. Any further discussion on the amendment? So many as favor the amendment please signify by saying aye. Those who are opposed no. The amendment passes.

Rep. Starnes: Question of staff. Someone told me yesterday, and I want to know if it's true because I'd never heard it. Is a candidate's spouse prohibited as the candidate's treasurer?

Rep. Ross: There's somebody from the Board of Elections. Kim, please.

Kim Strach: Yes, that is true.

Rep. Ross: Representative Starnes.

Rep. Starnes: What's the reasoning behind that?

Kim Strach: Mr. Gilkeson would probably be the best one to explain that.

Bill Gilkeson: I think this was before my time.

Rep. Ross: Representative Starnes, I will remind you, wasn't there an interesting Congresswoman whose husband served as her treasurer and ended up doing a bunch of things with the books and the money? Anyway, Representative Starnes and then Representative Michaux.

Rep. Starnes: Well I wanted to throw this out as an idea and I'll give it some feedback from the committee before I'll pursue it; but I don't see why if my wife wanted to do my books that it would be illegal for her to do them. I know, she can do it and I can sign it. That's true. I mean I don't know a real good reason there's that prohibition and I just want to know if the committee would be willing to look at repealing that exemption.

Rep. Michaux: Madam chair, you're ready for a motion.

Rep. Ross: I am so ready.

Rep. Michaux: I move that we incorporate the amendments into the committee substitute and the committee substitute be given a favorable report, the original bill an unfavorable report.

Rep. Ross: You've heard the motion. So many as favor the motion, please signify by saying aye. Those opposed no. The motion carries. We are finally done with House Bill 1128.

We are now moving on to House Bill 4. Representative Miller, who has been very patient...

Rep. Luebke: Madam chairman.

Rep. Ross: Yes.

Rep. Luebke: Procedurally what do you have in mind since House Bill 4 and House Bill 1024 do different things that are, I would say, are _____(unintelligible)?

Rep. Ross: The idea with House Bill 4 and House Bill 1024 is that each bill will be taken up and the committee will be able to vote for or against them based on the committee's desires. And we don't know what the Senate will be doing with either or both of those bills, and so I think each of them should have to stand on their own merit because there's no telling what might happen across the pond. And so for that reason we will take each bill as they come and if there are questions...if you want to raise questions about House Bill 4, which are relative to your own bill, which we'll be hearing next, that's perfectly appropriate. But since both of you have good ideas for dealing with the second primary issue why don't we give you each the same courtesy to have your bill heard and voted on.

Representative Miller.

Rep. Miller: Thank you, madam chair, members of the committee. I appreciate the opportunity to come before the committee again to present another election matter. This bill as the title suggests is very simple, and that is it eliminates second primaries. The reasons for this bill are several. One major reason is voter turnout in second primaries tend to be quite low. They tend to be less than the number of people that voted for each candidate in the first primary. In terms of percentages, they tend to be in the range of two to three percent of the electoral. So the idea of a second primary in concept is supposed to add more democracy, but I would assert that it actually adds less democracy because less people are participating—much less. The last significant primary that we had that was a second primary was in 1990 that was against Easley and Harvey Gantt, and even that had a significant drop off. Furthermore, any time you have a second primary for the few people who come to it, it costs your county money. It costs significant money. And so for a

very small number of people, your county could spend on the average of \$100,000 per election. Again, this is something that doesn't really add to the democratic process, but it does add to the cost.

Furthermore, this bill has been reviewed by the Association of County Commissioners and the North Carolina Legislative Black Caucus; and both groups have in fact supported this bill.

Forty other states do not have second primaries. Most of the states that do have second primaries are here in the south. I think this is an antiquated law that it's time has now come now that we're in the 21st century to move on. What voters want at the end of any election cycle, which we sometimes have trouble doing, is a decision. And so a decision just needs to be made, and a second primary doesn't really add to that decision, and in my opinion, actually takes away from the democratic process because of the lack of participation. And we would be in line with most of the country by going in this direction. So, I'd be happy to answer any questions and would ask for a favorable report.

Rep. Ross: Representative Blust.

Rep. Blust: The only question I've got on it is how do you ensure a situation doesn't happen when a whole bunch of candidates might file and you might get somebody who's got just a loyal, small following but really not broad support and maybe winning with say ten or twelve percent of the vote. And then there could be a district that's safe for one party or the other, so there's not a fall candidate so you could really get somebody that's way out there that's being elected.

Rep. Miller: And I guess from a theoretical standpoint, anything's possible. But if you analyze the election results from the last fifteen years, that situation really hasn't occurred. The one possibility of that situation that could have occurred was in the Democratic U. S. Senate primary in 2002, I think, and where Dan Blue—2004 it was—Dan Blue, Erskine Bowles, Secretary of State Elaine Marshall all ran. But even in that case, the candidate got more than forty percent at the time. So it's, you know, the difference between a mathematical probability and reality, and that's what kind this bill's measured on is reality, and the reality is that very small numbers of people vote in a second primary. At the end of the day, we just want a decision.

Rep. Ross: Representative Michaux.

Rep. Michaux: Yeah. I can tell you actually from personal experience, the fact of the matter is that a second primary was originally introduced to elect the Democratic candidates. Now that's basically where it came. In other words, Republicans didn't have a shoo-in to start with back in the early years even before my time because the Democrats had these candidates out there. They said if you didn't get fifty percent plus one, then you have a runoff and whoever won that runoff actually went into office. That was the election. I think that's changing now. I was a subject of a second primary maybe to my betterment, but I don't know. But I got forty-six percent of the vote on the first primary. There was four people running in that primary that I ran in. I got forty-six percent of the vote and a _____. When the second primary came around that was the only time in the history of this state that the second primary drew more than the first. And that was because of race. I mean it was just that simple. _____ to have a second primary, if you're not satisfied with your candidate, your Republican candidate, then I suggest you go to convention status, and do it in convention and don't put the cost on the counties to run that second primary. To me it's just that simple. And the other thing is that if you run only one primary, you're going to have a whole lot of interest. You're not going to have people who were saying like in the primary that I was in, well if we can get into a runoff we'll whip him. And that's sometimes what happens in there. So they're all good reasons and all. And I guarantee you'll have more action in one primary than you'll have coming up with a second.

Rep. Ross: Representative Luebke.

Rep. Luebke: Thank you. I do not support Representative Miller's bill because my bill—I have Bill 1024—the next one on the calendar allows you to do all the savings that Representative Miller has talked about by having the runoff happen on the same day. What you do, is you vote for your first choice, second choice, third choice, etc. I'll tell you more when I get a chance to present my bill. But the point is, you can save the money and still have the participation. The concern that Representative Blust has raised precisely happened in the supreme court election when, I believe, Mr. Newby was elected to the supreme court seat with eight candidates in the race with, I'm looking at the bill...

Bill Gilkeson: I think it was twenty-three percent.

Rep. Luebke: ...twenty-three percent. So twenty-three percent, someone is on our supreme court, and that's because we do not have a law. My bill would have a mechanism for that. As far as the issue of the use of the second primary in your situation, Representative Michaux, I completely agree with our analysis of what was done. I volunteered both primaries for

you and support you very, very strongly. It's also true that your situation has been corrected in the sense that we get...our second primary now requires forty percent. Representative Michaux seated forty percent in 1982 in his race. I would also note that when you do not have a second primary, you can have situations such when future Congresswoman Eva Clayton ran. She ran second in the primary, and by having a runoff primary she was able to be elected to the United States Congress. So it's not clear cut that getting rid of the second primary has one effect or another. I think that it leads to weakened candidates. I think it is exactly possible to have people win in maybe not in twelve but with twenty-three. It can happen all the time, and there is an alternative to it with this line. So I would urge you not to support the member's bill.

Rep. Ross: Okay. Let's let Representative Miller respond and then we have Representative Starnes and Representative Blust.

Rep. Miller: I would ask that you support Representative Miller's bill. I would say first of all what Representative Luebke is stating is trying to make the rule with the exception. His case is the exception for second primaries not the rule. The rule says that very few people turn out, and the rule says it rarely affects the outcome, and the rule says when it does it tends to be based on non-democratic principles, let's just say. Two to three percent of a turnout is the rule, and so it doesn't really weaken anything. Second thing, in terms of cost the fact is that...well forget about cost. For a second let's talk about what he said in terms of the second of the weakened party. I think that's what he called it. For the weakened party, we need to in fact look at the results are over whatever number of years you want to consider. And that situation he described, again, a theoretical situation that doesn't apply to the rule. The only real difference between his way and my way is that he counts the votes differently in the first primary. I counted by one person, one vote. He counts it by another mechanism. I would suggest that the people would prefer one person, one vote. And that's a new mechanism that's maybe not even implementable.

Rep. Ross: Representative Starnes.

Rep. Starnes: Thank you, madam chair. I will have to disagree with my good friend Representative Miller on this bill. You know we live in a democracy and with that comes the freedoms and with the freedoms also comes responsibilities, and I wish that we lived in a perfect society where everyone did vote. But they don't. But they have the opportunity to vote. It troubles me that we would change the process that we have and in which we would pick our candidates and they're receiving less than forty percent of the vote. Even though in a second primary there may

be a reduced rate of participation, people still have the privilege to come out and express their opinion. Primaries are expensive, but that's just the cost of democracy. I just think that we need to leave this alone unless you want to change the bill so that each political party has the option to choose the second primary or not do it or just have the one primary.

Rep. Ross: Okay. Representative Blust then Representative Michaux.

Rep. Blust: I'm not sure how the chairman would want to proceed on this, but my question is more on.... I've got a question on Representative Luebke's bill, but it could affect this bill. Could I be permitted to ask Representative Luebke a question on his bill?

Rep. Ross: It's fine to ask him a question on his bill, but I don't want to get into a whole big discussion on his bill because he will get a hearing on his bill as soon as we're finished with this bill.

Rep. Blust: My question would be what's the cutoff for going to the instant runoff voting in his bill? Is it still 40 or 50? It just says a substantial plurality.

Rep. Luebke: A substantial plurality, I'm looking to Bill Gilkeson as to what the statute...

Bill Gilkeson: Right. In section 2 of the bill, it describes that it applies to substantial plurality to both instant runoff and second....

Rep. Ross: Do you have a follow-up question?

Rep. Blust: And this will be the last one. If we can do this and it's not costly, why not say you've got to get 50 percent plus in the first round.

Rep. Luebke: Because I think it was right dropping it from 50 to 40 percent because of the particular case that happened personally to Representative Michaux.

Rep. Ross: Okay. Any other member of the committee? Representative Michaux and then Representative Lewis.

Rep. Michaux: You know either we ought to do away with second primaries or go to a convention. First of all, primaries cost the state money. Every time you have elections, it costs the state money. A primary is strictly a party function. It's actually not a state function; it's the state paying for a party function. So why not just do away...my thing is do away with primaries and let the parties make their own decisions in their smoke-

filled back rooms and then put them out there in the general election. You'd be saving the state a whole lot of money.

Rep. Ross: Well, Representative Michaux, that sounds like another bill. Let's just get through these bills today. Representative Lewis and then Representative Blust. And then there a number of people in the audience who are here, and I want to give them an opportunity to comment of this bill. Representative Lewis.

Rep. Lewis: Inquiry to the bill sponsor or the staff: On page 7, lines 6 and 7, could explain _____. (Unintelligible)

Rep. Miller: I'll let staff explain it.

Bill Gilkeson: Page 7?

Rep. Lewis: Page 7, lines 6 and 7.

Bill Gilkeson: This is a municipal election...these municipal parties and elections and this is changing the way...currently now cities that have partisan elections such as Charlotte and Winston-Salem have the first primary held on the sixth Tuesday before the election, the second primary held on the third Tuesday before the election. So this would just have one primary and it would be held on the fourth Tuesday before the election. Again the cities have...and it's a very few cities still.

Rep. Ross: Follow-up.

Rep. Lewis: Does that give the staff enough time usually to prepare for the _____s and what not?

Bill Gilkeson: I would think so, but probably the Board of Elections folks would be better on that than I would.

Rep. Ross: Gary, please identify yourself.

Gary Bartlett: I'm Gary Bartlett, Executive Director, State Board of Elections. It will give enough time unless there is a tremendous turnout, and we have not seen than in municipal elections during my tenure.

Rep. Ross: Representative Blust, did you have another? Representative Starnes, and then I'm going to open it up and see if there's anybody from....

Rep. Starnes: I'm going to ask staff to draft an amendment to say the parties have the option of dropping the second primary.

Rep. Ross: Okay. Is there anybody, any member of the public, who has a comment on House Bill 4 who would like to...? Mr. Meyer, and state your name and then identify who you're with and then we'll go to you afterwards.

Paul Meyer: I'm Paul Meyer representing the County Commissioners Association. I don't want to get in between these two pieces of legislation, but I will say that my clients are on record supporting the abolishment of second primaries. They said to me that they find it unconscionable that we're spending \$15 to \$25 a vote on second primaries. They want to see that end. They've asked us to come and support this piece of legislation. I'd be glad to answer questions about how we got to that....

Rep. Ross: Okay. Representative Luebke and then Representative Holmes.

Rep. Luebke: Are the county commissioners aware of my bill that also puts an end to the second primary because they are actually voting in a second primary the same day?

Paul Meyer: Good question. We actually developed this proposal as part of our legislative goals process whereby we take suggestions from counties from across the state. This was done before any of the bills were filed, so...

Rep. Luebke: The answer's no.

Paul Meyer: The answer's no.

Rep. Ross: Representative Holmes.

Rep. Holmes: Yes. Can I ask the gentleman a question?

Rep. Ross: Yes.

Rep. Holmes: What percentage of your association responds to that?

Paul Meyer: Respond to developing our goals? We have all 100 counties participating through our board of directors and through a big statewide convention where we gather all the counties in one big room and go through various proposals that they submitted to us. So everybody's on record saying that they support the concept in House Bill 4.

Rep. Ross: Follow-up question, Representative Holmes?

Rep. Holmes: Do they just respond as a convention from the floor? Is that how they respond to this?

Paul Meyer: They actually...our process without getting too detailed, they actually submit proposals to our association. They go through a variety of policy committees. They consist of elected folks from all around the state, and ultimately those proposals make their way to the convention floor and they respond to a yea-nay amendment just like you all do when you're making legislation.

Rep. Holmes: My county commission did not contact me about this....

Rep. Ross: Okay. We have a gentleman in the back, then Mr. Murphy, then Mr. Heagarty Please state your name and identify yourself.

Jeff Rau: I'm Jeff Rau with Grassroots with Grassroots North Carolina. opposes this bill. We believe that it reduces the value of the individual votes. As Representative Blust said, especially if you have a lot of candidates, somebody can win the nomination with a very small percentage of votes. And, of course, that wouldn't be very representative of the voting in that district. And I also have to agree with what Representative Starnes mentioned. Voters do have the opportunity to vote in runoffs now, and this takes away the opportunity of that. (Unintelligible) And I really think...it costs money. There's a lot of things in the budget that cost a lot of money and there's things that are important. And the democratic process is important. As for the _____, it might be an exception to the rule to some extent, but there are some other examples like Congressman McHenry who won his runoff by last year by 87 votes, so runoffs are a very important part of the process and we urge you not to vote for it.

Rep. Ross: Thank you. Mr. Murphy.

Warren Murphy: Yes. I'm Warren Murphy, Common Cause of North Carolina. I'm co-chair of the state governing board. I can't say that we've had any actual vote on Mr. Miller's bill. We'd like to see less expensive elections so we will tend to go in favor of getting rid of the second primary but only in terms of the instant runoff voting because we see that as getting rid of the second primary in the best way.

Rep. Ross: Thank you, Mr. Murphy. Mr. Heagarty.

Chris Heagarty: Thank you. Chris Heagarty, North Carolina Center for Voter Education. Better that you all are making this decision than us, I tell ya. We have looked at this issue before, and it's a tough issue because on one side you do have some of these statewide ballot offices that they have the second primary and you get maybe three or four percentage of the vote. It's an incredible expense, there's not a lot of

interest, and you always have a lot of people wondering why are coming to vote for...very few people come out and vote. But you have a side of that...is, I want to take you down a little trip of alternative history. I feel I have to point this out because I want to represent this fairly. There are several cases where the second primary winner is actually the actual winner and did not have the most votes on the first primary ballot, as has been mentioned. We would have had Democratic Congress Walter Jones, Jr. representing the first district in the 1992 election. We would have had GOP representative David Balmer representing the ninth district down in Charlotte in the 1992 election. For Congress Patrick McHenry was mentioned. He would have lost, and you would have had David Huffman in the U.S. Senate and in the U.S. House you would have had from Winston-Salem Vernon Robinson representing the North Carolina fifth district as the GOP congressman in the U.S. Congress. So you see in these statewide races, it really is a problem, and it is tremendously expensive. In the congressional races it really can make a significant difference. As you consider which way you want to go on this bill, you might want to consider the many differences in some of these offices in some of these races. Thank you.

Rep. Ross: Let me let Representative Miller respond, then Representative Starnes, and then we're going to do this amendment and try to wrap up our dealing with this bill so that we can move on to Representative Luebke's bill.

Rep. Miller: Just two comments. As you said, this bill saves money. Doing it a different way will cost money whether it's by instant primary or by keeping a second primary. That will actually cost more money. I'll just share my experience with second primaries. I had experience with a second primary when I was eight years old, believe it or not. I lived in Mississippi. We lived across the street from Charles Evers. Charles Evers was the brother of slain civil rights leader Medgar Evers. My father was his campaign manager when he was running for Congress in 1968. Charles Evers ran and won the first primary. If we had one primary like most other states do in the union, he would have been the first black elected to Congress from Mississippi in 1968 instead of 1990+. And so, there was a second primary.... (Tape ran out here)...and this issue has stayed with me for thirty-some years hence this bill.

The instant primary is just a way to maintain status quo and not really go forward with the rest of the U.S. And so, I would just say for financial reasons for democratic reasons, to support elimination of the second primary.

Rep. Ross: Representative Michaux and then we're going to go to Representative Starnes' amendment.

Rep. Michaux: Actually, sometimes it's better not to have a second primary if all the candidates you might end up _____ (unintelligible.) But, in a couple of races, I think there are four or times that that has happened where the second primary was _____ (unintelligible). I can tell you one of them. The Walter Jones race. Walter Jones-Eva Clayton race. The first time that we had _____ (unintelligible) by district that elected her. That was the result of that. But here again, I still say it's a party function. The state is paying for a party function. And you're right, Deborah, we might be looking at another bill. But if can't decide the first time around who you want, then _____ (Too much background noise).

Rep. Ross: Representative Lewis.

Rep. Lewis: Madam chair, I know you're trying to move this bill and I'm sorry, I'll talk as fast as I can. The language on page 3 where it talks about tie votes. All that _____ out. I know it's very rare that we have a tie, but I'm just curious. What happens then?

Rep. Ross: We actually have a statute that determines how we deal with tie votes. Erika could you let Representative Lewis know what...because we dealt with that statute....

Erika Churchill: There's a separate statute.

Rep. Ross: ...a separate statute for how we deal with tie votes.

Rep. Lewis: Okay, I'll take the word of the chair.

Rep. Ross: Okay, and Erika can look for that. Are we ready for Representative Starnes' amendment? Are you ready for your amendment, Representative Starnes?

Rep. Starnes: Yes, I believe I am.

Rep. Ross: You are recognized to explain your amendment to the committee.

Rep. Starnes: Well, Representative Michaux very ably made the point. I don't know whether he supports the amendment or not, but primaries are a party function. Parties have the obligation and the right to determine who is going to represent them in the general election. Second primaries are expensive, but that's just the cost of democracy. I believe the people ought to have the choice and in the sheet that Representative Miller

passed out, it doesn't affect just the state school superintendent or the state agricultural commission, but there are a lot of legislative races that are involved in that. And there's a lot of local interest in these local races and congressional races, and it is important who we pick. But nonetheless the primary is a party function. My amendment simply gives the party the option to have a second primary or opt out of the second primary.

Rep. Ross: Okay. We'll recognize Bill Gilkeson to actually tell the committee what lines and pages we'll be amending. So Bill, could you read the actual amendment to us?

Bill Gilkeson: The amendment on page 1, line 6 through page 4, line 39, restores all the language that's struck through there so the whole process with the second primary would be in place. Then on page 4, line 40, subsection G becomes the entire rest of that section of the bill so that in that line, line 40, would read "nominations and primary elections where the state party chair opted prior to election year not to conduct a second primary shall be determined as follows:" And then that entire rest of section through page 5, line 15 would be the same, line 16 would be deleted, save the section prevails over any local act. The rest of sections 2 through sections 14 would be deleted because they're clean-up sections. You still would have a second primary. And then the title of the bill would be changed accordingly.

Rep. Ross: Representative Michaux on the amendment then Representative Holmes and Representative Blust.

Rep. Michaux: I've got a couple of questions. Does this affect only second primaries? Is that what the amendment affects? Only second primaries?

Bill Gilkeson: Right. Correct.

Rep. Ross: Second question, Representative Michaux.

Rep. Michaux: Would it be possible to add in there, if in fact the second primary is called by the party, that they bear the expense?

Bill Gilkeson: I guess you could.

Rep. Michaux: Thank you. Call that a perfecting amendment, that's what I'd like done.

Rep. Starnes: How about you just run your own amendment?

Rep. Ross: Representative Holmes. Representative Blust.

Rep. Blust: I reluctantly have a problem with the amendment even that it be clarified that's only the second primary, but I just know if a party chairman said we're going to take this out of the people's hands and we're going to decide and they were to decide that the second place finisher was the one that was going to be the nomination, that you would get killed. If the second place person can't go to the ballot box and become first, it just wouldn't be doable. So I just don't think the amendment is realistic. I think that a party that opted out would be committing political suicide for the year or so. That people would be saying they don't want us to be able to decide.

Rep. Ross: Representative Kiser.

Rep. Kiser: Madam chairman, time has expired for a vote.

Rep. Ross: Well, I was going to ask Representative Starnes, do you want us to just vote on your amendment right now? Because if we carry it over, you realize, there are many, many bills in this committee.

Rep. Starnes: Chairman Ross, let's carry it over to see if we can develop a consensus between now and next week.

Rep. Ross: Any member of this committee who has a bill in the committee who's upset with the bills...your bill not being heard, please speak to these folks about, you know, maybe developing consensus before we come to the committee meeting. Committee meeting's adjourned.

The meeting adjourned at 1:55 p.m.

AGENDA

HOUSE OF REPRESENTATIVES ELECTION LAW AND CAMPAIGN FINANCE REFORM COMMITTEE

**May 4, 2005
Representative Ross, Presiding**

HB 1128, Campaign Finance Amendments	Reps. Moore and Ross
HB 4, Abolish Second Primary	Rep. Miller
HB 1024, Instant Runoff Voting	Rep. Luebke

Nancy Garriss (Rep. Tim Moore)

From: Margie Penven (Rep. Ross)
Sent: Friday, April 29, 2005 11:01 AM
To: Rep. Paul Miller; Rep. Paul Luebke
Subject: Committee Notice for May 4, 2005--Election Law and Campaign Finance Reform

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION**

You are hereby notified that the Committee on Election Law and Campaign Finance Reform will meet as follows:

DAY & DATE: **Wednesday, May 4, 2005**

TIME: **1:00 p.m.**

LOCATION: **1425 LB**

The following bills will be considered (Bill # & Short Title & Bill Sponsor):

HB 1128, Campaign Finance Amendments, Reps. Moore and Ross
HB 4, Abolish Second Primary, Rep. Miller
HB 1024, Instant Runoff Voting, Rep. Luebke

Respectfully,

Representatives Tim Moore and Deborah Ross
Chairs

I hereby certify this notice was filed by the committee assistant at the following offices at 10:55 a.m. on April 29, 2005.

____ Principal Clerk
____ Reading Clerk - House Chamber

Margie Penven (Committee Assistant)

**2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative Moore, Ross (Chairs) for the Committee on ELECTION LAW AND CAMPAIGN FINANCE REFORM.

☐ Committee Substitute for

HB 1128 A BILL TO BE ENTITLED AN ACT TO REQUIRE TRAINING FOR ALL CAMPAIGN TREASURERS; TO REQUIRE AN AUDIT TRAIL FOR ANY CAMPAIGN CONTRIBUTION MADE BY MONEY ORDER; TO ALLOW CAMPAIGN EXPENDITURES TO BE MADE BY ANY VERIFIABLE FORM OF PAYMENT; TO SET A THREE-YEAR TIME LIMIT BEFORE ANY UNPAID DEBT IN A CAMPAIGN IS DEEMED TO BE A CONTRIBUTION; TO INCLUDE VACANCY ELECTIONS AND NONPARTISAN RUNOFFS IN THE DEFINITION OF "ELECTION" FOR PURPOSES OF CONTRIBUTION LIMITS; TO CLARIFY THE MEANING OF "QUALIFIED TO RECEIVE VOTES ON THE BALLOT AS A CANDIDATE FOR THE OFFICE" AS A PRECONDITION FOR CERTIFICATION UNDER THE PUBLIC CAMPAIGN FINANCING FUND; TO CLARIFY WHAT CANDIDATES UNDER THAT FUND MAY RAISE AND SPEND AFTER FILING NOTICE OF INTENT TO PARTICIPATE; TO PROVIDE FOR EARLIER DISTRIBUTION OF THE JUDICIAL VOTER GUIDE; TO LIMIT THE USE OF CREDIT CARDS FOR PAYMENT OF EXPENDITURES IN PUBLICLY FUNDED JUDICIAL CAMPAIGNS; TO APPLY THE SCOPE AND ADVISORY OPINION SECTIONS OF ARTICLE 22A OF CHAPTER 163 OF THE GENERAL STATUTES TO ARTICLES 22B, 22D, 22E, AND 22F AS WELL; AND TO EXPRESSLY REQUIRE THAT ORGANIZATIONS EXPENDING FOR "ELECTIONEERING COMMUNICATIONS" MUST DO SO OUT OF A SEGREGATED ACCOUNT THAT CONTAINS NO MONEY FROM PROHIBITED SOURCES AND TO EXPRESSLY PROVIDE FOR DETAILED REPORTING FROM ANY SUCH ACCOUNT.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House) committee substitute bill/(joint) resolution (No. _____) is placed on the Calendar of _____. (The original bill resolution No. _____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. _____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. _____) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

D

HOUSE BILL 1128

PROPOSED COMMITTEE SUBSTITUTE H1128-PCS80354-RR-17

Short Title: Campaign Finance Amendments.

(Public)

Sponsors:

Referred to:

April 6, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE TRAINING FOR CAMPAIGN TREASURERS; TO REQUIRE AN AUDIT TRAIL FOR ANY CAMPAIGN CONTRIBUTION MADE BY MONEY ORDER; TO ALLOW CAMPAIGN EXPENDITURES TO BE MADE BY ANY VERIFIABLE FORM OF PAYMENT; TO SET A THREE-YEAR TIME LIMIT BEFORE ANY UNPAID DEBT IN A CAMPAIGN IS DEEMED TO BE A CONTRIBUTION; TO INCLUDE VACANCY ELECTIONS AND NONPARTISAN RUNOFFS IN THE DEFINITION OF "ELECTION" FOR PURPOSES OF CONTRIBUTION LIMITS; TO CLARIFY THE MEANING OF "QUALIFIED TO RECEIVE VOTES ON THE BALLOT AS A CANDIDATE FOR THE OFFICE" AS A PRECONDITION FOR CERTIFICATION UNDER THE PUBLIC CAMPAIGN FINANCING FUND; TO CLARIFY WHAT CANDIDATES UNDER THAT FUND MAY RAISE AND SPEND AFTER FILING NOTICE OF INTENT TO PARTICIPATE; TO PROVIDE FOR EARLIER DISTRIBUTION OF THE JUDICIAL VOTER GUIDE; TO LIMIT THE USE OF CREDIT CARDS FOR PAYMENT OF EXPENDITURES IN PUBLICLY FUNDED JUDICIAL CAMPAIGNS; TO APPLY THE SCOPE AND ADVISORY OPINION SECTIONS OF ARTICLE 22A OF CHAPTER 163 OF THE GENERAL STATUTES TO ARTICLES 22B, 22D, 22E, AND 22F AS WELL; AND TO EXPRESSLY REQUIRE THAT ORGANIZATIONS EXPENDING FOR "ELECTIONEERING COMMUNICATIONS" MUST DO SO OUT OF A SEGREGATED ACCOUNT THAT CONTAINS NO MONEY FROM PROHIBITED SOURCES AND TO EXPRESSLY PROVIDE FOR DETAILED REPORTING FROM ANY SUCH ACCOUNT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-278.7(e) reads as rewritten:

1 "(e) Every treasurer of a political committee who has not previously attended a
2 training conducted by the State Board of Elections or referendum committee shall
3 receive, prior to every election in which the political committee or referendum
4 committee is involved, training from the State Board of Elections as to the duties of the
5 office, including the requirements of G.S. 163-278.13(e1), provided that the treasurer
6 may designate an employee or volunteer of the committee to receive the training. This
7 subsection shall not apply to a political committee where the candidate is the treasurer."

8 **SECTION 2.** G.S. 163-278.14(b) reads as rewritten:

9 "(b) No entity shall give, and no candidate, committee or treasurer shall accept,
10 any monetary contribution in excess of one hundred dollars (\$100.00) unless such
11 contribution be in the form of a check, draft, money order, credit card charge, debit, or
12 other noncash method that can be subject to written verification. The State Board of
13 Elections may prescribe guidelines as to the reporting and verification of any method of
14 contribution payment allowed under this Article. For contributions by money order, the
15 State Board shall prescribe methods to ensure an audit trail for every contribution so
16 that the identity of the contributor can be determined. For a contribution made by credit
17 card, the credit card account number of a contributor is not a public record."

18 **SECTION 3.** G.S. 163-278.8(e) reads as rewritten:

19 "(e) All expenditures for media expenses shall be made by ~~check only~~ a verifiable
20 form of payment. The State Board of Elections shall prescribe methods to ensure an
21 audit trail for every expenditure so that the identity of each payee can be determined.
22 All media expenditures in any amount shall be accounted for and reported individually
23 and separately."

24 **SECTION 4.** G.S. 163-278.8(f) reads as rewritten:

25 "(f) All expenditures for nonmedia expenses (except postage) of more than fifty
26 dollars (\$50.00) shall be made by ~~check only~~ a verifiable form of payment. The State
27 Board of Elections shall prescribe methods to ensure an audit trail for every expenditure
28 so that the identity of each payee can be determined. All expenditures for nonmedia
29 expenses of fifty dollars (\$50.00) or less may be made by check or by cash payment. All
30 nonmedia expenditures of more than fifty dollars (\$50.00) shall be accounted for and
31 reported individually and separately, but expenditures of fifty dollars (\$50.00) or less
32 may be accounted for and reported in an aggregated amount, but in that case the
33 treasurer shall account for and report that he made expenditures of fifty dollars (\$50.00)
34 or less each, the amounts, dates, and the purposes for which made. In the case of a
35 nonmedia expenditure required to be accounted for individually and separately by this
36 subsection, if the expenditure was to an individual, the report shall list the name and
37 address of the individual."

38 **SECTION 5.** G.S. 163-278.6(6) reads as rewritten:

39 "(6) The terms "contribute" or "contribution" mean any advance,
40 conveyance, deposit, distribution, transfer of funds, loan, payment,
41 gift, pledge or subscription of money or anything of value whatsoever,
42 to a candidate to support or oppose the nomination or election of one
43 or more clearly identified candidates, to a political committee, to a
44 political party, or to a referendum committee, whether or not made in

1 an election year, and any contract, agreement, promise or other
2 obligation, whether or not legally enforceable, to make a contribution.
3 These terms include, without limitation, such contributions as labor or
4 personal services, postage, publication of campaign literature or
5 materials, in-kind transfers, loans or use of any supplies, office
6 machinery, vehicles, aircraft, office space, or similar or related
7 services, goods, or personal or real property. These terms shall also
8 include a debt, or any portion thereof, to pay an expenditure that has
9 been uncollected beyond the three years set in G.S. 1-52 for its
10 collection, although no civil or criminal liability will attach without
11 evidence that the debtor intended to accept a contribution or the
12 creditor intended to make a contribution, and that the contribution was
13 unlawful. These terms also include, without limitation, the proceeds of
14 sale of services, campaign literature and materials, wearing apparel,
15 tickets or admission prices to campaign events such as rallies or
16 dinners, and the proceeds of sale of any campaign-related services or
17 goods. Notwithstanding the foregoing meanings of "contribution," the
18 word shall not be construed to include services provided without
19 compensation by individuals volunteering a portion or all of their time
20 on behalf of a candidate, political committee, or referendum
21 committee. The term "contribution" does not include an "independent
22 expenditure." If:

- 23 a. Any individual, person, committee, association, or any other
24 organization or group of individuals, including but not limited
25 to, a political organization (as defined in section 527(e)(1) of
26 the Internal Revenue Code of 1986) makes, or contracts to
27 make, any disbursement for any electioneering communication,
28 as defined in G.S. 163-278.80(2) and (3) and
29 G.S. 163-278.90(2) and (3); and
30 b. That disbursement is coordinated with a candidate, an
31 authorized political committee of that candidate, a State or local
32 political party or committee of that party, or an agent or official
33 of any such candidate, party, or committee that disbursement or
34 contracting shall be treated as a contribution to the candidate
35 supported by the electioneering communication or that
36 candidate's party and as an expenditure by that candidate or that
37 candidate's party."

38 **SECTION 6.** G.S. 163-278.13(d) reads as rewritten:

39 "(d) For the purposes of this section, the term "an election" means any primary,
40 runoff, second primary, or general election-general election, or vacancy election in
41 which the candidate or political committee may be involved, without regard to whether
42 the candidate is opposed or unopposed in the election, except that where a candidate is
43 not on the ballot in a runoff or second primary, that runoff or second primary is not "an
44 election" with respect to that candidate."

1 **SECTION 7.** G.S. 163-278.64(c) reads as rewritten:

2 "(c) Certification of Candidates. – Upon receipt of a submittal of the record of
3 demonstrated support by a participating candidate, the Board shall determine whether or
4 not the candidate has complied with all the following requirements, ~~if they apply to that~~
5 ~~candidate requirements:~~

6 (1) Signed and filed a declaration of intent to participate in this Article.

7 (2) Submitted a report itemizing the appropriate number of qualifying
8 contributions received from registered voters, which the Board shall
9 verify through a random sample or other means it adopts. The report
10 shall include the county of residence of each registered voter listed.

11 (3) ~~Qualified to receive votes on the ballot as a candidate for the~~
12 ~~office.~~ Filed a valid notice of candidacy pursuant to Article 25 of this
13 Chapter.

14 (4) Otherwise met the requirements for participation in this Article.

15 The Board shall certify candidates complying with the requirements of this section
16 as soon as possible and no later than five business days after receipt of a satisfactory
17 record of demonstrated support."

18 **SECTION 8.** G.S. 163-278.64(d) reads as rewritten:

19 "(d) Restrictions on Contributions and Expenditures for Participating and Certified
20 Candidates. – The following restrictions shall apply to contributions and expenditures
21 with respect to participating and certified candidates:

22 (1) Beginning January 1 of the year before the election and before the
23 filing of a declaration of intent, a candidate for office may accept in
24 contributions up to ten thousand dollars (\$10,000) from sources and in
25 amounts permitted by Article 22A of this Chapter and may expend up
26 to ten thousand dollars (\$10,000) for any campaign purpose. A
27 candidate who exceeds either of these limits shall be ineligible to file a
28 declaration of intent or receive funds from the Public Campaign
29 Financing Fund.

30 (2) From the filing of a declaration of intent through the end of the
31 qualifying period, a candidate ~~shall~~ may accept only qualifying
32 contributions, contributions under ten dollars (\$10.00) from North
33 Carolina voters, and personal and family contributions permitted under
34 subdivision (4) of this subsection. The total contributions the candidate
35 may accept during this period shall not exceed the maximum
36 qualifying contributions for that candidate. In addition to these
37 contributions, the candidate may only expend during this period no
38 more than an amount equal to the maximum qualifying contributions
39 for that candidate, not including possible rescue funds or the remaining
40 money raised pursuant to subdivision (1) of this subsection. subsection
41 and possible rescue funds received pursuant to G.S. 163-278.67.
42 ~~Contributions a candidate may use to expend to that limit shall be~~
43 ~~limited to qualifying contributions, and personal and family~~
44 ~~contributions permitted by subdivision (4) of this subsection.~~

- 1 (3) After the qualifying period and through the date of the general
2 election, the candidate shall expend only the funds the candidate
3 receives from the Fund pursuant to G.S. 163-278.65(b)(4) plus any
4 funds remaining from the qualifying period and possible rescue funds.
- 5 (4) During the qualifying period, the candidate may contribute up to one
6 thousand dollars (\$1,000) of that candidate's own money to the
7 ~~campaign and campaign~~. Debt incurred by the candidate for a
8 campaign expenditure shall count toward that limit. The candidate may
9 accept in contributions one thousand dollars (\$1,000) from each
10 member of that candidate's family consisting of spouse, parent, child,
11 brother, and sister.
- 12 (5) A candidate and the candidate's committee shall limit the use of all
13 revenues permitted by this subsection to expenditures for
14 campaign-related purposes only. The Board shall publish guidelines
15 outlining permissible campaign-related expenditures. In establishing
16 those guidelines, the Board shall differentiate expenditures that
17 reasonably further a candidate's campaign from expenditures for
18 personal use that would be incurred in the absence of the candidacy. In
19 establishing the guidelines, the Board shall review relevant provisions
20 of G.S. 163-278.42(e), the Federal Election Campaign Act, and rules
21 adopted pursuant to it, and similar provisions in other states.
- 22 (6) Any contribution received by a participating or certified candidate that
23 falls outside that permitted by this subsection shall be returned to the
24 donor as soon as practicable. Contributions intentionally made,
25 solicited, or accepted in violation of this Article are subject to civil
26 penalties as specified in G.S. 163-278.70. The funds involved shall be
27 forfeited to the Civil Penalty and Forfeiture Fund.
- 28 (7) A candidate shall return to the Fund any amount distributed for an
29 election that is unspent and uncommitted at the date of the election, or
30 at the time the individual ceases to be a certified candidate, whichever
31 occurs first. For accounting purposes, all qualifying, personal, and
32 family contributions shall be considered spent before revenue from the
33 Fund is spent or committed."

34 **SECTION 9.** G.S. 163-278.69(a) reads as rewritten:

35 "(a) Judicial Voter Guide. – The Board shall publish a Judicial Voter Guide that
36 explains the functions of the appellate courts and the laws concerning the election of
37 appellate judges, the purpose and function of the Public Campaign ~~Financing~~-Fund, and
38 the laws concerning voter registration. The Board shall distribute the Guide to as many
39 voting-age individuals in the State as practical, through a mailing to all residences or
40 other means it deems effective. The distribution shall occur no more than ~~28~~14 days nor
41 fewer than seven days before the one-stop voting period provided in G.S. 163-227.2 for
42 the primary and no more than 2814 days nor fewer than seven days before the one-stop
43 voting period provided in G.S. 163-227.2 for the general election."

44 **SECTION 10.** G.S. 163-278.6(9) reads as rewritten:

"(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, promise or other obligation, whether or not legally enforceable, to make an expenditure or to incur an obligation to pay an expenditure, to support or oppose the nomination, election, or passage of one or more clearly identified candidates, or ballot measure. 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. The special definition of "expenditure" in G.S. 163-278.12A applies only in that section."

SECTION 11. G.S. 163-278.5 reads as rewritten:

"§ 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, and 22F of the General Statutes to the same extent that it applies to this Article."

SECTION 12. G.S. 163-278.23 reads as rewritten:

"§ 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, and 22F of the General Statutes to the same extent that it applies to this Article."

SECTION 13.(a) G.S. 163-278.81 reads as rewritten:

"§ 163-278.81. Disclosure of Electioneering Communications.

(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) ~~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~~ 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) ~~If the disbursements were paid out of funds not described in subdivision (5) of this subsection, the names and addresses of all contributors who contributed an aggregate amount of more than one thousand dollars (\$1,000) to the entity making the disbursement during the period beginning on the first day of the preceding calendar year and ending on the disclosure date."~~

SECTION 13.(b) G.S. 163-278.82 reads as rewritten:

"§ 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 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 individuals ~~entities~~ other than prohibited sources directly to that account.

(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."

SECTION 13.(c) G.S. 163-278.91 reads as rewritten:

"§ 163-278.91. Disclosure of Electioneering Communications.

(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

1 excess of ten thousand dollars (\$10,000) during any calendar year shall, within 24 hours
2 of each disclosure date, file with the Board a statement containing the information
3 described in subsection (b) of this section.

4 (b) Contents of Statement. – Each statement required to be filed by this section
5 shall be made under the penalty of perjury in G.S. 14-209 and shall contain the
6 following information:

- 7 (1) The identification of the entity making the disbursement, of any entity
8 sharing or exercising direction or control over the activities of that
9 entity, and of the custodian of the books and accounts of the entity
10 making the disbursement.
- 11 (2) The principal place of business of the entity making the disbursement
12 if the entity is not an individual.
- 13 (3) The amount of each disbursement of more than one thousand dollars
14 (\$1,000) during the period covered by the statement and the
15 identification of the entity to whom the disbursement was made.
- 16 (4) The elections to which the electioneering communications pertain and
17 the names, if known, of the candidates identified or to be identified.
- 18 (5) ~~If the disbursements were paid out of a segregated bank account that~~
19 ~~consists of funds contributed solely by individuals directly to that~~
20 ~~account for electioneering communications, the~~ The names and
21 addresses of all contributors who contributed an aggregate amount of
22 more than one thousand dollars (\$1,000) during the period beginning
23 on the first day of the preceding calendar year and ending on the
24 disclosure date to a segregated bank account that consists of funds
25 contributed solely by entities other than prohibited sources. Nothing in
26 this subdivision is to be construed as a prohibition on the use of funds
27 in such a segregated account for a purpose other than electioneering
28 communications.
- 29 (6) ~~If the disbursements were paid out of funds not described in~~
30 ~~subdivision (5) of this subsection, the names and addresses of all~~
31 ~~contributors who contributed an aggregate amount of more than one~~
32 ~~thousand dollars (\$1,000) to the entity making the disbursement during~~
33 ~~the period beginning on the first day of the preceding calendar year~~
34 ~~and ending on the disclosure date."~~

35 **SECTION 13.(d)** G.S. 163-278.92 reads as rewritten:

36 **"§ 163-278.92. Prohibition of corporate and labor disbursements for electioneering**
37 **communications.**

38 (a) Prohibition. – No prohibited source may make any disbursement for the costs
39 of producing or airing any electioneering communication. No individual, committee,
40 association, or any other organization or group of individuals, including but not limited
41 to, a political organization (as defined in section 527(e)(1) of the Internal Revenue Code
42 of 1986), which has received any payment from a prohibited source may make any
43 disbursement for the costs of producing and airing any electioneering communication.
44 For the purpose of this section, the term "electioneering communication" does not

1 include a communication by a section 501(c)(4) organization or a political organization
2 (as defined in section 527(e)(1) of the Internal Revenue Code of 1986) if the
3 communication is paid for exclusively by funds provided by individuals and the
4 disbursements for costs of producing and airing the communication are paid out of a
5 segregated bank account that consists of funds contributed solely by ~~individuals~~ entities
6 other than prohibited sources directly to that account.

7 (b) Direct or Indirect Disbursement. – An electioneering communication shall be
8 treated as made by a prohibited source if the prohibited source directly or indirectly
9 disburses any amount for any of the costs of the communication.

10 (c) Segregated Fund. – Any disbursement for an electioneering communication
11 made from an account must be made from a segregated account into which no funds
12 from a prohibited source have been directly or indirectly introduced."

13 **SECTION 14.** This act becomes effective July 1, 2005, and applies to all
14 contributions and expenditures made or accepted on or after that date.



BILL ANALYSIS

HOUSE BILL 1128: Campaign Finance Amendments.

Committee: House Election Law and
Campaign Finance Reform

Date: April 12, 2005

Version: H1128-CSRR-17 [v.2]

Introduced by: Reps. Moore and Ross

Summary by: William R. Gilkeson
Committee Co-Counsel

SUMMARY: *This Proposed Committee Substitute for House Bill 1128 would make several changes to the campaign finance laws. The changes are based on proposals made by the staff of the State Board of Elections.*

Section 1. Training for All Treasurers. Current law requires that all treasurers of referendum committees must be receive training from the State Board of Elections. The law specifically says the training must include instruction that referendum committees that have received corporate or union contributions may not in turn contribute to political committees or candidates. The State Board staff would like to train treasurers of political committees as well, feeling that training would prevent many of the most common mistakes treasurers make. The PCS provides that all treasurers must receive State Board training.

Section 2. Audit Trail for Contribution by Money Order. Current law allows contributions to be made 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 staff of the State Board reports that money orders are the form of contribution they find most often associated with questionable practices. The problem, they say, is the difficulty of tracing the original source of the money. The PCS directs the State Board to prescribe methods to ensure an audit trail for contributions by money order so that the identity of the contributor can be determined.

Sections 3 and 4. Payment of Expenses by "Any Verifiable Form." Current law says a campaign must pay all media expenses and all other expenses over \$50 by check only. The State Board staff says the law should recognize other forms of payment. The PCS says the expenses now payable only by check may be paid by "a verifiable form of payment." Mirroring the language about money orders, this section directs the State Board to prescribe methods to ensure an audit trail for every expenditure so that the identity of each payee can be determined.

Section 5. Uncollected Debt Deemed Contribution. Current law defines a "contribution" to include many forms of gift, including a loan and the in-kind provision of goods or services for free. Campaigns will purchase goods or services and won't always have the money to pay up front. The State Board staff says it has found that some expenditures go unpaid for such a long time that they begin to look very much like an in-kind contribution of the good or service from the vendor to the campaign. This section of the PCS amends the definition of "contribution" to include a debt to pay an expenditure that has been uncollected beyond the 3-year statute of limitations on a lawsuit to collect the debt.

Section 6. Runoff and Vacancy Election as "an election" for the \$4,000 Limit. Current law sets the limit on contributions at \$4,000 per donor per donee per an election. For purposes of that limit, "an election" is defined as a primary, a second primary, or a general election in which the candidate or political committee is involved. So, a candidate may receive from the same donor \$4,000 for the primary, another \$4,000 for the second primary (but only if the candidate is on the ballot), and another \$4,000 for the general election. The State Board staff says there are two other kinds of election involving candidates that aren't mentioned: nonpartisan runoffs (used in some municipal elections) and elections to fill vacancies. This section of the PCS adds runoff and vacancy election those to the definition of "an election," thereby allowing a contributor to give a candidate \$4,000 for each.

Sections 7 through 10. Debugging the Judicial Campaign Act. In 2002 the General Assembly established the Public Campaign Financing Fund to support campaigns of candidates for Supreme Court and Court of Appeals who agree to certain limitation on contributions and expenditures. The new system was first implemented in the 2004 election. These sections are the result of bugs the State Board, and judicial candidates, found in that initial implementation.

HOUSE BILL 1128

Page 2

Section 7. Eligibility for Certification to Receive Funds. Current law says that to certify a candidate to receive funds, the State Board must determine whether a candidate meets certain criteria including whether the candidate is "qualified to receive votes on the ballot as a candidate for the office." The State Board, and judicial candidates, were uncertain what that language meant: Did it mean simply the candidate met the constitutional qualifications for the office, being 21, a NC citizen, and an attorney? Or did it mean the person had to have filed a notice of candidacy? This section specifies that it means the person must have filed a notice of candidacy. (The section also cleans up some language left over from an early draft of the act.)

Section 8. What a Candidate May Raise and Spend During Qualifying Period. After a candidate is certified and the date of the nonpartisan primary (which marks the end of the qualifying period), it is clear that a candidate may spend only money received from the public Fund plus any money leftover from the qualifying period. But the State Board, and some judicial candidates, found the law unclear as to what could be raised and spent during the period that begins when the candidate files a declaration of intent to participate in the program and ends on primary day, when the qualifying period ends. Particularly uncertain were whether candidates could spend leftover money they raised before they filed their intent and whether they could raise or spend amounts under \$10. (Qualifying contributions must come in amounts from \$10 to \$500. This section rewrites the law to make clear that from the declaration of intent to the primary day, a candidate may accept in contributions only:

- Qualifying contributions.
- Contributions under \$10 from NC voters.
- Personal and family contributions of \$1,000 per person.

Those contributions may not exceed the maximum amount a candidate may receive in qualifying contributions. In addition to those contributions, during this period a candidate may spend only:

- Leftover money of that raised from September 1 before the election year through the filing of intent. During that time a candidate may raise up to \$10,000 from any otherwise legal source without foreclosing the chance to be certified under the Fund.
- Any rescue funds triggered by spending by opponents.

Section 8 also provides, reflecting Section 5 of the PCS, that debt by a candidate for a campaign expenditure counts toward the candidate's \$1,000 limit over contributing to his or her own campaign. (See also Section 10, concerning a candidate's use of a credit card.)

Section 9. Timing of Voter Guide Distribution. Current law calls for the State Board to distribute to as many voters as possible a Voter Guide telling about the nonpartisan candidates for Supreme Court and Court of Appeals. It says this must be done no more than 28 days and no fewer than 7 days before the election. In 2004, many people received the guides after they had already voted during the one-stop (early voting) period, which begins 20 days before the election. This section would change the distribution dates to no more than 14 days and no fewer than 7 days before the beginning of the early voting period.

Section 10. Use of Credit Card by Candidate. Current law limits the candidate to a \$1,000 contribution to his or her own campaign. The State Board found that some candidates were using their credit cards to pay bills after they had already maxed out on the \$1,000. This section amends the definition of "expenditure" to add "incur an obligation to pay an expenditure," making clear that paying a campaign bill with a credit card comes under the definition of "expenditure" and the \$1,000 limit on candidates making such in-kind contributions to their own campaigns. (Although this section amends the definition of "expenditure" that applies to all campaigns, appellate judicial campaigns are the only ones that have any dollar limit on candidates contributing to their own campaigns.)

Sections 11 and 12. Applying Scope and Opinion Provisions to All Campaign Finance Articles. Current law has provisions that limit the scope of Article 22A, the main campaign finance act, to elections to State and local offices in North Carolina and that give the Executive Director of the State Board the duty to provide written opinions about whether an inquired-about practice complies with Article 22A. If a person receives such an opinion and complies with it, that person cannot be prosecuted for an Article 22A violation. In addition to Article 22A, four other Articles in Chapter 163 regulate campaign finance:

- 22B The Political Parties Financing Fund.

HOUSE BILL 1128

Page 3

- 22D The Public Campaign Financing Act (for Supreme Court and Court of Appeals).
- 22E Electioneering Communications on television and radio.
- 22F Electioneering Communications through mass mailings and phone banks.

The State Board staff requested that the scope and written opinion statutes be applied to the other four Articles as well as to 22A. These sections do that.

Section 13. Reporting Contributions for Electioneering Communications. In 2004 the General Assembly prohibited the use of corporate or union money for an "electioneering communication," a message sent 30 days before a primary or 60 days before a general election where the message targets the relevant electorate through radio, television, mass mailing, or phone bank and where the message refers to a candidate for statewide office or General Assembly. That act, patterned after the federal McCain-Feingold Act, also requires an organization doing electioneering communications to report contributions and expenditures for them. During its initial implementation of the act in 2004, the State Board staff found that one national organization used the wording of the act to argue that it was not required to report contributions to a separate segregated fund. Instead the organization insisted it was only required to make a large, unrevealing report of contributions from all over the nation. This section clarifies that if an organization makes electioneering communications, it must pay for them out of a separate segregated account into which goes only money from legally acceptable sources, and it must report contributions to and spending from that fund.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1128DATE 5-4-05

S. B. No. _____

Amendment No. 2(to be filled in by
Principal Clerk)COMMITTEE SUBSTITUTE ✓

Rep.)

Sen.)

Lewis1 moves to amend the bill on page 2, line 1

2 () WHICH CHANGES THE TITLE

3 by inserting between the phrase "Committee" and the
4 phrase "or" the following:

5 _____

6 "who has not previously attended a ~~training~~ training
conducted by the State Board of Elections"

8 _____

9 _____

10 _____

11 _____

12 _____

13 _____

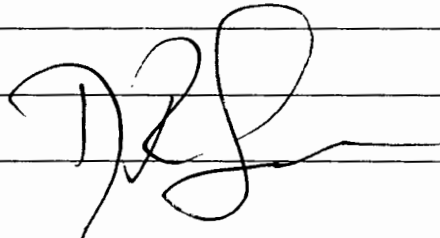
14 _____

15 _____

16 _____

17 _____

18 _____

SIGNED 

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1128

DATE _____

S. B. No. _____

Amendment No. _____

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Michaux
Sen.)

1 moves to amend the bill on page 1, line 2

2 () WHICH CHANGES THE TITLE

3 by deleting the word "ALL";

4 _____

5 and on page 2, line 5 by inserting at the

6 end of that line:

7 _____

8 "This subsection shall not apply to a political
9 committee where the candidate is the treasurer."

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

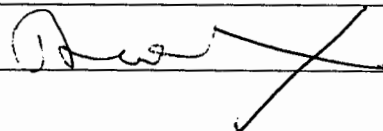
16 _____

17 _____

18 _____

19 _____

SIGNED



ADOPTED _____ FAILED _____ TABLED _____



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1128

H1128-ARR-48 [v.2]

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

Page 1 of 1

Date _____, 2005

Comm. Sub. [YES]
Amends Title [NO]
First Edition

Representative Michaux

- 1 moves to amend the bill on page 3, line 6,
2 by deleting the term "without limitation," and
3
4 on page 3, line 8,
5 by inserting between the term "collection" and the period the following: "although no
6 civil or criminal liability will attach without evidence that the debtor intended to accept
7 a contribution or the creditor intended to make a contribution, and that the contribution
8 was unlawful".
9

SIGNED [Signature]
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

1

HOUSE BILL 4

Short Title: Abolish Second Primary.

(Public)

Sponsors: Representative Miller.

Referred to: Election Law and Campaign Finance Reform.

January 27, 2005

A BILL TO BE ENTITLED
AN ACT TO ABOLISH THE SECOND PRIMARY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-111 reads as rewritten:

"§ 163-111. Determination of primary results; second primaries results.

(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

1 ~~written notice of withdrawal with the State Board of Elections within~~
2 ~~three days after the result of the first primary has been officially~~
3 ~~declared and published. Should that be done, the remaining aspirant~~
4 ~~shall be declared the nominee. In the event of a tie for the highest~~
5 ~~number of votes in a first primary among more than two candidates for~~
6 ~~party nomination for one of the offices mentioned in this subdivision,~~
7 ~~no recount shall be held, but all of the tied candidates shall be entered~~
8 ~~in a second primary.~~

9 (3) ~~In the event one candidate receives the highest number of votes cast in~~
10 ~~a first primary, but short of a substantial plurality, and two or more of~~
11 ~~the other candidates receive the second highest number of votes cast in~~
12 ~~an equal number, the proper board of elections shall declare the~~
13 ~~candidate having the highest vote to be the party nominee, unless all~~
14 ~~but one of the tied candidates give written notice of withdrawal to the~~
15 ~~proper board of elections within three days after the result of the first~~
16 ~~primary has been officially declared. If all but one of the tied~~
17 ~~candidates withdraw within the prescribed three day period, and the~~
18 ~~remaining candidate demands a second primary in accordance with the~~
19 ~~provisions of subsection (c) of this section, a second primary shall be~~
20 ~~held between the candidate who received the highest vote and the~~
21 ~~remaining candidate who received the second highest vote.~~

22 (e) ~~Date of Second Primary; Procedures. If a second primary is required under~~
23 ~~the provisions of this section, the appropriate board of elections, State or county, shall~~
24 ~~order that it be held four weeks after the first primary.~~

25 ~~There shall be no registration of voters between the dates of the first and second~~
26 ~~primaries. Persons whose qualifications to register and vote mature after the day of the~~
27 ~~first primary and before the day of the second primary may register on the day of the~~
28 ~~second primary and, when thus registered, shall be entitled to vote in the second~~
29 ~~primary. The second primary is a continuation of the first primary and any voter who~~
30 ~~files a proper and timely affidavit of transfer of precinct, under the provisions of~~
31 ~~G.S. 163-82.15, before the first primary may vote in the second primary without having~~
32 ~~to refile the affidavit of transfer if he is otherwise qualified to vote in the second~~
33 ~~primary. Subject to this provision for registration, the second primary shall be held~~
34 ~~under the laws, rules, and regulations provided for the first primary.~~

35 (f) ~~No Third Primary Permitted. In no case shall there be a third primary. The~~
36 ~~candidates receiving the highest number of votes in the second primary shall be~~
37 ~~nominated. If in a second primary there is a tie for the highest number of votes between~~
38 ~~two candidates, the proper party executive committee shall select the party nominee for~~
39 ~~the office in accordance with the provisions of G.S. 163-114.~~

40 (g) Nominations in primary elections shall be determined as follows:

41 (1) When more than one person is seeking election to a single office, the
42 candidate who receives the highest number of votes shall be declared
43 the nominee.

(2) When more persons are seeking nomination to two or more offices (constituting a group) than there are offices to be filled, those candidates receiving the highest numbers of votes, equal in number to the number of offices to be filled, shall be declared the nominees.

(h) When more than one person is seeking election to a single office, and two or more candidates receiving the highest numbers of votes each receive the same number of votes, the proper party executive committee shall, from among those candidates receiving the same numbers of votes, select the party nominee in accordance with G.S. 163-114.

(i) When more persons are seeking nomination to two or more offices (constituting a group) than there are offices to be filled, and two or more candidates receiving the lowest numbers of votes necessary for nomination each receive the same number of votes, the proper party executive committee shall, from among those candidates receiving the same numbers of votes, select the party nominee in accordance with G.S. 163-114.

(j) This section prevails over any local act."

SECTION 2. G.S. 163-82.6(d) reads as rewritten:

"(d) **Instances When Person May Register and Vote on Election Day.** – If a person has become qualified to register and vote between the twenty-fifth day before an election and election day, then that person may apply to register on 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 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 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."~~

SECTION 3. G.S. 163-82.17(a) reads as rewritten:

"(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

1 election, indicate the change on an application form as described in G.S. 163-82.3 or on
2 a voter registration card described in G.S. 163-82.8. No registrant shall be permitted to
3 change party affiliation or unaffiliated status for a ~~primary, second primary,~~ primary or
4 special or general election after the deadline for registration applications for that
5 election as set out in G.S. 163-82.6."

6 **SECTION 4.** G.S. 163-226(c) reads as rewritten:

7 "(c) The Term "Election". – As used in this Subchapter, unless the context clearly
8 requires otherwise, the term "election" includes a general, primary, ~~second primary,~~
9 runoff election, bond election, referendum, or special election."

10 **SECTION 5.** G.S. 163-227.1 is repealed.

11 **SECTION 6.** G.S. 163-255 reads as rewritten:

12 **"§ 163-255. Absentee voting at office of board of elections.**

13 Notwithstanding any other provisions of Chapter 163 of the General Statutes, any
14 person eligible to vote an absentee ballot pursuant to G.S. 163-245 shall be permitted to
15 vote an absentee ballot pursuant to G.S. 163-227.2 if the person has not already voted an
16 absentee ballot which has been returned to the board of elections, and if he will not be in
17 the county on the day of the primary or election.

18 In the event an absentee application or ballot has already been mailed to such person
19 applying to vote pursuant to G.S. 163-227.2, the board of elections shall void the
20 application and ballot unless the voted absentee ballot has been received by the board of
21 elections. Such person shall be eligible to vote pursuant to G.S. 163-227.2 no later than
22 5:00 P.M. on the day next preceding the ~~primary, second primary~~ primary or election."

23 **SECTION 7.** G.S. 163-227.3(b) is repealed.

24 **SECTION 8.** G.S. 163-278.6(8) reads as rewritten:

25 "(8) The term 'election' means any general or special election, a ~~first or~~
26 ~~second~~ primary, a run-off election, or an election to fill a vacancy.
27 The term 'election' shall not include any local or statewide
28 referendum."

29 **SECTION 9.** G.S. 163-278.13(d) reads as rewritten:

30 "(d) For the purposes of this section, the term 'an election' means any ~~primary,~~
31 ~~second primary,~~ primary or general election in which the candidate or political
32 committee may be involved, without regard to whether the candidate is opposed or
33 unopposed in the election, ~~except that where a candidate is not on the ballot in a second~~
34 ~~primary, that second primary is not 'an election' with respect to that candidate.~~ election."

35 **SECTION 10.** G.S. 163-278.13B(d) is repealed.

36 **SECTION 11.** G.S. 163-278.40B(2) reads as rewritten:

37 "(2) Pre-election Report. – The treasurer shall file a report 10 days prior to
38 the election, ~~unless a second primary is held and the candidate~~
39 ~~appeared on the ballot in the second primary, in which case the report~~
40 ~~shall be filed 10 days before the second primary election.~~

41 **SECTION 12.** G.S. 163-279(a)(2) reads as rewritten:

42 "(a) Primaries and elections for offices filled by election of the people in cities,
43 towns, incorporated villages, and special districts shall be held in ~~1973-2005~~ and every
44 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 sixth Tuesday before the election, and the second primary, if required, shall be held on the third Tuesday before the election and the primary 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."

SECTION 13. G.S. 163-291 reads as rewritten:

"§ 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 his 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 first Friday in August preceding the election, except:
 - a. In 2001 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 2002 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

1 candidacy for one office with the county board of elections under this
2 section, then a notice of candidacy may not later be filed for any other
3 municipal office for that election unless the notice of candidacy for the
4 first office is withdrawn first.

5 (3) The filing fee for municipal and district primaries shall be fixed by the
6 governing board not later than the day before candidates are permitted
7 to begin filing notices of candidacy. There shall be a minimum filing
8 fee of five dollars (\$5.00). The governing board shall have the
9 authority to set the filing fee at not less than five dollars (\$5.00) nor
10 more than one percent (1%) of the annual salary of the office sought
11 unless one percent (1%) of the annual salary of the office sought is less
12 than five dollars (\$5.00), in which case the minimum filing fee of five
13 dollars (\$5.00) will be charged. The fee shall be paid to the board of
14 elections at the time notice of candidacy is filed.

15 (4) The municipal ballot may not be combined with any other ballot.

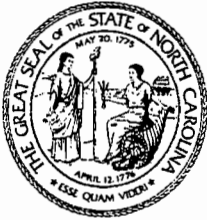
16 (5) The canvass of the primary ~~and second primary~~ shall be held on the
17 seventh day following the ~~primary or second primary~~ primary. In
18 accepting the filing of complaints concerning the conduct of an
19 election, a board of elections shall be subject to the rules concerning
20 Sundays and holidays set forth in G.S. 103-5.

21 (6) ~~Candidates having the right to demand a second primary shall do so~~
22 ~~not later than 12:00 noon on the Thursday following the canvass of the~~
23 ~~first primary."~~

24 SECTION 14. G.S. 115C-37 is amended by adding a new subsection to
25 read:

26 "(j) The election of any county board of education held at the time of the primary,
27 whether under this section, a local act, or any merger plan adopted under Article 7 of
28 this Chapter, shall be determined by a plurality under G.S. 163-292. No runoff election
29 shall be held."

30 SECTION 15. This act is effective when it becomes law and applies to all
31 elections held on or after that date.



HOUSE BILL 4: Abolish Second Primary

BILL ANALYSIS

Committee:	House Election Law and Campaign Finance Reform	Date:	April 27, 2005
Introduced by:	Rep. Miller	Summary by:	William R. Gilkeson
Version:	First Edition		Committee Co-Counsel

SUMMARY: *The First Edition of House Bill 4 would abolish the second primary for partisan offices. Instead of the current 40% threshold for winning in a primary without the possibility of the runner-up calling for a second primary, the candidate with the most votes, regardless of the percentage, would win the primary outright.*

CURRENT LAW: Currently, the law for partisan primaries in NC is that if the leading candidate in a single-seat race receives more than 40% of the vote in the first primary held, that candidate wins the nomination. If the candidate wins 40% or less, the runner up has the right to demand a second primary.

In a multi-seat race, the formula is slightly more complicated. The threshold is arrived at by dividing the total vote cast by the number of candidates, and multiplying the resulting number by 0.4. In a race for two seats, if the two top candidates receive more votes than the number that results from that formula, they win the nomination outright. If one of the two top candidates falls short of that number, then the candidate one below has the right to call for a second primary. If both of the two top candidates fall short of the threshold number, then two candidates down the line have the right to call for a second primary.

A candidate who has the right to call for a second primary must do so by the ninth day after the primary. The second primary is held four weeks after the first.

BILL ANALYSIS: Section 1 of the bill would set these rules for deciding primaries:

- In a single-seat race, the candidate with the most votes wins.
- In a multi-seat race, say, for two seats, the two candidates with the most votes win.
- In a single-seat race, if the top two candidates tie, the proper party executive committee chooses the nominee from between those two candidates.
- In a multi-seat race, say, for two seats, if one candidate receives the most votes and two candidates tie for the second most votes, the top candidate wins proper party executive committee chooses between the other two.

Sections 2 through 13 of the bill are conforming changes.

Section 14 of the bill deals with county boards of education that are elected on a nonpartisan election and runoff system, with the election set on the day of the partisan first primary and the runoff set on the day of the partisan second primary. The bill simply changes those to nonpartisan plurality elections held on the day of the partisan primary.

EFFECTIVE DATE: The bill would be effective when it becomes law and apply to all primaries held on or after that date. This means that, if it is enacted and receives Voting Rights Act preclearance in time, it would first apply to municipal elections this year.

H0004e1-SMRR

SECOND PRIMARIES IN NORTH CAROLINA 1990-2004

Statewide Races, U.S. House Races, General Assembly Races, Judicial Races.

November 9, 2000 – Updated May 3, 2005

Year	Office	Total # of votes in first primary	Front-runner and second candidate in first primary (by party) BFD = black female Democrat, etc.	Votes for front-runner in first primary	Votes for second candidate in first primary	Total # of votes in second primary	Second primary winner	% drop-off in voting between first and second primary
1990	U.S. Senate	693,496	1. Gantt (BMD) 2. Easley (WMD)	260,179 37.52%	206,934 30.27%	480,850	Gantt (BMD) 273,567	30.66%
1992	Superintendent of Public Instruction	214,409	1. Little (WFR) 2. Robinson (BMR)	75,519 35.22%	69,842 32.57%	45,556	Little (WFR) 23,887	78.75%
	U.S. House – 1 st District	88,199	1. Jones (WMD) 2. Clayton (BFD)	33,634 38.13%	27,477 31.15%	78,939	Clayton * (BFD) 43,210	10.50%
	U.S. House – 2 nd District	19,836	1. Davis (WMR) 2. Israel (WMR)	4,848 24.44%	4,845 24.32%	7,316	Davis (WMR) 5,005	63.12%
	U.S. House – 12 th District	8,687	1. Washington (BFR) 2. Jones (BMR)	2,938 33.82%	1,917 22.07%	1,932	Washington (BFR) 1,071	77.76%
	N.C. House – District 46 ¹	17,807	1. Buchanan (WMR) 2. Thompson (WMR)	3,511 39.43%	3,486 39.15%	5,352	Thompson* (WMR) 3,587	69.94%
	N.C. House – District 77	6,965	1. Moore (WFD) 2. Stewart (WMD)	2,729 39.18%	2,449 35.16%	5,841	Moore (WFD) 3,164	16.14%
	District judge ² - 2 nd district	15,573	1. McLendon (WMD) 2. Paul (WMD)	5,258 33.76%	5,158 33.12%	12,785	Paul * (WMD) 6,567	17.90%
	District judge - 11 th district	23,163	1. Stubbs (WMD) 2. Lanier (WMD)	8,580 37.04%	7,476 32.28%	8,959	Lanier * (WMD) 4,838	61.32%

¹ House District 46 was a two-member district. In the Republican first primary, David T. Flaherty Jr. received more than 40% of half the total votes cast in the race and therefore was declared nominated without a second primary. Rep. Charles Buchanan and Greg Thompson were in a second primary for the other seat.

² Beginning in 2002, District Court judgeships were elected on a nonpartisan ballot. Therefore, they were no longer subject to the second primary statutes.

William R. Gilkeson, Legislative Services Office, N.C. General Assembly.

Much of the research was compiled by Sarah Kamprath and Dee Atkinson, Legislative Services Office.

Boldfaced italics indicates an incumbent.

An asterisk (*) indicates the candidate won in the general election.

Year	Office	Total # of votes in first primary	Front-runner and second candidate in first primary (by party)	Votes for front-runner in first primary	Votes for second candidate in first primary	Total # of votes in second primary	Second primary winner	% drop-off in voting between first and second primary
1994	N.C. Court of Appeals	479,159	1. Tyson (WMD) 2. McCrodden (WFD)	186,085 38.77%	166,711 34.73%	171,072	McCrodden (WFD) 101,377	64.36%
	U.S. House – 9 th District	35,313	1. Myrick (WFR) 2. Balmer (WMR)	12,173 34.47%	9,894 28.02%	25,991	Myrick * (WFR) 17,713	26.40%
	N.C. House – District 28	3,216	1. Burton (BMD) 2. Boyd-McIntyre (BFD)	1,187 36.91%	1,119 34.79%	1,200	Boyd-McIntyre * (BFD) 538	62.69%
	N.C. House – District 69	3,801	1. Lemmond (WMR) 2. Daly (WMR)	1,441 37.91%	1,198 31.52%	3,946	Lemmond* (WMR) 1,976	-3.81%
	District judge - 14 th district	61,225	1. O'Neal-Lee (BFD) 2. Hill (WMD)	8,017 13.09%	5,973 9.76%	8,591	O'Neal-Lee* (BFD) 4,850	85.97%
	District judge - 18 th district	24,901	1. Bray (WFD) 2. Priest (WFD)	7,388 29.67%	5,640 22.65%	5,180	Priest 3,282	79.20%
	District judge - 23 rd district	15,226	1. Reavis (WFR) 2. Byrd (WMR)	6,064 39.83%	5,581 36.65%	9,034	Byrd * (WMR) 4,686	40.67%
	District judge - 26 th district	18,083	1. Heasley (WMD) 2. Williamson (WFD)	6,691 37%	5,574 30.82%	17,968	Heasley * (WMD) 9,606	0.64%
1996	Secretary of State	481,159	1. Marshall (WFD) 2. Lee (BFD)	130,520 27.13%	98,581 20.49%	116,202	Marshall * (WFD) 70,279	75.85%
	Commissioner of Agriculture	199,455	1. Davidson (WMR) 2. Gray (WMR)	66,046 33.11%	54,701 27.43%	40,058	Davidson (WMR) 22,212	79.92%
	U.S. House – 7 th District	52,684	1. Lowry-Townsend (IFD) 2. McIntyre (WMD)	15,925 30.23%	12,327 23.40%	31,153	McIntyre * (WMD) 16,285	40.87%
	U.S. House – 7 th District	19,198	1. Anderson (WMR) 2. Caster (WMR)	7,176 37.38%	6,201 32.30%	9,982	Caster (WMR) 5,355	48.01%
	U.S. House – 8 th District	22,797	1. Morgan (WMR) 2. Blackwood (WMR)	8,053 35.32%	6,583 28.88%	5,321	Blackwood (WMR) 3,398	76.66%

Year	Office	Total # of votes in first primary	Front-runner and second candidate in first primary (by party)	% of votes for front-runner in first primary	% of votes for second candidate in first primary	Total # of votes in second primary	Second primary winner	% drop-off in voting between first and second primary
1998	No second primaries were held in these offices in 1998. ³							
2000	Commissioner of Agriculture	242,084	1. Troxler (WMR) 2. Davidson (WMR)	66,257 27.37%	58,189 24.04%	50,775	Troxler (WMR) 30,666	79.03%
	Commissioner of Labor	241,425	1. Berry (WFR) 2. Miller (WMR)	92,695 38.39%	74,127 30.70%	49,629	Berry (?) (WFR) 28,203	79.44%
	N.C. Senate – District 38	10,560	1. Potts (WMR) 2. Bingham (WMR)	2,796 26.48%	2,738 25.93%	4,724	Bingham* (WMR) 3,096	55.27%
	N.C. House – District 49	4,111	1. Bryant (WFD) 2. Huskins (WMD)	1,464 35.61%	1,388 33.76%	2,421	Huskins (WMD) 1,307	41.11%
	District Judge – District 10.	34,142	1. Bryant (WMD) 2. Suhr (Asian MD)	10,988 32.18%	6,462 18.93%	6,104	Bryant (WMD) 3,858	82.12%
2002	Because of delays caused by redistricting litigation, no second primaries were held in 2002.							
2004	Supt. of Public Instruction	384,663	1. Stewart (WMD) 2. Atkinson (WFD)	135,348 35.19%	132,041 34.33%	80,068	Atkinson ⁴ (WFD) 44,175	79.18%
	U.S. House – District 5	58,627	1. Robinson (BMR) 2. Foxx (WFR)	13,824 23.58%	13,119 22.38%	42,293	Foxx* (WFR) 23,092	27.86%
	U.S. House – District 10	40,852	1. Huffman (WMR) 2. McHenry (WMR)	14,280 34.96%	10,760 26.34%	29,945	McHenry* (WMR) 15,015	26.70%
	N.C. Senate – District 3	15,223	1. Jenkins (WMD) 2. Willingham (BMD)	5,044 33.13%	4,991 32.79%	11,144	Jenkins* (WMD) 6,070	26.79%
	N.C. Senate – District 7	17,333	1. Berger (WMD) 2. Moss (BMD)	6,360 36.69%	3,412 19.68%	8,619	Berger* (WMD) 4,409	50.27%
	N.C. House – District 27	9,832	1. Henderson (BMD) 2. Wray (WMD)	2,882 29.31%	2,874 29.23%	5,806	Wray* (WMD) 2,982	40.95%
	N.C. House – District 67	4,233	1. Almond (WMR) 2. Barbee (WMR)	1,686 39.83%	1,603 37.87%	3,574	Almond* (WMR) 2,322	15.57%
	N.C. House – District 74	8,071	1. Folwell (WMR) 2. Conrad-Shrader (WFR)	2,351 29.13%	2,066 25.60%	6,999	Folwell* (WMR) 4,656	13.28%

³ All congressional first primaries were held under a court order in mid-September with no provision for a runoff. One of those primary contests, for the 12th District Republican nomination, drew six candidates. The winner, Scott Keadle (WMR), received just under 28% of the vote.

⁴ The State Board of Elections ruled that Ms. Atkinson won the general election, but litigation over the race was not settled by 5-3-05.

Statistics:

- 35 runoff primaries in 7 election years (not counting 2002). Out of more than 1,000 potential primaries.
- 17 of the 35 resulted in reversals, or 48.57%.
- In 9 of the 35 primaries, the top candidate in the first primary received less than 30% of the vote.
- Only 5 incumbents were involved in the 35 runoffs. 4 of the 5 incumbents led in the first primary. 3 of the 5 incumbents were defeated in the second primary.
- 12 of the runoffs involved a minority-race candidate in a contest with a white candidate. 6 of the minority candidates led in the first primary; of those 6, 3 also won in the runoff and 3 lost. 6 of the minority candidates came in second in the first primary; of those 6, one prevailed in the runoff and the other 5 lost.
- 16 of the runoffs involved women in races with a man. 9 of the women candidates led in the first primary; of those 9, 6 also won in the runoff and 3 lost. 7 of the women candidates came in second in the first primary; of those 7, 5 won the second primary and 2 lost.
- Of the 35 runoffs, 18 had fewer than half the number of voters who voted in the first primary. Only one runoff had more voters than the first primary.
- In 18 of those 35 primaries, the winner in the second primary received fewer votes than the runner-up in the first primary.

VISITOR REGISTRATION SHEET

Election Law and Campaign Finance Reform

May 4, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Phelps	NCLM
Chris Heagarty	NCCUE
Gary Bartlett	SBE
Kim Strach	SBE
Kathleen Edwards	unc-cu Legis Reporting Service
Jeff Rau	GRNC
Chad Hinton	Civitas Institute
Khand Walker	Zusider
Mike Ashe	Durham Cty Bd of Elections
Bob Hall	Remedy North Carolina
Steve Reed	NEVCE

VISITOR REGISTRATION SHEET

Election Law and Campaign Finance Reform

May 4, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mark Binder	N+R
Paul Meyer	NCAC
WARREN MURPHY	COMMON CAUSE
Lee Mortimer	NC Voter
SUZANNE BICKLEY	GOV'S OFFICE
Ed Kine	NC Green Party
R. Paul Wilms	NCHBA
John Gelfert	chairman, Wake BOE
Michael Houser	NCTE
MARGARET LILLARD	AP

MINUTES
House Committee on Election Law and Campaign Finance Reform
May 11, 2005
1:00 p.m., Room 1425
Representative Moore, Presiding

The House Committee on Election Law and Campaign Finance Reform met at 1:00 p.m. on Tuesday, May 11, 2005, in Room 1425 of the State Legislative Building.

Members present were: Representative Tim Moore, Co-Chair; Representative Deborah Ross, Co-Chair; Representative Paul Luebke, Vice-Chair; Representative Mickey Michaux, Vice-Chair; Representative John Blust, Representative Pricey Harrison; Representative Hugh Holliman; Representative George Holmes; Representative David Lewis; and Representative Edgar Starnes.

There were three bills on the agenda: House Bill 4, Abolish Second Primary, sponsored by Representative Paul Miller, House Bill 1024, Instant Runoff Voting, sponsored by Representative Paul Luebke, and House Bill 1102, Early Prep for One-Stop Count, sponsored by Representative Cary Allred.

Co-Chair Tim Moore called the meeting to order and introduced the page and sergeants-at-arms.

Co-Chair Moore recognized Rep. Miller to explain House Bill 4. Representative Miller reiterated the points he made at the last meeting concerning his bill to eliminate second primaries.

So House Bill 4 could be compared to House Bill 1024, Mr. Bill Gilkeson, committee staff, explained House Bill 1024, Instant Runoff Voting.

Representative Starnes sent forth an amendment to House Bill 4, which would allow each state party to choose if they want to participate in the second primary or not. Representative Starnes moved that his amendment be adopted. The motion failed.

After further discussion on House Bill 4, Representative Michaux made a motion to adjourn. The motion failed.

Representative Michaux call for a fiscal bill on House Bill 4, and the bill was displaced so a fiscal note could be obtained.

Representative Luebke was recognized to explain House Bill 1024. Representative Luebke asked for a motion to consider a committee substitute for House Bill 1024 to accommodate a small change. Representative Holliman so moved and the motion carried.

Representative Luebke explained the committee substitute for House Bill 1024, and Mr. Gilkeson added comments.

The chair recognized Mr. Don Wright from the Board of Elections for comment, and Mr. Wright said the State Board neither supported nor opposed the bill.

There was discussion on making the bill a pilot program or the subject of a study.

Representative Luebke sent forth an amendment to authorize the State Board of Elections to conduct a pilot program in which the instant runoff method of voting would be used in local elections, and he moved for adoption of the amendment. Mr. Gilkeson suggested a technical perfecting amendment on page 1, line 17, to add "the entire" before the word "electorate". The amendment as perfected was adopted.

Representative Holliman moved that the committee substitute as amended by given a favorable report, unfavorable as to the original bill. The motion carried.

Representative Allred was recognized to explain House Bill 1102, Early Prep for One-Stop Count. Representative Allred said the bill would allow local boards of elections to begin counting their one-stop ballot earlier n the day on Election Day.

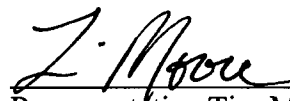
Mr. Don Wright from the Board of Elections said the Board had no problem with the bill as long as the local county boards of election posted legal notice of the time to allow an opportunity for the public to view the count.

Representative Harrison moved that HB 1102 be given a favorable report and the motion carried.

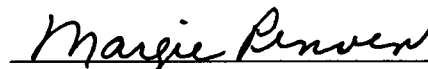
There being no further business, the meeting was adjourned at 1:50 p.m.

A verbatim transcript of this meeting is attached hereto along with all pertinent documents and handouts.

Respectfully submitted,



Representative Tim Moore, Presiding Chair



Margie Penven, Committee Assistant

TRANSCRIPT
House Committee on Election Law and Campaign Finance Reform

1:00 p.m. on May 11, 2005

Room 1425, LOB

Representative Moore, Presiding

Rep. Moore: The Election Law and Campaign Finance Committee will come to order. It appears to the chair we have a quorum. We are now prepared to move forward with business. Before taking up the bill I do want to recognize our sergeants-at-arms James Worth, Leslie Oakley, and Willie Nelson. And we also have as our page Laura Ruterbories. Did I get it right? All right. Great. I want to welcome you to the committee meeting on behalf of my co-chair Representative Ross of Wake County. We have three bills on the agenda today. The first bill is House Bill 4, which is abolishment of the second primary. Representative Miller from Durham County is the sponsor of that bill, and he's been very patient and kind. You're just about an officio member of the Election Law Committee. You've been here the last several. We're about ready to give you a vote, I think. But Representative Miller's been very patient, and I think it might be in order to.... Would you object to allowing staff to give an explanation of the bill and then to make...?

Rep. Ross: We already talked about it the last time. The only issue, I think, was Representative Starnes had some kind of...but he isn't here, so I think we should move forward on the bill.

Rep. Moore: And I don't see Edgar. Do it before Edgar gets here. All right. Representative Miller, you're recognized to offer comments to the committee.

Rep. Miller: Thank you, Chair Moore. Thank you, Chair Ross. Appreciate the opportunity to come before the Election Law and Finance Reform Committee. I think we had a pretty thorough discussion on second primaries last meeting. The points I made I'll just reiterate. First point is that a very few states in our union currently have second primaries. About ten states or so have second primaries. Forty states do not have second primaries. Florida recently dropped their second primary within the last year, and I think that would probably be an improvement in Florida's process. In addition, second primaries of course cost money and a significant amount of money for each of your counties. The second primary also has a track record of bringing very few voters to the polls, so what happens is the few decide the election for the many. So few people make a choice after many people cast their ballots. And so I would content that a second primary was actually less democratic, not more democratic. We also talked a little bit about Representative

Luebke's bill, which is instant runoff. And just to recap my thoughts about that is that it would actually be a costly bill that would not be able to be practically implemented. And, of course, if an instant runoff resulted in some other person than the person who got the most number of votes in the first runoff, then you'll have to explain that to your constituents how someone in the aggregate still lost. So I would not favor that particular bill although I do understand it in theoretical principle. So anyway, I'll be more than happy to answer any questions.

Rep. Moore: Do we have any questions of Representative Miller, members of the committee? Representative Luebke.

Rep. Luebke: Well I just was going to comment that...not to rehash and all, I don't remember what Representative Starnes' amendment was that held us up. We were about ready to vote I thought last time, but I can't remember what it was. But I would just submit to you that as has been indicated by Representative Miller, my bill, House Bill 1024, allows for people to carry out their runoff vote on the same day so we will have an opportunity to have a runoff, you'll just be casting your second choice right away there on the same day. So you will have the same level of turnout, but you will not have the cost. The other thing I would simply say, it's up to the State Board of Elections how to implement it. I am not going to be into the technical matters, but it has worked in some parts of the country already, and so I wouldn't want you to be persuaded by my Durham colleague or my second Durham colleague here, that an instant runoff can't work. So I would urge you not to support my colleague Representative Miller's bill.

Rep. Michaux: Tell me how that works. I'm still at a loss as to how you do the primary and a runoff on.... What do you do? Do you vote on them twice? In other words, if you've got three people on the ballot....

Rep. Moore: Does Representative Luebke yield to the question from the other gentleman from Durham.

Rep. Luebke: I will yield, but I will also defer to the chair if the chair would rather that we discuss House Bill 1024 when....

Rep. Moore: Well, there is a germaneness issue, but I was actually interested in the answer.

Rep. Luebke: I would rather just do it when I have a chance to explain the bill.

Rep. Moore: Okay. The gentleman does not yield to your question.

- Rep. Michaux: I didn't ask him a question. I'm asking Representative Miller a question.
- Rep. Moore: All right. Representative Miller's on the hot seat then.
- Rep. Miller: I don't really think it's a hot seat, but I could just say simply this. Suppose you got the first of most number of votes in this first primary. Then somehow on that same Election Day, you lost. That would be something that I would have problems explaining to my constituents. I would dare say more people would in elective office know how you can win on the same Election Day and still lose on the same Election Day. And also, of course, there's the question of are any of the voting machines that we have in North Carolina able to even handle that kind of situation without getting new ones?
- Rep. Luebke: I would have to ask staff to explain what's in the bill, but I think it is really....
- Rep. Moore: Well let me do this before we start chasing rabbits on House Bill 1024, we are on House Bill 4 at this point. So let's.... Representative Michaux.
- Rep. Michaux: I understand, Mr. Chairman, but I've got to make up my mind between one of these two bills, and I would like to know how this instant runoff voting operates.
- Rep. Moore: All right, here's what we're going to do. Mr. Gilkeson, I would ask you to perhaps very briefly explain the differences between these two bills in an unbiased manner.
- Bill Gilkeson: Representative Luebke's bill involves two steps. One the voting step and two the counting step. In the voting step, the voter votes for...ranks their choices of however many candidates there are, either one, two, three, four, whatever. And then in counting, there are potentially two rounds of counting. The first count is of all the first choice votes of the candidates, and if a candidate gets more than 40% of the first choice votes, that candidate is the frontrunner; that candidate wins. If no candidate gets more than 40% of the first choice votes, then all the candidates but the top two are eliminated and the voters...the second choices, the alternative choices of the voters whose first choice was eliminated are then counted for the candidates who aren't eliminated.
- Rep. Michaux: Mr. Chairman, are you ready for a motion.

Rep. Moore: No. Not at this point. No motion at this time. We have an amendment that has been submitted by Representative Starnes. Representative Starnes, you're recognized for your amendment.

Rep. Starnes: Thank you, Mr. Chairman. Ladies and gentlemen of the committee. This is to continue our discussions from last week. Representative Michaux made the statement, "primaries are a function of the party." And we give the party certain latitude in how they _____ (unintelligible). And so this would simply say that a state party can determine whether or not they want to have a second primary or not. If they don't want to have a second primary, then the party's executive committee can vote to not participate in the second primary and that resolution, which passed by the state party's then presented to the State Board of Elections, I believe it's in January, prior to the election season.

Bill Gilkeson: December first.

Rep. Starnes: December first, the year before the election.

Rep. Moore: Representative Starnes has explained the amendment. Is there further discussion or debate on the amendment offered by Representative Starnes? I understand the maker of the bill is taking no position on the amendment. Representative Luebke, you're recognized for debate on the amendment.

Rep. Luebke: Does your amendment, Representative Starnes, say who bears the cost of the primary?

Rep. Starnes: The cost would be borne by the state or the county as is currently existing.

Rep. Moore: All right. Further debate or discussion? Representative Michaux.

Rep. Michaux: That's where I have my problem. I mean the party caucus is fine. But I don't think the state ought to have to pay a cost of it. I mean what's the difference in this and what we got right now. I don't think we ought to pay the cost of it.

Rep. Moore: Representative Blust.

Rep. Blust: I don't think right now when someone...no candidate reaches the threshold of 40%, I don't see any great public outcry if the second place finisher ends up winning the runoff. But I do think that if a party just decided on their own they were going to pick the second place finisher of their own volition over the candidate who had gotten the

most votes in the first primary, that there would be an uproar. And so I don't believe even if we passed this, any party's ever really going to want to do that. It'd be the party boss's overruling the choice of the majority or most of the people...a plurality of the people. And I just couldn't see them wanting to do that.

Rep. Moore: Representative Michaux, you're recognized for debate on it.

Rep. Michaux: I thought the bill said that the candidate for the general election would be done by party caucus. Is that what...?

Rep. Starnes: No.

Rep. Michaux: Well what is this saying then?

Rep. Moore: Representative Starnes. You're recognized.

Rep. Starnes: House Bill 4 as Representative Miller has before us is a bill to eliminate the runoff primary—the second primary. This simply says then parties can choose if they want to participate in the second primary or not participate.

Rep. Michaux: Oh, well. Mr. Chairman?

Rep. Moore: Representative Michaux.

Rep. Michaux: That ain't what I said, Representative Starnes, in my remarks. My remarks were either doing a primary or going to party caucuses to pick the candidate. That was what I was talking about. This don't come nowhere near to what I was saying.

Rep. Moore: Representative Starnes.

Rep. Starnes: I didn't want to imply that you're supporting this amendment. And I certainly did want to put words in your mouth. You just made the statement last week, and accurately so, that primaries are party functions.

Rep. Michaux: Right.

Rep. Starnes: And even though it has been a party function, even now. Heretofore, the state has always picked up the cost of those. This bill that he has says you're going to abolish second primaries. Well, truthfully, I like the second primary. I think someone needs to win at least 40% of the vote before they can carry the banner of their party. If they can't get 40% of the vote, then I think that they need to have a provision where

you can find someone who at least has broad enough support for carrying the party's banner. And in trying to accommodate what Representative Miller wants to do, if the Democratic Party or the Republican Party wants to opt out, then so be it. I'm not in favor of eliminating the second primaries, but I'm saying that as long as primaries are a party function, then we'll give the parties an option of participating or not participating.

Rep. Moore: Further debate or discussion on the amendment? Are we ready to vote? All right. All those in favor of the amendment offered by Representative Starnes please say aye. All opposed no. In the opinion of the chair, the noes have it. The noes do have it. All right.

We're now back on bill. Representative Miller for a comment?

Rep. Miller: Yes. In terms of this 40% threshold, let me just address that and talk about numbers. In the first primary a significant number of people do vote. Okay? In the second primary a significant number less people vote. So many people less that the total people voting in the second primary tend to have less votes than either of the candidates in the first primary. So you're not going to get this so-called threshold even in the second primary because hardly anyone has shown up in a two to four percent kind of election. You're going to get the most representation based on the first primary just like forty other states have done. This is not a new concept. This is an old concept in the U.S., and the Deep South tends to have the most problem in the shift, but other states have shifted, including Florida recently. So I would just suggest that this is a more democratic way of doing it, not a less one, because of the turnout.

Rep. Moore: Representative Michaux.

Rep. Michaux: Are you ready for a motion now?

Rep. Moore: Ready for a motion.

Rep. Michaux: I move we adjourn.

Rep. Moore: Motion is not recognized at this time.

Rep. Michaux: I'm sorry, sir. You did recognize me for a motion. You accepted it. I made the motion we adjourn.

Rep. Moore: All right. All in favor of adjourning say aye. Opposed no. The noes have it. We are not adjourned. Representative Holmes you're recognized.

Rep. Holmes: Yes. What effect will this have on national elections or primaries?

Rep. Moore: Is your question directed toward the bill sponsor or staff?

Rep. Miller: I'll let the staff answer that.

Bill Gilkeson: Toward presidential primaries?

Rep. Holmes: Or congress, either one.

Bill Gilkeson: Well it would affect U. S. Senate and U. S. House primaries. It would not have an effect on presidential primaries.

Rep. Holmes: May I ask Representative Michaux a question?

Rep. Moore: Does Representative Michaux yield to the question?

Rep. Michaux: Yeah, I yield.

Rep. Moore: Representative Holmes. He yields.

Rep. Holmes: Representative Michaux, you, I believe, sometime back introduced legislation that would reduce the percentage down to 40%. Is that correct?

Rep. Michaux: No, sir. That happened in the 1981 Session. I was not here then. I'm sorry, the '89 Session. Yeah, I was here. I introduced it. Yes, I did. You're right. You're right.

Rep. Holmes: You did it, and....

Rep. Moore: Does the gentleman wish to state a follow-up?

Rep. Holmes: Just to make a statement.

Rep. Moore: The gentleman is recognized to debate the bill.

Rep. Holmes: I think that the present method that we have has worked well through the years, and I don't believe I voted with Representative Michaux; but I think that it has helped the process through the years. And I personally don't see any point in changing what we have if it works well. And I think it's worked well.

Rep. Moore: Further debate or discussion? Representative Starnes.

Rep. Starnes: When a party chooses their nominee to represent their party in the General Election, they want someone that has broad-based support. And yes, there is a falloff in voters between the first primary and the second primary, but this is still America. We still have the privilege to vote and to choose the people who represent us. But a person the right to vote; he has the right not to vote, if that's what they choose. But if you go back and look just in recent history, if there had not been a second primary then, and I speak more of Republican politics than Democrat politics because that's what I'm more familiar with, Patrick McHenry would not be a congressman, Virginia Foxx would not be a congressman. It goes on. And these were just in the last election cycle.

Rep. Michaux: And I would have been.

Rep. Starnes: And you would have been. No, you would have won under the 40% rule on the first time. See. Yeah. But that problem's been fixed. See, you got over 40% the first time.

Rep. Moore: Further debate. Further debate or discussion?

Rep. Michaux: Mr. Chairman.

Rep. Moore: Rep. Michaux is recognized for debate on the bill.

Rep. Michaux: Do we have a fiscal note on this bill?

Rep. Moore: I'll have to direct to staff. Do we have a fiscal note on this bill?

Bill Gilkeson: I don't believe we do.

Rep. Michaux: Mr. Chairman, I'd to call for a fiscal note on this bill.

Rep. Moore: Okay. The bill will be displaced so a fiscal note can be obtained for the Vice Chair of the Appropriations Committee.

Rep. Michaux: Thank you, Mr. Chair.

Rep. Moore: Yes, sir. All right. Representative Luebke, are you going to give it a shot on yours or are you thinking the weather is not so good in here today? All right, Representative Miller, we'll look forward to having you back again.

Rep. Miller: My pleasure.

Rep. Moore: Representative Luebke is now going to be recognized to explain House Bill 1024, which is the instant runoff voting legislation.

Rep. Luebke: Actually, Mr. Chairman, I need a motion for a committee substitute. There is a small change.

Rep. Moore: Representative Holliman's recognized that the committee consider the PCS. All those in favor, please say aye. Opposed no. The ayes have it. We'll now consider the PCS.

Rep. Luebke: Thank you members of the committee. Well I had thought, and the chairs had intended, perhaps, that there would be resolution to House Bill 4 before House Bill 1024 came before you. But so be it. House Bill 1024 is here. What I want to say first of all, that I share the sentiments of those of you that feel that there needs to be sort of a strong party nominee. That's what the 40% rules represents, and that is what this bill says, first of all, is that any candidate who on the first round gets 40% plus of the vote, that person is the nominee. What makes this bill different is that it really is instant runoff voting—is the national term for it—I would actually call it same day runoff voting or same time runoff voting—it can't be instant. When you are going to vote, you will vote not only for your first choice, but all...I think there was an example, I think was asked, what if three candidates were there. Well, let's take for example the three candidates for State Superintendent of Education on the Democratic ticket. What you would do instead of having, necessitating, \$3.5 million second primary in which the turnout was, I'm looking to staff, maybe ten percent or fifteen percent of what was in the first primary.

Bill Gilkeson: Are you talking about the one in 2000?

Rep. Luebke: The state superintendent of education in 2004.

Bill Gilkeson: The drop off was something like 79%.

Rep. Luebke: Okay, so 21% of the people who voted who were participating in the first primary were...just 21% were voting in the second primary. What my bill does, and I'll let Mr. Gilkeson explain it better from a technical perspective, but basically, you would go in there and you would put 1 for your first choice, and then you'd put 2 and 3. And then, if your first choice didn't make 40%, and your candidate was not first or second—in other words your candidate was third place—then the counting system would look to those third place voters and see if they had preferred candidate 1 or candidate 2, and depending on what they had done, that's your runoff. So it basically can happen on the basis of the 1, 2 and 3, which you have done on the ballot. And that is the gist of it. It saves the money. It is something that we can educate the voters about, and I think it is really, in contrary to what Representative Miller

said about how would the voters understand it, I think the voters would understand it just fine. Mr. Chairman, I can either take questions now or....

Rep. Moore: I would ask staff to offer further comment on the bill, as the staff feels necessary.

Bill Gilkeson: Right. One thing I would say is it applies... the method is as Representative Luebke described. This bill applies it to statewide, partisan primaries or partisan primaries for statewide offices and also for non-partisan judicial offices on a statewide basis; that is either court of appeals or state supreme court. In the case where there's a mid-election year vacancy, and the law calls for a plurality election. There was a plurality election this past year where there were eight candidates running for one seat. It was a plurality election. The idea was whoever got the most votes won. There was a candidate with 23% of the vote that won. This would apply the instant runoff method to that as well.

Rep. Moore: For what purpose does Representative Holliman seek recognition?

Rep. Holliman: I'd like to ask the bill sponsor a question.

Rep. Luebke: Yes, sir.

Rep. Holliman: Representative Luebke, are any other states doing this?

Rep. Luebke: I know that some municipalities are doing it, but do you know if any other states have adopted this?

Bill Gilkeson: The only state adoption that I'm aware off is that there...Arkansas and Louisiana have used this method for...have voted this year to apply this method to absentee voting by military and overseas voters on the theory that sometimes they don't get a chance to actually participate in a second primary because they don't get their absentee ballots quick enough, and so they let them do it. There's actually a bill in the Senate here to do that same thing.

Rep. Moore: Further questions. Representative Holliman, is this for debate or...?

Rep. Holliman: Yes.

Rep. Moore: Representative Holliman's recognized for debate.

Rep. Holliman: I'm just kind of concerned in the last six or seven years we've had people going in one way, and then we want this change. I just wonder about voter education and really how successful we could communicate

this kind of change to the population out here and how good a vote would that be? That's my concern. And I don't know if the Board of Elections knows the position on that topic. Seems like there would be....

Rep. Moore: I'm going to let Representative Luebke respond and then I am going to ask for comment from Don Wright, Board of Elections. Representative Luebke if you would respond.

Rep. Luebke: What I would say, I'm interested to see if other members of the committee find this to be an acceptable way to go forward because, Representative Holliman, I do share with you the concern that there is some education involved here. And my committee substitute was about a very minor thing in the scheme of things—the change. But I do have an amendment that would establish this as an option for the State Board of Elections to conduct a pilot program using the instant method runoff and they would, on the basis of that.... My understanding is that Wake County already has expressed an interest in doing that.

Rep. Holliman: If I could follow-up, I just think would be...rather than jump right into this and have a mess, a pilot I think would make it a lot more....

Rep. Moore: Representative Blust.

Rep. Blust: My question is how would this work on some voting systems. How would they basically do this? For example, I think Forsyth is still using the punch card, if I'm not wrong and we haven't made them change. And how would you implement this system on some of our voting machinery?

Rep. Luebke: Well there's a line—in fact I got an e-mail just today identifying a new company that's worked out an electronic method, just a method, of counting the votes that allows this to be done as part of the software. But I am not saying with our bill—this does not respond to those technical answers. It gives the State Board of Elections plenty of time. In fact, you will note the act becomes effective January 1, 2008. So we're actually in supporting this bill, if you were to support the whole thing, we would be talking about giving the State Board ample time to go through this and come back to us and say, you know, there's just not the software out there. I think there is, or I wouldn't be pushing moving the bill forward. But I also respect very much our State Board. And so that's how.... We could move forward with the whole bill, but I also have already indicated to you an offering, really, to do it as a pilot because I think that would move us forward as well.

Rep. Moore: Do you have a follow-up, Representative Blust? You're recognized for a follow-up.

Rep. Blust: I don't doubt that software can be developed for current-type voting machines, but I'm just wondering in those counties that don't even have a machine that would software, are we going to look to pay for replacing their voting machines? How is that going to work to where we.... It seems like we have to get the entire state on one type of voting apparatus if this is going to become the law.

Rep. Luebke: Maybe we better see if the State Board wants to comment on that.

Rep. Moore: I'm going to recognize Representative Harrison first. She had her hand up, then I'll go to the State Board.

Rep. Harrison: Well, actually...Representative Blust, I was just going to say I was generally supportive of the concept in that—this comments.

Rep. Moore: Mr. Wright, would you like to comment on the question posed.

Mr. Wright: Yes. The State Board neither supports or opposes this; however, obviously IRV is very commonly discussed in the election community. The largest IRV election in the United States has been the San Francisco metropolitan elections. I personally talked to the clerk in San Francisco about their experience, and as Representative Blust has noted, the biggest problem was the technology of the voting systems—getting voting systems to operate. However, that is now being worked on so over a period of time you're going to have that capacity. IRV is used in European elections. Interesting is its use by corporations who look for their board of directors so they don't have to have second primaries as well. So it's an issue that we neither support or oppose, but thought we'd keep an eye on it and whatever this body wants to do on it, we will implement it.

Rep. Moore: Representative Co-chair Ross.

Rep. Ross: I think if we are going to move forward with the bill at all, it would give me comfort to deal with the amendment as opposed to continuing to deal with the bill as if it would be a statewide bill. That's just a statement.

Rep. Moore: You want to move the amendment.

Rep. Ross: Well, it's Representative Luebke's amendment.

Rep. Moore: Representative Luebke do you want to move the amendment?

- Rep. Luebke: I have now.... Representative Holloman had already indicated some interest in it. I'd like to hear from Representative Holmes before I formally offer the amendment.
- Rep. Moore: Representative Holmes, you're recognized to debate the bill.
- Rep. Holmes: Mr. Chairman, we have heard from the Board of Elections, and they are making no comment pro or con about the bill. But they have some reservations about it, and they're awaiting a study. It's my opinion rather than we jump into this change that we have a study of our own to see if it's going to do what we think it might do. And if it turns out favorable, then we act on the legislation. But just to jump into it cold turkey, I think, is the wrong way to go.
- Rep. Moore: Representative Holliman.
- Rep. Holliman: You know, I think that's what this amendment does. It provides for a pilot program and certainly one that would be used to work out any problems that we might have, and I think it's a good idea and it's very limited and really the way to make a change. And I would support the amendment.
- Rep. Moore: Representative Starnes.
- Rep. Starnes: Well, I'm not sure that we even need to proceed with the pilot program at this point in time. I would think the study would be more appropriate. We've got candidates running for public office that spend millions of dollars to convince people to make them their first choice. I don't think people then want to have to spend millions of dollars to convince people to make them their second choice, too. I don't think a pilot program is the way to go. I just think a study is more appropriate.
- Rep. Luebke: May I? Both to my friends Representative Starnes and Representative Holmes: this is the study that you're talking about. It cannot be forced upon any kind of board of election. The county board of elections would be requesting it as has been indicated by State Board of Representatives (sic). This is much talked about in election board communities' discussions nationally, and this would provide us exactly the opportunity to see what happens when it goes forward. It is in fact a study. I would submit to you that just sort of talking about it in general has you looking at how did it work in Louisiana. How did it work in Arkansas? We have actually have a county—Wake County—where I have been told by the director of the board of elections that they already have a motion that they have indicated that they want to try something like this. So it really wouldn't be forcing a thing on anyone.

It would simply really allow us to gather the data. It would be the study, and so I think I would then move adoption of this amendment.

Rep. Moore: The amendment. All right.

Rep. Luebke: And I think Mr. Gilkeson from the staff had a technical change.

Rep. Moore: Bill, did you want to comment on this?

Bill Gilkeson: Right. On page 1, line 17 of the amendment; add "the entire"—the words "the entire" before electorate. And then that sentence will make sense. So it will say, "The State Board shall not use instant runoff voting in the primary or an election for an office unless the entire electorate for the office uses the same method."

Rep. Moore: Any objection to the perfecting amendment offered? Hearing no objection, the perfecting amendment is adopted. Now we're on consideration of Representative Luebke's amendment to the bill. Further debate or discussion on the amendment? Representative Starnes is recognized.

Rep. Starnes: Well, this is authorizing a pilot program. Representative Luebke says Wake County is interested in a pilot program to this effect. Wake County's one of the largest counties in the state, and I don't know that you want to start a pilot program in a county this big. Maybe if it works perfectly, that'll be great. But if it doesn't work and if we thought Carteret was a mess when they lost 4,000 votes, I don't know what you're going to do in Wake County here, they have, I don't know, hundreds of thousands.

Rep. Luebke: If I may respond. Representative Starnes, they came to me. Wake County has come to me and said they want it. If you read the amendment, it says the State Board shall select up to ten counties. It shall seek diversity of population size. If Wake were the only county after the board went for this, that wanted to do it, so be it. But I would imagine there probably would be a few other counties that would be looking for ways to save money because is it not the counties that pay for the elections? Some people have said the state pays for it. I think the counties pay for it.

Audience: Counties. Counties.

Rep. Luebke: Counties. So I would suspect that there would really be one. But most importantly, Representative Starnes, you're kind of telling Wake County they don't know what they want to do, and I would say in this particular case I didn't seek them out. They came to me.

Rep. Moore: Further debate or discussion.

Rep. Starnes: Well, in response to that, I think we tell counties what they can or can't do every day down here. They make a lot of requests, but they don't....

Rep. Moore: Further debate or discussion on the amendment? Representative Blust.
Rep. Blust: Well, I don't see any harm in testing a new idea, and you almost need for it to be in a county that has a lot of races because my fear is that you set this up and then there's no race in which somebody doesn't get 40%, and so you've done nothing so you probably wouldn't want it in a small county where there weren't many races, and if it's just local or if it's just one time, I think a lot of testing and ideas, seeing it in the real world would work. And this idea, though I'm not ready to pass the original bill today, may be the wave of the future, and I don't see why we wouldn't want to see what can happen out there with it. So I don't see why we shouldn't support the amendment.

Rep. Moore: Representative Harrison.

Rep. Harrison: I just want a clarification. I thought that it only applies to statewide offices and appellate judicial races. Is that so? Does the pilot make it all races?

Bill Gilkeson: The pilot would give the State Board of Elections the discretion to make it in county races. Yeah. This would have to be in county or city races—races for county and city offices only.

Rep. Moore: I have a question. What if the.... Do you have anything where it will say the county or the city does not want to be a part? Let's say the Board of Elections chose Currituck County and Currituck did not want to be a part. Would it give the counties an opt out or would you prefer to keep it this way?

Rep. Luebke: I just think counties can concurrence in their own way.

Bill Gilkeson: There's actually a provision in here that says the pilots shall be conducted in a county only with the concurrence of the county board of elections.

Rep. Moore: Good enough then. That's okay. Further debate or discussion?
Representative Starnes.

Rep. Starnes: Well, I don't know that we're going fix.... This is going to apply to county races or municipal races. But if they go into the next election cycle and they do this as a pilot and then you got a district wide race,

well then you got.... Let's say there's a congressional primary and there's a runoff. Then there's going to have to be a second ballot anyway. If their congressional district, if they had a congressional primary, and there was a runoff, then they're going to have a second primary anyway so this is just saying you have an instant check off on a few races. And I don't actually think that you're going to save any money. They still have to trim the ballot if there happens to be a run-off election in a district wide race that they're a part of.

Rep. Moore: Further debate or discussion on the amendment. Seeing not, all those in favor of the amendment offered by Representative Luebke, please say aye. All opposed no. On the opinion of the chair the ayes have it. The ayes do have it. The amendment is adopted. We're now back on the bill as amended. Further debate or discussion on the bill as....

Rep. Luebke: I was just going to say that since this now replaces the bill, that the motion...

Rep. Moore: Is there a motion? Representative Holliman.

Rep. Holliman: Move for a favorable report.

Rep. Moore: Motion is made for a favorable report as to the proposed committee substitute as amended, unfavorable to the original bill. Further debate or discussion? Seeing not, all those in favor of the motion please say aye. All opposed no. In the opinion of the chair the ayes have it. The ayes do have it, and the bill's given a favorable report.

Rep. Luebke: Thank you, Mr. Chairman. Thank you members of the committee.

Rep. Moore: We're going to try to take up House Bill 1102. Representative Allred is recognized to explain his bill, Early Prep for One-Stop Count. Representative Allred.

Rep. Allred: Thank you, Mr. Chairman, members of the committee. This is a non-partisan simple bill, which would allow local boards of elections to begin counting their one-stop ballots earlier in the day on Election Day. Did you have a question for me, representative?

Rep. Moore: Was there a question? Did somebody have one?

Rep. Allred: We had a real problem in Alamance County in 2002 because of a malfunction of the voting equipment, and final tallies were not available until 4:30 a.m. the next morning after Election Day. During this past election, we didn't have election returns posted in the courthouse for the voters to see until after 11 p.m. This bill would

ensure that it would give them the option of going ahead and beginning the counting of the one-stop ballots and count them the same way as they do the absentee mail-in ballots so that if there is a malfunction in the voting equipment, they'll have somebody in there in time to correct it, hopefully, so that election results can be posted for the good of the public. And that's who this bill is designed to help. I'd appreciate your support.

Rep. Moore: Does staff desire further comment on the bill?

Bill Gilkeson: Not really.

Rep. Moore: All right. Any questions of the bill sponsor? Representative Ross.

Rep. Ross: The Board of Elections did provide a letter with a comment on this bill to Co-chair Moore and myself, and so I would just like the Board of Elections to share what they had to say about this bill with the committee.

Rep. Moore: Mr. Wright, you're recognized. Please state your name for the committee, please.

Don Wright: Don Wright, General Counsel, State Board of Elections, and Representative Allred discussed this bill with us yesterday. As a result of that, Mr. Bartlett, our Executive Director, wrote Representative Allred copying the two co-chairs, as follows: In reference to House Bill 1102. Is that the bill you want referenced?

Rep. Moore: Yes, 1102.

Don Wright: Early prep for one-stop counts seems to provide county boards with additional time to perform statutory duties on Election Day. We have no objection to the change contained in House Bill 1102 as long as county boards of elections post in the legal notice of elections the time that this proceeding will begin on special notice to recognize political parties to allow _____ parties to view the preparation of the counting. So we have no objection contingent upon notice and opportunity for the public to view.

Rep. Moore: Do we have any further comment from members of the public? Seeing not, do we have further debate or discussion from members of the committee? Is there a motion from the committee? Representative Lewis, you're recognized for a motion.

Rep. Lewis: Representative Harrison....

Rep. Moore: I couldn't tell. Your hands went up at the same time. Representative Harrison.

Rep. Harrison: I'll move for a favorable report.

Rep. Moore: Representative Harrison moves that we give House Bill 1102 a favorable report. Further debate or discussion? Seeing not, all in favor of the motion please say aye, opposed no. The ayes have it. The motion is adopted.

Rep. Allred: Thank you Mr. Chairman, Madam Chairman, and members of the committee.

Rep. Moore: That appears to be the business for the day. We do have House Bill 4, which presumably will be before us next week. Hopefully with a fiscal note. We stand adjourned.

Meeting adjourned at 1:50 p.m.

AGENDA

HOUSE OF REPRESENTATIVES ELECTION LAW AND CAMPAIGN FINANCE REFORM COMMITTEE

**May 11, 2005
Representative Moore, Presiding**

HB 4, Abolish Second Primary

Rep. Miller

HB 1024, Instant Runoff Voting

Rep. Luebke

HB 1102, Early Prep for One-Stop Count

Rep. Allred

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION**

You are hereby notified that the Committee on Election Law and Campaign Finance Reform will meet as follows:

DAY & DATE: **Wednesday, May 11, 2005**

TIME: **1:00 p.m.**

LOCATION: **1425 LB**

The following bills will be considered (Bill # & Short Title & Bill Sponsor):

HB 4, Abolish Second Primary, Rep. Miller

HB 1024, Instant Runoff Voting, Rep. Luebke

HB 1102, Early Prep for One-Stop Count, Rep. Allred

Respectfully,
Representatives Tim Moore and Deborah Ross
Chairs

I hereby certify this notice was filed by the committee assistant at the following offices at
11:35 a.m. on May 9, 2005.

____Principal Clerk
____Reading Clerk - House Chamber

Nancy Garriss (Committee Assistant)

5-11-05

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Moore, Ross (Chairs) for the Committee on ELECTION LAW AND
CAMPAIGN FINANCE REFORM.

☐ Committee Substitute for

HB 1024 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR INSTANT
RUNOFF VOTING IN STATEWIDE PARTY PRIMARIES AND CERTAIN STATEWIDE
JUDICIAL VACANCY ELECTIONS.

☒ With a favorable report as to the committee substitute bill, *which changes title* unfavorable as to the original bill, and
~~recommendation that the committee substitute bill be re-referred to the Committee on~~

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House) committee substitute bill/(joint) resolution (No. _____) is
placed on the Calendar of _____. (The original bill resolution No. _____) is placed on the Unfavorable
Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. _____) is re-referred to the
Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint)
resolution No. _____) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

1

HOUSE BILL 4

Short Title: Abolish Second Primary.

(Public)

Sponsors: Representative Miller.

Referred to: Election Law and Campaign Finance Reform.

January 27, 2005

A BILL TO BE ENTITLED
AN ACT TO ABOLISH THE SECOND PRIMARY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-111 reads as rewritten:

"§ 163-111. Determination of primary results; second primaries results.

(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 (e) 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 (e) 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.

(e) 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,

1 State Senators in multi-county senatorial districts, and
2 Members of the State House of Representatives in multi-county
3 representative districts.

- 4 (2) ~~A candidate who is apparently entitled to demand a second primary,~~
5 ~~according to the unofficial results, for one of the offices listed below~~
6 ~~and desiring to do so, shall file a request for a second primary in~~
7 ~~writing with the chairman or director of the county board of elections~~
8 ~~no later than 12:00 noon on the ninth day (including Saturdays and~~
9 ~~Sundays) following the date on which the primary was conducted, and~~
10 ~~such request shall be subject to the certification of the official results~~
11 ~~by the county board of elections:~~

12 State Senators in single-county senatorial districts,
13 Members of the State House of Representatives in single-county
14 representative districts, and
15 All county officers.

- 16 (3) ~~Immediately upon receipt of a request for a second primary the~~
17 ~~appropriate board of elections, State or county, shall notify all~~
18 ~~candidates entitled to participate in the second primary, by telephone~~
19 ~~followed by written notice, that a second primary has been requested~~
20 ~~and of the date of the second primary.~~

21 (d) Tie Votes; How Determined.—

- 22 (1) ~~In the event of a tie for the highest number of votes in a first primary~~
23 ~~between two candidates for party nomination for a single county, or~~
24 ~~single county legislative district office, the board of elections of the~~
25 ~~county in which the two candidates were voted for shall conduct a~~
26 ~~recount and declare the results. If the recount shows a tie vote, a~~
27 ~~second primary shall be held on the date prescribed in subsection (e) of~~
28 ~~this section between the two candidates having an equal vote, unless~~
29 ~~one of the aspirants, within three days after the result of the recount~~
30 ~~has been officially declared, files a written notice of withdrawal with~~
31 ~~the board of elections with which he filed notice of candidacy. Should~~
32 ~~that be done, the remaining aspirant shall be declared the nominee. In~~
33 ~~the event of a tie for the highest number of votes in a first primary~~
34 ~~among more than two candidates for party nomination for one of the~~
35 ~~offices mentioned in this subdivision, no recount shall be held, but all~~
36 ~~of the tied candidates shall be entered in a second primary.~~

- 37 (2) ~~In the event of a tie for the highest number of votes in a first primary~~
38 ~~between two candidates for a State office, for United States Senator, or~~
39 ~~for any district office (including State Senator in a multi-county~~
40 ~~senatorial district and member of the State House of Representatives in~~
41 ~~a multi-county representative district), no recount shall be held solely~~
42 ~~by reason of the tie, but the two candidates having an equal vote shall~~
43 ~~be entered in a second primary to be held on the date prescribed in~~
44 ~~subsection (e) of this section, unless one of the two candidates files a~~

1 ~~written notice of withdrawal with the State Board of Elections within~~
2 ~~three days after the result of the first primary has been officially~~
3 ~~declared and published. Should that be done, the remaining aspirant~~
4 ~~shall be declared the nominee. In the event of a tie for the highest~~
5 ~~number of votes in a first primary among more than two candidates for~~
6 ~~party nomination for one of the offices mentioned in this subdivision,~~
7 ~~no recount shall be held, but all of the tied candidates shall be entered~~
8 ~~in a second primary.~~

9 (3) ~~In the event one candidate receives the highest number of votes cast in~~
10 ~~a first primary, but short of a substantial plurality, and two or more of~~
11 ~~the other candidates receive the second highest number of votes cast in~~
12 ~~an equal number, the proper board of elections shall declare the~~
13 ~~candidate having the highest vote to be the party nominee, unless all~~
14 ~~but one of the tied candidates give written notice of withdrawal to the~~
15 ~~proper board of elections within three days after the result of the first~~
16 ~~primary has been officially declared. If all but one of the tied~~
17 ~~candidates withdraw within the prescribed three day period, and the~~
18 ~~remaining candidate demands a second primary in accordance with the~~
19 ~~provisions of subsection (c) of this section, a second primary shall be~~
20 ~~held between the candidate who received the highest vote and the~~
21 ~~remaining candidate who received the second highest vote.~~

22 (e) ~~Date of Second Primary; Procedures. If a second primary is required under~~
23 ~~the provisions of this section, the appropriate board of elections, State or county, shall~~
24 ~~order that it be held four weeks after the first primary.~~

25 ~~There shall be no registration of voters between the dates of the first and second~~
26 ~~primaries. Persons whose qualifications to register and vote mature after the day of the~~
27 ~~first primary and before the day of the second primary may register on the day of the~~
28 ~~second primary and, when thus registered, shall be entitled to vote in the second~~
29 ~~primary. The second primary is a continuation of the first primary and any voter who~~
30 ~~files a proper and timely affidavit of transfer of precinct, under the provisions of~~
31 ~~G.S. 163-82.15, before the first primary may vote in the second primary without having~~
32 ~~to refile the affidavit of transfer if he is otherwise qualified to vote in the second~~
33 ~~primary. Subject to this provision for registration, the second primary shall be held~~
34 ~~under the laws, rules, and regulations provided for the first primary.~~

35 (f) ~~No Third Primary Permitted. In no case shall there be a third primary. The~~
36 ~~candidates receiving the highest number of votes in the second primary shall be~~
37 ~~nominated. If in a second primary there is a tie for the highest number of votes between~~
38 ~~two candidates, the proper party executive committee shall select the party nominee for~~
39 ~~the office in accordance with the provisions of G.S. 163-114.~~

40 (g) Nominations in primary elections shall be determined as follows:

41 (1) When more than one person is seeking election to a single office, the
42 candidate who receives the highest number of votes shall be declared
43 the nominee.

(2) When more persons are seeking nomination to two or more offices (constituting a group) than there are offices to be filled, those candidates receiving the highest numbers of votes, equal in number to the number of offices to be filled, shall be declared the nominees.

(h) When more than one person is seeking election to a single office, and two or more candidates receiving the highest numbers of votes each receive the same number of votes, the proper party executive committee shall, from among those candidates receiving the same numbers of votes, select the party nominee in accordance with G.S. 163-114.

(i) When more persons are seeking nomination to two or more offices (constituting a group) than there are offices to be filled, and two or more candidates receiving the lowest numbers of votes necessary for nomination each receive the same number of votes, the proper party executive committee shall, from among those candidates receiving the same numbers of votes, select the party nominee in accordance with G.S. 163-114.

(j) This section prevails over any local act."

SECTION 2. G.S. 163-82.6(d) reads as rewritten:

"(d) **Instances When Person May Register and Vote on Election Day.** – If a person has become qualified to register and vote between the twenty-fifth day before an election and election day, then that person may apply to register on 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 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 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."~~

SECTION 3. G.S. 163-82.17(a) reads as rewritten:

"(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

1 election, indicate the change on an application form as described in G.S. 163-82.3 or on
2 a voter registration card described in G.S. 163-82.8. No registrant shall be permitted to
3 change party affiliation or unaffiliated status for a ~~primary, second primary,~~ primary or
4 special or general election after the deadline for registration applications for that
5 election as set out in G.S. 163-82.6."

6 **SECTION 4.** G.S. 163-226(c) reads as rewritten:

7 "(c) The Term "Election". – As used in this Subchapter, unless the context clearly
8 requires otherwise, the term "election" includes a general, primary, ~~second primary,~~
9 runoff election, bond election, referendum, or special election."

10 **SECTION 5.** G.S. 163-227.1 is repealed.

11 **SECTION 6.** G.S. 163-255 reads as rewritten:

12 **"§ 163-255. Absentee voting at office of board of elections.**

13 Notwithstanding any other provisions of Chapter 163 of the General Statutes, any
14 person eligible to vote an absentee ballot pursuant to G.S. 163-245 shall be permitted to
15 vote an absentee ballot pursuant to G.S. 163-227.2 if the person has not already voted an
16 absentee ballot which has been returned to the board of elections, and if he will not be in
17 the county on the day of the primary or election.

18 In the event an absentee application or ballot has already been mailed to such person
19 applying to vote pursuant to G.S. 163-227.2, the board of elections shall void the
20 application and ballot unless the voted absentee ballot has been received by the board of
21 elections. Such person shall be eligible to vote pursuant to G.S. 163-227.2 no later than
22 5:00 P.M. on the day next preceding the ~~primary, second primary~~ primary or election."

23 **SECTION 7.** G.S. 163-227.3(b) is repealed.

24 **SECTION 8.** G.S. 163-278.6(8) reads as rewritten:

25 "(8) The term 'election' means any general or special election, a ~~first or~~
26 ~~second~~ primary, a run-off election, or an election to fill a vacancy.
27 The term 'election' shall not include any local or statewide
28 referendum."

29 **SECTION 9.** G.S. 163-278.13(d) reads as rewritten:

30 "(d) For the purposes of this section, the term 'an election' means any ~~primary,~~
31 ~~second primary,~~ primary or general election in which the candidate or political
32 committee may be involved, without regard to whether the candidate is opposed or
33 unopposed in the election, ~~except that where a candidate is not on the ballot in a second~~
34 ~~primary, that second primary is not 'an election' with respect to that candidate.~~ election."

35 **SECTION 10.** G.S. 163-278.13B(d) is repealed.

36 **SECTION 11.** G.S. 163-278.40B(2) reads as rewritten:

37 "(2) Pre-election Report. – The treasurer shall file a report 10 days prior to
38 the election, ~~unless a second primary is held and the candidate~~
39 ~~appeared on the ballot in the second primary, in which case the report~~
40 ~~shall be filed 10 days before the second primary election.~~

41 **SECTION 12.** G.S. 163-279(a)(2) reads as rewritten:

42 "(a) Primaries and elections for offices filled by election of the people in cities,
43 towns, incorporated villages, and special districts shall be held in ~~1973-2005~~ and every
44 two or four years thereafter as provided by municipal charter on the following days:

- 1 (1) If the election is nonpartisan and decided by simple plurality, the
2 election shall be held on Tuesday after the first Monday in November.
- 3 (2) If the election is partisan, the election shall be held on Tuesday after
4 the first Monday in November, ~~the first primary shall be held on the~~
5 ~~sixth Tuesday before the election, and the second primary, if required,~~
6 ~~shall be held on the third Tuesday before the election and the primary~~
7 ~~shall be held on the fourth Tuesday before the election.~~
- 8 (3) If the election is nonpartisan and the nonpartisan primary method of
9 election is used, the election shall be held on Tuesday after the first
10 Monday in November and the nonpartisan primary shall be held on the
11 fourth Tuesday before the election.
- 12 (4) If the election is nonpartisan and the election and runoff election
13 method of election is used, the election shall be held on the fourth
14 Tuesday before the Tuesday after the first Monday in November, and
15 the runoff election, if required, shall be held on Tuesday after the first
16 Monday in November."

17 **SECTION 13. G.S. 163-291 reads as rewritten:**

18 **"§ 163-291. Partisan primaries and elections.**

19 The nomination of candidates for office in cities, towns, villages, and special
20 districts whose elections are conducted on a partisan basis shall be governed by the
21 provisions of this Chapter applicable to the nomination of county officers, and the terms
22 "county board of elections," "chairman of the county board of elections," "county
23 officers," and similar terms shall be construed with respect to municipal elections to
24 mean the appropriate municipal officers and candidates, except that:

- 25 (1) The dates of primary and election shall be as provided in
26 G.S. 163-279.
- 27 (2) A candidate seeking party nomination for municipal or district office
28 shall file his notice of candidacy with the board of elections no earlier
29 than 12:00 noon on the first Friday in July and no later than 12:00
30 noon on the first Friday in August preceding the election, except:
- 31 a. In 2001 a candidate seeking party nomination for municipal or
32 district office in any city which elects members of its governing
33 board on a district basis, or requires that candidates reside in a
34 district in order to run, shall file his notice of candidacy with the
35 board of elections no earlier than 12:00 noon on the fourth
36 Monday in July and no later than 12:00 noon on the second
37 Friday in August preceding the election; and
- 38 b. In 2002 if the election is held then under G.S. 160A-23.1, a
39 candidate seeking party nomination for municipal or district
40 office shall file his notice of candidacy with the board of
41 elections at the same time as notices of candidacy for county
42 officers are required to be filed under G.S. 163-106.

43 No person may file a notice of candidacy for more than one
44 municipal office at the same election. If a person has filed a notice of

1 candidacy for one office with the county board of elections under this
2 section, then a notice of candidacy may not later be filed for any other
3 municipal office for that election unless the notice of candidacy for the
4 first office is withdrawn first.

5 (3) The filing fee for municipal and district primaries shall be fixed by the
6 governing board not later than the day before candidates are permitted
7 to begin filing notices of candidacy. There shall be a minimum filing
8 fee of five dollars (\$5.00). The governing board shall have the
9 authority to set the filing fee at not less than five dollars (\$5.00) nor
10 more than one percent (1%) of the annual salary of the office sought
11 unless one percent (1%) of the annual salary of the office sought is less
12 than five dollars (\$5.00), in which case the minimum filing fee of five
13 dollars (\$5.00) will be charged. The fee shall be paid to the board of
14 elections at the time notice of candidacy is filed.

15 (4) The municipal ballot may not be combined with any other ballot.

16 (5) The canvass of the primary ~~and second primary~~ shall be held on the
17 seventh day following the ~~primary or second primary~~ primary. In
18 accepting the filing of complaints concerning the conduct of an
19 election, a board of elections shall be subject to the rules concerning
20 Sundays and holidays set forth in G.S. 103-5.

21 (6) ~~Candidates having the right to demand a second primary shall do so~~
22 ~~not later than 12:00 noon on the Thursday following the canvass of the~~
23 ~~first primary."~~

24 SECTION 14. G.S. 115C-37 is amended by adding a new subsection to
25 read:

26 "(j) The election of any county board of education held at the time of the primary,
27 whether under this section, a local act, or any merger plan adopted under Article 7 of
28 this Chapter, shall be determined by a plurality under G.S. 163-292. No runoff election
29 shall be held."

30 SECTION 15. This act is effective when it becomes law and applies to all
31 elections held on or after that date.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 4

H4-ARR-56 [v.2]

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

Page 1 of 2

Date _____, 2005

Comm. Sub. [NO]
Amends Title [YES]
First Edition

Representative Starnes

- 1 moves to amend the bill on page 1, line 2,
2 by rewriting that line to read:
3 "AN ACT TO MAKE A SECOND PRIMARY AN OPTION OF THE POLITICAL
4 PARTY."; and
5
6 on page 1, line 4,
7 by rewriting that line to read:
8 "SECTION 1. G.S. 163-111 is amended by adding a new subsection to
9 read:"; and
10
11 on page 1, line 5, through page 4, line 39,
12 by deleting the language on those lines; and
13
14 on page 4, line 40, through page 5, line 16,
15 by rewriting those lines to read:
16
17 "(g) If a political party has, by action of its State Executive Committee reported to
18 the State Board of Elections by resolution delivered no later than the first day of
19 December preceding a primary, provided that that party's primaries shall be conducted
20 without a second primary, then that party's nominations shall be determined as follows:
21 (1) When more than one person is seeking election to a single office, the
22 candidate who receives the highest number of votes shall be declared
23 the nominee. When more than one person is seeking election to a
24 single office, and two or more candidates receiving the highest
25 numbers of votes each receive the same number of votes, the proper



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 4

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

H4-ARR-56 [v.2]

Page 2 of 2

1 party executive committee shall, from among those candidates
2 receiving the same numbers of votes, select the party nominee in
3 accordance with G.S. 163-114.

4 (2) When more persons are seeking nomination to two or more offices
5 (constituting a group) than there are offices to be filled, those
6 candidates receiving the highest numbers of votes, equal in number to
7 the number of offices to be filled, shall be declared the nominees.
8 When more persons are seeking nomination to two or more offices
9 (constituting a group) than there are offices to be filled, and two or
10 more candidates receiving the lowest numbers of votes necessary for
11 nomination each receive the same number of votes, the proper party
12 executive committee shall, from among those candidates receiving the
13 same numbers of votes, select the party nominee in accordance with
14 G.S. 163-114."

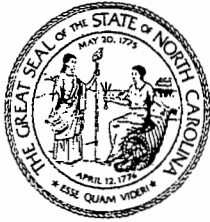
15 For a party to withdraw its permission, it must do so by action of its State Executive
16 Committee, similarly reported to the State Board of Elections no later than the first day
17 of December preceding the primary where the withdrawal is to become effective."; and
18

19 by deleting Sections 2 through 14 of the bill renumbering any subsequent section of the
20 bill accordingly.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____



HOUSE BILL 4: Abolish Second Primary

BILL ANALYSIS

Committee:	House Election Law and Campaign Finance Reform	Date:	April 27, 2005
Introduced by:	Rep. Miller	Summary by:	William R. Gilkeson
Version:	First Edition		Committee Co-Counsel

SUMMARY: *The First Edition of House Bill 4 would abolish the second primary for partisan offices. Instead of the current 40% threshold for winning in a primary without the possibility of the runner-up calling for a second primary, the candidate with the most votes, regardless of the percentage, would win the primary outright.*

CURRENT LAW: Currently, the law for partisan primaries in NC is that if the leading candidate in a single-seat race receives more than 40% of the vote in the first primary held, that candidate wins the nomination. If the candidate wins 40% or less, the runner up has the right to demand a second primary.

In a multi-seat race, the formula is slightly more complicated. The threshold is arrived at by dividing the total vote cast by the number of candidates, and multiplying the resulting number by 0.4. In a race for two seats, if the two top candidates receive more votes than the number that results from that formula, they win the nomination outright. If one of the two top candidates falls short of that number, then the candidate one below has the right to call for a second primary. If both of the two top candidates fall short of the threshold number, then two candidates down the line have the right to call for a second primary.

A candidate who has the right to call for a second primary must do so by the ninth day after the primary. The second primary is held four weeks after the first.

BILL ANALYSIS: Section 1 of the bill would set these rules for deciding primaries:

- In a single-seat race, the candidate with the most votes wins.
- In a multi-seat race, say, for two seats, the two candidates with the most votes win.
- In a single-seat race, if the top two candidates tie, the proper party executive committee chooses the nominee from between those two candidates.
- In a multi-seat race, say, for two seats, if one candidate receives the most votes and two candidates tie for the second most votes, the top candidate wins proper party executive committee chooses between the other two.

Sections 2 through 13 of the bill are conforming changes.

Section 14 of the bill deals with county boards of education that are elected on a nonpartisan election and runoff system, with the election set on the day of the partisan first primary and the runoff set on the day of the partisan second primary. The bill simply changes those to nonpartisan plurality elections held on the day of the partisan primary.

EFFECTIVE DATE: The bill would be effective when it becomes law and apply to all primaries held on or after that date. This means that, if it is enacted and receives Voting Rights Act preclearance in time, it would first apply to municipal elections this year.

H0004e1-SMRR

Year	Office	Total # of votes in first primary	Front-runner and second candidate in first primary (by party)	% of votes for front-runner in first primary	% of votes for second candidate in first primary	Total # of votes in second primary	Second primary winner	% drop-off in voting between first and second primary
1998	No second primaries were held in these offices in 1998. ³							
2000	Commissioner of Agriculture	242,084	1. Troxler (WMR) 2. Davidson (WMR)	66,257 27.37%	58,189 24.04%	50,775	Troxler (WMR) 30,666	79.03%
	Commissioner of Labor	241,425	1. Berry (WFR) 2. Miller (WMR)	92,695 38.39%	74,127 30.70%	49,629	Berry (?) (WFR) 28,203	79.44%
	N.C. Senate – District 38	10,560	1. Potts (WMR) 2. Bingham (WMR)	2,796 26.48%	2,738 25.93%	4,724	Bingham* (WMR) 3,096	55.27%
	N.C. House – District 49	4,111	1. Bryant (WFD) 2. Huskins (WMD)	1,464 35.61%	1,388 33.76%	2,421	Huskins (WMD) 1,307	41.11%
	District Judge – District 10.	34,142	1. Bryant (WMD) 2. Suhr (Asian MD)	10,988 32.18%	6,462 18.93%	6,104	Bryant (WMD) 3,858	82.12%
2002	Because of delays caused by redistricting litigation, no second primaries were held in 2002.							
2004	Supt. of Public Instruction	384,663	1. Stewart (WMD) 2. Atkinson (WFD)	135,348 35.19%	132,041 34.33%	80,068	Atkinson ⁴ (WFD) 44,175	79.18%
	U.S. House – District 5	58,627	1. Robinson (BMR) 2. Foxx (WFR)	13,824 23.58%	13,119 22.38%	42,293	Foxx* (WFR) 23,092	27.86%
	U.S. House – District 10	40,852	1. Huffman (WMR) 2. McHenry (WMR)	14,280 34.96%	10,760 26.34%	29,945	McHenry* (WMR) 15,015	26.70%
	N.C. Senate – District 3	15,223	1. Jenkins (WMD) 2. Willingham (BMD)	5,044 33.13%	4,991 32.79%	11,144	Jenkins* (WMD) 6,070	26.79%
	N.C. Senate – District 7	17,333	1. Berger (WMD) 2. Moss (BMD)	6,360 36.69%	3,412 19.68%	8,619	Berger* (WMD) 4,409	50.27%
	N.C. House – District 27	9,832	1. Henderson (BMD) 2. Wray (WMD)	2,882 29.31%	2,874 29.23%	5,806	Wray* (WMD) 2,982	40.95%
	N.C. House – District 67	4,233	1. Almond (WMR) 2. Barbee (WMR)	1,686 39.83%	1,603 37.87%	3,574	Almond* (WMR) 2,322	15.57%
	N.C. House – District 74	8,071	1. Folwell (WMR) 2. Conrad-Shrader (WFR)	2,351 29.13%	2,066 25.60%	6,999	Folwell* (WMR) 4,656	13.28%

³ All congressional first primaries were held under a court order in mid-September with no provision for a runoff. One of those primary contests, for the 12th District Republican nomination, drew six candidates. The winner, Scott Keadle (WMR), received just under 28% of the vote.

⁴ The State Board of Elections ruled that Ms. Atkinson won the general election, but litigation over the race was not settled by 5-3-05.

Statistics:

- 35 runoff primaries in 7 election years (not counting 2002). Out of more than 1,000 potential primaries.
- 17 of the 35 resulted in reversals, or 48.57%.
- In 9 of the 35 primaries, the top candidate in the first primary received less than 30% of the vote.
- Only 5 incumbents were involved in the 35 runoffs. 4 of the 5 incumbents led in the first primary. 3 of the 5 incumbents were defeated in the second primary.
- 12 of the runoffs involved a minority-race candidate in a contest with a white candidate. 6 of the minority candidates led in the first primary; of those 6, 3 also won in the runoff and 3 lost. 6 of the minority candidates came in second in the first primary; of those 6, one prevailed in the runoff and the other 5 lost.
- 16 of the runoffs involved women in races with a man. 9 of the women candidates led in the first primary; of those 9, 6 also won in the runoff and 3 lost. 7 of the women candidates came in second in the first primary; of those 7, 5 won the second primary and 2 lost.
- Of the 35 runoffs, 18 had fewer than half the number of voters who voted in the first primary. Only one runoff had more voters than the first primary.
- In 18 of those 35 primaries, the winner in the second primary received fewer votes than the runner-up in the first primary.

SECOND PRIMARIES IN NORTH CAROLINA 1990-2004

Statewide Races, U.S. House Races, General Assembly Races, Judicial Races.

November 9, 2000 – Updated May 3, 2005

Year	Office	Total # of votes in first primary	Front-runner and second candidate in first primary (by party) BFD = black female Democrat, etc.	Votes for front-runner in first primary	Votes for second candidate in first primary	Total # of votes in second primary	Second primary winner	% drop-off in voting between first and second primary
1990	U.S. Senate	693,496	1. Gantt (BMD) 2. Easley (WMD)	260,179 37.52%	206,934 30.27%	480,850	Gantt (BMD) 273,567	30.66%
1992	Superintendent of Public Instruction	214,409	1. Little (WFR) 2. Robinson (BMR)	75,519 35.22%	69,842 32.57%	45,556	Little (WFR) 23,887	78.75%
	U.S. House – 1 st District	88,199	1. Jones (WMD) 2. Clayton (BFD)	33,634 38.13%	27,477 31.15%	78,939	Clayton * (BFD) 43,210	10.50%
	U.S. House – 2 nd District	19,836	1. Davis (WMR) 2. Israel (WMR)	4,848 24.44%	4,845 24.32%	7,316	Davis (WMR) 5,005	63.12%
	U.S. House – 12 th District	8,687	1. Washington (BFR) 2. Jones (BMR)	2,938 33.82%	1,917 22.07%	1,932	Washington (BFR) 1,071	77.76%
	N.C. House – District 46 ¹	17,807	1. Buchanan (WMR) 2. Thompson (WMR)	3,511 39.43%	3,486 39.15%	5,352	Thompson* (WMR) 3,587	69.94%
	N.C. House – District 77	6,965	1. Moore (WFD) 2. Stewart (WMD)	2,729 39.18%	2,449 35.16%	5,841	Moore (WFD) 3,164	16.14%
	District judge ² – 2 nd district	15,573	1. McLendon (WMD) 2. Paul (WMD)	5,258 33.76%	5,158 33.12%	12,785	Paul * (WMD) 6,567	17.90%
	District judge – 11 th district	23,163	1. Stubbs (WMD) 2. Lanier (WMD)	8,580 37.04%	7,476 32.28%	8,959	Lanier * (WMD) 4,838	61.32%

¹ House District 46 was a two-member district. In the Republican first primary, David T. Flaherty Jr. received more than 40% of half the total votes cast in the race and therefore was declared nominated without a second primary. Rep. Charles Buchanan and Greg Thompson were in a second primary for the other seat.

² Beginning in 2002, District Court judgeships were elected on a nonpartisan ballot. Therefore, they were no longer subject to the second primary statutes.

William R. Gilkeson, Legislative Services Office, N.C. General Assembly.

Much of the research was compiled by Sarah Kamprath and Dee Atkinson, Legislative Services Office.

Boldfaced italics indicates an incumbent.

An asterisk (*) indicates the candidate won in the general election.

Year	Office	Total # of votes in first primary	Front-runner and second candidate in first primary (by party)	Votes for front-runner in first primary	Votes for second candidate in first primary	Total # of votes in second primary	Second primary winner	% drop-off in voting between first and second primary
1994	N.C. Court of Appeals	479,159	1. Tyson (WMD) 2. McCrodden (WFD)	186,085 38.77%	166,711 34.73%	171,072	McCrodden (WFD) 101,377	64.36%
	U.S. House – 9 th District	35,313	1. Myrick (WFR) 2. Balmer (WMR)	12,173 34.47%	9,894 28.02%	25,991	Myrick * (WFR) 17,713	26.40%
	N.C. House – District 28	3,216	1. Burton (BMD) 2. Boyd-McIntyre(BFD)	1,187 36.91%	1,119 34.79%	1,200	Boyd-McIntyre * (BFD) 538	62.69%
	N.C. House – District 69	3,801	1. Lemmond (WMR) 2. Daly (WMR)	1,441 37.91%	1,198 31.52%	3,946	Lemmond* (WMR) 1,976	-3.81%
	District judge - 14 th district	61,225	1. O'Neal-Lee (BFD) 2. Hill (WMD)	8,017 13.09%	5,973 9.76%	8,591	O'Neal-Lee* (BFD) 4,850	85.97%
	District judge - 18 th district	24,901	1. Bray (WFD) 2. Priest (WFD)	7,388 29.67%	5,640 22.65%	5,180	Priest 3,282	79.20%
	District judge - 23 rd district	15,226	1. Reavis (WFR) 2. Byrd (WMR)	6,064 39.83%	5,581 36.65%	9,034	Byrd * (WMR) 4,686	40.67%
	District judge - 26 th district	18,083	1. Heasley (WMD) 2. Williamson (WFD)	6,691 37%	5,574 30.82%	17,968	Heasley * (WMD) 9,606	0.64%
1996	Secretary of State	481,159	1. Marshall (WFD) 2. Lee (BFD)	130,520 27.13%	98,581 20.49%	116,202	Marshall * (WFD) 70,279	75.85%
	Commissioner of Agriculture	199,455	1. Davidson (WMR) 2. Gray (WMR)	66,046 33.11%	54,701 27.43%	40,058	Davidson (WMR) 22,212	79.92%
	U.S. House – 7 th District	52,684	1. Lowry-Townsend (IFD) 2. McIntyre (WMD)	15,925 30.23%	12,327 23.40%	31,153	McIntyre * (WMD) 16,285	40.87%
	U.S. House – 7 th District	19,198	1. Anderson (WMR) 2. Caster (WMR)	7,176 37.38%	6,201 32.30%	9,982	Caster (WMR) 5,355	48.01%
	U.S. House – 8 th District	22,797	1. Morgan (WMR) 2. Blackwood (WMR)	8,053 35.32%	6,583 28.88%	5,321	Blackwood (WMR) 3,398	76.66%

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

D

HOUSE BILL 1024
PROPOSED COMMITTEE SUBSTITUTE H1024-CSRR-30 [v.1]

5/10/2005 3:23:15 PM

Short Title: Instant Runoff Voting.

(Public)

Sponsors:

Referred to:

March 31, 2005

A BILL TO BE ENTITLED
AN ACT TO PROVIDE FOR INSTANT RUNOFF VOTING IN STATEWIDE
PARTY PRIMARIES AND CERTAIN STATEWIDE JUDICIAL VACANCY
ELECTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 10 of Chapter 163 of the General Statutes is amended
by adding a new section to read:

"§ 163-111A. Instant runoff voting.

(a) Definition. – As used in this Chapter, 'instant runoff voting' means a method of casting and counting votes as set forth in this section that accomplishes the same effect as all voters participating in a second primary or runoff election. In casting votes, voters rank candidates by order of preference. In counting votes, ballots are counted in rounds. In the first round, only first-choice votes are counted. If the top candidate receives a substantial plurality of the first-choice votes, that candidate wins. If no candidate receives a substantial plurality in the first round, there is a second round of counting. Only the two candidates with the greatest number of first-choice votes advance to the second round of counting. In this second round, each ballot counts as a vote for whichever of the two final candidates is ranked higher on the ballot. The candidate with the greater number of votes in the second round wins.

(b) Voting. – On every ballot using instant runoff voting, the voters shall be given the opportunity to rank candidates in the order of their preference. Ballots shall be made simple and easy to understand. The instructions for the ballot shall inform the voter of all of the following:

- (1) That in addition to marking their first-choice candidate, the voter may rank alternate choice candidates.
- (2) That marking a second or other choice candidate can never defeat the voter's first choice.

1 (c) Counting. – The following procedures shall be used to determine winners in
2 instant runoff voting:

3 (1) The ballots shall be counted initially according to the first choice
4 marked on each ballot. If one candidate receives a substantial plurality
5 of the votes cast, the board of elections shall certify that candidate as
6 the winner.

7 (2) If at the end of the initial round of counting, no candidate received a
8 substantial plurality of first choices, all candidates shall be eliminated
9 except the two candidates with the greatest number of first choices.
10 The board of elections shall then conduct a second, final round of
11 counting in which ballots that rank eliminated candidates as a first
12 choice and that indicate one of the uneliminated candidates as an
13 alternative choice shall be counted as votes for whichever of the
14 uneliminated candidates is ranked higher on each ballot. In the second
15 round, each ballot is counted as one vote for the highest ranked
16 candidate on that ballot who has not been eliminated. The candidate
17 with the greater number of votes in the second round shall be certified
18 as the winner. If instant runoff voting results in a tie between the
19 uneliminated candidates, the proper party executive committee shall
20 select the nominee as it would in a tie in a second primary as provided
21 in G.S. 163-111(f).

22 (d) General Provisions. – The following general provisions shall apply to instant
23 runoff voting:

24 (1) If after the first-choice candidate is eliminated, a ballot does not
25 indicate one of the uneliminated candidates as an alternative choice,
26 the ballot is exhausted and shall not be counted after the initial round.

27 (2) The fact that the voter gives more than one ranking to the same
28 candidate shall not invalidate the vote. The highest ranking given a
29 particular candidate shall count as long as the candidate is not
30 eliminated.

31 (3) In case of a tie between candidates such that two or more candidates
32 have an equal number of first choices and more than two candidates
33 qualify for the second round, instant runoff voting shall be used to
34 determine which two candidates shall advance to the second round."

35 **SECTION 2.** G.S. 163-111 reads as rewritten:

36 **"§ 163-111. Determination of primary results; second primaries.**

37 (a) **Nomination Determined by Substantial Plurality; Definition of Substantial**
38 **Plurality.** – Except as otherwise provided in this section, nominations in primary
39 elections shall be determined by a substantial plurality of the votes cast. A substantial
40 plurality within the meaning of this section and G.S. 163-111A shall be determined as
41 follows:

42 (1) If a nominee for a single office is to be selected, and there is more than
43 one person seeking nomination, the substantial plurality shall be
44 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

1 writing with the Executive Director of the State Board of Elections no
2 later than 12:00 noon on the ninth day (including Saturdays and
3 Sundays) following the date on which the primary was conducted, and
4 such request shall be subject to the certification of the official results
5 by the State Board of Elections. If the vote certification by the State
6 Board of Elections determines that a candidate who was not originally
7 thought to be eligible to call for a second primary is in fact eligible to
8 call for a second primary, the Executive Director of the State Board of
9 Elections shall immediately notify such candidate and permit him to
10 exercise any options available to him within a 48-hour period
11 following the notification:

12 Governor;

13 Lieutenant Governor;

14 All State executive officers;

15 District Attorneys of the General Court of Justice,

16 United States Senators;

17 Members of the United States House of Representatives,

18 State Senators in multi-county senatorial districts, and

19 Members of the State House of Representatives in multi-county
20 representative districts.

- 21 (2) A candidate who is apparently entitled to demand a second primary,
22 according to the unofficial results, for one of the offices listed below
23 and desiring to do so, shall file a request for a second primary in
24 writing with the chairman or director of the county board of elections
25 no later than 12:00 noon on the ninth day (including Saturdays and
26 Sundays) following the date on which the primary was conducted, and
27 such request shall be subject to the certification of the official results
28 by the county board of elections:

29 State Senators in single-county senatorial districts,

30 Members of the State House of Representatives in single-county
31 representative districts, and

32 All county officers.

- 33 (3) Immediately upon receipt of a request for a second primary the
34 appropriate board of elections, State or county, shall notify all
35 candidates entitled to participate in the second primary, by telephone
36 followed by written notice, that a second primary has been requested
37 and of the date of the second primary.

38 (c1) Primaries for Statewide Offices. – In all primaries for statewide office, if no
39 candidate receives a substantial plurality, the winner shall be determined by instant
40 runoff voting as provided in G.S. 163-111A. In those primaries, instant runoff voting
41 shall be used without the need for the second-place candidate to call for it.

42 (d) Tie Votes; How Determined. –

- 43 (1) In the event of a tie for the highest number of votes in a first primary
44 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 four 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 affidavit of transfer of precinct, under the provisions of G.S. 163-82.15, before the first primary may vote in the second primary without having to refile the affidavit of transfer 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."

SECTION 3. G.S. 163-329 reads as rewritten:

"§ 163-329. Elections to fill vacancy created after primary filing period to use plurality or instant runoff voting 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 or judge of the Court of Appeals during the same time period, the vacancy shall be filled by instant runoff voting, as provided in G.S. 163-111A, except that a candidate wins in the first round of counting only if that candidate has a majority of all votes cast. 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) ~~Plurality Special Vacancy 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

1 working days for the office of justice of the Supreme Court, judge of
2 the Court of Appeals, or superior court judge. All persons filing in
3 either filing period shall run as a group and the election results shall be
4 determined by subdivision (3) of this subsection.

5 (2) When more than one person is seeking election to a single office, the
6 candidate who receives the highest number of votes shall be declared
7 ~~elected~~, elected, except that elections for justice of the Supreme Court
8 and judge of the Court of Appeals shall be determined by instant
9 runoff voting as provided in subsection (a) of this section.

10 (3) When more persons are seeking election to two or more offices
11 (constituting a group) than there are offices to be filled, those
12 candidates receiving the highest number of votes, equal in number to
13 the number of offices to be filled, shall be declared elected.

14 (4) If two or more candidates receiving the highest number of votes each
15 receive the same number of votes, the board of elections shall resolve
16 the tie in accordance with ~~G.S. 163-182.8~~, G.S. 163-182.8, except that
17 ties in elections for justice of the Supreme Court and judge of the
18 Court of Appeals shall be resolved by instant runoff voting as provided
19 in subsection (a) of this section. If instant runoff voting results in a tie,
20 the provisions of G.S. 163-182.8 shall apply.

21 (5) Except as provided in this section, the provisions of this Article apply
22 to elections conducted under this section."

23 **SECTION 4.** This act becomes effective January 1, 2008, and applies to any
24 primaries or elections held on or after that date.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1024

H1024-ARR-58 [v.1]

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

Page 1 of 2

Date _____, 2005

Comm. Sub. [YES]
Amends Title [YES]
H1024-CSR-30 [V.1]

Representative *Lucy Burke*

1 moves to amend the bill on page 1, line 2, through page 7, line 24,
2 by rewriting those lines to read:

3
4 "AN ACT TO AUTHORIZE THE STATE BOARD OF ELECTIONS TO CONDUCT
5 A PILOT PROGRAM IN WHICH THE INSTANT RUNOFF METHOD OF
6 VOTING WOULD BE USED IN LOCAL ELECTIONS.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** The State Board of Elections shall select up to 10 counties in
9 which to conduct a pilot program during the 2005 and 2006 elections. In selecting those
10 counties, the State Board shall seek diversity of population size, regional location, and
11 demographic composition. The pilot shall be conducted in a county only with the
12 concurrence of the county board of elections. The pilot program shall consist of using
13 the instant runoff method of voting, as described in House Bill 1024 of the 2005 Session
14 of the General Assembly, with modifications the State Board deems necessary, in
15 primaries and/or elections for city offices, for county offices, or for both. The State
16 Board shall not use instant runoff voting in a primary or election for an office unless
17 electorate for the office uses the same method.

18 **SECTION 2.** This act is effective when it becomes law. The State Board of
19 Elections shall closely monitor the pilot program and report its findings and
20

the entire



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1024

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

H1024-ARR-58 [v.1]

Page 2 of 2

- 1 recommendations to the General Assembly at its 2006 Regular Session and to the 2007
2 General Assembly."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

1

HOUSE BILL 1024

Short Title: Instant Runoff Voting.

(Public)

Sponsors: Representatives Luebke; Fisher and Harrison.

Referred to: Election Law and Campaign Finance Reform.

March 31, 2005

A BILL TO BE ENTITLED
AN ACT TO PROVIDE FOR INSTANT RUNOFF VOTING IN STATEWIDE
PARTY PRIMARIES AND CERTAIN STATEWIDE JUDICIAL VACANCY
ELECTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 10 of Chapter 163 of the General Statutes is amended
by adding a new section to read:

"§ 163-111A. Instant runoff voting.

(a) Definition. – As used in this Chapter, 'instant runoff voting' means a method of casting and counting votes as set forth in this section that accomplishes the same effect as all voters participating in a second primary or runoff election. In casting votes, voters rank candidates by order of preference. In counting votes, ballots are counted in rounds. In the first round, only first-choice votes are counted. If the top candidate receives a substantial plurality of the first-choice votes, that candidate wins. If no candidate receives a substantial plurality in the first round, there is a second round of counting. Only the two candidates with the greatest number of first-choice votes advance to the second round of counting. In this second round, each ballot counts as a vote for whichever of the two final candidates is ranked higher on the ballot. The candidate with the greater number of votes in the second round wins.

(b) Voting. – On every ballot using instant runoff voting, the voters shall be given the opportunity to rank candidates in the order of their preference. Ballots shall be made simple and easy to understand. The instructions for the ballot shall inform the voter of all of the following:

(1) That in addition to marking their first-choice candidate, the voter may rank alternate choice candidates.

(2) That marking a second or other choice candidate can never defeat the voter's first choice.

(c) Counting. – The following procedures shall be used to determine winners in instant runoff voting:

(1) The ballots shall be counted initially according to the first choice marked on each ballot. If one candidate receives a substantial plurality of the votes cast, the board of elections shall certify that candidate as the winner.

(2) If at the end of the initial round of counting, no candidate received a substantial plurality of first choices, all candidates shall be eliminated except the two candidates with the greatest number of first choices. The board of elections shall then conduct a second, final round of counting in which ballots that rank eliminated candidates as a first choice and that indicate one of the uneliminated candidates as an alternative choice shall be counted as votes for whichever of the uneliminated candidates is ranked higher on each ballot. In the second round, each ballot is counted as one vote for the highest ranked candidate on that ballot who has not been eliminated. The candidate with the greater number of votes in the second round shall be certified as the winner.

(d) General Provisions. – The following general provisions shall apply to instant runoff voting:

(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 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.

(3) 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."

SECTION 2. G.S. 163-111 reads as rewritten:

"§ 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 and G.S. 163-111A 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.

(c1) Primaries for Statewide Offices. – In all primaries for statewide office, if no candidate receives a substantial plurality, the winner shall be determined by instant runoff voting as provided in G.S. 163-111A. In those primaries, instant runoff voting shall be used without the need for the second-place candidate to call for it.

(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 four 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 affidavit of transfer of precinct, under the provisions of G.S. 163-82.15, before the first primary may vote in the second primary without having to refile the affidavit of transfer 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."

SECTION 3. G.S. 163-329 reads as rewritten:

"§ 163-329. Elections to fill vacancy created after primary filing period to use plurality or instant runoff voting 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 or judge of the Court of Appeals during the same time period, the vacancy shall be filled by instant runoff voting, as provided in G.S. 163-111A, except that a candidate wins in the first round of counting only if that candidate has a majority of all votes cast. 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) ~~Plurality~~ Special Vacancy 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~~ elected, except that elections for justice of the Supreme Court

1 and judge of the Court of Appeals shall be determined by instant
2 runoff voting as provided in subsection (a) of this section.

3 (3) When more persons are seeking election to two or more offices
4 (constituting a group) than there are offices to be filled, those
5 candidates receiving the highest number of votes, equal in number to
6 the number of offices to be filled, shall be declared elected.

7 (4) If two or more candidates receiving the highest number of votes each
8 receive the same number of votes, the board of elections shall resolve
9 the tie in accordance with ~~G.S. 163-182.8~~. G.S. 163-182.8, except that
10 ties in elections for justice of the Supreme Court and judge of the
11 Court of Appeals shall be resolved by instant runoff voting as provided
12 in subsection (a) of this section. If instant runoff voting results in a tie,
13 the provisions of G.S. 163-182.8 shall apply.

14 (5) Except as provided in this section, the provisions of this Article apply
15 to elections conducted under this section."

16 **SECTION 4.** This act becomes effective January 1, 2008, and applies to any
17 primaries or elections held on or after that date.



HOUSE BILL 1024: Instant Runoff Voting

BILL ANALYSIS

Committee:	House Election Law and Campaign Finance Reform	Date:	May 10, 2005
Introduced by:	Rep. Luebke	Summary by:	William R. Gilkeson
Version:	PCS to First Edition H1024-CSRR-30 [v.1]		Committee Co-Counsel

SUMMARY: *This Proposed Committee Substitute for House Bill 1024 would use "instant runoff voting" to determine partisan primaries for statewide offices. The method would also be used vacancy elections for Supreme Court and Court of Appeals during the election year, where a statewide nonpartisan plurality is used. Instant runoff voting involves allowing the voter to list the candidates in order of preference. If no candidate reaches the threshold of victory in the first round of counting, all but the top two candidates are eliminated, and those candidates are assigned the alternative votes they got from voters whose first-choice candidate was eliminated. The intent is to accomplish at one time the same effect as all voters participating in a second primary or runoff.*

CURRENT LAW: Currently, candidates in party primaries in NC is that if the leading candidate in a single-seat race receives more than 40% of the vote in the first primary held, that candidate wins the nomination. If the leading candidate wins 40% or less, the runner up has the right to demand a second primary.

Judges are elected by a nonpartisan primary-and-election system. The primary eliminates all but the top two candidates. No primary is held if only two candidates file. The election is a choice between the remaining two candidates. However, in the case of Superior Court judges, Court of Appeals judges, and justices of the Supreme Court, if a vacancy occurs after the filing period for the primary opens but before the 60th day before the election, the law eliminates the primary and the seat is filled by a nonpartisan plurality election in which the candidate with the most votes wins, regardless how small the percentage of the vote for that candidate. The State Constitution requires an election the same year if the vacancy occurred more than 60 days before the fall general election.

BILL ANALYSIS: House Bill 1024 would leave the current 40% second primary system alone for all partisan offices except those elected statewide. For statewide partisan offices it would substitute "instant runoff voting," a form of preference voting, to determine the nominees when no candidate received more than 40%. Instant runoff voting is described in Section 1 of the bill as a process of both voting and counting:

- In voting, the voter is allowed to rank by choice all the candidates running. The voter would be instructed that marking a second or lower choice for a candidate can never defeat the voter's first choice.
- In counting the votes, the board of elections may go two rounds. In the first round, the first-choice votes for the candidates are counted. If the leading candidate wins more than 40% of the first-choice votes, that candidate wins the nomination. If the leading candidate does not get more than 40%, then all but the two top candidates are eliminated. Round Two of counting then proceeds. In Round Two, the board counts the ballots of all the voters whose first choice candidate was eliminated. It counts those ballots for the uneliminated candidate who is ranked highest as an alternative choice on that ballot. Those alternative votes, added to the ballots that ranked the uneliminated candidates as first choice, will determine the winner between the top two.

Section 2 of the bill sets out the full existing second primary statute, describing the "substantial plurality" as more than 40%. It changes the statute to say that for statewide races, instant runoff voting will be used to determine the winner in case of no substantial plurality. This section also makes clear that, unlike with a second primary, the instant runoff method will be applied even if the runner-up doesn't demand it.

Section 3 of the bill applies the same instant runoff method to mid-election-year vacancies for Supreme Court and Court of Appeals, the two statewide judicial elections, when those vacancy elections require a plurality election.

EFFECTIVE DATE: The bill would not go into effect until January 1, 2008.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

1

HOUSE BILL 1102

Short Title: Early Prep for One-Stop Count.

(Public)

Sponsors: Representative Allred.

Referred to: Election Law and Campaign Finance Reform.

April 4, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE COUNTY BOARDS OF ELECTIONS TO COUNT
ONE-STOP BALLOTS AT THE SAME TIME AS OTHER ABSENTEE
BALLOTS, AND TO ALLOW THOSE BOARDS TO TAKE PREPARATORY
STEPS FOR COUNTING ONE-STOP AND OTHER ABSENTEE VOTES
EARLIER THAN TWO O'CLOCK P.M.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-234(2) reads as rewritten:

"(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, and except that one-stop ballots under G.S. 163-227.2 counted

1 ~~electronically shall not be counted until the polls close; provided,~~
2 ~~however, that if there are outstack ballots in the counting device, they~~
3 ~~may be counted at the same time as other ballots are counted under this~~
4 ~~subdivision. The county board of elections may begin putting them in~~
5 ~~the tabulator at the same time as other ballots are counted under this~~
6 ~~subdivision if the system for counting one-stop ballots requires them to~~
7 ~~be put in a tabulator but the process has the voter place them in a ballot~~
8 ~~box.~~ ballots. Nothing in this section shall prohibit a county board of
9 elections from taking preparatory steps for the count earlier than the
10 times specified in this section, as long as the preparatory steps do not
11 reveal to any individual in understandable form election results before
12 the times specified in this subdivision for the count to begin. By way
13 of illustration and not limitation, a preparatory step for the count
14 would be the entry of tally cards from direct record electronic voting
15 units into a computer for processing. The board shall not announce the
16 result of the count before 7:30 p.m."

17 **SECTION 2.** This act is effective when it becomes law and applies to all
18 elections held on or after that date.



HOUSE BILL 1102: Early Prep for One-Stop Count

BILL ANALYSIS

Committee:	House Election Law and Campaign Finance Reform	Date:	May 10, 2005
Introduced by:	Rep. Allred	Summary by:	William R. Gilkeson
Version:	First Edition		Committee Co-Counsel

SUMMARY: *The First Edition of House Bill 1102 would allow a county board of elections to count one-stop (early voting) ballots electronically at the same time as other absentee ballots are counted, that is, at 2 p.m. on election day, rather than having to wait till the polls close. In addition, the bill would allow the board to take preparatory steps toward counting one-stop votes and mail absentee ballots earlier than 2 p.m., as long as the preparatory steps do not reveal results understandably to any human being. The bill leaves in place the law that says no results may be made public until the polls close.*

CURRENT LAW: Currently, NC has somewhat elaborate statutes for the counting of one-stop (early-voting) ballots and mail absentee ballots:

- The default provision for counting mail absentee ballots is that the board may begin counting them at 5 p.m. on election day. All mail absentee ballots are necessarily paper.
- If the board resolves 2 weeks before the election to do so, it may begin the mail absentee count at 2 p.m. on election day, rather than 5 p.m.
- A provision in the one-stop statute allows counties to use optical scan and direct-record-electronic equipment for one-stop, rather than the paper ballots in envelopes required for mailed absentee ballots, if the voting system provides for retrievable ballots. A county using such a voting system must present a plan for its use in one-stop to the State Board of Elections. The State Board allows counties using optical scan equipment to let one-stop voters insert their ballots into tabulators, on the theory that the tabulator is analogous to an envelope, as long as no one presses the button on the tabulators that print a tape showing the results. That printing of results constitutes counting, and it may not be done till election day.
- If one-stop ballots are counted manually, they would be treated like other absentee ballots. If they are counted electronically, the statute says the counting must not begin until the polls close. The exception is ballots that optical scan tabulators throw into an "outstack" -- the paper ballots the tabulator can't read. Those may be counted at 5 p.m. or 2 p.m. with the other ballots.

BILL ANALYSIS: The bill would remove the requirement that one-stop ballots counted electronically may not be counted until the polls close. They could be counted at 5 p.m. or 2 p.m. like other absentee ballots.

In addition, the bill would allow preparatory steps toward counting to occur earlier, as long as those steps do not reveal results to anyone before the count begins. The bill gives as an example the entry of tally cards in a direct-record-electronic voting system into a computer for processing. This part of the bill generalizes what optical scan counties may do to counties that use other voting systems, including direct record electronic, as well.

EFFECTIVE DATE: Effective when it becomes law and applies to primaries and elections on and after that date.

BACKGROUND: Earlier this session, the House passed HB 128 and the Senate passed SB 226. Those bills, with identical provisions, were recommended by the Joint Select Committee on Electronic Voting Systems. They were short-titled "Early Prep for Absentee Count." They address only the counting of mail absentee ballots, saying that a county board that uses a tabulator to count mail absentee ballots may begin the preparation for that count at each meeting it holds before election day to approve absentee applications. At those meetings, they may remove approved absentee ballots from their application envelopes and feed them into the tabulator, not printing the totals tape until election day. Thus those bills would allow optical scan counties to do with mail absentee ballots what they can do with one-stop absentee ballots. HB 1102 applies the same "early prep" principle to all voting systems, and to both mail absentee and one-stop ballots.

H1102e1-SMRR

VISITOR REGISTRATION SHEET

Election Law

5-11-05

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Jane Doran	GTCC
Betsy Morris	Guilford Technical Community College
Theresa Anne Collins	GTCC
Lisa A. Yeager	Guilford Technical Community College
Christy Speer	GTCC, Poli Sci Janesville NC
Dawn Izum	WSD
Judy Hodges	Wake Co ROE
Susan Myrick	Wake Co ROE
John Phelps	NCLM
Rick + Jean Moore	NCLM
Chris Heagerty	NCCVE

VISITOR REGISTRATION SHEET

Election Law

Name of Committee

5-11-05

Date _____

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME

FIRM OR AGENCY

Bob Hall

Demorest, North Carolina

Don Wright

State Bd. of Elections

Chad Hinton

Curtas Institute

Harold H. Shapiro

City of King Mountain

H. L. G. Smith

Southern's Tri-County Garden

Paul Meyer

NCAc

Chad Essick

Poyner + Spruill LLP

Dang Song

Information Services Division

Song Hale

Informasi Sistem Dikawatir

Robert B. Partin

mayor - Town of Scotland Neck

2cm Colson

CWA

David Under

PTI-PNC

MINUTES
House Committee on Election Law and Campaign Finance Reform
May 18, 2005
1:00 p.m., Room 1425
Representative Ross, Presiding

The House Committee on Election Law and Campaign Finance Reform met at 1:00 p.m. on Tuesday, May 18, 2005, in Room 1425 of the State Legislative Building.

Members present were: Representative Tim Moore, Co-Chair; Representative Deborah Ross, Co-Chair; Representative Joe Kiser, Vice-Chair; Representative Paul Luebke, Vice-Chair; Representative John Blust; Representative Walter Church; Representative Pricey Harrison; Representative Hugh Holliman; Representative George Holmes; Representative David Lewis; and Representative Edgar Starnes.

There was one bill on the agenda: House Bill 4, Abolish Second Primary, sponsored by Representative Paul Miller.

Co-Chair Deborah Ross called the meeting to order and introduced the pages and sergeants-at-arms.

The Chair asked Representative Miller to report on the fiscal note on House Bill 4. Representative Miller said it would obviously be cheaper to have no second primaries. Representative Miller summed up the reasons the second primary should be abolished.

The Chair asked whether any members of the audience wanted to comment on the bill.

Mr. Mike Ashe, Director of Election in Durham County spoke in favor of House Bill 4. He said because of the low turnout for second primaries, the votes of many are thrown out and replaced by the votes of a few.

Paul Meyer with the County Commissioners Association said the Association like the bill because it would save money.

Representative Luebke made a motion that House Bill 4 be given a favorable report. The motion failed.

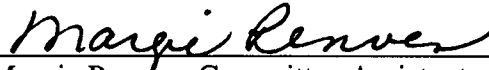
There being no further business, the meeting was adjourned at 1:20 p.m.

A verbatim transcript of this meeting is attached hereto along with all pertinent documents and handouts.

Respectfully submitted,



Representative Deborah Ross, Presiding Chair



Margie Penven, Committee Assistant

TRANSCRIPT
House Committee on Election Law and Campaign Finance Reform

1:00 p.m. on May 18, 2005

Room 1425, LOB

Representative Ross, Presiding

Rep. Ross: The committee will come to order because we have quorum. And I know it's so surprising, but we also have Representative Miller with us today.

Someone: I thought he was a member of the committee.

Rep. Ross: He's an ex-officio member of the committee.

Our pages today are Graham Langdon from Johnston County, who's sponsored by Representative. Langdon. Any relation?

Graham: No.

Rep. Ross: Oh, really?

Graham: Maybe distant.

Rep. Ross: Okay. Well, we're happy to have you here. And we also have Joseph Bender. Joseph, please stand up. He's from Buncombe County, and he's sponsored by Representative Fisher. And then our sergeants-at-arms are Fred Harris, Leslie Oakley, and Willie Dixon. And our bill on the calendar today is House Bill 4, Abolish Second Primaries. Representative Miller's with us, and at the end of our discussion of this bill the last time, Representative Michaux had asked for a fiscal note. And we understand that actually we had a fiscal note last time, but Representative Miller why don't you come forward and let's start with the fiscal note because that was the last issue in question, and then we can have comments from you and any questions from the committee. Representative Miller. Do you have copies of the fiscal note for the committee?

Rep. Miller: No, I don't. But I can tell you what it says.

Bill Gilkeson: It's in the folders.

Rep. Ross: Oh, it's in your folders. Okay. The fiscal note is in your folders.

Rep. Miller: And the fiscal note says it's cheaper.

Rep. Ross: Okay. Well why don't you take an opportunity to tell the committee a little more about that. Why it's cheaper and how....

Rep. Miller: Well, obviously, if you don't have a second primary, you don't have the cost of a second primary so it would be less expensive for your counties involved. So that's pretty much what the fiscal note said. If you want to get further details than that... It's hard to determine, of course, how many second primaries you're going to have in a year. But, obviously, when you have no second primaries it will result in a cheaper cost.

Rep. Ross: Any other....

Rep. Miller: And may I continue.

Rep. Ross: Absolutely.

Rep. Miller: I think this is time number four I've been before the committee or been here at the committee for this bill, so I think pretty much the line of the arguments have been discussed, and I'll just sum them up very quickly. A second primary should be abolished for several reasons. One is 40 other states have already done so. The most recent state that has done so is Florida, the State of Florida. And you know how they are with their election process. So they obviously think it was a good idea and improvement since their second to the last presidential election. In addition, this bill's supported by the County Commissioner's Association. It's also supported by the North Carolina Black Legislative Caucus. This bill would be more democratic, in my viewpoint, because on second primaries the participation rate is quite low. A matter of fact, even lower than probably the number of candidates (sic) that voted for any individual person in a first primary. And I'll be happy to answer any questions or there may be people in the audience who also have viewpoints about it, Madam Chair.

Rep. Ross: Okay. Why don't we go to the audience first? Is there anybody in the audience who has never addressed the committee on this issue before? Please stand up and state your name and your affiliation and share your views.

Mike Ashe: Thank you. Yes, ma'am. I'm Mike Ashe. I'm Director of Elections in Durham County. I'm here representing myself but also my board and the Durham County Commissioners who support Representative Miller's bill. I have been to a couple of your committee meetings and listened to some of the arguments. I'd first like to address cost. Obviously it costs less if I don't have to run a second primary. Durham County costs about \$75,000 for me to do a second primary. I have to pay in every precinct, pay all the precinct officials, print the ballots, do the advertising, and all of the things that go in. But I don't think we should do away with the second primary because of costs. That is not one of my issues at all. I think that democracy

is very expensive, and I think it's worth every penny of it. And so cost is not the issue.

Two weeks ago at the committee here several committee members reported _____ information about the current system and the previous system has helped or hurt someone over the years, and I think if we go to a different system over the coming years, there'll be lots of cases across the state where it will help or hurt somebody no matter what this committee happens to do. My argument to do away with the second primary comes down to one thing and only one thing. The votes of the many are thrown out and replaced by the votes of a few. The votes of the many, you're saying your votes don't count. Just throw them away and we replace them by the votes of a few. I think that's wrong. I think we should have a system where the person with the most votes moves forward and the losers go home. It's as simple as that. If you win, you win, and if you lose, you don't. To give you a little historical for my one county in North Carolina, over the past ten years of primaries—in 2004, 30,600 voted in the primary; 2,900 voted in the second primary. We threw out over 30,000 votes and replaced them with two thousand and some. In 2000, 27,000 people voted and in a second primary 733 voted. In '96, 34,000 votes were thrown away and replaced by 3,800 votes. And in '94, 25,000 were thrown away and replaced by 8,000. In virtually every single case, the votes of the many are thrown away and replaced by the votes of a few. And I think that's a bad system, and I'd like to see a change so the winners move forward and the losers go home. Thank you.

Rep. Ross: Is there anybody else from the audience who has any comment. Mr. Meyer, please state your name and your affiliation.

Paul Meyer: Paul Meyer with the County Commissioners Association. As Mr. Miller said, our board of directors and our association likes this piece of legislation. It does save money for counties across the state. The primary issue that was discussed at our annual conference was the cost of various second primaries. Our folks think it's a problem when we're spending \$15 to \$20 per vote in a second primary. We don't think that's a good use of public money, and we'd like to see this bill pass as a result. I'd be glad to answer any questions, Madam Chair.

Rep. Ross: Are there any questions for either of our speakers? Representative Luebke.

Rep. Luebke: Well just to ask Mr. Meyer again.... (It is unintelligible on the tape, but he asked whether the county commissioners talked about the instant voting runoff bill.)

Paul Meyer: Correct. We don't have a position; however, on a permissive bill like Representative Luebke brought forward, if the counties want to

participate, we think that's great and we'd encourage them to do so. Our folks are on record saying this proposal was what they want, but that solution is definitely another solution for this.

Rep. Ross: Okay. Is this a follow-up question?

Rep. Luebke: No, I just wanted to speak to the bill.

Rep. Ross: Well, Representative Moore.

Rep. Moore: I just had a question, I guess, Representative Luebke and Representative Miller. If we pass Paul's bill today, that means that your bill is on the floor today. How does that work because they're establishing two different procedures? I guess it's a procedural question. Maybe I should go with the staff. How does that work if we pass both bills?

Rep. Ross: We don't know what the Senate's going to do.

Rep. Moore: I'm just saying assuming that both bills pass, what would the effect be.

Rep. Miller: I was actually going to say that, Representative Ross. Representative Luebke's bill's a pilot program, so it may or may not go into effect statewide. And it's a pilot against the current system. This would change the current system so whether or not Representative Luebke's would go into effect later on is still in effect in the same kind of way. So this is a more intrinsic change where Representative Luebke's bill is an experimental change, and he can correct me if I am incorrect.

Rep. Moore: Follow-up. Would his bill then be permitted, is what I'm saying, if this bill passes?

Rep. Ross: Okay. Representative Luebke.

Rep. Luebke: Well, that's close enough. I mean, I think what Representative Miller said is a close enough description. I just remind everybody that you can have your cake and eat it too. You really can in the sense that with the permissive, experimental pilot program we're going to talk about, people will be able to vote a second time the same day by putting their second, third, or fourth choices down that the committee endorsed the last time only they didn't support it on the floor. It also states the money that the county commissioners have been concerned about, but I think ensures that the people that are participating in the first primary that they've got their opportunity for a second primary right then by putting their second, third and fourth. So I think that's as I've indicated and as Representative Miller said, this is about fourth round on this, I'll say again I think that's the better choice.

Rep. Ross: Any further discussion on the bill? Representative Blust.

Rep. Blust: I have a lot of sympathy for what Representative Miller's trying to do and maybe we would work a deal. I'd trade my vote for an independent redistricting for this, but I see a tie here because this is why I just can't bring myself to support the bill is because what we've done through gerrymandering is we have created super Republican districts and super Democrat districts where the primary is the election. And you're going to see this in every Congressional race in the future except maybe District 13 and one Robin Hayes...is that 8? That whenever there's an incumbent retired, you're going to get a ten-way primary in both parties because everyone knows all they have to do is win 15 percent or maybe 20 percent of that primary vote and their going to be in there for thirty years if they want to. And it's less so at our rate, but at our level, you know, seventy-five percent of us are not going to be defeated in a general election. And we've done that, the primary is so important I just don't want to see somebody be able to get a congressional seat for 30 years because they could appeal to a narrow segment. And if you watch these primaries carefully at least in our party, they weren't on some of the bigger issues that a lot of Republicans...it focused on some of the more emotional-type issues. And I just don't think that's healthy. My argument for the drop off in votes is everyone when there's a runoff has an opportunity to vote, and they could if they felt strong enough. Perhaps they're just saying they were interested in voting for the full slate, but among two left for that particular race, they don't have a problem with either of them. So you really haven't thrown out all those people's votes in a real sense. But everyone could vote if they....And I just think it's an important check to keep somebody from winning an important office with maybe even 18 or 15 percent of the vote. And I just don't think that should happen, and that gives me trouble as to sometimes a candidate really....Or maybe if we did it....And I understand the....I almost wish we could change it for the Democrats and not for the Republicans because I think you all at least at this point in history have a unique problem that you're trying to address that I think has some merit. But I just see some danger out there that you could have candidates getting important offices with 15 percent of one party's core voters. And that to me is very dangerous. I'd love to get together and create some redistricting standards with certain attributes that have to be met, and we wouldn't have this problem. I think we'd have a lot more competition in General Elections and voters would have to think we need to elect someone that can win a difficult general election, and that is a big check on some of these sub issues out there.

Rep. Ross: Representative Miller would like to respond.

Rep. Miller: Yeah. I would just say first of all the redistricting issue is obviously a separate issue from this, in my opinion, completely. In terms of the issue

of the number of votes, in a second primary right now you're going to get a small fraction of the votes right now. That's what's going on now in second primaries. So if you're concerned about getting a small fraction of the vote, I would assert that eliminating the second primary would eliminate that small fraction since a very few number of people vote in the second primary. So you are of the danger of appealing to a small section of people who come out in a second primary when the majority do not. I also said this is a long-standing method that 40 other states have adopted, not the experimental method. So it's something that's been around for a very long time.

Rep. Ross: Any other members of the committee? Any motions brewing?

Rep. Miller: I guess I can't make a motion.

Rep. Ross: You can't make a motion, as much as you've been here—more than some of the members of the committee. Does anybody have any feelings about this? Yes, okay. Representative Miller, would you like to be invited back or would you like us to....

Rep. Miller: Why don't we adjourn for right now if you want to, Madam Chairman?

Rep. Luebke: Surely we have more to do than to address this issue a fifth time.

Rep. Ross: Right.

Rep. Luebke: Can someone not...? I'll make a motion for a favorable report.

Rep. Ross: Okay. We have a motion for a favorable report. All those in favor of Representative Luebke's motion please say aye. All those opposed please say no. Okay. The bill does not get a favorable report, though we do give you an A for effort for having been here.

Rep. Miller: Thank you.

Rep. Ross: Members of the committee, before we adjourn. Next week we are not going to have a committee meeting. I know that's going to distress you very much because we're going to be in Edenton. And so check your e-mails for before crossover. We may be having a meeting before our last meeting.... You know, before that Wednesday before crossover where we may just may be meeting on that. So thank you very much. The meeting's adjourned.

(Adjourned at 1:20 p.m.)

AGENDA

**HOUSE OF REPRESENTATIVES
ELECTION LAW AND CAMPAIGN FINANCE REFORM
COMMITTEE**

**May 18, 2005
Representative Ross, Presiding**

HB 4, Abolish Second Primary

Rep. Miller

Nancy Garriss (Rep. Tim Moore)

From: Margie Penven (Rep. Ross)

Sent: Monday, May 16, 2005 11:06 AM

To: Rep. Paul Miller

Subject: Committee Notice for May 18, 2005--Election Law and Campaign Finance Reform

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION**

You are hereby notified that the Committee on Election Law and Campaign Finance Reform will meet as follows:

DAY & DATE: Wednesday, May 18, 2005

TIME: 1:00 p.m.

LOCATION: 1425 LB

The following bills will be considered (Bill # & Short Title & Bill Sponsor):

HB 4, Abolish Second Primary, Rep. Miller

Respectfully,

Representatives Tim Moore and Deborah Ross
Chairs

I hereby certify this notice was filed by the committee assistant at the following offices at 11:05 a.m. on May 16, 2005.

____ Principal Clerk
____ Reading Clerk - House Chamber

Margie Penven (Committee Assistant)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

1

HOUSE BILL 4

Short Title: Abolish Second Primary.

(Public)

Sponsors: Representative Miller.

Referred to: Election Law and Campaign Finance Reform.

January 27, 2005

A BILL TO BE ENTITLED
AN ACT TO ABOLISH THE SECOND PRIMARY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-111 reads as rewritten:

"§ 163-111. **Determination of primary results; ~~second primaries results.~~**

(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,

1 State Senators in multi-county senatorial districts, and
2 Members of the State House of Representatives in multi-county
3 representative districts.

- 4 (2) ~~A candidate who is apparently entitled to demand a second primary,~~
5 ~~according to the unofficial results, for one of the offices listed below~~
6 ~~and desiring to do so, shall file a request for a second primary in~~
7 ~~writing with the chairman or director of the county board of elections~~
8 ~~no later than 12:00 noon on the ninth day (including Saturdays and~~
9 ~~Sundays) following the date on which the primary was conducted, and~~
10 ~~such request shall be subject to the certification of the official results~~
11 ~~by the county board of elections:~~

12 State Senators in single-county senatorial districts,
13 Members of the State House of Representatives in single-county
14 representative districts, and
15 All county officers.

- 16 (3) ~~Immediately upon receipt of a request for a second primary the~~
17 ~~appropriate board of elections, State or county, shall notify all~~
18 ~~candidates entitled to participate in the second primary, by telephone~~
19 ~~followed by written notice, that a second primary has been requested~~
20 ~~and of the date of the second primary.~~

21 (d) ~~Tie Votes; How Determined.—~~

- 22 (1) ~~In the event of a tie for the highest number of votes in a first primary~~
23 ~~between two candidates for party nomination for a single county, or~~
24 ~~single county legislative district office, the board of elections of the~~
25 ~~county in which the two candidates were voted for shall conduct a~~
26 ~~recount and declare the results. If the recount shows a tie vote, a~~
27 ~~second primary shall be held on the date prescribed in subsection (e) of~~
28 ~~this section between the two candidates having an equal vote, unless~~
29 ~~one of the aspirants, within three days after the result of the recount~~
30 ~~has been officially declared, files a written notice of withdrawal with~~
31 ~~the board of elections with which he filed notice of candidacy. Should~~
32 ~~that be done, the remaining aspirant shall be declared the nominee. In~~
33 ~~the event of a tie for the highest number of votes in a first primary~~
34 ~~among more than two candidates for party nomination for one of the~~
35 ~~offices mentioned in this subdivision, no recount shall be held, but all~~
36 ~~of the tied candidates shall be entered in a second primary.~~

- 37 (2) ~~In the event of a tie for the highest number of votes in a first primary~~
38 ~~between two candidates for a State office, for United States Senator, or~~
39 ~~for any district office (including State Senator in a multi-county~~
40 ~~senatorial district and member of the State House of Representatives in~~
41 ~~a multi-county representative district), no recount shall be held solely~~
42 ~~by reason of the tie, but the two candidates having an equal vote shall~~
43 ~~be entered in a second primary to be held on the date prescribed in~~
44 ~~subsection (e) of this section, unless one of the two candidates files a~~

1 ~~written notice of withdrawal with the State Board of Elections within~~
2 ~~three days after the result of the first primary has been officially~~
3 ~~declared and published. Should that be done, the remaining aspirant~~
4 ~~shall be declared the nominee. In the event of a tie for the highest~~
5 ~~number of votes in a first primary among more than two candidates for~~
6 ~~party nomination for one of the offices mentioned in this subdivision,~~
7 ~~no recount shall be held, but all of the tied candidates shall be entered~~
8 ~~in a second primary.~~

9 (3) ~~In the event one candidate receives the highest number of votes cast in~~
10 ~~a first primary, but short of a substantial plurality, and two or more of~~
11 ~~the other candidates receive the second highest number of votes cast in~~
12 ~~an equal number, the proper board of elections shall declare the~~
13 ~~candidate having the highest vote to be the party nominee, unless all~~
14 ~~but one of the tied candidates give written notice of withdrawal to the~~
15 ~~proper board of elections within three days after the result of the first~~
16 ~~primary has been officially declared. If all but one of the tied~~
17 ~~candidates withdraw within the prescribed three day period, and the~~
18 ~~remaining candidate demands a second primary in accordance with the~~
19 ~~provisions of subsection (c) of this section, a second primary shall be~~
20 ~~held between the candidate who received the highest vote and the~~
21 ~~remaining candidate who received the second highest vote.~~

22 (e) ~~Date of Second Primary; Procedures. If a second primary is required under~~
23 ~~the provisions of this section, the appropriate board of elections, State or county, shall~~
24 ~~order that it be held four weeks after the first primary.~~

25 ~~There shall be no registration of voters between the dates of the first and second~~
26 ~~primaries. Persons whose qualifications to register and vote mature after the day of the~~
27 ~~first primary and before the day of the second primary may register on the day of the~~
28 ~~second primary and, when thus registered, shall be entitled to vote in the second~~
29 ~~primary. The second primary is a continuation of the first primary and any voter who~~
30 ~~files a proper and timely affidavit of transfer of precinct, under the provisions of~~
31 ~~G.S. 163-82.15, before the first primary may vote in the second primary without having~~
32 ~~to refile the affidavit of transfer if he is otherwise qualified to vote in the second~~
33 ~~primary. Subject to this provision for registration, the second primary shall be held~~
34 ~~under the laws, rules, and regulations provided for the first primary.~~

35 (f) ~~No Third Primary Permitted. In no case shall there be a third primary. The~~
36 ~~candidates receiving the highest number of votes in the second primary shall be~~
37 ~~nominated. If in a second primary there is a tie for the highest number of votes between~~
38 ~~two candidates, the proper party executive committee shall select the party nominee for~~
39 ~~the office in accordance with the provisions of G.S. 163-114.~~

40 (g) Nominations in primary elections shall be determined as follows:

41 (1) When more than one person is seeking election to a single office, the
42 candidate who receives the highest number of votes shall be declared
43 the nominee.

(2) When more persons are seeking nomination to two or more offices (constituting a group) than there are offices to be filled, those candidates receiving the highest numbers of votes, equal in number to the number of offices to be filled, shall be declared the nominees.

(h) When more than one person is seeking election to a single office, and two or more candidates receiving the highest numbers of votes each receive the same number of votes, the proper party executive committee shall, from among those candidates receiving the same numbers of votes, select the party nominee in accordance with G.S. 163-114.

(i) When more persons are seeking nomination to two or more offices (constituting a group) than there are offices to be filled, and two or more candidates receiving the lowest numbers of votes necessary for nomination each receive the same number of votes, the proper party executive committee shall, from among those candidates receiving the same numbers of votes, select the party nominee in accordance with G.S. 163-114.

(j) This section prevails over any local act."

SECTION 2. G.S. 163-82.6(d) reads as rewritten:

"(d) Instances When Person May Register and Vote on Election Day. – If a person has become qualified to register and vote between the twenty-fifth day before an election and election day, then that person may apply to register on 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 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 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."~~

SECTION 3. G.S. 163-82.17(a) reads as rewritten:

"(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,~~ primary or special or general election after the deadline for registration applications for that election as set out in G.S. 163-82.6."

SECTION 4. G.S. 163-226(c) reads as rewritten:

"(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."

SECTION 5. G.S. 163-227.1 is repealed.

SECTION 6. G.S. 163-255 reads as rewritten:

"§ 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~~ primary or election."

SECTION 7. G.S. 163-227.3(b) is repealed.

SECTION 8. G.S. 163-278.6(8) reads as rewritten:

"(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."

SECTION 9. G.S. 163-278.13(d) reads as rewritten:

"(d) For the purposes of this section, the term 'an election' means any ~~primary, second primary,~~ 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.~~ election."

SECTION 10. G.S. 163-278.13B(d) is repealed.

SECTION 11. G.S. 163-278.40B(2) reads as rewritten:

"(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~~ election."

SECTION 12. G.S. 163-279(a)(2) reads as rewritten:

"(a) Primaries and elections for offices filled by election of the people in cities, towns, incorporated villages, and special districts shall be held in ~~1973-2005~~ 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 sixth Tuesday before the election, and the second primary, if required, shall be held on the third Tuesday before the election and the primary 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."

SECTION 13. G.S. 163-291 reads as rewritten:

"§ 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 his 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 first Friday in August preceding the election, except:
 - a. In 2001 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 2002 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

1 candidacy for one office with the county board of elections under this
2 section, then a notice of candidacy may not later be filed for any other
3 municipal office for that election unless the notice of candidacy for the
4 first office is withdrawn first.

5 (3) The filing fee for municipal and district primaries shall be fixed by the
6 governing board not later than the day before candidates are permitted
7 to begin filing notices of candidacy. There shall be a minimum filing
8 fee of five dollars (\$5.00). The governing board shall have the
9 authority to set the filing fee at not less than five dollars (\$5.00) nor
10 more than one percent (1%) of the annual salary of the office sought
11 unless one percent (1%) of the annual salary of the office sought is less
12 than five dollars (\$5.00), in which case the minimum filing fee of five
13 dollars (\$5.00) will be charged. The fee shall be paid to the board of
14 elections at the time notice of candidacy is filed.

15 (4) The municipal ballot may not be combined with any other ballot.

16 (5) The canvass of the primary ~~and second primary~~ shall be held on the
17 seventh day following the ~~primary or second primary~~ primary. In
18 accepting the filing of complaints concerning the conduct of an
19 election, a board of elections shall be subject to the rules concerning
20 Sundays and holidays set forth in G.S. 103-5.

21 (6) ~~Candidates having the right to demand a second primary shall do so~~
22 ~~not later than 12:00 noon on the Thursday following the canvass of the~~
23 ~~first primary."~~

24 SECTION 14. G.S. 115C-37 is amended by adding a new subsection to
25 read:

26 "(j) The election of any county board of education held at the time of the primary,
27 whether under this section, a local act, or any merger plan adopted under Article 7 of
28 this Chapter, shall be determined by a plurality under G.S. 163-292. No runoff election
29 shall be held."

30 SECTION 15. This act is effective when it becomes law and applies to all
31 elections held on or after that date.



HOUSE BILL 4: Abolish Second Primary

BILL ANALYSIS

Committee:	House Election Law and Campaign Finance Reform	Date:	April 27, 2005
Introduced by:	Rep. Miller	Summary by:	William R. Gilkeson
Version:	First Edition		Committee Co-Counsel

SUMMARY: *The First Edition of House Bill 4 would abolish the second primary for partisan offices. Instead of the current 40% threshold for winning in a primary without the possibility of the runner-up calling for a second primary, the candidate with the most votes, regardless of the percentage, would win the primary outright.*

CURRENT LAW: Currently, the law for partisan primaries in NC is that if the leading candidate in a single-seat race receives more than 40% of the vote in the first primary held, that candidate wins the nomination. If the candidate wins 40% or less, the runner up has the right to demand a second primary.

In a multi-seat race, the formula is slightly more complicated. The threshold is arrived at by dividing the total vote cast by the number of candidates, and multiplying the resulting number by 0.4. In a race for two seats, if the two top candidates receive more votes than the number that results from that formula, they win the nomination outright. If one of the two top candidates falls short of that number, then the candidate one below has the right to call for a second primary. If both of the two top candidates fall short of the threshold number, then two candidates down the line have the right to call for a second primary.

A candidate who has the right to call for a second primary must do so by the ninth day after the primary. The second primary is held four weeks after the first.

BILL ANALYSIS: Section 1 of the bill would set these rules for deciding primaries:

- In a single-seat race, the candidate with the most votes wins.
- In a multi-seat race, say, for two seats, the two candidates with the most votes win.
- In a single-seat race, if the top two candidates tie, the proper party executive committee chooses the nominee from between those two candidates.
- In a multi-seat race, say, for two seats, if one candidate receives the most votes and two candidates tie for the second most votes, the top candidate wins proper party executive committee chooses between the other two.

Sections 2 through 13 of the bill are conforming changes.

Section 14 of the bill deals with county boards of education that are elected on a nonpartisan election and runoff system, with the election set on the day of the partisan first primary and the runoff set on the day of the partisan second primary. The bill simply changes those to nonpartisan plurality elections held on the day of the partisan primary.

EFFECTIVE DATE: The bill would be effective when it becomes law and apply to all primaries held on or after that date. This means that, if it is enacted and receives Voting Rights Act preclearance in time, it would first apply to municipal elections this year.

H0004e1-SMRR

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 4 (First Edition)

SHORT TITLE: Abolish Second Primary.

SPONSOR(S): Representative Miller

FISCAL IMPACT

Yes (X) No () No Estimate Available ()

FY 2005-06 FY 2006-07 FY 2007-08 FY 2008-09 FY 2009-10

REVENUES

EXPENDITURES

See Assumptions and Methodology

POSITIONS (cumulative):

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: County Boards of Election

EFFECTIVE DATE: The bill is effective when it becomes law and applies to all elections held after that date

BILL SUMMARY:

This bill amends G.S. § 163-111 to abolish second primaries by providing that the person receiving the highest number of votes for office would be the nominee. The amendment to G.S. § 163-111 overrides any local act to the contrary. The bill also makes conforming amendments to other sections of G.S. Ch. 163. The bill adds a new G.S. § 115C-37(j) to provide that the election of any county board of education or any merger plan would be determined by a plurality under G.S. § 163-292 and that there would be no runoff election.

Source: Modified from the Bill Digest for H.B. 4 (01/27/2005).

ASSUMPTIONS AND METHODOLOGY:

Under current law, nominations in primary elections are to be determined by a substantial plurality of the votes cast. Current law specifies the conditions under which an aspirant in the primary may demand a second primary when an insufficient number of the aspirants in the primary received a

substantial plurality. The right to demand a second primary applies to the following offices: 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, Members of the State House of Representatives, and all county officers. Also, current law provides in G.S. § 115C-37(a) that the election of county boards of education is to be conducted according to the provisions of G.S. Ch. 163 then governing primary elections.

This bill amends current law to abolish second primaries. It also provides that the election of any county board of education held at the time of a primary is to be determined by plurality without a runoff. Currently, counties bear the cost of the primary and general elections as well as the cost of any second primary elections or runoff elections that must be held. Fiscal Research believes that the fiscal impact of this bill would be savings to the counties because they would no longer be required to hold second primaries. However, while we have second primary average cost data by county based on a survey conducted by the State Board of Elections, we cannot estimate the annual fiscal impact of the bill because the counties which would be required to hold second primaries can vary based on the results of their respective primary election. We will note, however, that of the 88 counties that reported their average cost for second primary elections, the average cost ranged from \$1,700 in Tyrell County with approximately 2,400 registered voters to \$278,021 in Wake County with over 408,000 registered voters. With the exception of Wake County, Guilford County (reported average cost of \$220,000) and Mecklenburg County (reported average cost of \$250,000), the other counties reported average cost of \$70,000 or less. The total of the cost reported by the 88 counties is \$2,372,553 with an average of \$26,961. But again, because of the uncertainty of which counties would be required to hold second primary elections, we cannot determine what portion of the \$2,372,553 would be saved on an annual basis.

SOURCES OF DATA: State Board of Elections

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Marilyn Chism

APPROVED BY: James D. Johnson, Director
Fiscal Research Division



DATE: February 14, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

Statistics:

- 35 runoff primaries in 7 election years (not counting 2002). Out of more than 1,000 potential primaries.
- 17 of the 35 resulted in reversals, or 48.57%.
- In 9 of the 35 primaries, the top candidate in the first primary received less than 30% of the vote.
- Only 5 incumbents were involved in the 35 runoffs. 4 of the 5 incumbents led in the first primary. 3 of the 5 incumbents were defeated in the second primary.
- 12 of the runoffs involved a minority-race candidate in a contest with a white candidate. 6 of the minority candidates led in the first primary; of those 6, 3 also won in the runoff and 3 lost. 6 of the minority candidates came in second in the first primary; of those 6, one prevailed in the runoff and the other 5 lost.
- 16 of the runoffs involved women in races with a man. 9 of the women candidates led in the first primary; of those 9, 6 also won in the runoff and 3 lost. 7 of the women candidates came in second in the first primary; of those 7, 5 won the second primary and 2 lost.
- Of the 35 runoffs, 18 had fewer than half the number of voters who voted in the first primary. Only one runoff had more voters than the first primary.
- In 18 of those 35 primaries, the winner in the second primary received fewer votes than the runner-up in the first primary.

Year	Office	Total # of votes in first primary	Front-runner and second candidate in first primary (by party)	% of votes for front-runner in first primary	% of votes for second candidate in first primary	Total # of votes in second primary	Second primary winner	% drop-off in voting between first and second primary
1998	No second primaries were held in these offices in 1998. ³							
2000	Commissioner of Agriculture	242,084	1. Troxler (WMR) 2. Davidson (WMR)	66,257 27.37%	58,189 24.04%	50,775	Troxler (WMR) 30,666	79.03%
	Commissioner of Labor	241,425	1. Berry (WFR) 2. Miller (WMR)	92,695 38.39%	74,127 30.70%	49,629	Berry (?) (WFR) 28,203	79.44%
	N.C. Senate – District 38	10,560	1. Potts (WMR) 2. Bingham (WMR)	2,796 26.48%	2,738 25.93%	4,724	Bingham* (WMR) 3,096	55.27%
	N.C. House – District 49	4,111	1. Bryant (WFD) 2. Huskins (WMD)	1,464 35.61%	1,388 33.76%	2,421	Huskins (WMD) 1,307	41.11%
	District Judge – District 10.	34,142	1. Bryant (WMD) 2. Suhr (Asian MD)	10,988 32.18%	6,462 18.93%	6,104	Bryant (WMD) 3,858	82.12%
2002	Because of delays caused by redistricting litigation, no second primaries were held in 2002.							
2004	Supt. of Public Instruction	384,663	1. Stewart (WMD) 2. Atkinson (WFD)	135,348 35.19%	132,041 34.33%	80,068	Atkinson ⁴ (WFD) 44,175	79.18%
	U.S. House – District 5	58,627	1. Robinson (BMR) 2. Foxx (WFR)	13,824 23.58%	13,119 22.38%	42,293	Foxx* (WFR) 23,092	27.86%
	U.S. House – District 10	40,852	1. Huffman (WMR) 2. McHenry (WMR)	14,280 34.96%	10,760 26.34%	29,945	McHenry* (WMR) 15,015	26.70%
	N.C. Senate – District 3	15,223	1. Jenkins (WMD) 2. Willingham (BMD)	5,044 33.13%	4,991 32.79%	11,144	Jenkins* (WMD) 6,070	26.79%
	N.C. Senate – District 7	17,333	1. Berger (WMD) 2. Moss (BMD)	6,360 36.69%	3,412 19.68%	8,619	Berger* (WMD) 4,409	50.27%
	N.C. House – District 27	9,832	1. Henderson (BMD) 2. Wray (WMD)	2,882 29.31%	2,874 29.23%	5,806	Wray* (WMD) 2,982	40.95%
	N.C. House – District 67	4,233	1. Almond (WMR) 2. Barbee (WMR)	1,686 39.83%	1,603 37.87%	3,574	Almond* (WMR) 2,322	15.57%
	N.C. House – District 74	8,071	1. Folwell (WMR) 2. Conrad-Shrader (WFR)	2,351 29.13%	2,066 25.60%	6,999	Folwell* (WMR) 4,656	13.28%

³ All congressional first primaries were held under a court order in mid-September with no provision for a runoff. One of those primary contests, for the 12th District Republican nomination, drew six candidates. The winner, Scott Keadle (WMR), received just under 28% of the vote.

⁴ The State Board of Elections ruled that Ms. Atkinson won the general election, but litigation over the race was not settled by 5-3-05.

Year	Office	Total # of votes in first primary	Front-runner and second candidate in first primary (by party)	Votes for front-runner in first primary	Votes for second candidate in first primary	Total # of votes in second primary	Second primary winner	% drop-off in voting between first and second primary
1994	N.C. Court of Appeals	479,159	1. Tyson (WMD) 2. McCrodden (WFD)	186,085 38.77%	166,711 34.73%	171,072	McCrodden (WFD) 101,377	64.36%
	U.S. House – 9 th District	35,313	1. Myrick (WFR) 2. Balmer (WMR)	12,173 34.47%	9,894 28.02%	25,991	Myrick * (WFR) 17,713	26.40%
	N.C. House – District 28	3,216	1. <i>Burton</i> (BMD) 2. Boyd-McIntyre (BFD)	1,187 36.91%	1,119 34.79%	1,200	Boyd-McIntyre * (BFD) 538	62.69%
	N.C. House – District 69	3,801	1. <i>Lemmond</i> (WMR) 2. Daly (WMR)	1,441 37.91%	1,198 31.52%	3,946	<i>Lemmond</i> * (WMR) 1,976	-3.81%
	District judge - 14 th district	61,225	1. O'Neal-Lee (BFD) 2. Hill (WMD)	8,017 13.09%	5,973 9.76%	8,591	O'Neal-Lee* (BFD) 4,850	85.97%
	District judge - 18 th district	24,901	1. Bray (WFD) 2. Priest (WFD)	7,388 29.67%	5,640 22.65%	5,180	Priest 3,282	79.20%
	District judge - 23 rd district	15,226	1. Reavis (WFR) 2. Byrd (WMR)	6,064 39.83%	5,581 36.65%	9,034	Byrd * (WMR) 4,686	40.67%
	District judge - 26 th district	18,083	1. Heasley (WMD) 2. Williamson (WFD)	6,691 37%	5,574 30.82%	17,968	Heasley * (WMD) 9,606	0.64%
1996	Secretary of State	481,159	1. Marshall (WFD) 2. Lee (BFD)	130,520 27.13%	98,581 20.49%	116,202	Marshall * (WFD) 70,279	75.85%
	Commissioner of Agriculture	199,455	1. Davidson (WMR) 2. Gray (WMR)	66,046 33.11%	54,701 27.43%	40,058	Davidson (WMR) 22,212	79.92%
	U.S. House – 7 th District	52,684	1. Lowry-Townsend (IFD) 2. McIntyre (WMD)	15,925 30.23%	12,327 23.40%	31,153	McIntyre * (WMD) 16,285	40.87%
	U.S. House – 7 th District	19,198	1. Anderson (WMR) 2. Caster (WMR)	7,176 37.38%	6,201 32.30%	9,982	Caster (WMR) 5,355	48.01%
	U.S. House – 8 th District	22,797	1. Morgan (WMR) 2. Blackwood (WMR)	8,053 35.32%	6,583 28.88%	5,321	Blackwood (WMR) 3,398	76.66%

SECOND PRIMARIES IN NORTH CAROLINA 1990-2004

Statewide Races, U.S. House Races, General Assembly Races, Judicial Races.

November 9, 2000 – Updated May 3, 2005

Year	Office	Total # of votes in first primary	Front-runner and second candidate in first primary (by party) BFD = black female Democrat, etc.	Votes for front-runner in first primary	Votes for second candidate in first primary	Total # of votes in second primary	Second primary winner	% drop-off in voting between first and second primary
1990	U.S. Senate	693,496	1. Gantt (BMD) 2. Easley (WMD)	260,179 37.52%	206,934 30.27%	480,850	Gantt (BMD) 273,567	30.66%
1992	Superintendent of Public Instruction	214,409	1. Little (WFR) 2. Robinson (BMR)	75,519 35.22%	69,842 32.57%	45,556	Little (WFR) 23,887	78.75%
	U.S. House – 1 st District	88,199	1. Jones (WMD) 2. Clayton (BFD)	33,634 38.13%	27,477 31.15%	78,939	Clayton * (BFD) 43,210	10.50%
	U.S. House – 2 nd District	19,836	1. Davis (WMR) 2. Israel (WMR)	4,848 24.44%	4,845 24.32%	7,316	Davis (WMR) 5,005	63.12%
	U.S. House – 12 th District	8,687	1. Washington (BFR) 2. Jones (BMR)	2,938 33.82%	1,917 22.07%	1,932	Washington (BFR) 1,071	77.76%
	N.C. House – District 46 ¹	17,807	1. Buchanan (WMR) 2. Thompson (WMR)	3,511 39.43%	3,486 39.15%	5,352	Thompson* (WMR) 3,587	69.94%
	N.C. House – District 77	6,965	1. Moore (WFD) 2. Stewart (WMD)	2,729 39.18%	2,449 35.16%	5,841	Moore (WFD) 3,164	16.14%
	District judge ² – 2 nd district	15,573	1. McLendon (WMD) 2. Paul (WMD)	5,258 33.76%	5,158 33.12%	12,785	Paul * (WMD) 6,567	17.90%
	District judge – 11 th district	23,163	1. Stubbs (WMD) 2. Lanier (WMD)	8,580 37.04%	7,476 32.28%	8,959	Lanier * (WMD) 4,838	61.32%

¹ House District 46 was a two-member district. In the Republican first primary, David T. Flaherty Jr. received more than 40% of half the total votes cast in the race and therefore was declared nominated without a second primary. Rep. Charles Buchanan and Greg Thompson were in a second primary for the other seat.

² Beginning in 2002, District Court judgeships were elected on a nonpartisan ballot. Therefore, they were no longer subject to the second primary statutes.

William R. Gilkeson, Legislative Services Office, N.C. General Assembly.

Much of the research was compiled by Sarah Kamprath and Dee Atkinson, Legislative Services Office.

Boldfaced italics indicates an incumbent.

An asterisk (*) indicates the candidate won in the general election.

VISITOR REGISTRATION SHEET

Election Law and Campaign Finance Reform

May 18, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Paul Meyer	NC ACC
Mike Ashe	Durham County BOE
Johnnie Miller	SCC
Kathleen Edwards	UNC-CH Legis. Agency Service
Holly Howington	intern, Rep. Eddins
Chris Heagarty	NC Center for Voter Education
John Phelps	NCLM
Dan M. Maynard	gn
Matt Latrock	Intern
Chad Hinton	Civitas Institute

MINUTES
House Committee on Election Law and Campaign Finance Reform
June 1, 2005
1:00 p.m., Room 1425
Representative Moore, Presiding

The House Committee on Election Law and Campaign Finance Reform met at 1:00 p.m. on Tuesday, June 1, 2005, in Room 1425 of the State Legislative Building.

Members present were: Representative Tim Moore, Co-Chair; Representative Deborah Ross, Co-Chair; Representative Joe Kiser, Vice-Chair; Representative Paul Luebke, Vice-Chair; Representative John Blust; Representative Walter Church; Representative Pricey Harrison; Representative Hugh Holliman; Representative George Holmes; Representative David Lewis; and Representative Edgar Starnes.

There were two bills on the agenda: House Bill 1256, Rights for Accused and Ex-Offenders, sponsored by Representative Pierce, and House Bill 1101 Prompt Release of Election Results, sponsored by Representative Allred

Co-Chair Tim Moore called the meeting to order and introduced the pages and sergeants-at-arms.

House Bill 1101 was taken up first, and Co-Chair Moore recognized Representative Allred to explain the bill.

The chair recognized Mr. Garry Bartlett, Director of the North Carolina Board of Elections, for comment on the bill. Although Mr. Bartlett considered the problem an administrative matter, he said the Board had no objection if the committee wanted to clarify the law.

Representative Luebke said he objected to the bill because it was unnecessary and would clutter up the statutes since the matter could be handled administratively. He made a motion to give the House Bill 1101 an unfavorable report.

Representative Allred asked if he could withdraw the bill from the calendar. Hearing no objection, the chair allowed the bill to be withdrawn.

Chairman Moore recognized Representative Pierce to explain House Bill 1256, and Representative Kiser questioned whether ex-prisoners could have their voting rights restored before they had met the requirements of their sentence like restitution, probation, and parole.

Ms. Spearman for the Department of Corrections was present and answered questions on the bill. Also present was Bob Hall from Democracy North Carolina who commented in favor of the bill.

Representative Kiser sent forth an amendment that would clarify that citizenship would be restored after restitution and other requirements of the court were met. Representative Kiser moved that the amendment be adopted, and the motion carried.

Co-Chair Moore asked Co-Chair Ross to chair so he could send forth an amendment. Co-Chair Ross recognized Representative Moore to explain his amendment, which would eliminate the section of the bill that would make it easier for people in jail to vote. Representative Moore moved that the amendment be adopted, and the motion carried.

Representative Harrison moved that the amendments be rolled into a committee substitute, the original bill be given an unfavorable report, and the committee substitute be given a favorable report. The motion carried.

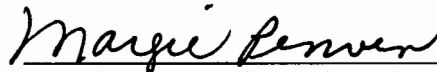
There being no further business, the meeting was adjourned at 1:52.

A verbatim transcript of this meeting is attached hereto along with all pertinent documents and handouts.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "T. Moore", written over a horizontal line.

Representative Tim Moore, Presiding Chair

A handwritten signature in cursive script, appearing to read "Margie Penven", written over a horizontal line.

Margie Penven, Committee Assistant

TRANSCRIPT
House Committee on Election Law and Campaign Finance Reform

1:00 p.m. on June 1, 2005

Room 1425, LOB

Representative Moore, Presiding

Rep. Moore: The committee will please come to order. This is the Election Law and Campaign Finance Reform Committee. I hope you're in the right place that you expected to be. We have with us today four pages. We have Suzanne Jordan who is sponsored by our co-chair, Representative Ross. We have Mary Christoph from Alamance County—whenever I call your name wave your hand if you would—who is sponsored by Representative Alice Bordsen. We have Dana Boone from Caldwell County who is sponsored by Representative Phillip Frye; and we have Edward Bersuder from Wake County who is also sponsored by Representative Ross.

We have our three sergeants-at-arms today: James Worth, Walter Spell, and Jim Womack. Welcome and thank you for all your hard work.

We're going to take up House Bill 1101 first today, which is from Representative Allred, which is the Prompt Release of Election Results. Representative Allred, you are recognized to explain your bills.

Rep. Allred: Thank you very much, Mr. Chairman. This is a very simple bill that would require the local board of elections to release any precinct results, any elections results that they have, as soon as the polls close that they have tabulated. We have a situation in Alamance County where the Alamance County Board of Elections refused to release any results until all of the absentee ballots were counted, which meant that people had to sit in the courthouse until 11:30 p.m. And frankly this bill probably doesn't affect anybody but Alamance County, but it's a public bill.

Rep. Moore: All right. Do we have any questions of the bill sponsor concerning the bill? Representative Ross.

Rep. Ross: Thank you, Chairman Moore. The Board of Elections, I believe, has sent a letter to you and myself and Representative Allred about this bill, but I think for the benefit of the committee we should hear from Mr. Bartlett at the Board of Elections about this bill.

Rep. Moore: Mr. Bartlett, you're recognized to address the committee, please.

Mr. Bartlett: Yes, sir. The gist of the letter to Representative Allran and to the co-chairs is that we believe that this is an administrative issue. We have that already in our rules. Unfortunately it was poor judgment by the Alamance County Board of Elections; and we have stated that if this body thinks that this is something that is needed to be clarified in the law, we pose no objection to it.

Rep. Moore: All right. Do we have further debate or discussion? Representative Luebke.

Rep. Luebke: I appreciate Mr. Bartlett's comments because I had read...done my homework before class here...and I have read Mr. Gilkeson's commentary on the bill and particularly the point that the State Board had indicated that Alamance was incorrect and that leads me to ask the question, if I might, of the bill sponsor, which is if they simply were incorrect, won't they do it correctly next time?

Rep. Allred: There was no consequence. The public had to suffer because of an arrogant local board of elections.

Rep. Luebke: Follow-up?

Rep. Moore: Recognized for a follow-up.

Rep. Luebke: Representative Allred, with your bill here, with the statement from Mr. Bartlett, I mean, this really strikes me as overkill. I mean they have been directed that they misinterpreted the statute, and they should behave differently if asked in the future.

Rep. Allred: There's nothing to make them do that. There's no consequence. I do want to hit them in the head with a two by four.

Rep. Moore: You're recognized to speak on the bill, Representative Luebke.

Rep. Luebke: My good colleague from Alamance is very candid, but I don't think that's a good basis for legislation to hit people with two by fours. I really think....

Rep. Allred: When it's a mule, it's a good idea.

Rep. Luebke: I just really think that we.... I'm sure the Alamance Board of Elections can be just as reasonable as any of the other 99 and recognize that it made a mistake, and it ought to respond differently in the next election. And I just think this is a.... We joke about it being a waste of trees, well this would be an _____ to clutter up our statutes. I think it's

really unnecessary. Our State Board Director has indicated that he's stated it clearly. I just see no need for it and would oppose it.

Rep. Moore: Further debate or discussion on the bill? Seeing not, is the committee ready? Is there a motion? Representative Luebke is recognized for a motion.

Rep. Luebke: I move to just give the bill an unfavorable report.

Rep. Moore: A motion has been made for an unfavorable report to the bill. All those in favor of the motion....

Rep. Allred: Mr. Chairman.

Rep. Moore: Yes, sir.

Rep. Allred: May I speak again.

Rep. Moore: Yes, sir. You're recognized.

Rep. Allred: I would appreciate if the members would either vote against this motion or that the motion be withdrawn and that the bill be withdrawn from the calendar.

Rep. Moore: Which do you prefer? You want to take your chance on the vote?

Rep. Allred: I would ask that the bill be withdrawn from the calendar.

Rep. Moore: Without objection, House Bill 1101 will be withdrawn from today's calendar.

Rep. Allred: Thank you.

Rep. Moore: Yes, sir. The next item on the agenda is House Bill 1256 filed by Representative Pierce, which is Rights for Accused and Ex-Offenders. Representative Pierce, welcome to the committee. You are recognized to explain your bill.

Rep. Pierce: Thank you, Chairmen Moore and Ross and all that are on the committee today....

Rep. Ross: Is there a PCS? There's no PCS?

Rep. Moore: Is there a PCS? No, there's no PCS. The bill before you is the bill.

Rep. Pierce:

Thank you for allowing me to come today. There's a lot of documents that I just picked up on my way to the meeting today, and I have in my possession here, "Knowing Your Voting Rights, A Prisoner's Guide to Voting in North Carolina." And this comes from the State Board of Elections, so some things I think we're already on a path to have what we need to help offenders and ex-offenders to be eligible to vote. Some things are already going on, but let me just share this with you. This bill would allow—I talked to the Department of Corrections this morning—this bill would allow those that are awaiting trial and those whose have not been convicted—that's the absentee ballot—to vote. The main piece is about the felons once they have been released from the Department of Corrections and have satisfied what they need to satisfy as it relates to their felony convictions. I think some of it is already in place, but we just wanted to get it where DOC once an inmate or person has been released from the Department of Corrections, that on their exit...once they are exiting, they've satisfied everything that they need to satisfy, and at that point the Department of Corrections or the probation officer will let them know that you're now eligible to register and vote again. It's just a matter of information, that once you have completed everything—many of you know—if you're a felon, once you've completed everything, you are eligible to vote. All we're asking is that the Department would remind them that you are now eligible to vote. And that's just a matter, I think, of a pack of paper. You can buy a pack of paper for \$5.00. That's 500 sheets. And all we would ask is that would be in their exit package that you are now eligible to vote. We need to make sure that.... I know sometime we have a heartburn with felons and all that and those folks. But once they get back into society and being in the community, we need to make them active participants in the community. Give them something. It costs the states nothing for a person to vote. We don't have to pay a dime for that. And I think sometimes from the way I see it, if people have an active part in society.... Everybody's not going to go straight because, you know, we understand that. But you got a lot of folks who are going to feel like I'm a part of society again. Let me be an active participant. Let me see what I can do to make my community, my neighborhood a better place. So this is just a bill that we will allow those who've had problems with the law, once they get back, let's make them active participants in the community because we've got options. Either we deal with them and try to bring them back or either we're going to re-incarcerate them a lot of times where they don't feel like they're a part and we're spending \$30,000 to \$35,000 a year when you could just give a person a chance to let them know that you are important in the neighborhood, you're important in the community, and this is what this bill is about. The only other piece was that if a person's in prison or jail, whether we put in a bill or not, they still have the right to write for an absentee ballot, and I think that

our State Board bears that out in “A Prisoner’s Guide to Vote.” They already have that. There are some things the state has already implemented, it’s just a matter.... All I want is to just make sure that the information is made available to those who find themselves in those situations. And that’s all my bill is asking. We’re not doing anything that the state has not already not said; it’s just a matter of the information being assimilated to those that need it. That’s all my bill asks for is just information be given to them, and let’s give these folks a chance to participate in the process again. And, as I said, that’s all my bill asks for is just a matter of information.

Rep. Moore: Do we have any questions of the bill sponsor? Representative Harrison.

Rep. Harrison: Like Representative Pierce, I ran into several ex-cons on the campaign trail when I knocked on doors, and they did not realize they had the right to vote. So I think it’s a good bill, and at the appropriate time I’ll move for a favorable report.

Rep. Moore: Okay. Representative Kiser.

Rep. Kiser: I’m pretty sure representatives from the Department of Corrections are here, and if I’m wrong with what I’m getting ready to say, then I’m sure they can correct me. But when we talk about all of the conditions met, sometimes people are released from prison and they have not met the requirements of refunding to the victims what they were mandated by the court or paid for their defense of the attorneys. Is that a correct statement?

Rep. Pierce: Representative Kiser, let me just restate it to you from the State Board, if you don’t mind. ...(unintelligible) after completing all terms of your sentences, including parole, probation and restitution you do not have to do anything to have your citizenship rights including your voting rights restored. So what they’re saying is just like you said, once you have did all those things—restitution, probation and parole—then you are automatically eligible to vote anyway in the state. Is that right?

Rep. Moore: Is there someone here from DOC who would like to comment on this? Is there anyone here from the Department of Corrections?

DOC rep: Yes, we are here.

Rep. Moore: You all are on the hot seat for just a moment. You’ve been asked a question there. Who would like to respond to Representative Kiser’s question?

Ms. Spearman : As I understand it, the statute is as you read it. Once all ____ (unintelligible) and sentencing have been satisfied, we grant a certificate of restoration upon completion of the ____ (unintelligible) including those periods of probation or parole.

Rep. Kiser: My question, if I might....

Rep. Moore: You're recognized for a follow-up, Rep. Kiser.

Rep. Kiser: People are released from the DOC when they have not met the restitution requirements. And my question is are their rights restored the moment they are released?

Rep. Moore: And if you would, when you answer the question, ma'am, state your name and whom you work for. We have a recorder running at the moment.

Ms. Spearman: My name is Mildred Spearman. I'm with the Department of Corrections. As I understand it, their rights would be restored, but we would need a follow-up on that.

Rep. Moore: Further debate or discussion on the bill. The bill sponsor is recognized.

Rep. Pierce: I talked to Mr. James Poole this morning in Probation and Parole, and like Representative Joe Kiser asked a question, once you have satisfied everything then your rights are restored. I mean I'm surprised at the statement you guys made, but once you have...Joe is that the question you asked, that once you have satisfied everything?

Rep. Kiser: My question was people are released from prison before they have met all the restitution requirements and repaid back to the Offices of Indigent Defense their costs for defense of their case. And I don't believe that their rights to vote should be restored until they have met all those qualifications. My question is does this bill, and I'll ask this to the attorneys over here, does this bill restore it the moment they're released or do they have to meet the restitution requirements?

Rep. Moore: Mr. Gilkeson, would you like to respond to that?

Bill Gilkeson: No, sir. G.S.13-1 lists what the conditions are for restoration of citizenship. One of them says the unconditional discharge of an inmate by the State Department of Correction, of a probationer by the State Department of Correction or of a parolee by the State Department of Correction, or of a defendant under a suspended sentence by the court. So it may be that there's some post incarceration part of the sentence that a person who is being released from prison still hasn't satisfied,

and they would not be eligible for the automatic restoration of citizenship until they satisfy the whole thing.

Rep. Moore: Representative Ross, you had a comment or question, I believe.

Rep. Ross: Thank you, Chair Moore. I would just say that one of the things that's very specific about this bill is that it says.... This is on line 14 and also on line 22. It only applies to people at the time their rights to citizenship are restored. So it doesn't apply to people before their rights to citizenship are restored.

Rep. Kiser: That is my question. When is their citizenship restored? Is it restored before restitution and payback they owe offices of indigent defense.

Bill Gilkeson: That would be one of the conditions of their sentence. Perhaps somebody from the Department of Correction can help us out on that, but I think until all the conditions of the sentence are satisfied, the person is not eligible for restoration of citizenship. Ms. Churchill has....

Rep. Moore: Ms. Churchill, you're recognized.

Ms. Churchill: The way the bill is written, it would be the right to citizenship is restored under Chapter 13 of the General Statutes. Those rights are restored upon the unconditional discharge or the satisfaction of all conditions of the pardon.

Rep. Kiser: All conditions. All conditions.

Rep. Moore: Further debate or discussion on.... Representative Holmes.

Rep. Holmes: I have a question, and I'm sorry, Mr. Chair. I came in late and I didn't hear the full explanation, but I'm trying to read. Does this bill provide for the notification of all of that former inmate's rights by writing or through a direct communication with him?

Rep. Pierce: What's the question?

Rep. Holmes: And I mean by communication that somebody counsels him as to what his rights are.

Rep. Pierce: You came in late, right?

Rep. Holmes: Right.

Rep. Pierce: Okay. This is already “The Prisoner’s Guide to Voting in North Carolina.” This is made by the State Board of Elections—our Chairman is sitting back there—so these things are already in writing as to your rights as a... to vote and what the procedure is.

Rep. Moore: Bob’s recognized for a follow-up.

Rep. Holmes: So what is it that you want us to do beyond that?

Rep. Pierce: Well we want to make....What we’re finding out, there’s some already talked about it, that a lot of times these folks have not been told that they are eligible to vote. All we was asking that DOC would have a slip of paper when they exit whether for probation or parole or either come straight out the gate and go home and there’s nothing else attached to them that they would be just given a sheet of paper on their way out that you’re now.... It’s nothing more than information that they’re now qualified to vote, like Representative Joe said, once everything has been satisfied.

Rep. Moore: There is the additional part, Representative Holmes, you need to understand on Section 2 about the absentee voting by incarcerated citizens. That’s.... I don’t know if you saw that. That’s the one thing beyond this.

Rep. Holmes: Let me ask one more question.

Rep. Moore: You’re recognized for a follow-up.

Rep. Holmes: Is what you say that you’re going to put on a slip of paper, is it already.... Are the instructions and does that duplicate what you have in your hand?

Rep. Pierce: In some ways.

Rep. Holmes: Another question?

Rep. Moore: You’re recognized.

Rep. Holmes: What is the purpose of putting a slip of paper in there if you already instruct them in the booklet that you give them when they’re released?

Rep. Pierce: Okay. We don’t give them this. Nobody gives them this? That comes from the Board of Elections. The Board of Elections is not in concert with DOC.

Rep. Holmes: I thought that came from the Department of Corrections.

Rep. Pierce: No, sir.

Rep. Moore: Let's try to come to order a little bit. Representative Holliman, you're recognized for debate or discussion on the bill.

Rep. Holliman: I've just got some concerns like Sheriff Kiser. I'd like to hear what DOC is actually doing. I think the staff is certainly interpreting the law right, but I want some reassurances that's what they're doing and not.... I don't want to hold up the bill. I know it's sensitive.

Rep. Moore: Further debate or discussion. Representative Kiser.

Rep. Kiser: My problem is that in a B1 to an E felony, when you're released from prison you're under a nine months of probation by a probation officer. So in that nine months, you haven't completed. When you walk out of a prison from this, it wouldn't be any use to give them...they've got nine more months even if you don't consider restitution.

Rep. Moore: Further debate or discussion. Representative Ross.

Rep. Ross: Sheriff Kiser, I think that one thing that is in here is that there's coordination both with Department of Corrections and with AOC. So if Department of Corrections isn't the last place where the person is, you know, if when you walk out of prison you still have post release supervision, you have restitution or whatever; generally that person will then be—sometimes—they will be kind of supervised by AOC. And so I think that for some people, Department of Corrections will be the last place that they have contact with, you know, with the State before they go out and their voting rights are restored. With other people it will be AOC.

Rep. Moore: Representative Kiser, you are recognized.

Rep. Kiser: But felons have nine months of post-release supervision. And that means to me that they have not completed all the requirements that this bill says. So I don't understand why then you would put this paper in their hand when they walk out the door.

Rep. Moore: Further debate or discussion on the bill. Representative Blust.

Rep. Blust: The question.... I've never been notified of my right to register and vote. Why should a felon be entitled to something ordinary citizens aren't entitled to?

Rep. Moore: Is someone raising their hand in the back? Would you please, sir, stand and identify yourself.

Bob Hall: Bob Hall from Democracy North Carolina. Let me address that question, if you don't mind. What happens for a felon is that a notice is sent to the boards of elections by the court system and their record's marked that they are a felon and they are not allowed to vote anymore. And if they actually go back to that same place, their record will still be marked that way. Sometimes they need to have a piece of paper, but it's an automatic thing that their right is restored. But on the street, as the representative said, on the street the great myth is that once you are convicted of a felony, your rights are gone. You have no more rights. That is the popular myth. We have people do a lot of voter registration in the state, and we run across them all the time. And there are 70,000 ex-felons who have served their time who want to come back into society, and we should be welcoming them back in trying to create an environment where they can become citizens and wanting them—not pushing them away from it. So I think the purpose of this bill is to try to provide the educational—and maybe all it is is a piece of paper at the appropriate time. It's not giving it to them as they leave the building if they're still serving on probation; it's given at the time they are released from their probation—on notification their rights are restored, and here is a pamphlet about your voting rights. That's just not getting done in a way that registers, and that's why it's important because their rights are actually taken away. Your rights weren't taken away.

Rep. Moore: Further debate or discussion on the bill. Representative Luebke.

Rep. Luebke: Thank you, Mr. Chairman. I'm trying to follow through the concern that Representative Kiser indicated with reference to the AOC. If someone has a period of time before she or he has restoration of rights, then would it not be the way Representative Pierce's bill is drafted, that then perhaps AOC would be the organization providing the notice?

Rep. Moore: Someone from DOC has their hand raised. Please, again, stand and introduce yourself.

M. Spearman: Hi. Mildred Spearman. If a person has (unintelligible)...with this provision; we also have a Division of Community Respite that would issue the certificate of restoration at the appropriate time at the end of the period of supervision.

Rep. Luebke: Right. So, in other words...

Rep. Moore: You're recognized for a follow-up.

Rep. Luebke: Thanks. In other words, it's not.... There are more places where this educational event occurs than simply at the prison door, prison gate.

M. Spearman: Right.

Rep. Luebke: And if I understand right, that is the way Representative Pierce drafted the bill in such a way as to cover all those eventualities. That's just what I'm trying to get clear because were the situation (unintelligible) Representative Kiser (unintelligible). It sounds like that document would come at the end of their community service or whatever.

Rep. Moore: I saw Mr. Gilkeson raise his hand. Maybe he's prepared to respond to that question.

Bill Gilkeson: One of the things that the bill...the main thing the bill does in the felony section is to direct the three agencies—the State Board of Elections, the Department of Corrections, and the AOC—to come up with a program and to get it right. So the implication is that the right person is supposed to go...the ex-offender is supposed to be approached at the proper time so that people aren't told that it's time to register to vote when it's not time to register to vote yet, so that miscommunication doesn't happen, etc.

Rep. Moore: Any further debate or discussion? Does the bill sponsor want to respond also?

Rep. Pierce: And you know that keeps down on fraud, if we do it the right way. You know, that's where we get into a lot of elections where we see voter fraud where people who were actually felons people weren't registering to vote and that's what you create...you create a situation that it's not necessary to have, but I know...some people might not agree with it, but what I'm saying is, all I'm looking at is to giving these folks an opportunity to get back into the main stream, and that helps all of us. It helps communities at large; it helps society at large. So don't think I'm being soft on anybody. It's nothing like that, but I think once you have paid your debt to society, any of us, you know we ought to inform people of their rights. And that's all my bill is about so anything else is nothing more than that. And like Representative Kiser said, if a person has not completed all the things to be completed.... I disagree with you, Representative. They should not be...you shouldn't be allowed to vote. Shouldn't be nothing put in place for them to vote, but once they have satisfied everything that's been ____, I think you need to give them that opportunity to be able to vote again, and that's all I'm saying.

Rep. Moore: Further debate or discussion on the bill.

Rep. Kiser: I have an amendment here.

Rep. Moore: Okay. I've got two other folks to speak. We'll give you time to get your amendment together. Representative Blust.

Rep. Blust: Well, the statement, "paid your debt to society," I keep hearing that being used. I don't really necessarily agree with that. I don't think some of these actions whether you can ever make up for them; and to be quite frank, having been down here and served on Justice and Public Safety before and served on Judiciary and covered many bills dealing with sentences and time served, I think a lot of them don't pay their debt to society just because we can't afford to have enough prisons to keep people in as long as they have to be in. And I don't know whether it's a constitutional—federal or constitutional—thing that says you've got to restore these voting rights to people that have committed crimes and victimized our people, if that's the reason we're doing it all. But just because a sentence is up, I just don't buy the notion that someone's necessarily paid their debt to society to the extent that they get the right to vote. They might have taken Representative Luebke's property or just something.... If you've never been a victim of a crime.... I had a break-in and I never realized how violated I could feel until I walked in my own house and found my stuff torn up, some of my property gone, my place ransacked, and just because we can't afford the prison space to burden the taxpayers, somebody might serve...say even if they served a year, and then we pretend they repaid that debt, and I don't feel that way. So I just don't....

Rep. Moore: Does the gentleman from Guilford yield to the gentleman from Durham.

Rep. Blust: He yields.

Rep. Luebke: Haven't you wandered a long way away from the content of the bill? You may have taken issue with a particular phrase the bill sponsor used...

Rep. Blust: The whole basis is that we somehow...these guys, they're all squared away with us and everything should be just like they never did it, and I just don't agree with that.

Rep. Moore: Further debate or discussion. Representative Starnes, I saw your hand up a minute ago. Are you still wishing to debate on the bill?

Rep. Starnes: The discussion sparked a question in my mind. I just assume, and I'm not that familiar with the court system. I just assume when a person is released from prison, then their right of citizenship is restored. But now from the discussion, apparently, some people are released from prison and their rights are not restored until nine months or some months after they are released. So when is the information going to be given to the people? When they're released from prison or when their citizenship is restored?

Rep. Moore: Your question is to the bill sponsor?

Rep. Starnes: Uh huh.

Rep. Moore: The bill sponsor is recognized.

Rep. Pierce: Ok, thank you. It's restored at the time you have completed whether... If you walk straight out of prison and there's nothing else attached to your citizen, then at that time you would have restored your rights. But like Representative Kiser said and others, if you go into a probation period and got a parole officer and all that, you have to pay restitution, then it's obvious that your rights are not going to be restored until that nine-month period is up, Representative Kiser is putting forth. So it's just when you have completed everything with which department. Some people walk right out of prison already satisfied that they have taken care of everything, but then there's some who have to go into a probation or parole period to further monitor them. So whichever point an inmate would come in, that's where you would give them, you know, you would tell them about their rights. If you walk straight out of prison and you've satisfied everything that courts have allowed you or told you to do, then you're through with it. But if you have to go to a nine months probation period or parole period, then you cannot have your rights restored until such time you have completed that nine-month period or whatever the time might be. Sometime the time could be longer than nine months.

Rep. Moore: We're going to have to stand just a moment. You're being wanted right here. Our bill sponsor's being needed for just a moment. We're going to suspend just a second although I think there is an amendment that's being out there. We'll go ahead and start. I'm going to recognize Representative Kiser to send forth an amendment and just ask that the copies be distributed to the members, please. We'll take up discussion in just a moment. There are no copies.

Rep. Kiser: I'll attempt to explain.

Rep. Moore: Hold on just a moment.

Rep. Ross: Sorry. This is not to upset this amendment because I'm very much in favor of the amendment, but I believe Representative Pierce is actually needed in another committee that he's supposed to be in right now, and so you would like to request that we adjourn this committee meeting and then come back.

Rep. Luebke: Could you not, Madam chair, pinch hit for Representative Pierce while he goes to....

Rep. Ross: Or actually, Representative Harrison is a co-sponsor of this bill and so she could certainly come up and work on this bill a little bit, if that's your pleasure.

Rep. Moore: Whatever the bill sponsor wants to do. You want to do that? Continue on with it?

Rep. Pierce: If that's what y'all want.

Rep. Moore: Representative Harrison, you are a substitute primary sponsor. Come on down. Okay, Representative Kiser has sent forth an amendment and copies have not been made, but I'm going to recognize Ms. Churchill to explain the amendment, if that's all right with the amendment sponsor, since she has the verbage. Then I'll recognize the sponsor of the amendment. Ms. Churchill.

Ms. Churchill: The amendments would read, "...moves to amend the bill on page 1, line 15, by inserting the following between "citizenship" and "under": and all filings required have been completed"; and again on page one, line twenty-two, by deleting "is" and substituting "has been". Under Chapter 13 of the citizenship restoration chapter a certificate is required to be filed with the clerk of superior court in the county in which the defendant resides upon the certificate of restoration of rights, and the concept would be to require that certificate to have been filed to kick in the program to notify the person of their right to vote.

Rep. Moore: I'll recognize the maker of the amendment to speak on the amendment. Representative Kiser.

Rep. Kiser: This further clarifies what the bill sponsor is trying to do. It assures that all filings in the court case have been met including restitution and repayment of everything to the victim that might have been required. And upon completion of everything, then he will be notified that his citizenship has been restored and he can register. I urge you to vote for the amendment.

Rep. Moore: Okay. Does the bill sponsor want to comment on the amendment?

Rep. Harrison: I think it's a good amendment, and the sponsors support the bill with the amendment added. Thank you.

Rep. Moore: Representative Luebke.

Rep. Luebke: I guess this question is for staff. I'm not sure who is supposed to send this information along that Representative Kiser asked about. Is this something that is expected to be done anyway or are we giving a new task to the clerk of court?

Ms. Churchill: The clerk of court is already required to see that this is filed if they get a restoration, and the bill requires the State Board of Elections, the

Department of Corrections and the AOC to develop a program to notify that person.

Rep. Luebke: So the amendment adds what? Or is it just sort of like the bill itself, underscoring certain things should happen.

Rep. Kiser: That all filings in the court have been met.

Rep. Ross: It's a good amendment.

Rep. Moore: Further debate or discussion on the amendment. Seeing not, all those who favor the amendment please signify by saying aye. Those opposed no. The ayes do have it. The amendment is adopted. We are now back in debate on the original bill. Further debate or discussion? Representative Starnes.

Rep. Starnes: My question's to the Board of Elections. You said that when someone is a felon that their name is flagged or their registration is flagged so that they can't vote. Are they actually removed from the rolls?

Mr. Bartlett: They are just removed and placed in another category. They're flagged. We check for felons every two months. For instance, if someone had their rights restored, we would be checking that list and if a name would appear, then we would inform that person what we found through correspondence. And if there was some kind of mistake, the person could ask for a hearing before the county board of elections and present any kind of evidence they may have.

Rep. Starnes: All right. The next question is, _____ (unintelligible) in this legislation, the person who will receive the voter registration form gets notice that his rights have been restored. So how much lag time is there going to be? Probably a two-month period then. I'm just wondering if someone mails in a voter registration form, and then your office checks it, and their name is flagged, then what happens?

Mr. Bartlett: A letter is sent to that person who was trying to submit an application of a voter registration and they can request a hearing.

Rep. Moore: Further debate or discussion on the bill. Let's just stand for just one moment. For the purpose of hearing an amendment, Representative Ross is going to assume the chair for just a moment.

Rep. Ross: So I believe that Representative Moore is interested in sending forth an amendment. I think this is a fairly simple amendment. Why don't you just explain it to the committee while we are having Erika draft it.

Rep. Moore: I'm moving to amend Section 2 of the bill, which has actually not received a lot of discussion today but has been the one that has probably caused me the most heartburn about it, which is this thing about the education of folks who are presently in jail, making it easier for them to vote. I know they have a right to vote and certainly then can. But it looks like we're going to more effort to get those folks to vote than we are on the average voter under this statute. I happened to have a conversation with a sheriff in my county at one time—not about this bill; it was a couple of years ago—about the whole issue of inmates voting and some of the logistical issues they deal with. Anyway, I'll just ask that that section be deleted. My understanding was the bill sponsor does not have an objection to that section being deleted from the bill, and I move for that amendment at this time.

Rep. Ross: I'll recognize Representative Harrison to respond to this idea for the amendment.

Rep. Harrison: Representative Moore is right. If this will earn your support for the bill, I'm okay with the amendment.

Rep. Ross: Okay. Does everybody understand the amendment as Erika.... The amendment would be to amend the bill on page 1, line 24 through page 2, line 3, by deleting those lines and then renumbering the sections, and it would also require an amendment to the long title. Does everybody understand that amendment 'cause we're running close to the time. Okay. Any further discussion on the amendment. If not, so many as favor the amendment please say aye. Those who oppose? Okay the amendment passes, so now we are back on the bill.

Rep. Moore: Further debate or discussion on the bill. Is there a motion? Representative Luebke is recognized for a motion.

Rep. Luebke: I think there was already a motion...

Rep. Moore: That's right. You had the motion. There is a motion for a favorable report by Representative Harrison.

Rep. Luebke: I was just going to ask about the technicalities of rolling into a committee substitute versus attaching the amendments given how close we are to deadline.

Rep. Moore: Would you amend your motion? Do you want to attach the amendments to the bill as opposed to a PCS?

Rep. Luebke: No, I think _____ (unintelligible) doesn't it according to the rules or is that...?

Rep. Moore: I might have to defer to staff on that question unless my co-chair knows the answer.

Ms. Churchill: It depends on how short the bill is. They should be able to turn it around and report it in before you all are out of session today.

Rep. Ross: And we probably will have a supplemental calendar, so...

Rep. Moore: The motion is then that this be rolled into a proposed committee substitute, unfavorable report as to the original bill, favorable to the proposed committee substitute. Further debate or discussion? Seeing not, all those who favor the motion please say aye. All those opposed? The ayes appear to have it. The ayes do have it. We stand adjourned, there being no further business before the committee.

The meeting was adjourned at 1:52 p.m.

AGENDA

HOUSE OF REPRESENTATIVES ELECTION LAW AND CAMPAIGN FINANCE REFORM COMMITTEE

**June 1, 2005
Representative Moore, Presiding**

HB 1256, Rights for Accused and Ex-Offenders

Rep. Pierce

HB 1101, Prompt Release of Election Results

Rep. Allred

Nancy Garriss (Rep. Tim Moore)

From: Margie Penven (Rep. Ross)
Sent: Tuesday, May 31, 2005 4:16 PM
To: Rep. Cary Allred; Rep. Garland Pierce
Subject: REVISED ELECTION LAW CAMPAIGN FINANCE REFORM COMMITTEE NOTICE (HB 1101 ADDED)
Importance: High

REVISED

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
2005-2006 SESSION**

You are hereby notified that the Committee on **Election Law and Campaign Finance Reform** will meet as follows:

DAY & DATE: Wednesday, June 1, 2005

TIME: 1:00 p.m.

LOCATION: 1425 LB

The following bills will be considered (Bill # & Short Title & Bill Sponsor):

HB 1256, Rights for Accused and Ex-Offenders, Rep. Pierce

HB 1101, Prompt Release of Election Results, Rep. Allred

Respectfully,

Representatives Tim Moore and Deborah Ross
Co-chairs

I hereby certify this notice was filed by the committee clerk at the following offices at **4:15 P.M.** on **May 31, 2005.**

____ Principal Clerk
____ Reading Clerk - House Chamber

Margie Penven (Committee Assistant)

5/31/2005

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Moore, Ross (Chairs) for the Committee on ELECTION LAW AND
CAMPAIGN FINANCE REFORM.

☐ Committee Substitute for

HB 1256

A BILL TO BE ENTITLED AN ACT TO FACILITATE VOTING BY
ACCUSED CITIZENS WHO ARE INCARCERATED BUT NOT CONVICTED OF CRIMES AND
BY CITIZENS WHO ARE INCARCERATED ON MISDEMEANOR CONVICTIONS; AND TO
FACILITATE VOTER REGISTRATION BY FORMER FELONS UPON THE COMPLETION OF
THEIR SENTENCE AND THE RESTORATION OF THEIR CITIZENSHIP.

☒ With a favorable report as to the committee substitute bill, ^{which changes the title,} unfavorable as to the original bill, and
~~recommendation that the committee substitute bill # be re-referred to the Committee on.~~

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House) committee substitute bill/(joint) resolution (No. _____) is
placed on the Calendar of _____. (The original bill resolution No. _____) is placed on the Unfavorable
Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. _____) is re-referred to the
Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint)
resolution No. _____) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

1

HOUSE BILL 1256

Short Title: Rights for Accused and Ex-Offenders.

(Public)

Sponsors: Representatives Pierce; Faison, Farmer-Butterfield, Harrison, Jones,
Lucas, Parmon, Wainwright, and Womble.

Referred to: Election Law and Campaign Finance Reform.

April 18, 2005

A BILL TO BE ENTITLED

AN ACT TO FACILITATE VOTING BY ACCUSED CITIZENS WHO ARE
INCARCERATED BUT NOT CONVICTED OF CRIMES AND BY CITIZENS
WHO ARE INCARCERATED ON MISDEMEANOR CONVICTIONS; AND TO
FACILITATE VOTER REGISTRATION BY FORMER FELONS UPON THE
COMPLETION OF THEIR SENTENCE AND THE RESTORATION OF THEIR
CITIZENSHIP.

The General Assembly of North Carolina enacts:

SECTION 1. Article 7A of Chapter 163 of the General Statutes is amended
by adding a new section to read:

"§ 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 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 is being restored, informing that person that the person may now register to
vote, with a voter registration form enclosed with the notice."

SECTION 2. Article 20 of Chapter 163 of the General Statutes is amended
by adding a new section to read:

"§ 163-227.2A. Absentee voting by incarcerated citizens.

The State Board of Elections, the Department of Correction, the Administrative
Office of the Courts, and the sheriffs of the counties shall jointly develop and

1 implement educational programs and procedures for citizens who are incarcerated to
2 vote by absentee ballot. Those procedures shall apply to citizens who are incarcerated
3 awaiting trial and citizens who are incarcerated as a result of misdemeanor convictions."

4 **SECTION 3.** This act becomes effective January 1, 2006.



HOUSE BILL 1256: Rights for Accused and Ex-Offenders

BILL ANALYSIS

Committee:	House Election Law and Campaign Finance Reform	Date:	May 31, 2005
Introduced by:	Rep. Pierce	Summary by:	R. Erika Churchill
Version:	First Edition		Committee Counsel

SUMMARY: *House Bill 1256 would require the State Board of Elections, the Department of Correction and the Administrative Office of the Courts to develop and implement educational programs and procedures to facilitate voting by accused citizens, misdemeanants, and former felons.*

CURRENT LAW: Article VI, Section 2 of the North Carolina Constitution provides that no person adjudicated guilty of a felony shall be permitted to vote unless that person's citizenship rights have been restored in the manner prescribed by law. (See reverse side for text) G. S. 163-55 provides that a person convicted of a felony cannot register or vote unless citizenship rights have been restored. Under G.S. 163-275, it is a Class I felony for such person to vote.

Until such time as their citizenship rights are restored, convicted felons are also prohibited from the following: service as juror, qualification for ABC permit, employment in the sale or distribution of alcoholic beverages, qualification to serve as personal representative in estate matters, qualification to serve as guardian of an estate, employment with a licensee under the Structural Pest Control Act, service as county director of elections.

G.S. 13-1 currently provides for the automatic restoration of citizenship rights when a person is:

1. Unconditionally discharged from prison or from a suspended sentence
2. Receives an unconditional pardon
3. Satisfies the conditions of a pardon.

Under current law, a person convicted of a felony who is in prison or who is on parole or probation, serving a suspended sentence or otherwise subject to supervision is not eligible to vote, hold office, or participate in the other activities listed in the above paragraph.

BILL ANALYSIS:

Section 1. The bill would require the State Board of Elections, the Department of Corrections, and the Administrative Office of the Courts to develop and implement a program to educate persons having their citizenship rights restored about registering to vote and to provide procedure for those persons to register to vote. At a minimum the procedure shall include written notice and a voter registration form, and shall be designed to:

1. Inform the person that restoration of rights removes that person's disqualification to vote, but in order to be able to vote, that person must register to vote.
2. Provide an opportunity for that person to register to vote.

Section 2. The bill would require the State Board of Elections, the Department of Corrections, the AOC, and the sheriffs of the counties to develop and implement educational programs and procedures for incarcerated citizens who may vote to do so. Incarcerated persons who may vote are persons convicted of a misdemeanor and persons awaiting trial.

EFFECTIVE DATE: The act would become effective January 1, 2006.

H1256e1-SMST

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1256

DATE 6-1-05

S. B. No. _____

Amendment No. _____

COMMITTEE SUBSTITUTE _____

(to be filled in by
Principal Clerk)

Rep.)

Sen.)

Kiser

1 moves to amend the bill on page 1, line 15

2 () WHICH CHANGES THE TITLE

3 by inserting the following between "citizenship" and "under"

4
5 "and all filings required have been completed"; and

6
7 on page 1, line 22 by deleting "is" and
8 substituted "has been".

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

SIGNED

John Kiser

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 12951256 ^{WRG}

DATE 6-1-05

S. B. No. _____

Amendment No. 2

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)

Sen.)

Moore

1 moves to amend the bill on page 1, line 24

2 () WHICH CHANGES THE TITLE

3 by through Page 2, line 3

4

5 by deleting those lines;

6

7 and on page 1, lines 4-7 by rewriting

8 that line to read:

9 "WHO ARE INCARCERATED ON

10 and rewriting the long title accordingly;

11

12 and renumbering the remaining sections

13 accordingly.

14

15

16

17

18

19

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

1

HOUSE BILL 1101

Short Title: Prompt Release of Election Results.

(Public)

Sponsors: Representative Allred.

Referred to: Election Law and Campaign Finance Reform.

April 4, 2005

A BILL TO BE ENTITLED
AN ACT TO PROVIDE FOR PROMPT RELEASE OF ELECTION RESULTS
AFTER THE CLOSE OF THE POLLS ON ELECTION DAY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-182.2(b) reads as rewritten:

"(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.
- (4) The rules shall provide for the public release of unofficial election results promptly after the closing of all polls. The rules shall provide for release of partial results as soon as they are available after the polls are closed rather than holding back available results until all results are in.

The State Board shall direct the county boards of elections in the application of the principles and rules in individual circumstances."

SECTION 2. This act is effective when it becomes law and applies to all primaries and elections held on or after that date.



HOUSE BILL 1101: Prompt Release of Election Results

BILL ANALYSIS

Committee:	House Election Law and Campaign Finance Reform	Date:	June 1, 2005
Introduced by:	Rep. Allred	Summary by:	William R. Gilkeson
Version:	First Edition		Committee Co-Counsel

SUMMARY: *House Bill 1101 would direct the State Board of Elections to adopt rules providing for county boards of elections to promptly release election returns after the polls close. The bill provides that the county board shall release partial results as they become available after the polls close rather than holding back available results until all results are in.*

CURRENT LAW: The election statutes require the State Board of Elections to adopt rules for the initial counting of ballots. GS 163-182.2. Those rules are to provide for the accurate counting of votes and for the accurate reporting of results from the precinct to the county board of elections. Pursuant to that statute, the State Board of Elections has adopted a rule (8 NCAC 6B.0105(d)) that says:

"When the counting is completed, the chief judge or designee shall announce the results at the precinct. The announcement 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 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." [Emphasis added.]

The Public Records Act (GS Chapter 132) provides that records made or received pursuant to law by a public agency are public and must be disclosed. Election results fit within that category. GS 132-6 directs every custodian of a public record to "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." The duty to disclose public records has many exceptions. Two election statutes require certain election records to be kept confidential:

- Voted ballots are to be kept confidential. No election official shall disclose a ballot so as to make known the identity of a voter. GS 163-165.1(e).
- No absentee ballot results are to be made public until 7:30 pm, the hour that polls normally close. GS 163-234.

BILL ANALYSIS: The bill adds a guideline to the list of guidelines for the State Board's rules on initial counting of votes. The new guideline would say that election results shall be released promptly after the closing of the polls. It would further say that county boards of elections shall release partial results as soon as they become available rather than holding back available results until all results are in.

EFFECTIVE DATE: When it becomes law; applies to all primaries and elections on and after that date.

BACKGROUND: In 2004 the Alamance County Board of Elections stated the belief that it did not have the authority to release election returns from precincts until it had available all the one-stop (early voting) results. The staff of the State Board has said the Alamance Board's interpretation was incorrect.

VISITOR REGISTRATION SHEET

Election Law and Campaign Finance Reform

June 1, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Dave Ingram	WS Journal
Gary Bartlett	SBE
Johnnie McLean	SBE
Sarah Hargar	ACLU - NC
Dan Blau	ACLU - NC
JUDIE BURKE	League of Women Voters North Carolina
Stephanie Cohn	NCDSI
Mildred Spearman	NCDOC
Tracy Little	NCDOC
Bob Hall	Democracy NC
Stella McKenry	NC DHHS

VISITOR REGISTRATION SHEET

Election Law and Campaign Finance Reform

June 1, 2005

Name of Committee

Date _____

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME _____

FIRM OR AGENCY AND ADDRESS

Pat. A. Young

ACLU

Holly Bryan

NCA-TL

N. Carne / Robinson

NC Black Leadership Caucus

Holly Howington

intern, Rep Eddins

Nancy Garriss (Rep. Tim Moore)

From: Nancy Goodman (House Legislative Assistant's Office)
Sent: Wednesday, June 01, 2005 8:43 PM
To: Margie Penven (Rep. Ross); Nancy Garriss (Rep. Tim Moore)
Subject: 2005 COMMITTEE REPORT
Importance: High

Met around the desk of Rep. Tim Moore at 8:30 p.m. on June 1, 2005, to consider HB 1101. Present: Moore, Ross, Kiser, Blust, Harrison, Holmes, Lewis, Eddins (ex-officio). Rep. Tim Moore moved for a favorable report to HB 1101. Motion carried.

6/2/2005

6-1-05

**2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative Moore, Ross (Chairs) for the Committee on ELECTION LAW AND
CAMPAIGN FINANCE REFORM.

☐ Committee Substitute for

HB 1101 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR PROMPT
RELEASE OF ELECTION RESULTS AFTER THE CLOSE OF THE POLLS ON ELECTION
DAY.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on
_____.

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

1

HOUSE BILL 1101

Short Title: Prompt Release of Election Results.

(Public)

Sponsors: Representative Allred.

Referred to: Election Law and Campaign Finance Reform.

April 4, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR PROMPT RELEASE OF ELECTION RESULTS
3 AFTER THE CLOSE OF THE POLLS ON ELECTION DAY.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 163-182.2(b) reads as rewritten:

6 "(b) The State Board of Elections shall promulgate rules for the initial counting of
7 official ballots. All election officials shall be governed by those rules. In promulgating
8 those rules, the State Board shall adhere to the following guidelines:

- 9 (1) For each voting system used, the rules shall specify the role of precinct
10 officials and of the county board of elections in the initial counting of
11 official ballots.
12 (2) The rules shall provide for accurate unofficial reporting of the results
13 from the precinct to the county board of elections with reasonable
14 speed on the night of the election.
15 (3) The rules shall provide for the prompt and secure transmission of
16 official ballots from the voting place to the county board of elections.
17 (4) The rules shall provide for the public release of unofficial election
18 results promptly after the closing of all polls. The rules shall provide
19 for release of partial results as soon as they are available after the polls
20 are closed rather than holding back available results until all results are
21 in.

22 The State Board shall direct the county boards of elections in the application of the
23 principles and rules in individual circumstances."

24 SECTION 2. This act is effective when it becomes law and applies to all
25 primaries and elections held on or after that date.



HOUSE BILL 1101: Prompt Release of Election Results

BILL ANALYSIS

Committee:	House Election Law and Campaign Finance Reform	Date:	June 1, 2005
Introduced by:	Rep. Allred	Summary by:	William R. Gilkeson
Version:	First Edition		Committee Co-Counsel

SUMMARY: *House Bill 1101 would direct the State Board of Elections to adopt rules providing for county boards of elections to promptly release election returns after the polls close. The bill provides that the county board shall release partial results as they become available after the polls close rather than holding back available results until all results are in.*

CURRENT LAW: The election statutes require the State Board of Elections to adopt rules for the initial counting of ballots. GS 163-182.2. Those rules are to provide for the accurate counting of votes and for the accurate reporting of results from the precinct to the county board of elections. Pursuant to that statute, the State Board of Elections has adopted a rule (8 NCAC 6B.0105(d)) that says:

"When the counting is completed, the chief judge or designee shall announce the results at the precinct. The announcement 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 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." [Emphasis added.]

The Public Records Act (GS Chapter 132) provides that records made or received pursuant to law by a public agency are public and must be disclosed. Election results fit within that category. GS 132-6 directs every custodian of a public record to "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." The duty to disclose public records has many exceptions. Two election statutes require certain election records to be kept confidential:

- Voted ballots are to be kept confidential. No election official shall disclose a ballot so as to make known the identity of a voter. GS 163-165.1(e).
- No absentee ballot results are to be made public until 7:30 pm, the hour that polls normally close. GS 163-234.

BILL ANALYSIS: The bill adds a guideline to the list of guidelines for the State Board's rules on initial counting of votes. The new guideline would say that election results shall be released promptly after the closing of the polls. It would further say that county boards of elections shall release partial results as soon as they become available rather than holding back available results until all results are in.

EFFECTIVE DATE: When it becomes law; applies to all primaries and elections on and after that date.

BACKGROUND: In 2004 the Alamance County Board of Elections stated the belief that it did not have the authority to release election returns from precincts until it had available all the one-stop (early voting) results. The staff of the State Board has said the Alamance Board's interpretation was incorrect.

MINUTES
House Committee on Election Law and Campaign Finance Reform
June 1, 2005
8:30 p.m., House Chamber
Representative Ross, Presiding

The House Committee on Election Law and Campaign Finance Reform met at 8:30 p.m. on Tuesday, June 1, 2005, around Representative Moore's desk in the House Chamber to consider House Bill 1101. (See minutes of June 1, 2005, 1:00 meeting, for a copy of the bill.)

Members present were: Representative Tim Moore, Co-Chair; Representative Deborah Ross, Co-Chair; Representative Joe Kiser, Representative John Blust; Representative Pricey Harrison; Representative George Holmes; and Representative David Lewis. Also present was Representative Rick Eddins, ex-officio member.

Representative Moore made a motion that House Bill 1101 be given a favorable report and the motion carried.

There being no further business, the meeting was adjourned.

A copy of the committee report is attached. See the transcript attached to the minutes of the 1:00 meeting on June 1, 2005, for an explanation of the bill.

Respectfully submitted,



Representative Deborah Ross, Presiding Chair



Margie Penven, Committee Assistant

**2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative Moore, Ross (Chairs) for the Committee on ELECTION LAW AND
CAMPAIGN FINANCE REFORM.

☐ Committee Substitute for

HB 1101 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR PROMPT
RELEASE OF ELECTION RESULTS AFTER THE CLOSE OF THE POLLS ON ELECTION
DAY.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on
_____.

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

MINUTES
House Committee on Election Law and Campaign Finance Reform
June 8, 2005
1:00 p.m., Room 1425
Representative Ross, Presiding

The House Committee on Election Law and Campaign Finance Reform met at 1:00 p.m. on Tuesday, June 8, 2005, in Room 1425 of the State Legislative Building.

Members present were: Representative Deborah Ross, Co-Chair; Representative Joe Kiser, Vice-Chair; Representative Paul Luebke, Vice-Chair; Representative Walter Church; Representative Pricey Harrison; Representative Hugh Holliman; and Representative David Lewis.

There was one bill on the agenda—Senate Bill 368, Franklin School Elections Nonpartisan, introduced by Senator Doug Berger.

Co-Chair Ross called the meeting or order and introduced the pages and the sergeants-at-arms.

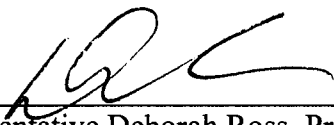
The chair recognized Senator Berger to explain Senate Bill 368. After his explanation Senator Berger answered questions from members of the committee.

Representative Holliman moved that Senate Bill 368 be given a favorable report and the motion carried.

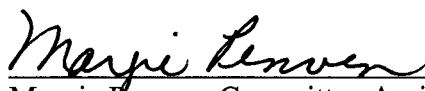
The meeting was adjourned at 1:07.

A verbatim transcript of this meeting is attached hereto along with all pertinent documents and handouts.

Respectfully submitted,



Representative Deborah Ross, Presiding Chair



Margie Penven, Committee Assistant

TRANSCRIPT
House Committee on Election Law and Campaign Finance Reform

1:00 p.m. on June 8, 2005

Room 1425, LOB

Representative Ross, Presiding

Rep. Ross: Members of the committee, we have a quorum. It's nice to see you all. Since we have session at 2:00, I thought we would try to get started as soon as we could. Representative Moore was technically supposed to chair today, but he's with some constituents, and so he'll chair the next meeting.

Today we have several pages; in fact, we have three who are Representative Moore's so I hope they'll get to meet him and be with him at some other time. Zack Bridges, Michael Moore also Representative Moore's page, Lamar Watkins—Representative Moore's page. Then we have Kyle West who's Representative Insko's page, Jered Wilson who is Representative Lucas' page, and Linzy Shoaf who is Representative Holliman's page. And our Sergeants-at-Arms are Frank Prevo, Lesli Oakley, and James Worth.

Today we have Senate Bill 368, Franklin School Elections Nonpartisan, and we have Senator Doug Berger with us. Senator Berger, please come forward. Welcome to the Election Laws Committee, and let the committee know about your bill.

Sen. Berger: Thank you, Chairman Ross.

Franklin County wants to join the 81 counties that have non-partisan school board elections. We have seven members of our school board represented by both political parties that have unanimously requested this legislation. We just had a school bond referendum—the second time in the past ten years—this last fall and had overwhelming support by over 70 percent of the community, and the community and the school board feel that we need to remove the partisan aspect out of our elections in Franklin County and ask your support for this bill.

Rep. Ross: Questions from members of the Committee? Representative Holliman.

Rep. Holliman: Yes. A question to the bill sponsor: Is there any opposition _____ (unintelligible).

Rep. Berger: I don't know of any opposition.

Rep. Ross: Rep. Holliman.

Rep. Holliman: At the appropriate time, Madam Chairman, I'd like to make a motion.

Rep. Ross: And Representative Kiser, did you have a question?

Rep. Kiser: Yes, I have several.

Rep. Ross: Okay.

Rep. Kiser: Thank you, Madam Chairman.

Senator, are there two school boards in Franklin County?

Sen. Berger: No, sir. We have one. We merged our system back in 1994. We had Franklinton City School system and Franklin County system, and so as part of the that merger legislation, our school board election processes are part of that legislation, so that's why that particular legislation has to be amended.

Rep. Ross: Follow-up.

Rep. Kiser: And is it a partisan election now?

Sen. Berger: Yes, sir.

Rep. Kiser: And what is the makeup of the board?

Sen. Berger: Six Democrats and one Republican.

Rep. Ross: Another follow-up, Representative Kiser?

Rep. Kiser: Yes. And when do their terms expire?

Sen. Berger: We have elections every two years so in the next election we have three seats open and in the following election we'll have four seats open.

Rep. Ross: Any further questions, Representative Kiser? Any further questions from members of the committee? If not, Representative Holliman moves that we give Senate Bill 368 a favorable report. Those in favor please say aye. Those opposed no. The motion carries. Thank you very much members of the committee and congratulations, Senator Berger. And Representative Lucy Allen will handle this bill on the floor. The committee meeting's adjourned.

The meeting adjourned at 1:07.

AGENDA

HOUSE OF REPRESENTATIVES ELECTION LAW AND CAMPAIGN FINANCE REFORM COMMITTEE

**June 8, 2005
Representative Ross, Presiding**

SB 368, Franklin School Elections Nonpartisan, Sen. Doug Berger

Nancy Garriss (Rep. Tim Moore)

From: Margie Penven (Rep. Ross)
Sent: Tuesday, June 07, 2005 8:32 AM
To: Sen. Doug Berger
Subject: 06-08-05 Meeting Notice.doc

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
2005-2006 SESSION**

You are hereby notified that the Committee on **Election Law and Campaign Finance Reform** will meet as follows:

DAY & DATE: **Wednesday, June 8, 2005**

TIME: **1:00 p.m.**

LOCATION: **1425 LB**

The following bills will be considered (Bill # & Short Title & Bill Sponsor):
SB 368, Franklin School Elections Nonpartisan, Sen. Doug Berger

Respectfully,

Representatives Tim Moore and Deborah Ross
Co-chairs

I hereby certify this notice was filed by the committee clerk at the following offices at **8:30 a.m.** on **June 7, 2005.**

____ Principal Clerk
____ Reading Clerk - House Chamber

Margie Penven (Committee Assistant)

6-7-05

**2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative Moore, Ross (Chairs) for the Committee on ELECTION LAW AND
CAMPAIGN FINANCE REFORM.

X Committee Substitute for

SB 368 A BILL TO BE ENTITLED AN ACT TO CHANGE THE MANNER OF
ELECTION OF THE FRANKLIN COUNTY BOARD OF EDUCATION FROM PARTISAN
TO NONPARTISAN.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on
_____.

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S

2

SENATE BILL 368
State and Local Government Committee Substitute Adopted 3/24/05

Short Title: Franklin School Elections Nonpartisan.

(Local)

Sponsors:

Referred to:

March 3, 2005

A BILL TO BE ENTITLED

AN ACT TO CHANGE THE MANNER OF ELECTION OF THE FRANKLIN
COUNTY BOARD OF EDUCATION FROM PARTISAN TO NONPARTISAN.

The General Assembly of North Carolina enacts:

SECTION 1. Section 6(b) of Chapter 341 of the 1993 Session Laws reads as
rewritten:

"(b) The members of the Permanent Board shall be elected for a term of four years
in ~~partisan~~ nonpartisan elections held at the time of the ~~general election~~ regular primary
for county offices, ~~in the same manner as elections for county officers, including~~
~~primary elections if required, with the results determined under the election and runoff~~
~~election method as provided under G.S. 163-293. The runoff election, if needed, shall be~~
~~at the same time as the second primary is scheduled. The primary elections shall be held~~
~~on the dates provided by law for county elections. The filing period shall be the same as~~
~~for county officers elected on a partisan basis.~~ Duly elected members of the Permanent
Board shall take office the first Monday of December immediately following their
election and shall take the oath of office prescribed in Article VI, Section 7 of the
Constitution. Upon the members of the Permanent Board being installed, the Permanent
Board shall replace the Merged Board and shall assume all of the duties, powers, assets,
and liabilities of the Merged Board as provided for in Section 5(d) of this act and the
Merged Board shall cease to exist and the terms of office of the members of the Merged
Board shall end."

SECTION 2. This act is effective when it becomes law.



SENATE BILL 368: Franklin School Elections Nonpartisan

BILL ANALYSIS

Committee:	House Election Law and Campaign Finance Reform	Date:	June 6, 2005
Introduced by:	Sen. Berger of Franklin	Summary by:	R. Erika Churchill
Version:	Second Edition		Committee Counsel

SUMMARY: *Senate Bill 368 would provide for non-partisan elections for the Franklin County School Board.*

CURRENT LAW: Members of the Franklin County Board are elected in partisan elections held at the time of the general election for county officers, including primary elections if required.

BILL ANALYSIS: The bill would amend the 1993 merger agreement between the Franklinton City Schools and Franklin County Schools to provide that members of the merged board are elected on a non-partisan basis. The election would be conducted under Chapter 163 of the General Statutes, and the winner determined using the election and runoff method (G.S. 163-293).

EFFECTIVE DATE: The act would become effective when it becomes law.

BACKGROUND: There are currently 81 local school boards whose members are elected in nonpartisan elections. There are 115 local school boards as of July 1, 2004.

S0368e2-SMST

Hal Pell contributed to this summary.

VISITOR REGISTRATION SHEET

Election Law and Campaign Finance Reform

June 8, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

James Bimmsch	LWV-NC
Audrey Albrecht	LWV-NC New Hanover Co.
Vicki Boyer	LWV-ODC Orange Co.
LYNNE WARE	LWV-ODC Orange Co.
Brenda Rogers	LWV-NC Wake County
JAN RICHMOND	LWV-ODC Durham Co.
Bob Hall	Demonstration, NC
Teresa Saunders	Rep. Linda Coleman
JUDIE BURKE	LWV-NC

MINUTES
House Committee on Election Law and Campaign Finance Reform
July 6, 2005
1:00 p.m., Room 1425
Representative Moore, Presiding

The House Committee on Election Law and Campaign Finance Reform met at 1:00 p.m. on Tuesday, July 6, 2005, in Room 1425 of the State Legislative Building.

Members present were: Representative Tim Moore, Co-Chair; Representative Deborah Ross, Co-Chair; Representative Joe Kiser, Vice-Chair; Representative John Blust, Representative Walter Church, Representative Pricey Harrison; Representative Hugh Holliman; Representative George Holmes; Representative David Lewis; Representative Edd Nye; and Representative Edgar Starnes. Also present were Representative Rick Eddins and Representative Joe Hackney, ex-officio members.

There were two bills on the agenda: Senate Bill 98, Orange County Super Precinct sponsored by Senator Kinnaird, and House Bill 851, Same Day Registration at One-Stop Sites, sponsored by Representative Ross.

Co-Chair Tim Moore called the meeting to order and introduced the pages and sergeants-at-arms.

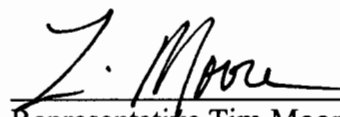
Co-Chair Moore recognized Mr. Gerry Cohen, Director of Legislative Bill Drafting, to explain Senate Bill 98.

After the explanation and extensive debate, Representative Moore said he would honor Senator Kinnaird's request that a vote not be taken on the bill that day. He asked if there were any one in the audience who wanted to be heard, and there was no one. Further debate continued among the committee members.

The Chair said Senate Bill 98 would likely be revised at the next meeting, and at the request of Representative Ross, House Bill 851, was put off. There being no further business, the meeting was adjourned at 1:40 p.m.

A verbatim transcript of this meeting is attached hereto along with all pertinent documents and handouts.

Respectfully submitted,



Representative Tim Moore, Presiding Chair



Margie Penven

Margie Penven, Committee Assistant

TRANSCRIPT
House Committee on Election Law and Campaign Finance Reform

1:00 p.m. on July 6, 2005

Room 1425, LOB

Representative Moore, Presiding

Rep. Moore: The Committee meeting of the Election Law and Campaign Finance Reform will come to order. Let's see. What's the magic number for a quorum, staff. We need one more? Chair plus four, isn't it?

Bill Gilkeson: I think it's the chair plus five. Looks like we need to wait a minute or two.

Rep. Moore: Okay. We're going to stand at ease just a moment, but as we wait I need to go ahead and get some administrative things out of the way. Do want to introduce our pages that we have today. We have Russell Lewis—and when you hear your name called just raise you hands, and folks can identify you. We have Russell Lewis from Carteret County who is sponsored by Representative Preston. We have Brook Shaffer from my home county, Cleveland County, who is sponsored by Representative Kiser from over in Lincoln County. We have Jessica Herndon from Nash County who is sponsored by Representative Daughtridge, and we have Britt Eller from Wilkes County who is sponsored by Representative Walker. We appreciate you all being here. Our sergeants-at-arms today are Fred Hines, Jay Callaway, and James Worth.

It appears to the chair that a quorum is present for the committee, so we will now declare the committee convened. We'll recognize staff for the first bill on the calendar today, which is Senate Bill 98. Senator Kinnaird is not here at the moment, so we're not going to actually take any action until the bill sponsor gets here, but we will go ahead and will recognize staff to explain the bill and go ahead and get that part out of the way.
Gerry.

Gerry Cohen: Senate Bill 98 passed the Senate unanimously. The concept of it originally came out of a recommendation from the Joint Select Committee on Electronic Voting Systems co-chaired....the bill was by Senator Kinnaird....A statewide bill was sponsored by Senator Kinnaird and Senator Allran and Representative Insko in the House. Senator Kinnaird decided to run this as a local bill because no action had yet been taken. This concept has been used several places around the country, most notably last year in Laramer County, Colorado. The basic concept is what you have in early voting where a voter can choose to vote at any of the early voting sites regardless of where they live. This would also apply on Election Day. This is a pilot project for 2005 and 2006. It requires a unanimous vote of the Orange County Board of Elections—all three members—and then approval by the State Board of Elections. I've talked

to the elections supervisor in Orange County. Although it may be too late to implement this in 2005, I think they're interested in this in 2006. It will enable.... You'll have your normal early voting sites, and then on Election Day there will be some number of sites—it's probably less than all the precincts in the county—but any voter can go to any site. And any building that can be used as a polling place can be used as a voting center. So this would mean that the whole issue of provisional ballots and address changes.... I don't think Representative Hackney has a committee substitute bill. Would you get Representative Hackney a copy of the committee substitute? It would have the same sort of system as early voting as used in Orange County. There would be laptop computers connected to the central county database so no voter could vote twice. If you voted in early voting you couldn't also vote on Election Day. But basically the Election Day...the machinery for voting on Election Day would be very similar to early voting. Right now, I think Orange County has 41 precincts. This would require there be at least one voting center in each township. Orange County has seven townships. And I'm not sure exactly how many voting centers there'd be. It might be anywhere from twenty to twenty-five rather than the forty-one. They would take the best-trained election officials. In Colorado and other places that use this system, they may use shopping malls as voting sites. Currently one of their early voting sites is on campus. Currently the early voting centers they have in Orange County—the last year's were in Morehead Planetarium, Carrboro Town Hall, and the Board of Elections Office in Hillsborough. But it would require a unanimous vote of the county board of elections to improve this project. The State Board of Elections would also have to sign off on it. The changes in the House committee substitute are largely technical after discussion of the bill with the State Board of Elections and Carolyn Thomas, the Elections Supervisor in Orange County. I'd be glad to answer any questions about the bill.

Rep. Moore: All right. Do we have any questions of staff concerning the bill?
Representative Hackney.

Rep. Hackney: So all the regular polling places would be open and those would be tabulated by precincts the same way as usual even though you may have voted at an at-large precinct?

Gerry Cohen: Right. I think the concept is not that there would be all the regular polling places; but there'd be some number less and that it would not be all of the regular polling places. I think the idea is that rather than forty-one there might be twenty or twenty-five sites around the county convenient to people in various parts of the county. And there would be at least one voting center in each township in the county. But what they did in Colorado was look at some larger sites with large access to parking and convenience—shopping malls, but it might also consider continuing at

churches and schools. But the board of elections unanimously would have to decide which sites would be used on Election Day, but any voter could choose to vote at any site so there'd be no more issues about provisional ballots. You could report Election Day changes at site. You could pick the site that's most convenient to you to vote, and all the ballots would be available. I think Orange County has three ballot styles because there're three House districts. So all three ballot styles would be available at all the sites in the county. If this was implemented as far as municipal elections, which it's getting tighter and tighter—I'm not sure whether they could actually implement it this fall—if they did, there'd be ballots available for Carrboro, Chapel Hill, Chapel Hill Governor's School Board (?), Hillsborough, and Mebane. All those ballot styles would be available at each site. All the votes would be returned. All the votes would be sorted also by precinct beginning in 2006. It would not be required in 2005, but what would probably happen is that each ballot when the election official wrote your ballot number on the ballot, they'd write your precinct number on the ballot, and this requires that within six months that the ballots would be resorted by precinct and then run through the tabulators again later so you would later on have counts by precinct. The counts released on election night would be by voting centers, but you would later have counts for precincts that would be available for redistricting and get out the vote for future elections—whatever use you'd have for precinct information. On election night you'd have counts by voting center, but at a later point in time the counts would be available back tracked by precinct.

Rep. Moore: Representative Kiser, you wish to state a question or...?

Rep. Kiser: Yes, I want to ask a question.

Rep. Moore: You're recognized.

Rep. Kiser: What kind of identification will be necessary if people can vote anywhere that they choose to vote? Would there be any need for more identification?

Gerry Cohen: This does not change the identification requirements for voting in Orange County in any way. You'd have the same requirement. Now the election officials certainly can ask for identification. You have to sign the poll book. But the requirements for identification, you know, are not changed by this bill in any way. In other words, if somebody from Chapel Hill chose to vote in Carrboro or vice versa, the same identification requirements would apply. There's no requirement to present an ID in North Carolina at this point.

Rep. Kiser: Speak on it.

Rep. Moore: You're recognized to debate the bill.

Rep. Kiser: I think this is...if you start closing precincts on Election Day, I think it's a prescription for disaster because I can tell you that when you change a location or where a precinct is voting you will find that people come to that place and they don't know even though it's been advertised; they'll come to that place to vote, and some of them will end up never finding their way to the poll. So I think this bill, if it does have good intentions, I believe the intentions are that more people would vote; but I would submit to you that you would have fewer people voting because of the confusion that this bill will cause on Election Day. And besides that, all during the early voting time, anyone who wants to choose to vote can vote in this process. We are, in my opinion, destroying the Election Day by closing part of the precincts.

Rep. Kiser: Senator Kinnaid, you just arrived, so would you like to speak on the bill also?

Sen. Kinnaid: Thank you, and I also would just want to tell you the genesis of this bill. The genesis of this bill actually started nine years ago when I was a freshman here, and the University of North Carolina students came to me and they said, "We have no idea where on earth our precincts are." And so I introduced a bill that we were hoping was going to allow them single precincts. That didn't work out, but what we did end up with was one-stop voting, which then Representative Martin Nesbitt and I worked on, and it has become as you know the most popular method of voting. So it started that way, and then they came to me again, and they said, "Can we again expand this so that we have the same ability...I mean ease in voting?" And I think that one of the things that has absolutely been proved by one-stop voting is the ease of voting has increased the number of people voting. So I would take issue. I would respectfully take issue that actually this will increase the number of people who are voting by a tremendous amount. One-stop has proved extremely successful. In fact, it's going all throughout the United States, so I think we can take pride in the fact that we have actually been leaders in this area. And I think that what we can do is try this one county—only one county. It's a small county in the sense that geographically we would have probably, I think, five we'd have to have. Right now we have three, and it's very successful in our county—the one-stop voting. And all we would do is expand that so that on Election Day we would do the same thing. We would have the drop-in centers like we have now. We have one on the campus, we have one in Carrboro, my town at Town Hall, and we have one at the elections board. Now one of the things we knew that the elections board were not going to want to have to fool with this, so that's one of the provisions that we put in there that that would not be. But I think this is probably going to make a tremendous difference in the turnout that was possible, and we would like to try it to see...to prove to or disprove...you can then decide statewide it's not anything that anybody's interested in, but let us try it and see how

it works and see whether it does improve both the ease of voting, the number voting and also how it works. Is it just mechanically going to work? And so I would hope that you would consider it for this small experiment. I think we have some statistics on it.

Gerry Cohen: In 2004, in Orange County, about 40% of all the ballots cast were at the three one-stop sites. In Larimer County, Colorado, which implemented this in 2004, they cut the number of their polling sites in half from what it was normally, and my understanding from looking at the statistics is that voter turnout was up by about 20% because voters were able to find out the most convenient sites. This is a pilot. It's two years. It's been chosen in 2005 and 2006 when turnout is probably going to be a lot lower. There's no statewide races on the ballot in 2006. It's one county, and it's a two-year pilot program, expiring at the end of 2006.

Sen. Kinnaird: If I could, Mr. Chair, just say one thing. Both Wake and Guilford were interested in this, but neither of them put their...the delegation, apparently couldn't.... So we had Guilford on there at one time and then took them off, and then Wake was considering it. So I think that there are people who are interested in it, and it will be interesting to see what this pilot reveals. Does it work or doesn't it work?

Rep. Moore: I had a question, Senator Kinnaird. Which precincts are going to be closed on the Election Day so that the new one can be opened? Would it be ones that are geographically close to where the super precincts are going to be? Is that....?

Sen. Kinnaird: As far as I know the election board's going to try to get one in every...

Gerry Cohen: Right, it would require a unanimous vote of the county board of elections—the two Democratic and one Republican member to come up with any plan. There is no bypass with the State Board being able to override that. My guess is there're probably going to have 15 to 20 voting sites around the county. Currently there's 41, and it will be up to the board of elections to decide though. There'll have to be at least seven sites. There's two townships in far northern Orange County. There'd have to be two there. There's three townships in the Hillsborough area. There'd have to be at least three in that area. And there's two townships in southern Orange County. There'd have to be at least seven sites, but there would probably be in the Chapel Hill area anywhere from eight to ten or twelve sites available to vote--wherever they can find large locations that can handle parking and traffic and voters in and out.

Sen. Kinnaird: Just one last thing I'd like to say, we live in an age of convenience. People want to go to drive-thrus for their banking, their hamburgers and everything else. And so, voting has been dropping off. And this is a way to

increase it so that sort of convenience that people are so used to...they're used to going to the mall where they can park their car and walk. But this will give a lot of help for the convenience that people are looking for.

Rep. Moore: Okay, we're going to open it up to discussion by the committee. I saw Representative Holmes' hand first.

Rep. Holmes: Yes. Senator Kinnaird, what percent of the Orange County voters are students at the University?

Sen. Kinnaird: I'm sorry. I do not know. I can get that information for you. But I can tell you that in a municipal election, you're probably not going to see a whole lot of students. They are more interested, usually, in the presidential and the senatorial. And that's why we kind of want to try it now when there's a very small number of candidates on the ballot.

Rep. Holmes: Gerry, do you know?

Gerry Cohen: My understanding in 2004, from information I read from newspapers in Orange County, is that there were probably 7,000 to 8,000 of 23,000 who were registered to vote in Orange County, which probably made up about 20% of the county's electorate in the general election.

Rep. Holmes: So it's about, then it'd be about one-third of the registered voters in Orange County are students.

Gerry Cohen: No, probably about 20% at the most.

Rep. Holmes: I thought you said seven or eight thousand.

Gerry Cohen: Out of the 22,000 students, about 7,000 to 8,000 of them were registered in Orange County. But that 7,000 to 8,000 is out of The turnout in Orange County may have been around 40,000 votes plus for 2004. Maybe even more than that.

Rep. Holmes: Another question? Of the precincts in Orange County, how many are on the campus?

Gerry Cohen: There are no polling places. The only.... There's one polling place on the University campus at the Institute, the School of Government and there's one at the general administration building on Raleigh Road. So there's two at the very edge of the campus. None of them are particularly near where any of the residences are, but there are two polling places that are physically located on University property. That's my recollection.

Sen. Kinnaird: If I could just follow up with that. Our one-stop voting actually started on campus. We discovered not only did that attract students, but the staff and the faculty also used that one-stop site that was on the campus. It was very popular.

Rep. Holmes: Could I make a comment?

Rep. Moore: You are recognized for debate.

Rep. Holmes: Senator Kinnaird, you mention that the ones that were interested or the ones who came to you were students. It would seem to me that you could solve that problem in Orange County if, since you have 25% of the registered voters on campus, that you or the board of elections would put polling places near the campus, and I could see where it would be confusing to the students because they're only there for four years primarily. Most of them are there four years, and they don't know their way around the county. So you could solve their problems by having polling places on the campus or near the campus.

Sen. Kinnaird: If I may. First of all, there's no parking on campus. That's one of the biggest problems. But in addition to that, what started with the genesis of the bill was students, but it is now statewide. In other words, they had a bright idea, which suited them, but it actually turned out to suit everybody in North Carolina. It's the most popular form of voting.

Rep. Holmes: Not in my area.

Sen. Kinnaird: Okay, I'm sorry. Not in your area.

Rep. Moore: Representative Hackney, you're recognized to debate the bill.

Rep. Hackney: Is there any ambiguity between this—this is for Gerry, I guess.

Rep. Moore: Sure. Yes, sir.

Rep. Hackney: Is there any ambiguity between approval of State Board of Elections for a pilot program on page 1, line 8, and on page 2, line 43, the approval of the Plan of Implementation just by the Executive Director.

Gerry Cohen: Page 1, line 7, requires that the State Board has to approve the entire program, but on page 2, lines 41-44, the Plan of Implementation—the list of all the polling places and everything—has to be approved both by the county board of elections unanimously and by the Executive Director. But the entire State Board will have to sign off on the plan as well. But I think the idea is when it got down to actually the voting centers, if there was a unanimous vote of the County Board of Elections then the State Executive

Director could approve those voting centers without requiring a meeting of the entire State Board of Elections. But the State Board of Elections will have to sign off on other details of the plan.

Rep. Moore: Further debate or discussion on the bill. Representative Lewis.

Rep. Lewis: Mr. Chairman, an inquiry of staff. Was the one-stop sites open on Election Day?

Gerry Cohen: There will still be one-stop sites running through Saturday before voting, the same as there currently is now. On Election Day, essentially whatever voting centers are chosen will basically be operated like they were one-stop sites. Anyone in the county can go to any of the sites, but you're going to have more of them on Election Day, or the Board of Elections can have more of them on Election Day, and plans to, than during the early voting period.

Rep. Lewis: Can I be recognized for a follow-up?

Rep. Moore: Yes, sir.

Rep. Lewis: I'm sorry, Mr. Chairman. I don't think I asked what I was trying to ask. Currently, are all our one-stop sites allowed to be open on Election Day.

Gerry Cohen: No. Right now on Election Day only the regular precincts are open, and other than the whole issue of provisional balloting, which I won't get into, you vote normally at your polling place where you are registered to vote. Now I'm not sure if they are going to have on Election Day, I don't believe they're going to have a voting site at the Board of Elections office in Hillsboro, but there'll be one somewhere else in Hillsborough.

Rep. Lewis: Let me ask this.

Rep. Moore: You're recognized for a follow-up.

Rep. Lewis: We're required or the County Boards of Elections are required by statute, I believe, to make sure that there is an adequate number of ballots at each polling place. So hypothetically we could have—I know we wouldn't, but we could—have a need to have each voting site have 70 ballots to make sure we've got enough for folks to vote. Is that correct?

Gerry Cohen: Well, what would have to happen is, having worked on the one-stop set-up in Wake County and worked at one of those sites, what happens is they have enough ballots printed. And normally what happens is they start off with a certain number of ballots, and they have some in reserve. And as people call in they'll deliver more ballots. In other words, if there's....

They'll have enough ballots available for everyone. But if it turns out that one site has a higher amount than someone, they will probably have to print more ballots than they print now, because they are going to have to have some available. If one site's turnout is heavier than they anticipated, then my understanding is probably there is somewhere in Chapel Hill or Carrboro, there'll be an election official—I know they did this in Wake County because a lot of times at one-stop sites in this county is late in the day they'd have to call and have more ballots delivered because there was no way to know from day-to-day what the turnout was going to be. So there were some in reserve and they were delivered generally by sheriff's deputies, extra ballots. I know that's what we did in Wake County here during the one-stop process.

Rep. Lewis: Mr. Chair, could I ask the sponsor one question?

Rep. Moore: Absolutely.

Rep. Lewis: If the goal is to get more folks to vote, why don't we don't we consider trying to keep the one-stop spots open on Election Day and not close the provisional precincts so folks who are taking time to vote know where to go?

Sen. Kinnaird: Two points. You know it's hard to get poll workers. I don't know that we could get extra poll workers. It's a struggle. I think yesterday we heard that the average age is like 75. It's getting very, very difficult. So I think that would be a real problem. Also, we have found, is that people know where the one-stops are and they really don't know where their precinct is. That's what happened on that last election because of the provisionals. So many people went to the wrong place. It's a sort of _____ process, unfortunately. It's not like you see on the TV. This is your polling place. But the one-stops pretty much were a help to people to just say, like you say, you want to drop in here and drop in there. It's a much easier process for people and that's one of the things that we really have found in one-stop voting is its convenience.

Gerry Cohen: There was some discussion of that question in a Senate Committee and basically the way to avoid double voting is every site is going to be on-line. When you vote at one-site and you're checked off, you are locked out from voting again at any other time. You can't go to another site and show up because if you try to vote there the system would already show you voted. If you had a choice on Election Day, if you had all 41 precincts open with just the list of people in that precinct in it AND you had early voting sites open on Election Day, then you'd have two different checks off and implementation systems, and I think logistically it'd be a problem to try to overlay one system on the other even if you had an unlimited amount of qualified poll workers. I think one of the concepts is that with a

smaller number of sites, the better-trained poll workers would be used at those sites as opposed to having to find poll workers for 40 plus sites.

Rep. Moore: I have a question. Is the equipment set up for that able to be instantaneous? Do you already have your equipment in Orange County to facilitate that?

Gerry Cohen: Talking to the Elections Supervisor, they certainly had in 2004, they had that available. One of the things they're looking at with their technology department, and obviously if they can't do this countywide, it won't work out. If they were able to ____ on it for this fall's municipal elections—the only elections this fall at this point in time are in Chapel Hill and Carrboro. There's no problem there. One of the things their technology department is looking at, you know, in Hillsborough and Mebane; but one of the things they're looking at is in the very northern part of the county, along the Caswell County line—Little River, Cedar Grove, Kerr—they're looking at having some sort of high-speed, on-line connection. If they can't implement it, they can't do this program. They have to be available to people in every part of the county. But the county's IT department is working on looking at it to make sure that they'll have on-line access in the more rural parts of the county. If they can't provide this, then the program can't be implemented.

Sen. Kinnaird: If I could, Mr. Chair.

Rep. Moore: Go ahead.

Sen. Kinnaird: We have been working with our elections board and our director because they have people on the front line who have to do this, so we have been working with them. And that's why the municipal election is ideal because there's so few ballots and so few candidates on the ballot.

Rep. Moore: Okay. Representative Hackney.

Rep. Hackney: So what is the...has there been a resolution at the Board of Elections or anything in our county with this or have you talked to them informally or how is all that going? This is my first real explanation of the hearing. I'm sort of thinking that I want to think about it some more before we vote.

Sen. Kinnaird: Yeah, I think probably that's a good idea, but I want to say that they are in favor of it. But that's a good idea.

Rep. Moore: For the committee's explaining purposes, I've spoken.... Senator Kinnaird has asked us not to vote on it today, and we're going to accommodate that request. But we do have some time. I did want to recognize folks in the audience if there was anyone here from the audience who wanted to speak

on the bill. Okay, Representative Kiser. I see your hand, but I didn't see anyone else standing up so, I'll come back to the committee.

Rep. Kiser: When you close a number of the voting places and reduce it to about half from what I'm hearing here, the major problem that I hear from voters is standing in line. So you're going to increase the number of people standing in lines for longer periods of time, and this just turns people away, and I still believe that this would cause fewer people to vote in any county that you put it in. I think it's a step backwards if we want to get people to get out and vote.

Sen. Kinnaird: If I may answer that, one of the beauties of one-stop is that it spread it out over a period of time and so we have 40% fewer people coming in, actually, on Election Day. So I... And again, it's convenience. People want to know...in and out, lunch hour, whatever. So that's what we have found in our area.

Rep. Moore: Is there any other debate or discussion on this bill? Representative Lewis?

Rep. Lewis: Mr. Chairman, to the bill sponsor. Did you consider just an attempt to combine precincts?

Sen. Kinnaird: I think by law you can't do that. Is that correct.

Gerry Cohen: I think the concept behind the bill is you could choose where to vote. In Orange County, in fact, because of the growth, in fact, they've divided precincts. At one point in time thirty years ago the entire campus was one precinct. But the problem was there were so many voters and so little parking that the people in the community who lived in the campus precinct couldn't get there, and there were long lines on campus. So what the Board of Elections...is going in the opposite direction, because of the growth in the county, creating more precincts. For instance, if you had a voting site at University Mall, which is on the east part of Chapel Hill, then there's lots of parking. You could set up lots of machines. Orange County has Opti-scan so you're not limited by having a fixed number of electronic voting machines. You could have...I know in Wake County at early voting sites, I was not actually at Morehead Planetarium, but in Wake County a lot of the early voting sites had 15 and 16 voting booths. Some of them had 20. So there could be large numbers of people voting at the same time and lots of election officials. There were extra election officials sent to the election sites that there was a higher turnout in one part of the day. You had people sent from the board of elections office to add staff to those sites to deal with unanticipated.... Again, this concept was patterned after a county in Colorado, which implemented this system very successfully two years ago. And other counties in Colorado are looking at this system for two years from now. As a matter of fact, I've

seen a number of correspondences from national election officials. There's a lot of interest nationally in this, the idea being it's more convenient to the voters. Whether the election would increase or decrease turnout, I don't know if there's any way to predict that, but the experience in Colorado is the turnout was substantially higher because voters found the convenience of voting anywhere apparently outweighed not having a particular polling place open. But there's no way to know exactly what would happen.

Sen. Kinnaird: An interesting concept, which we are far, far away from, but I believe the male end voting has increased...how much did that increase participation? Oregon, I believe did a mail-in voting, which is really no fun. I love...I vote on Election Day for, as Representative Kiser said, there's a real feeling of community. I don't use one-stop because I like that feeling of community, but you know we're kind of wamps and political wamps and we're not typical.

Gerry Cohen: The one-stop voting in the areas around the Triangle here, in Orange County in terms of whether people choose, they want to vote in their precinct or a central locations where they can vote anywhere. I know in Orange County over forty percent of the votes were cast in one-stop sites. I believe in Durham it was fifty percent or perhaps even more than that. So they're looking at basically expanding this choice to Election Day.

Rep. Moore: Do we have any further debate or discussion? Representative Hackney.

Rep. Hackney: Well, I was intrigued by Representative Lewis's suggestion. I wondered whether we should...I'll say we because I guess I'm involved in it too.... Since there are three one-stop voting sites in Orange County and they are fairly centrally located—one in Morehead Planetarium on campus where there is parking, and one at the Town Hall in Carrboro, and one in the Election Board Office in Hillsborough—I wonder whether there's an opportunity to keep all the precincts open and just add those three sites on Election Day. Is that a possibility that's been considered?

Sen. Kinnaird: If I may, it hasn't. We really don't want to keep the elections board open. They've got enough to do that day. So that would just leave two. And for your information, they're now charging for that parking lot on campus, unfortunately.

Gerry Cohen: I know when this was discussed in Senate committee, when it was discussed as a statewide bill, there were a couple of elections supervisors there, and the question was raised by a couple of committee members. One about having...keeping...exactly that question, keeping the regular polling places open and add one-stops, and the elections supervisors there said...Cherie Poucher from Wake County, I believe there was another one

there, said that that would be worse than the current system because it would require dual systems. It would require them to do everything they're doing now plus more, and it would be confusing because at some sites any voter could vote at and at other sites only the voters from that precinct could vote at, and keeping away from double voting, if at each precinct you only kept track of the poll book for your precinct, but at the one-stop sites you had to keep track of everyone, I know when this was discussed before, I have not discussed this with Carolyn Thomas, but the supervisor in Wake County said that that would be worse than the current system from an administration standpoint. That doesn't mean you can't do it, of course.

Rep. Hackney: Well why isn't the same thing true on this bill?

Gerry Cohen: Because at every site, however many there are, anybody could be able to vote. There'd just be one central registration system run out of the board of elections office with terminals or laptop computers in each early voting site, and....

Rep. Hackney: But some of the precincts will still remain open.

Gerry Cohen: Some of the Election Day sites may be precinct polling places, and there may be...was Carrboro Town Hall a precinct polling place? So for instance, it may be; but anybody could vote at any site. In other words, if Carrboro Town Hall happens to be a precinct polling place, but there wouldn't be any necessary correlation because on Election Day anybody coming from.... You could come from anywhere in the county and vote at Carrboro Town Hall, not just that precinct.

Rep. Moore: Further debate or discussion. I'm going to again ask are there any audience members who wanted to speak on this bill. Any further discussion from the committee. Senator Kinnaird, did you have anything else to add?

Sen. Kinnaird: No, thank you.

Rep. Moore: All right. What we're going to do, this bill is going to be revisited most likely at our next meeting. At the request of Representative Ross, we are not going to take up the other bill on today's calendar, House Bill 851. So that concludes the committee's business. Yes, sir.

Rep. Blust: Are we sure that we'll be in Session another week from now or might we get out?

Rep. Moore: I'm not the person to ask. The meeting stands adjourned.



The meeting adjourned at 1:40 p.m.

AGENDA

**HOUSE OF REPRESENTATIVES
ELECTION LAW AND CAMPAIGN FINANCE REFORM
COMMITTEE**

**July 6, 2005
Representative Moore, Presiding**

SB 98, Orange County Super Precinct

Senator Kinnaird

HB 851, Same Day Reg. At One-Stop Sites

Representative Ross

Nancy Garriss (Rep. Tim Moore)

From: Margie Penven (Rep. Ross)
Sent: Thursday, June 30, 2005 2:44 PM
To: Sen. Ellie Kinnaird
Subject: Election Law and Campaign Finance Reform--Wed., July 6, 1:00 p.m.

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION**

You are hereby notified that the Committee on Election Law and Campaign Finance Reform will meet as follows:

DAY & DATE: Wednesday, July 6, 2005

TIME: 1:00 p.m.

LOCATION: 1425

The following bills will be considered (Bill # & Short Title & Bill Sponsor):

SB 98, Orange County Super Precinct, Sen. Kinnaird

HB 851, Same Day Reg. at One-Stop Sites, Rep. Ross

Respectfully,
Representatives Moore and Ross
Co-Chairs

I hereby certify this notice was filed by the committee assistant at the following offices at **2:45 p. m.** on **July 6, 2005.**

____Principal Clerk
____Reading Clerk - House Chamber

Margie Penven (Committee Assistant)

6/30/2005

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

S

D

SENATE BILL 98

State and Local Government Committee Substitute Adopted 6/1/05

Third Edition Engrossed 6/1/05

PROPOSED HOUSE COMMITTEE SUBSTITUTE S98-CSST-70 [v.2]

7/5/2005 6:51:10 PM

Short Title: Orange County Super Precinct.

(Local)

Sponsors:

Referred to:

February 10, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ORANGE COUNTY BOARD OF ELECTIONS TO
CONDUCT A PILOT PROGRAM IN WHICH THE METHODS USED IN
ONE-STOP VOTING WOULD CONTINUE ON ELECTION DAY AS THE
VOTING METHOD, ALL TO BE KNOWN AS VOTING CENTERS.

The General Assembly of North Carolina enacts:

SECTION 1. With the approval of the State Board of Elections, the Orange County Board of Elections may conduct a pilot program 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 the county 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 are those designated as voting centers. There shall be at least one voting center in each township if any voter in that township is eligible to vote in that election.
- (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, and 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 county as one precinct with multiple voting places on election day, but a voter must when appearing to vote report any change of address within the county.
- (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.

1 **SECTION 2.** The State Board of Elections shall closely monitor the pilot
2 program and report its findings and recommendations to the General Assembly at its
3 2005 Regular Session in 2006, and to the 2007 Regular Session of the General
4 Assembly.

5 **SECTION 3.** This act is effective when it becomes law.



SENATE BILL 98: Orange County Super Precinct

BILL ANALYSIS

Committee:	House Election Law and Campaign Finance Reform	Date:	July 5, 2005
Introduced by:	Sen. Kinnaird	Summary by:	R. Erika Churchill
Version:	PCS to Third Edition S98-CSST-70		Committee Counsel

SUMMARY: *The proposed committee substitute for Senate Bill 98 would authorize the Orange County Board of Elections to conduct a pilot program in which the methods used in one-stop (early voting) would continue on election day; effective when it becomes law.*

CURRENT LAW: Current general statute provide for the division of counties into precincts. Each precinct is to have a voting place in the precinct where voters may go to vote on election day, except when specifically authorized to have the voting place outside the precinct. G.S. 163-130.1. The current election laws also provide that prior to election day, voters have an opportunity to vote by absentee ballot – by mail absentee ballot beginning 50 days before the election and at one-stop (early voting) sites beginning on the third Thursday before the election. Since 2001, both mail absentee voting and one-stop have been options available to be used by any voter for any reason. Some counties set up several one-stop sites throughout the county, and any voter in the county may vote at any site. In the 2004 general election, early voting accounted for about 30% of North Carolina's turnout.

BILL ANALYSIS: The proposed committee substitute would allow the Orange County Board of Elections to conduct a pilot program, upon approval of the State Board of Elections, for any or all primaries or elections occurring prior to January 1, 2007. The pilot program would consist of continuing the one-stop voting as provided in G.S. 163-227.2 on election day as the method of voting. Voting places would be known as "voting centers" during that election. The pilot program would consist of the following:

1. Any registered voter may vote at any voting center during the one-stop period or on election day.
2. On election day, the only places open to vote are those designated as voting centers. There shall be at least one voting center in each township if any voter in that township is eligible to vote in that election.
3. All the voting centers are to have a Web-based or online connection to the voter registration system.
4. The State Board is to determine which ballots are being made retrievable and identifiable by the county board of elections in order to ensure that the vote count is accurate.
5. The Plan of Implementation may provide a different system for voter sign-in than the regular one-stop process that requires completion of an absentee ballot application, but the process must be auditable. The voter, before voting, must sign that voter's name on the pollbook, other voting record, or voter authorization document, as provided by current law.
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. For primary elections in 2006, those returns by regular precinct shall be reported by May 1, 2007, and for

Senate Bill 98

Page 2

- the 2006 general election those returns by regular precinct shall be reported by March 1, 2007. Reporting returns by precinct would not apply to any elections in 2005.
8. The State Board of Elections may allow the county board to designate voting centers in commercial buildings that are not public buildings during the regular one-stop voting period.
 9. On election day any building may be designated as a voting center, and the office of the county board of elections does not have to be designated as a voting center.
 10. The Plan of Implementation must provide for appointment of election officials at voting centers so that political parties have a similar opportunity to recommend officials as if they were precinct polling places.
 11. The Plan of Implementation may treat the entire county as one precinct with multiple voting places on election day, but a voter must report any change of address within the county when appearing to vote.
 12. Before voting centers may be used, 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.

EFFECTIVE DATE: Effective when it becomes law.

BACKGROUND: In the *James v. Bartlett* lawsuit, Superintendent of Public Instruction candidate Bill Fletcher and others argued that Article VI, Section 2 of the State Constitution prohibits out-of-precinct voting on election day. The State Supreme Court, in its decision in *James v. Bartlett* in February 2005, did not reach that constitutional question. The Court ruled that the practice of allowing voters to vote provisional ballots outside of their home precinct on election day was not authorized by statute. In response to that ruling, the General Assembly enacted Session Law 2005-2, in which it stated that it was intent of the General Assembly for voters to be allowed to vote provisionally outside their home precinct on election day and for those ballots to be counted for all the races. That bill was signed by the Governor and approved under Section 5 of the Voting Rights Act. On May 4, the State Supreme Court denied a motion to reconsider the constitutional question about out-of-precinct voting.

The Joint Select Committee on Electronic Voting Systems recommended early this year that the General Assembly authorize the State Board of Elections to conduct a pilot of the same sort as S98 authorizes for Orange in up to 10 counties.

S0098e3-SMST-CSST-70

Bill Gilkeson contributed to this summary.

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

S

3

**SENATE BILL 98
State and Local Government Committee Substitute Adopted 6/1/05
Third Edition Engrossed 6/1/05**

Short Title: Orange County Super Precinct.

(Local)

Sponsors:

Referred to:

February 10, 2005

A BILL TO BE ENTITLED
AN ACT TO AUTHORIZE THE ORANGE COUNTY BOARD OF ELECTIONS TO
CONDUCT A PILOT PROGRAM IN WHICH THE METHODS USED IN
ONE-STOP VOTING WOULD CONTINUE THROUGH ELECTION DAY AS
THE VOTING METHOD, TO BE KNOWN AS "SUPER PRECINCTS" OR
"VOTE CENTERS".

The General Assembly of North Carolina enacts:

SECTION 1. With the approval of the State Board of Elections, the Orange County Board of Elections may conduct a pilot program for any or all primaries or elections occurring prior to January 1, 2007, where the requirements of this act prevail over any other requirement concerning voting on election day. The pilot program shall consist of continuing one-stop voting as provided in G.S. 163-227.2 or on election day as the method of voting. The program consists of the following elements:

- (1) Any voter properly registered in the county may vote at any one-stop site during the one-stop period established in G.S. 163-227.2 or on election day.
- (2) No polling places are open on election day other than the one-stop sites.
- (3) The county board of elections may also refer to the sites (whether before the election or on election day) as "super precincts" or "vote centers".
- (4) All one-stop sites shall have real-time online connection to the voter registration system so that voters can be checked.
- (5) Notwithstanding G.S. 163-227.2(e1), votes cast under this act (other than provisional ballots) shall not be marked with an absentee ballot number, as the real-time online voter registration system will ensure that no voter can vote more than once.

1 (6) A larger number of one-stop sites may be open on election day than
2 during the earlier part of the one-stop period.

3 (7) Where technically feasible, the election returns shall be reported by
4 precinct as well as by voting site.

5 (8) Notwithstanding G.S. 163-227.2(g), the State Board of Elections may
6 allow the county board of elections to designate one-stop sites in
7 commercial buildings that are not public buildings.

8 **SECTION 2.** This act is effective when it becomes law. The State Board of
9 Elections shall closely monitor the pilot program and report its findings and
10 recommendations to the General Assembly at its 2006 Regular Session and to the 2007
11 General Assembly.



SENATE BILL 98: Orange County Super Precinct

BILL ANALYSIS

Committee:	House Election Law and Campaign Finance Reform	Date:	July 5, 2005
Introduced by:	Sen. Kinnaird	Summary by:	R. Erika Churchill
Version:	PCS to Third Edition S98-CSST-70		Committee Counsel

SUMMARY: *The proposed committee substitute for Senate Bill 98 would authorize the Orange County Board of Elections to conduct a pilot program in which the methods used in one-stop (early voting) would continue on election day; effective when it becomes law.*

CURRENT LAW: Current general statute provide for the division of counties into precincts. Each precinct is to have a voting place in the precinct where voters may go to vote on election day, except when specifically authorized to have the voting place outside the precinct. G.S. 163-130.1. The current election laws also provide that prior to election day, voters have an opportunity to vote by absentee ballot – by mail absentee ballot beginning 50 days before the election and at one-stop (early voting) sites beginning on the third Thursday before the election. Since 2001, both mail absentee voting and one-stop have been options available to be used by any voter for any reason. Some counties set up several one-stop sites throughout the county, and any voter in the county may vote at any site. In the 2004 general election, early voting accounted for about 30% of North Carolina's turnout.

BILL ANALYSIS: The proposed committee substitute would allow the Orange County Board of Elections to conduct a pilot program, upon approval of the State Board of Elections, for any or all primaries or elections occurring prior to January 1, 2007. The pilot program would consist of continuing the one-stop voting as provided in G.S. 163-227.2 on election day as the method of voting. Voting places would be known as "voting centers" during that election. The pilot program would consist of the following:

1. Any registered voter may vote at any voting center during the one-stop period or on election day.
2. On election day, the only places open to vote are those designated as voting centers. There shall be at least one voting center in each township if any voter in that township is eligible to vote in that election.
3. All the voting centers are to have a Web-based or online connection to the voter registration system.
4. The State Board is to determine which ballots are being made retrievable and identifiable by the county board of elections in order to ensure that the vote count is accurate.
5. The Plan of Implementation may provide a different system for voter sign-in than the regular one-stop process that requires completion of an absentee ballot application, but the process must be auditable. The voter, before voting, must sign that voter's name on the pollbook, other voting record, or voter authorization document, as provided by current law.
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. For primary elections in 2006, those returns by regular precinct shall be reported by May 1, 2007, and for

Senate Bill 98

Page 2

- the 2006 general election those returns by regular precinct shall be reported by March 1, 2007. Reporting returns by precinct would not apply to any elections in 2005.
8. The State Board of Elections may allow the county board to designate voting centers in commercial buildings that are not public buildings during the regular one-stop voting period.
 9. On election day any building may be designated as a voting center, and the office of the county board of elections does not have to be designated as a voting center.
 10. The Plan of Implementation must provide for appointment of election officials at voting centers so that political parties have a similar opportunity to recommend officials as if they were precinct polling places.
 11. The Plan of Implementation may treat the entire county as one precinct with multiple voting places on election day, but a voter must report any change of address within the county when appearing to vote.
 12. Before voting centers may be used, 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.

EFFECTIVE DATE: Effective when it becomes law.

BACKGROUND: In the *James v. Bartlett* lawsuit, Superintendent of Public Instruction candidate Bill Fletcher and others argued that Article VI, Section 2 of the State Constitution prohibits out-of-precinct voting on election day. The State Supreme Court, in its decision in *James v. Bartlett* in February 2005, did not reach that constitutional question. The Court ruled that the practice of allowing voters to vote provisional ballots outside of their home precinct on election day was not authorized by statute. In response to that ruling, the General Assembly enacted Session Law 2005-2, in which it stated that it was intent of the General Assembly for voters to be allowed to vote provisionally outside their home precinct on election day and for those ballots to be counted for all the races. That bill was signed by the Governor and approved under Section 5 of the Voting Rights Act. On May 4, the State Supreme Court denied a motion to reconsider the constitutional question about out-of-precinct voting.

The Joint Select Committee on Electronic Voting Systems recommended early this year that the General Assembly authorize the State Board of Elections to conduct a pilot of the same sort as S98 authorizes for Orange in up to 10 counties.

S0098e3-SMST-CSST-70

Bill Gilkeson contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

1

HOUSE BILL 851

Short Title: Same Day Reg. at One-Stop Sites.

(Public)

Sponsors: Representatives Ross, McComas, Parmon, Holliman (Primary Sponsors);
Alexander, Bell, Carney, Coleman, England, Faison, Harrison, Luebke,
Pierce, Rapp, Wainwright, and Weiss.

Referred to: Election Law and Campaign Finance Reform.

March 22, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR IN-PERSON REGISTRATION AND VOTING AT
ONE-STOP EARLY VOTING SITES; AND TO APPROPRIATE FUNDS TO THE
STATE BOARD OF ELECTIONS TO IMPLEMENT AND STUDY THE
CHANGE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 7A of Chapter 163 of the General Statutes is amended
by adding a new section to read:

"§ 163-82.6A. In-person registration and voting at one-stop sites.

(a) Who May Register in Person. – An individual who is qualified to register to
vote may register in person and then vote at a one-stop voting site in the individual's
county of residence during the period for one-stop voting provided under
G.S. 163-227.2.

(b) Readiness of One-Stop Sites. – The State Board of Elections and the county
boards of elections shall provide to the maximum extent practical electronic access to an
updated statewide voter registration database and the North Carolina drivers license
database at each site where in-person registration and voting take place. The county
board shall staff those sites with personnel capable of using the equipment to conduct
in-person registration and voting with competence and integrity.

(c) Identification Requirement. – To register under this subsection, the person
shall provide proof of identity and residence and shall complete a registration form
which includes signing a statement, under penalty of perjury, that the person is a citizen
of the United States and resides at the address given. The presentation of any of the
following valid documents that show the name and address of the person shall suffice as
proof of identity and residence: A North Carolina drivers license, photo identification
from a government agency, or a copy of a utility bill, bank statement, paycheck,
government check, or other government document. The State Board of Elections may

1 designate additional documents or methods that suffice and shall prescribe procedures
2 for establishing proof of identity and residence.

3 (d) How the In-Person Registrant Shall Vote. – An individual who registers
4 under this subsection shall vote a retrievable absentee ballot as provided in
5 G.S. 163-227.2 if all of the following conditions are met:

6 (1) The individual presents as identification a currently valid North
7 Carolina drivers license.

8 (2) The address on the drivers license is the same address the individual
9 declares as residence address on the voter registration application.

10 (3) The one-stop site has accessible an online database of both drivers
11 license records for the county and voter registration records for the
12 county so that election officials can verify the voter registration
13 application immediately.

14 If the conditions in subdivisions (1), (2), and (3) in this subsection are not all met,
15 the voter shall vote by provisional ballot as provided in Article 14A of this Chapter.

16 (e) Requirement for Immediate Voting. – An individual who registers in person
17 under this subsection must vote immediately after registering. The county board of
18 elections shall ensure that the individual is informed of this requirement before
19 registering. If an individual who has registered under this subsection declines to vote
20 immediately, the registration shall be cancelled, but that individual may later register
21 and vote under this subsection in the same election.

22 (f) Verification of Registration; Counting of Ballot. – The county board of
23 elections shall proceed under G.S. 163-82.7 to verify the qualifications and address of
24 every individual who registers under this subsection. The individual's vote shall be
25 counted, unless the county board determines under G.S. 163-82.7(b) that the applicant is
26 not qualified to vote at the address given."

27 **SECTION 2.** G.S. 163-82.6 reads as rewritten:

28 **"§ 163-82.6. Acceptance of voter registration application forms.**

29 (a) How the Form May Be Submitted. – The county board of elections shall
30 accept any form described in G.S. 163-82.3 if the applicant submits the form by mail,
31 facsimile transmission, transmission of a scanned document, or in person. The applicant
32 may delegate the submission of the form to another person. Any person who
33 communicates to an applicant acceptance of that delegation shall deliver that form so
34 that it is received by the appropriate county board of elections in time to satisfy the
35 registration deadline in subdivision (1) or (2) of subsection (c) of this section for the
36 next election. It shall be a Class 2 misdemeanor for any person to communicate to the
37 applicant acceptance of that delegation and then fail to make a good faith effort to
38 deliver the form so that it is received by the county board of elections in time to satisfy
39 the registration deadline in subdivision (1) or (2) of subsection (c) of this section for the
40 next election. It shall be an affirmative defense to a charge of failing to make a good
41 faith effort to deliver a delegated form by the registration deadline that the delegatee
42 informed the applicant that the form would not likely be delivered in time for the
43 applicant to vote in the next election. It shall be a Class 2 misdemeanor for any person

1 to sell or attempt to sell a completed voter registration form or to condition its delivery
2 upon payment.

3 (b) Signature. – The form shall be valid only if signed by the applicant. An
4 electronically captured image of the signature of a voter on an electronic voter
5 registration form offered by a State agency shall be considered a valid signature for all
6 purposes for which a signature on a paper voter registration form is used.

7 (c) Registration Deadlines for an Election. – In order to be valid for an election,
8 except as provided in G.S. 163-82.6A, the form:

9 (1) If submitted by mail, must be postmarked at least 25 days before the
10 election, except that any mailed application on which the postmark is
11 missing or unclear is validly submitted if received in the mail not later
12 than 20 days before the election,

13 (2) If submitted in person, by facsimile transmission, or by transmission of
14 a scanned document, must be received by the county board of elections
15 by a time established by that board, but no earlier than 5:00 P.M., on
16 the twenty-fifth day before the election,

17 (3) If submitted through a delegatee who violates the duty set forth in
18 subsection (a) of this section, must be signed by the applicant and
19 given to the delegatee not later than 25 days before the election, except
20 as provided in subsection (d) of this section.

21 (c1) If the application is submitted by facsimile transmission or transmission of a
22 scanned document, a permanent copy of the completed, signed form shall be delivered
23 to the county board no later than 20 days before the election.

24 ~~(d) Instances When Person May Register and Vote on Election Day. – If a person~~
25 ~~has become qualified to register and vote between the twenty-fifth day before an~~
26 ~~election and election day, then that person may apply to register on election day by~~
27 ~~submitting an application form described in G.S. 163-82.3(a) or (b) to:~~

28 ~~(1) A member of the county board of elections;~~

29 ~~(2) The county director of elections; or~~

30 ~~(3) The chief judge or a judge of the precinct in which the person is~~
31 ~~eligible to vote;~~

32 ~~and, if the application is approved, that person may vote the same day. The official in~~
33 ~~subdivisions (1) through (3) of this subsection to whom the application is submitted~~
34 ~~shall decide whether the applicant is eligible to vote. The applicant shall present to the~~
35 ~~official written or documentary evidence that the applicant is the person he represents~~
36 ~~himself to be. The official, if in doubt as to the right of the applicant to register, may~~
37 ~~require other evidence satisfactory to that official as to the applicant's qualifications. If~~
38 ~~the official determines that the person is eligible, the person shall be permitted to vote in~~
39 ~~the election and the county board shall add the person's name to the list of registered~~
40 ~~voters. If the official denies the application, the person shall be permitted to vote a~~
41 ~~challenged ballot under the provisions of G.S. 163-88.1, and may appeal the denial to~~
42 ~~the full county board of elections. The State Board of Elections shall promulgate rules~~
43 ~~for the county boards of elections to follow in hearing appeals for denial of election day~~
44 ~~applications to register. No person shall be permitted to register on the day of a second~~

1 ~~primary unless he shall have become qualified to register and vote between the date of~~
2 ~~the first primary and the date of the succeeding second primary.~~

3 (e) ~~For purposes of subsection (d) of this section, persons who "become qualified~~
4 ~~to register and vote" during a time period:~~

5 (1) ~~Include those who during that time period are naturalized as citizens of~~
6 ~~the United States or who are restored to citizenship after a conviction~~
7 ~~of a felony; but~~

8 (2) ~~Do not include persons who reach the age of 18 during that time~~
9 ~~period, if those persons were eligible to register while 17 years old~~
10 ~~during an earlier period."~~

11 **SECTION 3.** G.S. 163-227.2(a) reads as rewritten:

12 "(a) Any voter eligible to vote by absentee ballot under G.S. 163-226 may request
13 an application for absentee ballots, complete the application, and vote under the
14 provisions of this ~~section~~ section and of G.S. 163-82.6A, as applicable."

15 **SECTION 4.** The State Board of Elections shall provide counties with the
16 access to the databases described in G.S. 163-82.6A(b), monitor the implementation of
17 this act, analyze its use in the counties during 2006, and determine the feasibility and
18 timetable for expanding same-day registration and voting to all voting places on election
19 day. The State Board shall report its findings no later than March 1, 2007, to the Joint
20 Legislative Commission on Governmental Operations of the General Assembly. There
21 is appropriated from the General Fund to the State Board of Elections for the 2005-2006
22 fiscal year the sum of seventy-five thousand dollars (\$75,000) for this purpose.

23 **SECTION 5.** Sections 1, 2, and 3 of this act become effective January 1,
24 2006, and shall apply to all primaries and elections held on or after that date. The
25 remainder of this act becomes effective July 1, 2005.

VISITOR REGISTRATION SHEET

Election Law and Campaign Finance Reform

July 6, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Katherine Turner	NC CENTER FOR PUBLIC POLICY RESEARCH
Sam Watts	NC Center for Public Policy Research
Kim Stach	SBE
Adam Sotak	Democracy NC
Chad Hinton	Cintas Institute
Cassie Gann	NC PIRG
Suzanne Buckley	GOV OFFICE
Matt Whelan	N.P. News Network
Harry O. Bartlett	SBE
Dave Ingram	WSJ
Scott Ryge	Insider / Cap Press Assoc.

VISITOR REGISTRATION SHEET

Election Law and Campaign Finance Reform

July 6, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME _____

FIRM OR AGENCY AND ADDRESS

Gary Robertson

AP

MINUTES
House Committee on Election Law and Campaign Finance Reform
July 13, 2005
1:00 p.m., Room 1425
Representative Ross, Presiding

The House Committee on Election Law and Campaign Finance Reform met at 1:00 p.m. on Tuesday, July 13, 2005, in Room 1425 of the State Legislative Building.

Members present were: Representative Tim Moore, Co-Chair; Representative Deborah Ross, Co-Chair; Representative Joe Kiser, Vice-Chair; Representative Paul Luebke, Vice-Chair; Representative Mickey Michaux, Vice-Chair; Representative John Blust, Representative Pricey Harrison; Representative Hugh Holliman; Representative George Holmes; Representative David Lewis; Representative Edd Nye, and Representative Edgar Starnes. Also present were Representative Pete Cunningham, Representative Rick Eddins, and Representative Joe Hackney, ex-officio members.

There were two bills on the agenda: Senate Bill 98, Orange County Super Precinct, sponsored by Senator Kinnaird; and House Bill 851, Same Day Registration at One-Stop Sites, sponsored by Representative Ross.

Co-Chair Deborah Ross called the meeting to order and introduced the pages and sergeants-at-arms.

The Chair asked for a motion to consider a proposed committee substitute for SB 98. Upon a motion by Representative Luebke, the proposed committee substitute was before the committee, and Mr. Gerry Cohen, Director of Bill Drafting, explained the differences between the bill he explained last week and the proposed committee substitute bill.

Representative Ross asked Representative Hackney and Rep. Faison, both representing Orange County, if they approved of the bill. Both were in agreement with the bill as written.

Rep. Moore offered an amendment to require identification at the polling place, and after discussion he agreed to submit a perfecting amendment that would allow someone without ID to vote a provisional ballot. He later withdrew the first amendment and the perfecting amendment, rolling the two into one new amendment.

Representative Kiser asked that the ayes and the nays be recorded, and it was sustained.

The roll was called and the amendment failed for lack of a majority. The vote was 7 to 7.

After discussion, Representative Kiser moved that the committee substitute bill be given a favorable report, and Representative Kiser asked that the ayes and nays be recorded. The roll was called and the motion passed by a vote of 8 to 7.

The next bill on the agenda was House Bill 851, Same Day Registration at One-Stop Sites. Representative Ross asked for a motion to put a proposed committee substitute before the committee for discussion purposes, Representative Harrison so moved, and the motion carried.

Representative explained the committee substitute bill briefly, and Mr. Bill Gilkeson, Research Division staff, explained the bill in detail.

The chair invited people from the audience to comment on the bill. Mr. Mike McLaughlin, representing the North Carolina Center for Public Policy, spoke in favor of the bill and answered questions of committee members. Also speaking in favor of the bill was Mr. Bob Hall from Democracy North Carolina and Mr. Keith Robertson, a student from East Carolina University.

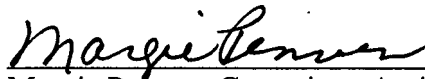
After further discussion, time ran out and the meeting was adjourned at 1:56 without taking a vote on the bill.

A verbatim transcript of this meeting is attached hereto along with all pertinent documents and handouts.

Respectfully submitted,



Representative Deborah Ross, Presiding Chair



Margie Penven, Committee Assistant

TRANSCRIPT
House Committee on Election Law and Campaign Finance Reform

1:00 p.m. on July 13, 2005

Room 1425, LOB

Representative Ross, Presiding

Rep. Ross: I want to introduce the pages. Caroline Curtis from Wake County sponsored by Speaker Black. Caroline where are you? Okay. Brook Blackman from Harnett County, who's sponsored by Representative Lewis; Jacob Hill from Buncombe County sponsored by Representative Goforth; Daniel Leyva from Buncombe County, Representative Goforth's page; Aaron Reaves from Edgecombe County, Representative Tolson's page; and Taylor Bundy from Gates County, Representative Culpepper's page. And for sergeants-at-arms we have Bill Sullivan, Toussaint Avent, and Lesli Oakley.

My understanding is, even though the bill sponsor is moving to the back of the room, that we're going to be taking up Senator Kinnaird's bill first. The committee spent some time on Senator Kinnaird's bill last time, and there is a proposed committee substitute for Senator Kinnaird's bill. Do members have copies of the bill?

Someone: Yes.

Rep. Ross: Members already have copies of the proposed committee substitute. Okay. Do I have motion that the proposed committee substitute...motion by Representative Luebke that the proposed committee substitute for Senate Bill 98 be before us for discussion purposes, and Gerry Cohen is here to explain the proposed committee substitute.

Mr. Cohen: For those of you who were here last week, I can explain the difference between last week and this week, then I'll discuss the whole bill. Last week's bill applied to all of Orange County. There had been some concern from one of the members of the delegation about its affect in the rural areas, so this particular subsidy that applies only in Chapel Hill Township, which are the twenty-eight voting precincts of Chapel Hill and Carrboro, does not apply in the thirteen rural precincts in Orange County. All would keep the same system they have now—their own polling place under exactly the same system. So that's the change. Also there is (sic) a few changes requiring that there be an outreach program to let voters know about changes in polling places and that there needs

to be a public hearing at the county board of elections prior to adopting the plan, and they have to notify the county chair of each party before doing that.

I'll go over the bill briefly. This bill is very similar to a program that was used in Larimer County, Colorado, and a number of national election officials organizations have endorsed, which is basically to continue what we know as one-stop voting on Election Day with more voting sites, which means that voters could choose any polling place to vote at because each polling place, just like with early voting, would have an on-line poll book so every voter would have access to the voting system. In Larimer County, Colorado, where this was used two years ago, they had thirty-one voting centers, and their turnout from an attached sheet there was about ninety-five percent of the registered voters. What this bill requires is that any voter in Chapel Hill Township, which again is Chapel Hill and Carrboro—twenty eight precincts—can vote at any of the voting centers during the one-stop period on Election Day. In Chapel Hill Township the only polling places to be opened would be those designated as voting centers, probably less than the twenty-eight they have now. Everything will have to have either a web base or on-line connection to the voter registration system, just like Orange County and others already used for one-stop voting. There's a number of other provisions here about reporting votes by precinct that they can use. Election officials from any precinct can staff any of the voting center sites because they're probably going to take their best-trained election officials and assign them to various sites. It also requires that the plan of implementation has to be approved unanimously by the county board of elections—all three members—so there's not any partisan advantage, and there's no provision for overriding that, like there is for the normal one-stop selection where the State Board of Elections can override a two-to-one decision of the board of elections. It's a pilot program. It's just for 2005 and 2006. In 2005 they may still be able to implement it. The only elections right now are in Chapel Hill Township anyway. In 2006 there are elections in the entire county.

I'll be glad to answer any questions, and again, I've explained the changes from last week's substitute.

Rep. Ross:

Before we take any questions, I know that we have Representative Hackney who represents part of Orange County, and we also have Representative Faison who represents part of Orange County. Do

you have any comments on the bill as it's been amended just so that the committee can understand that the delegation has spoken about this? Representative Hackney.

Rep. Hackney: I think it's fine. If you're going to have an experiment like this, I think limiting it to this particular area will give a good feeling for whether it works or not.

Rep. Ross: Representative Faison, do you have anything...?

Rep. Faison: Thank you, Madam Chairman. I'm fine with this bill as it is.

Rep. Ross: Okay. Great. Now, members of the committee, I know that there was some extensive discussion about this bill last time. Are there any other questions about the bill at this point? Representative Moore has an amendment. And Representative Moore, has Senator Kinnaird seen this amendment?

Rep. Moore: We've spoken about it. I don't know if.... We haven't followed up. I did advise Senator Kinnaird that I would be filing this amendment, and what this amendment does is at these super precincts, and only at these super precincts, it would require voter identification to identify the voter. It tracks the federal requirement on first-time voters, either a current or valid photo identification or copy of one of the following documents that shows the name and address of the voter—a utility bill, a bank statement, a government check, pay check, or other government document. The rationale behind doing this is two fold. Number one this is an experiment in getting away from the traditional precinct model. And the thing about having a precinct is that the voters arguably are exposed more face to face with the election officials, and there is less room for voter fraud and those sorts of things. And when you go to a super precinct where some of those natural checks and balances perhaps are not there.... Secondly, since this is an experiment, I think, frankly, that it's worthwhile to experiment with the idea of voter identification. There are some who argue that by requiring voter identification, you discourage participation. I tend to disagree with that, but let's experiment and let's see what happens. The whole concept behind doing this super precinct is to experiment and see do we increase participation? What does it do? What's the effect? And this is one more thing we can experiment with on a very limited basis. And if this amendment is adopted...people always ask how are you going to vote on this bill if the amendment is adopted...I'll vote for the bill. But I would ask your support on it.

Rep. Ross: Representative Michaux, you'll be first in line after the bill sponsor gets an opportunity to say what she thinks about the amendment. Senator Kinnaird.

Sen. Kinnaird: I did talk with Representative Moore, but I did tell him I'd also confer with other people. And we feel that this is something that... probably it needs a lot wider discussion, so I would prefer that this not be added to the bill at this point. Thank you.

Rep. Michaux: Well my question is simply what are you going to do about those who vote absentee? Are you going to make them show identification, too?

Rep. Moore: No. This would not change anything other than those voting at the super precincts.

Rep. Michaux: So you would have a difference in the people who go out to cast their vote and the people who vote absentee.

Rep. Moore: It would only apply to the super precincts.

Rep. Michaux: You didn't answer my question. I said you have a difference in voting at the precinct and in voting absentee.

Rep. Moore: If you vote at, Representative Michaux... A person votes at their regular precinct, the regular normal rules that are in effect would apply. If they elect to vote.... Let me finish it. If they elect to vote at the super precinct, then these rules apply. Of course the voter can always vote any other method or way. As you are aware, I think we ought to have voter identification everywhere, but the majority of the body is not ready to embrace that so I felt good that this would be one way to also experiment.

Rep. Ross: Representative Michaux.

Rep. Michaux: Well we've got three ways now. You got three differences in the way people cast their ballot. One, you can go to your regular precinct; you don't have to show identification. You go the super precinct you have to show identification, and if you vote absentee you can't get identification.

Rep. Moore: Would you be willing to support then voter identification for all methods of voting?

Rep. Michaux: Hell, no.

Rep. Ross: Representative Moore, even though you are the co-chair, you have to go through the chair. Representative Holmes.

Rep. Holmes: Representative Michaux, you do not have to be identified if you vote an absentee ballot cause you will have to be notarized.

Rep. Michaux: Yes, but that's not identification.

Rep. Holmes: It is identification.

Rep. Ross: Whoa, whoa, whoa. Let's.... If you want to question.... Do you want to know what the process is for an absentee ballot from Mr. Cohen?

Rep. Holmes: Right.

Gerry Cohen: What was the question?

Rep. Ross: Does Mr. Cohen know or should we have the rest of the staff....Gerry do you know what the process is for an absentee ballot for having that person assert that they are the person?

Gerry Cohen: If you are.... If registered after January 1, 2003, and did not supply a copy of your photo ID or utility bill at the time you registered, then you have to enclose it inside your absentee ballot currently. But that's only for voters who registered after 1-1-2003. And when you first registered, they give you a shot at doing it then. You still haven't done it, you have to send it in with your ballot. But people who registered twenty years ago who are voting absentee don't have to provide any information currently.

Rep. Ross: Thank you very much. Further discussion on the amendment? Representative Kiser then Representative Luebke.

Rep. Kiser: Madam Chairman, I would like the ayes and the nays recorded on this vote.

Rep. Ross: Absolutely. Is the call for the ayes and noes sustained? Okay, so we will have the ayes and noes on this vote. Representative Luebke.

Rep. Luebke: Well, first this question as I understand this then, the Chapel Hill Township, Chapel Hill and Carrboro, there will be under this pilot program fewer precincts probably because the super precincts will reduce the number of precincts that have previously existed. Is that correct?

Gerry Cohen: Right. They haven't actually.... A board of elections hasn't gotten to the stage of doing that, but we expect...I expect that there will be somewhat less than the twenty-eight precincts there are now whether it's ten, or twelve, or fifteen—I don't know.

Rep. Ross: Follow-up.

Rep. Luebke: On follow-up, we actually would have a situation where in northern Orange County you wouldn't have to show any ID, if this amendment were adopted; but in southern Orange County you would have to show ID.

Gerry Cohen: That's correct. In northern Orange County you could only vote at your polling place and in southern Orange County you could choose any voting center.

Rep. Luebke: I think this amendment is very premature in the sense that it's really not ready for this bill, and I would urge members to oppose it.

Rep. Ross: Okay. Any further discussion on the amendment? Representative Hackney.

Rep. Hackney: I hope we will let this be a super precinct experiment and not bring in these other issues. The identification issue is a national issue, it's a statewide issue, and it's something that we often fight about. And I'm on one side of it, I guess, and Representative Moore's on the other. I believe the system works pretty well the way it is and that certain people are discouraged from voting or don't vote because they didn't bring with them, or whatever, identification. So I would hope that we would not put this on this bill and I would hope that you would let us have this little experiment in southern Orange without it. Thank you.

Rep. Ross: Representative Blust.

Rep. Blust: Something Representative Hackney said struck me a little bit. The system works well the way it is, and we can debate that or not, but we're changing with this bill the system. The system that works well the way it is, is people voting pretty much in their neighborhoods and precincts. With this we're going to a much larger area with super precincts where you can vote at any super precinct. So there is a significant difference with this new system that may open the door for less control over whether someone's voting legally or not, and I think what Representative Moore is

attempting to do through this amendment is saying is, look since we're going to have this new approach to experiment on, which opens the door for more chance of people voting when they shouldn't, when they aren't legally entitled to, let's at least put an additional protection on there so that the person at the super precinct who's running it can be sure that someone is entitled to vote before they get to vote. So I think it's totally rational and appropriate and germane to what the bill is trying to do.

Rep. Ross: Okay. I have a question. Oh, Representative Hackney.

Rep. Hackney: I would just point out that in the super precinct idea it includes the on-line link so you can check and see whether a vote's already been recorded for that person or not, unlike in the regular precinct where that on-line link is not present.

Rep. Ross: That actually leads to a question that I had for staff. I wanted to know whether the way this super precinct is going to operate is similar to the way that our one-stop voting sites operate and as a follow up to that whether or not there have been problems with IDs at one-stop sites.

Gerry Cohen: Yes, basically this will operate almost exactly the same as one-stop sites are now. The one-stop sites....I can only speak in Wake County where I worked for about a week at one of the one-stop sites and from talking with other people at other sites...is that IDs were not required. A lot of people had their IDs out anyway. A lot of people didn't; some people didn't have them. The ones that didn't have them were allowed to vote a provisional ballot, and they had until the day of the canvas to either mail a photocopy of their driver's license or go to the board of elections with their driver's license. So you do get a provisional ballot if you don't have one, but there were a number of people.... At the one-stop site I was at there may have been 40 or 50 people who had no ID. Now that was people who had taken the effort to vote early. Whether that's a representative sample of the people who wait until Election Day to vote, I don't know.

Rep. Ross: Representative Blust and then Representative Hackney.

Rep. Blust: Getting back to this whether it's unreasonable or not, I just can't see in a modern society saying it's unreasonable. I mean, right now a lot of my practice is in bankruptcy. For me to go into bankruptcy court, and the guards...security people all know exactly who I am, but if I don't have a photo ID, I don't get in that court. And that's true of the debtors now that are getting to file Chapter 7s or

Chapter 13s. You can't get into the courthouse if you don't show a photo ID. And we talk about voting being this incredible responsibility and the lynchpin of our democracy and our republican star form of government, and I just think that being able to show that you're a voter and you're the voter you're claiming to be is not unreasonable at all.

Rep. Ross: Just for the committee's information, as Representative Moore said, the first time you vote you do have to do that under current law. Representative Hackney.

Rep. Hackney: Well this is a comment on Mr. Cohen's comment. It would appear that under the amendment, you could not cast a provisional vote under this amendment because it says prior to voting you have to show it. It doesn't say you could show it later.

Gerry Cohen: I believe that's correct. I was just speaking as what the current system is.

Rep. Ross: Okay.

Rep. Moore: I wouldn't have any objection to a perfecting amendment, Madam Chairman, so they could vote a provisional ballot. That's my intent. I think they should vote the provisional.

Rep. Ross: Would you like to perfect your amendment?

Rep. Moore: I would. Give me just a second to do that.

Rep. Ross: While Representative Moore is working on his amendment, are there any other questions about the bill?

Gerry Cohen: I would add at the end, "A voter not presenting such documentation may vote a provisional ballot under the same rules that generally apply."

Rep. Moore: I'd move adoption, Madam Chair, with this perfecting amendment on the amendment.

Rep. Ross: Okay. Representative Luebke.

Rep. Luebke: On the perfecting amendment, as I understood this he said based on his Wake experience people have from the date of one-stop voting till Election Day...

Gerry Cohen: No, till canvas day.

Rep. Luebke: ...till canvas day to come back. So now we would be restricting this to a very limited amount of time.

Gerry Cohen: That would be less than, in other words, from...the canvas is that, Bill, the week after the election currently under the Rice Law.

Bill Gilkeson: It's a week after the election under current law. There's a bill that passed this committee that would move it out to ten days during the general election—every even-numbered year.

Rep. Luebke: Let me follow up. Now there is a considerably longer period that what would be represented under the Moore perfecting amendment.

Gerry Cohen: Right. I mean if you voted the first day of early voting currently, you've got about three weeks to get your ID in. If you're casting a provisional ballot at the polls now based on lack of ID, which can occur now, you'd have the same 7 or 10 days.

Rep. Ross: I don't know that we have to vote on the perfecting amendment to the amendment. I think this is now the new... Why don't we do it this way, that you will withdraw...do you want to withdraw your amendment?

Rep. Moore: Withdraw and resubmit.

Rep. Ross: ...and resubmit this amendment. Are there any further questions on this amendment? Representative Hackney.

Rep. Hackney: Well, just a comment. I would just like to point out that if Bill Friday and Dean Smith walked in together to vote at one of these places as is likely they will do, they don't have an ID with them, and everybody in the State of North Carolina knows who they are, that they're not allowed to vote. And that's just not right.

Rep. Ross: Okay. Representative Kiser called for the ayes and noes on the amendment and so the clerk will call the roll.

Nancy Garriss: Called roll. Vote was 7 to 7.

Rep. Ross: The amendment fails from lack of a majority. We are now back on the bill. Any further discussion on the bill? Representative Kiser.

Rep. Kiser: May I ask for the ayes and noes on the bill?

Rep. Ross: Okay. Representative Cunningham.

Rep. Cunningham: At the proper time I'd like to move for a favorable report as amended....

Rep. Ross: Well, there's no amendment; so for the proposed committee substitute. Okay. Further discussion on the bill? Do you want to make a final comment or solicitation to the committee?

Sen. Kinnaird: Well, yeah. I would like to say that our whole delegation is in favor of this, and you've heard from Representative Faison who represents the rural areas that when we changed the location of the precincts, he was okay with the bill, so we are all of us in favor of the bill and I hope you will support it.

Rep. Ross: Representative Hackney.

Rep. Hackney: I just wanted to ask Senator Kinnaird a question.

Rep. Ross: Senator Kinnaird?

Sen. Kinnaird: Yes.

Rep. Hackney: Does this still have the provision that the board of elections locally needs to be unanimous in doing this?

Sen. Kinnaird: I think so.

Gerry Cohen: Yes, it does. If you'll look at page 2, lines 39 through 42, it has to be approved unanimously by the county board of elections.

Rep. Ross: Representative Luebke.

Rep. Luebke: Well, since I suspect a subtext of partisan concerns here, is it not true that the partisan issue has been addressed by the fact that board's decision must be unanimous, and it cannot be overruled by the State board in this legislation? Is it not true that it would have to have bipartisan support in order for it to come into play.

Sen. Kinnaird: Yes. Republican and the Democrats.

Rep. Luebke: The bill would require that the vote be unanimous.

Gerry Cohen: That's correct. So there's two...currently there's two in the Orange County Board of Elections, there's currently two Democratic members and one Republican member.

Rep. Luebke: Follow up. So the Republican member could thwart this. If this is, indeed, perceived as same kind of partisan effort, then the Republican member of the board could vote no on this and the pilot could not take place. Is that correct?

Gerry Cohen: Any member of the board could vote no for whatever reason they wanted.

Rep. Luebke: Thank you, sir.

Rep. Ross: Representative Cunningham.

Rep. Cunningham: Gerry, let me ask you a different question. Now this is a special election that only affects Orange County. Would you be saying doing it for the entire state about...or does that just affect Orange County wherein you have to have a hundred percent.

Gerry Cohen: This rule will only apply to this program. This unanimity rule will only apply to this program. It won't apply.... If this program doesn't get implemented, it won't apply to the regular rules or having one-stop sites.

Rep. Cunningham: Follow up.

Rep. Ross: Yes. Gerry, he's not done.

Rep. Cunningham: This is a very serious matter here as far as I can see, and Madam Chairman, I'm trying to be sure that there is... this one hundred percent agreement had to be in the fall election, and I guess my question is since this _____ (unintelligible) applies to a whole different situation than you normally have in Orange County and any other place, can we not amend the bill to say that this does not apply in terms of having a hundred percent?

Gerry Cohen: Are you asking whether the bill can be amended so it would only take a majority vote of the board of elections?

Rep. Cunningham: I'm asking the Chairman or the bill sponsor. I think it's a simple situation where the rule doesn't necessarily have to apply to this.

Rep. Ross: It's up to you. Senator Kinnaid, do you want...?

Sen. Kinnaid: I'm going to have to confer with my delegation here.

Rep. Ross: Okay. Representative Insko has come in. Representative Insko are you in favor of this bill. This is Senate Bill 98.

Rep. Insko: Yes. My county and I, very much.

Rep. Ross: Senator Kinnaird, we have Representative Cunningham's proposed amendment; we also have his motion. We'd like to hear from you what your pleasure is; whether we move on one and then the other or just on his motion.

Sen. Kinnaird: I think in consulting with our delegation here, that since this is so experimental, I think what we need to do is leave the bill the way it is. I appreciate your attempt to....

Rep. Cunningham: It was a big joke anyway, it seemed like.

Sen. Kinnaird: No, I appreciate your concern, and I think...I share your concern. I do, but this is sort of a fragile situation.

Rep. Ross: So, Representative Cunningham moves that the proposed committee substitute for Senate Bill 98 be given a favorable report, unfavorable as to the original bill. Representative Kiser has called for the ayes and noes, and so the clerk will call the roll.

Nancy Garriss: Called the roll. The vote was 8 to 7 for a favorable report.

Rep. Ross: So the motion passes by a vote of 8 to 7, and the bill will be given a favorable report. Thank you, Senator Kinnaird. You can talk to Representative Miller. You got out of here with just two committee meetings. He had, what? Four, five?

Members of the committee, we do have another bill to take up and that's House Bill 851, Same Day Registration at One-Stop Sites. Representative Holliman and I are co-sponsors of this bill, so Representative Holliman will be handling the bill. And there is a proposed committee substitute. Do I have a motion? Representative Harrison moves that the proposed committee substitute is before the committee for discussion purposes. All those in favor please say aye. Those opposed no. The proposed committee substitute is before us. Representative Holliman.

Rep. Holliman: Thank you, Madam Chair, members of the committee. In an ongoing effort to improve participation in our legislative process and our voting process, this bill is before us today. It will allow residents of a county to register to vote at one-stop, early voting sites in that county and then vote at that site immediately. And it would be effective in 2006, and this bill also appropriates \$75,000 for the State Board of Elections to provide counties with on-line

access to data bases in these sites and to monitor and analyze the program. Madam Chair, if you'd like the staff to give the details....

Rep. Ross:

Okay. Thank you. We're going to have Bill Gilkeson explain the bill to the committee, and I understand there are a few people here who want to speak on the bill. I don't think we have time to take a vote today, but we do want to hear from them. There are several people who come to speak on the bill. The copy that was in your packet was not the proper copy. Bill Gilkeson has had the proposed committee substitute handed out by the sergeant-at-arms. Has everyone gotten a copy of the proposed committee substitute?

Bill Gilkeson:

Representative Holliman explained the basics of the bill, but in a little more detail, currently the deadline for registering to vote in an election is 25 days before the election. You have to have your registration form in 25 days before the election in order to vote at that election, but what this bill would provide would be that anybody who was eligible to vote in that election could register at a one-stop site during the one-stop period, which occurs after the 25th day. The one-stop period begins on the third Thursday before the election and ends on Saturday before the election. So anyone could go to a one-stop site—an early voting site—and register there and vote at the same time. They would be able to register. The one-stop sites would have, to the maximum extent possible, electronic access to the statewide voter registration database.

The person who would seek to register at the one-stop site would have to provide an ID. It would be the same kind of ID you can see at the bottom of page one of the bill—either a North Carolina driver's license, a photo ID from a government agency or copy of a utility bill, bank statement, paycheck, government check or other government document. This is the same kind of range of IDs that is required for certain first-time voters by the Help America Vote Act. If the person provided a current North Carolina driver's license as an ID, they could vote just as anyone else at the one-stop site would, which would be a retrievable ballot, but it would be just as anyone else would. If they provided some other kind of ID than a driver's license, the people would have to vote a provisional ballot. If you register at the one-stop site, you have to vote right then. Under the bill you can't say I wanted to register now, but I haven't decided who I'm going to vote for so I want to go away and come back and vote later. You can't do that. You have to vote right then or your registration is cancelled, but you could come back later and register. After you vote at the one-stop site, having registered there, too, the county board of elections is supposed to send out the usual mailings to verify that you really lived at the

address that you say you do. And if you don't—if they determine that you're not qualified to vote through that process—then they wouldn't count your vote.

There are two types of people who now can register on Election Day in North Carolina. Those are people who have been naturalized as citizens after the registration deadline, or people who have regained their citizenship after a felony conviction after the registration deadline. They would still be able to register either at the one-stop site after they became citizens or they could do so on Election Day as now.

The bill would appropriate \$75,000 to the State Board of Elections to study this process and also to help provide on-line access to voter registration at all the one-stop sites.

Rep. Ross:

Representative Holliman. Do you want to add anything before we...? Okay. Representative Kiser, I will take your question first, but there are some people in the audience who may not be able to come to our next meeting, so I would like to give them an opportunity to speak, if that's okay with you. I know that we have Mike McLaughlin from Public Policy Research. Please come forward and identify yourself for the committee and let us know about your views on this bill.

Mike McLaughlin:

Good afternoon. My name is Mike McLaughlin. I'm very happy to be here today representing the North Carolina Center for Public Policy Research in regards to House Bill 851. And thank you for the opportunity to testify on behalf of the Center in support of this bill. Just briefly, the North Carolina Center for Public Policy Research is a non-partisan, public interest research group. We study issues of statewide concern. We have a very diverse board that includes people of all....(Tape ran out.)

(Tape begins again.) In April, 2003, we published a report on North Carolina insight on voter participation and how to ensure an accurate vote count in North Carolina. And, of course, as you all know, we found North Carolina to be one of the trailing states in voter participation, and that's in keeping with a long-standing trend. I believe we were 34th in 2000, which was the most recent presidential election when we did this research. And we made several recommendations that we hoped would increase voter participation in North Carolina. One of those was to move the registration deadline closer to Election Day. As I'm sure you're aware, the interest in political campaigns and politics tends to peak a little bit closer than our current 25-day registration deadlines, and

so some of the newcomers to our political process may find that they are excited about an election and want to be involved, and they don't have any opportunity because the deadline's passed. Now, as you know also, six states in the U. S. have Election Day registration, and we found that among these states 5 of the top 11 in better turnout were states that have same-day voter registration. And that, in part, is why we recommended that we go to same-day registration in North Carolina or at least move in that direction. This bill is consistent with that; and, therefore, we endorse it. I would point out that since 1998 there have been 12 gubernatorial elections in the United States in states that have same-day registration. Five have gone to the Democratic candidate, five have gone to the Republican candidate, and two to independent or third party candidates. So what we really think...we really think that citizen participation would be the true beneficiary of this type of change, and that is why we heartily endorse it. Thank you very much.

Rep. Ross: Okay. Are there any questions for Mr. McLaughlin?
Representative Kiser.

Rep. Kiser: What's your position on voter ID?

Mike. McLaughlin: I think that this is going to require voter ID.

Rep. Kiser: What is your position in general on voter ID.

Mike McLaughlin: We don't have a position on voter ID. I know that this particular bill would require it.

Rep. Ross: Are there any other questions for Mr. McLaughlin? He couldn't come last week. I don't know if he'll be able to come next week, so this might be your opportunity. Representative Luebke.

Rep. Luebke: Well, I don't know if you're responsible for the handout about the voter participation, but it seems pretty clear that it would be under 25 people who most likely would benefit from this proportionately because they're the ones that are widely under registered and under participating. Is that an explicit goal of your work to try to get young people to vote more?

Mike McLaughlin: It's not an explicit goal of our work, and we really can't foresee the future as to who would benefit the most. My thought is that it's probably going to be the organization or party that does the best job of getting out people who are partisan to their side of the election.

Rep. Luebke: Thank you.

Rep. Ross: For clarification for the committee, the handout that was put together with the data was prepared by my intern, Matt Latrick, who goes to NC State, who's been helping me on this bill.

Mike McLaughlin: Well I do think it's a great idea for young people to vote. I can't take credit for that.

Rep. Ross: Okay. We just have a few minutes. Is there anybody else here who would not be able to come back to a future committee meeting, who's here from out of state or.... I know that we do have some young people here who might be going back to school. I want to make sure that you have an opportunity to speak to the committee. Okay. Excuse me? Bob Hall.

Bob Hall: Bob Hall from Democracy North Carolina. These are some of the interns that have been working with Democracy North Carolina this summer; and as Representative Luebke says, it actually is the young folks twenty-four and under who are the largest single segment of the unregistered group in North Carolina. They have been doing a survey of young people that they come run in contact with, you know, on campuses and off campuses. And they polled over 500 North Carolina young people in a two-day for 24. Seventy percent of those that they surveyed who were not registered said they would be more likely to register and vote if there was this kind of availability at the early voting processing. Less than three percent of them knew that the cut-off date was 25 days before the election. So I want to commend you. These are the folks that would get benefit seriously from such a provision.

Rep. Ross: Okay. Representative Blust had a question.

Rep. Blust: I've got a question. Do we have any information as to why they're not registering already? I mean we've got Motor Voter now. You can do it when get a driver's license. It's just incredible to me that somebody would say that if I can't show up the same day and register, then I'm just not going to vote. What stops them right now?

Student: There were several things that they did on their surveys.

Rep. Ross: Please stand and identify yourself for the committee if you're going to respond to....

Keith Robertson:

My name is Keith Robertson. I'm a student at ECU. We put together the survey. A lot of students on campuses, they...like...ran into this a whole lot at ECU. They stay in say Wake County and they go to school in Greenville, then they may be registered in Wake County, but come time before Election Day we had classes on Tuesday morning, and it's hard to get back and forth to the, I guess, to where you are registered at. And it makes it a whole lot more difficult for you to vote. With same-day registration it would give you the ability to say vote maybe on that Friday or vote on Thursday. You can go in there and show them that you actually have an apartment or stay in a dorm on campus or whatever with other forms of identification showing that you actually stay in the district, and so with this you can have the ability to vote. And this would allow a whole lot more people definitely from what we found. We had a whole bunch of questions about that...stories, I guess, about students that had trouble getting back and forth—transportation from campus back to where they're registered to vote.

Rep. Ross:

And Representative Blust, one more thing, and then I think I think Representative Kiser had a question.

You know that when students first get their driver's license, they're 16 or 17 years old, and then because they don't renew their driver's license again for several years, and when they're 16 or 17 nobody asks them if they want to register to vote because they're too young, they aren't asked again through Motor Voter until several years later, which would mean that they would be 18, 19, 20, 21 before anybody would ask them again at Motor Voter to register to vote. So Motor Voter for the youngest voters doesn't necessarily do anything for them. Representative Kiser.

Rep. Kiser:

Under this bill, if I understand it right, you'll be able to register to vote if you produced a North Carolina driving license. Is that correct.

Bill Gilkeson:

Yes. If it's a...I think it has to be...yes. A currently valid North Carolina driver's license.

Rep. Kiser:

A North Carolina driver's license might prove who you are, but it certainly doesn't prove that you are eligible to vote in North Carolina because we issue driving licenses to people who are not even citizens. So I think you've got some cleaning up there that needs to be done.

Rep. Ross:

Well, Representative Kiser, the bill also requires that you sign under penalty of perjury that you are duly qualified to vote. But, we have run out of time. And we will see this bill, I am sure, and some other bills are left in the committee. Thank you members of the committee. We are adjourned.

The meeting adjourned at 1:56.

AGENDA

HOUSE OF REPRESENTATIVES ELECTION LAW AND CAMPAIGN FINANCE REFORM COMMITTEE

**July 13, 2005
Representative Ross, Presiding**

SB 98, Orange County Super Precinct

Senator Kinnaird

HB 851, Same Day Reg. At One-Stop Sites

Representative Ross

Nancy Garriss (Rep. Tim Moore)

From: Margie Penven (Rep. Ross)

Sent: Friday, July 08, 2005 11:33 AM

To: Sen. Ellie Kinnaird

Subject: Election Law and Campaign Finance Reform--Wed., July 13, 1:00 p.m.

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION**

You are hereby notified that the Committee on Election Law and Campaign Finance Reform will meet as follows:

DAY & DATE: Wednesday, July 13, 2005

TIME: 1:00 p.m.

LOCATION: 1425

The following bills will be considered (Bill # & Short Title & Bill Sponsor):

SB 98, Orange County Super Precinct, Sen. Kinnaird

HB 851, Same Day Reg. at One-Stop Sites, Rep. Ross

Respectfully,
Representatives Moore and Ross
Co-Chairs

I hereby certify this notice was filed by the committee assistant at the following offices at **11:35 on July 8, 2005.**

____Principal Clerk
____Reading Clerk - House Chamber

Margie Penven (Committee Assistant)

7/11/2005

7-13-05

**2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative Moore, Ross (Chairs) for the Committee on ELECTION LAW AND CAMPAIGN FINANCE REFORM.

☒ Committee Substitute for

SB 98 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE ORANGE COUNTY BOARD OF ELECTIONS TO CONDUCT A PILOT PROGRAM IN WHICH THE METHODS USED IN ONE-STOP VOTING WOULD CONTINUE THROUGH ELECTION DAY AS THE VOTING METHOD, TO BE KNOWN AS "SUPER PRECINCTS" OR "VOTE CENTERS".

☒ With a favorable report as to House committee substitute bill, which changes the title, unfavorable as to Senate committee substitute bill.

(FOR JOURNAL USE ONLY)

____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on ____.

____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No. ____) is placed on the Calendar of _____. (The original bill resolution No. ____) is placed on the Unfavorable Calendar.

____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ____) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S

D

SENATE BILL 98
State and Local Government Committee Substitute Adopted 6/1/05
Third Edition Engrossed 6/1/05
PROPOSED HOUSE COMMITTEE SUBSTITUTE S98-CSLB-85 [v.1]

Short Title: Orange County Voting Centers.

(Local)

Sponsors:

Referred to:

February 10, 2005

A BILL TO BE ENTITLED
AN ACT TO AUTHORIZE THE ORANGE COUNTY BOARD OF ELECTIONS TO
CONDUCT A PILOT PROGRAM IN CHAPEL HILL TOWNSHIP IN WHICH
THE METHODS USED IN ONE-STOP VOTING WOULD CONTINUE ON
ELECTION DAY AS THE VOTING METHOD, ALL TO BE KNOWN AS
VOTING CENTERS.

The General Assembly of North Carolina enacts:

SECTION 1. 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

- 1 the county board of elections in order to ensure that the vote count by
2 eligible voters is accurate. If any vote need not be identifiable, it shall
3 not be made so, notwithstanding G.S. 163-227.2(e1).
- 4 (5) The Plan of Implementation may provide a different system for voter
5 sign-in than the regular one-stop process which requires completion of
6 an absentee ballot application, but the process must be auditable. As
7 required by G.S. 163-166.7, the voter, before voting, shall sign that
8 voter's name on the pollbook, other voting record, or voter
9 authorization document. As provided by G.S. 163-166.7, if the voter is
10 unable to sign, a voting center official shall enter the person's name on
11 the same document before the voter votes. A voter at a voting center
12 shall be entitled to the same assistance as a voter at a voting place on
13 election day under G.S. 163-166.8.
- 14 (6) A larger number of voting centers may be open on election day than
15 during the earlier part of the one-stop period.
- 16 (7) Election returns shall be reported by regular precinct as well as by
17 voting center. Notwithstanding G.S. 163-132.5G, for primary elections
18 in 2006, those returns by regular precinct shall be reported by May 1,
19 2007, and for the 2006 general election those returns by regular
20 precinct shall be reported by March 1, 2007. G.S. 163-132.5G shall not
21 apply to elections held in 2005 under this act.
- 22 (8) Notwithstanding G.S. 163-227.2(g), the State Board of Elections may
23 allow the county board of elections during the regular one-stop voting
24 period to designate voting centers in commercial buildings that are not
25 public buildings.
- 26 (9) Notwithstanding G.S. 163-227.2(g), on election day any building may
27 be designated as a voting center, but the office of the county board of
28 elections does not have to be designated as a voting center.
- 29 (10) Notwithstanding G.S. 163-227.2(g), officials appointed pursuant to
30 G.S. 163-41, 163-42, and 163-42.1 may be assigned to staff the voting
31 centers. The Plan of Implementation shall provide for appointment of
32 election officials at voting centers so that political parties have a
33 similar opportunity to recommend officials as if there were precinct
34 polling places.
- 35 (11) The Plan of Implementation may for administrative purposes treat the
36 entire township as one precinct with multiple voting places on election
37 day, but a voter must when appearing to vote report any change of
38 address.
- 39 (12) Before voting centers may be used under this section, a Plan of
40 Implementation must be approved unanimously by the county board of
41 elections and then approved by the Executive Director of the State
42 Board of Elections. Prior to adoption, the county board of elections
43 shall conduct a public hearing and notify the county chair of each
44 political party under Article 9 of Chapter 163 of the General Statutes.

1 The county board of elections shall develop an outreach and education
2 campaign to inform voters about the changes in voting locations.

3 **SECTION 2.** The State Board of Elections shall closely monitor the pilot
4 program and report its findings and recommendations to the General Assembly at its
5 2005 Regular Session in 2006, and to the 2007 Regular Session of the General
6 Assembly.

7 **SECTION 3.** This act is effective when it becomes law.



SENATE BILL 98: Orange County Super Precinct

BILL ANALYSIS

Committee:	House Election Law and Campaign Finance Reform	Date:	July 5, 2005
Introduced by:	Sen. Kinnaird	Summary by:	R. Erika Churchill
Version:	PCS to Third Edition S98-CSST-70		Committee Counsel

SUMMARY: *The proposed committee substitute for Senate Bill 98 would authorize the Orange County Board of Elections to conduct a pilot program in which the methods used in one-stop (early voting) would continue on election day; effective when it becomes law.*

CURRENT LAW: Current general statute provide for the division of counties into precincts. Each precinct is to have a voting place in the precinct where voters may go to vote on election day, except when specifically authorized to have the voting place outside the precinct. G.S. 163-130.1. The current election laws also provide that prior to election day, voters have an opportunity to vote by absentee ballot – by mail absentee ballot beginning 50 days before the election and at one-stop (early voting) sites beginning on the third Thursday before the election. Since 2001, both mail absentee voting and one-stop have been options available to be used by any voter for any reason. Some counties set up several one-stop sites throughout the county, and any voter in the county may vote at any site. In the 2004 general election, early voting accounted for about 30% of North Carolina's turnout.

BILL ANALYSIS: The proposed committee substitute would allow the Orange County Board of Elections to conduct a pilot program, upon approval of the State Board of Elections, for any or all primaries or elections occurring prior to January 1, 2007. The pilot program would consist of continuing the one-stop voting as provided in G.S. 163-227.2 on election day as the method of voting. Voting places would be known as "voting centers" during that election. The pilot program would consist of the following:

1. Any registered voter may vote at any voting center during the one-stop period or on election day.
2. On election day, the only places open to vote are those designated as voting centers. There shall be at least one voting center in each township if any voter in that township is eligible to vote in that election.
3. All the voting centers are to have a Web-based or online connection to the voter registration system.
4. The State Board is to determine which ballots are being made retrievable and identifiable by the county board of elections in order to ensure that the vote count is accurate.
5. The Plan of Implementation may provide a different system for voter sign-in than the regular one-stop process that requires completion of an absentee ballot application, but the process must be auditable. The voter, before voting, must sign that voter's name on the pollbook, other voting record, or voter authorization document, as provided by current law.
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. For primary elections in 2006, those returns by regular precinct shall be reported by May 1, 2007, and for

Senate Bill 98

Page 2

- the 2006 general election those returns by regular precinct shall be reported by March 1, 2007. Reporting returns by precinct would not apply to any elections in 2005.
8. The State Board of Elections may allow the county board to designate voting centers in commercial buildings that are not public buildings during the regular one-stop voting period.
 9. On election day any building may be designated as a voting center, and the office of the county board of elections does not have to be designated as a voting center.
 10. The Plan of Implementation must provide for appointment of election officials at voting centers so that political parties have a similar opportunity to recommend officials as if they were precinct polling places.
 11. The Plan of Implementation may treat the entire county as one precinct with multiple voting places on election day, but a voter must report any change of address within the county when appearing to vote.
 12. Before voting centers may be used, 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.

EFFECTIVE DATE: Effective when it becomes law.

BACKGROUND: In the *James v. Bartlett* lawsuit, Superintendent of Public Instruction candidate Bill Fletcher and others argued that Article VI, Section 2 of the State Constitution prohibits out-of-precinct voting on election day. The State Supreme Court, in its decision in *James v. Bartlett* in February 2005, did not reach that constitutional question. The Court ruled that the practice of allowing voters to vote provisional ballots outside of their home precinct on election day was not authorized by statute. In response to that ruling, the General Assembly enacted Session Law 2005-2, in which it stated that it was intent of the General Assembly for voters to be allowed to vote provisionally outside their home precinct on election day and for those ballots to be counted for all the races. That bill was signed by the Governor and approved under Section 5 of the Voting Rights Act. On May 4, the State Supreme Court denied a motion to reconsider the constitutional question about out-of-precinct voting.

The Joint Select Committee on Electronic Voting Systems recommended early this year that the General Assembly authorize the State Board of Elections to conduct a pilot of the same sort as S98 authorizes for Orange in up to 10 counties.

S0098e3-SMST-CSST-70

Bill Gilkeson contributed to this summary.

7-13-05

Moore's amendment

ROLL CALL VOTE

$$\frac{1}{\text{YES}} \quad \frac{1}{\text{NO}} = \text{____ (TOTAL)}$$

HB# _____
SB# 98

HOUSE COMMITTEE ON ELECTION LAW AND CAMPAIGN FINANCE REFORM

[illegible]

ROLL CALL VOTE

$$\frac{8}{\text{YES}} \quad \frac{7}{\text{NO}} = \underline{\hspace{2cm}} (\text{TOTAL})$$

HB# PC5-SB98
SB# ✓

HOUSE COMMITTEE ON ELECTION LAW AND CAMPAIGN FINANCE REFORM

[illegible]



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 98

S98-AST-56 [v.2]

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

Page 1 of 1

Date _____, 2005

Comm. Sub. [YES]
Amends Title [NO]
Third Edition

Representative Moore

1 moves to amend the bill on page 2, line 13 by rewriting that line to read:

2
3 "election day under G.S. 163-166.8. The Plan of Implementation shall
4 also require every individual seeking to vote to present to the election
5 official at a voting center, prior to voting, one of the following:

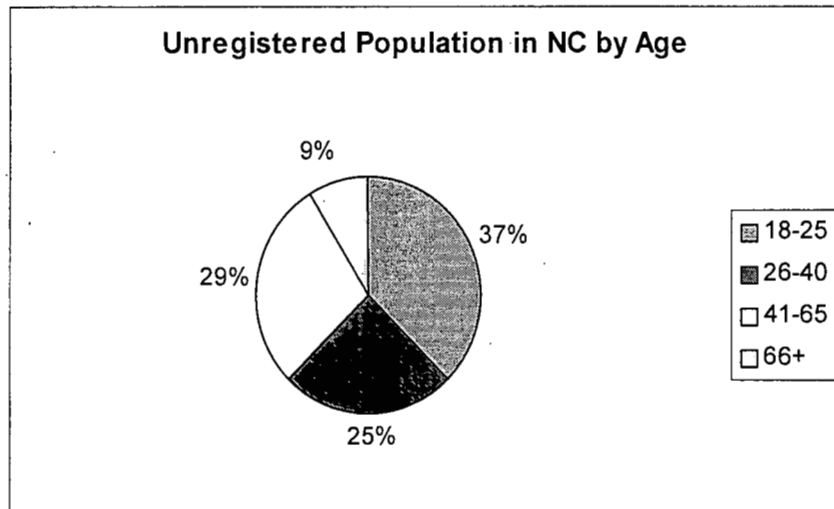
- 6 (1) A current and valid photo identification.
7 (2) A copy of one of the following documents that shows the name
8 and address of the voter: a current utility bill, bank statement,
9 government check, paycheck, or other government document."
10
11
12

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

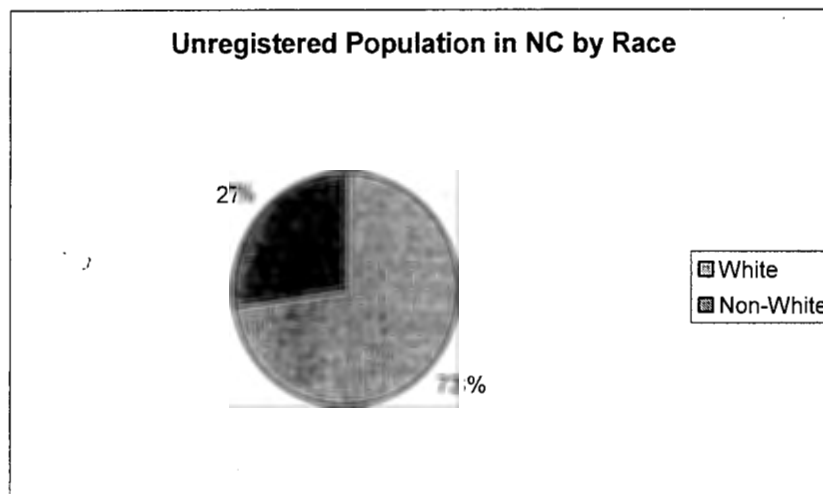
ADOPTED _____ FAILED _____ TABLED _____

Analysis of Unregistered Voting Age Population



Approximate Numbers of Unregistered Voters by Age

Age Group	Number	Percent	Whole Population	Percent of Pop.
18-25	357,157	37.5%	1,008,039	15.6%
26-40	233,977	24.6%	1,852,837	28.6%
41-65	279,318	29.3%	2,657,871	41.1%
66+	81,314	8.6%	953,011	14.7%
Total Unregistered	951,756	100.0%	6,471,758	100.0%



Approximate Numbers of Unregistered Voters by Race

Race	Number	Percent	Whole Population	Percent of Pop.
White	693,677	72.9%	4,942,616	76.4%
Non-White	258,079	27.1%	1,529,132	23.6%
Total Unregistered	951,756	100.00%	6,471,748	100.00%



Elections

[Main](#)[Info](#)[Register](#)[Elections](#)[Vote](#)[News & Education](#)

Voting Centers Receive Endorsement

Fort Collins Coloradoan editorial on 11/5/04

Larimer County voters appeared to roundly endorse the voting center concept on Election Day.

Tuesday was third election that Larimer County used vote centers -- 31 sites located throughout the county where voters could cast their ballots. Larimer County is the only county in the nation that currently uses the centers, which allow eligible voters to cast ballots anywhere in Larimer County.

The model in Larimer County is based on making voting and counting ballots more efficient, cost-effective and more secure than using dozens of precinct locations.

Of 155,045 active voters in Larimer County, 145,052, or a phenomenal 93.5 percent, cast ballots Tuesday.

County elections officials were well prepared with adequate staffing and information. While lines were long because of the record turnout, most residents reported a wait of less than 30 minutes, which is much less than other counties reported. Larimer County elections workers were able to check the status of each voter via an electronic poll book.

A few unavoidable glitches were reported, including a computer breakdown in Wellington, but for the most part, voters made it to the voting booths in a reasonable manner.

The vote centers also save taxpayers money because they require fewer workers and volunteers than do precincts. County officials also were able to post voting results quickly on the county Web site at www.larimer.org, with unofficial final results in by 11:16 p.m. Tuesday.

This election has seen much rancor and criticism about government as well as concern about the elections process. Larimer County's voting center concept, however, is a positive example of what government can and should do for the people.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

D

HOUSE BILL 851
PROPOSED COMMITTEE SUBSTITUTE H851-CSRR-44 [v.3]

7/6/2005 11:02:28 AM

Short Title: Same Day Reg. at One-Stop Sites.

(Public)

Sponsors:

Referred to:

March 22, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR IN-PERSON REGISTRATION AND VOTING AT ONE-STOP EARLY VOTING SITES; AND TO APPROPRIATE FUNDS TO THE STATE BOARD OF ELECTIONS TO IMPLEMENT AND STUDY THE CHANGE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 7A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-82.6A. In-person registration and voting at one-stop sites.

(a) Who May Register in Person. – An individual who is qualified to register to vote may register in person and then vote at a one-stop voting site in the individual's county of residence during the period for one-stop voting provided under G.S. 163-227.2.

(b) Readiness of One-Stop Sites. – The State Board of Elections and the county boards of elections shall provide to the maximum extent practical electronic access to an updated statewide voter registration database and the North Carolina drivers license database at each site where in-person registration and voting take place. The county board shall staff those sites with personnel capable of using the equipment to conduct in-person registration and voting with competence and integrity.

(c) Identification Requirement. – To register under this section, the person shall provide proof of identity and residence and shall complete a registration form which includes signing a statement, under penalty of perjury, that the person is a citizen of the United States and resides at the address given. The presentation of any of the following valid documents that show the name and address of the person shall suffice as proof of identity and residence: A North Carolina drivers license, photo identification from a government agency, or a copy of a utility bill, bank statement, paycheck, government check, or other government document. The State Board of Elections may designate

1 additional documents or methods that suffice and shall prescribe procedures for
2 establishing proof of identity and residence.

3 (d) How the In-Person Registrant Shall Vote. – An individual who registers
4 under this section shall vote a retrievable absentee ballot as provided in G.S. 163-227.2
5 if all of the following conditions are met:

6 (1) The individual presents as identification a currently valid North
7 Carolina drivers license.

8 (2) The address on the drivers license is the same address the individual
9 declares as residence address on the voter registration application.

10 (3) The one-stop site has accessible an online database of both drivers
11 license records for the county and voter registration records for the
12 county so that election officials can verify the voter registration
13 application immediately.

14 If the conditions in subdivisions (1), (2), and (3) in this subsection are not all met,
15 the voter shall vote by provisional ballot as provided in Article 14A of this Chapter.

16 (e) Requirement for Immediate Voting. -- An individual who registers in person
17 under this section must vote immediately after registering. The county board of
18 elections shall ensure that the individual is informed of this requirement before
19 registering. If an individual who has registered under this section declines to vote
20 immediately, the registration shall be cancelled, but that individual may later register
21 and vote under this section in the same election.

22 (f) Verification of Registration; Counting of Ballot. – The county board of
23 elections shall proceed under G.S. 163-82.7 to verify the qualifications and address of
24 every individual who registers under this section. The individual's vote shall be counted,
25 unless the county board determines under G.S. 163-82.7(b) that the applicant is not
26 qualified to vote."

27 **SECTION 2.** G.S. 163-82.6 reads as rewritten:

28 **"§ 163-82.6. Acceptance of voter registration application forms.**

29 (a) How the Form May Be Submitted. – The county board of elections shall
30 accept any form described in G.S. 163-82.3 if the applicant submits the form by mail,
31 facsimile transmission, transmission of a scanned document, or in person. The applicant
32 may delegate the submission of the form to another person. Any person who
33 communicates to an applicant acceptance of that delegation shall deliver that form so
34 that it is received by the appropriate county board of elections in time to satisfy the
35 registration deadline in subdivision (1) or (2) of subsection (c) of this section for the
36 next election. It shall be a Class 2 misdemeanor for any person to communicate to the
37 applicant acceptance of that delegation and then fail to make a good faith effort to
38 deliver the form so that it is received by the county board of elections in time to satisfy
39 the registration deadline in subdivision (1) or (2) of subsection (c) of this section for the
40 next election. It shall be an affirmative defense to a charge of failing to make a good
41 faith effort to deliver a delegated form by the registration deadline that the delegatee
42 informed the applicant that the form would not likely be delivered in time for the
43 applicant to vote in the next election. It shall be a Class 2 misdemeanor for any person

1 to sell or attempt to sell a completed voter registration form or to condition its delivery
2 upon payment.

3 (b) Signature. – The form shall be valid only if signed by the applicant. An
4 electronically captured image of the signature of a voter on an electronic voter
5 registration form offered by a State agency shall be considered a valid signature for all
6 purposes for which a signature on a paper voter registration form is used.

7 (c) Registration Deadlines for an Election. – In order to be valid for an election,
8 except as provided in G.S. 163-82.6A, the form:

9 (1) If submitted by mail, must be postmarked at least 25 days before the
10 election, except that any mailed application on which the postmark is
11 missing or unclear is validly submitted if received in the mail not later
12 than 20 days before the election,

13 (2) If submitted in person, by facsimile transmission, or by transmission of
14 a scanned document, must be received by the county board of elections
15 by a time established by that board, but no earlier than 5:00 P.M., on
16 the twenty-fifth day before the election,

17 (3) If submitted through a delegatee who violates the duty set forth in
18 subsection (a) of this section, must be signed by the applicant and
19 given to the delegatee not later than 25 days before the election, except
20 as provided in subsection (d) of this section.

21 (c1) If the application is submitted by facsimile transmission or transmission of a
22 scanned document, a permanent copy of the completed, signed form shall be delivered
23 to the county board no later than 20 days before the election.

24 (d) ~~Instances When Person May Register and Vote on Election Day.~~ After the
25 Standard Registration Deadline– If a person has become qualified to register and vote
26 between the twenty fifth day before an election and election day, then that person may
27 apply to register and vote at a one-stop site as provided in G.S. 163-82.6A if the person
28 has become qualified before the end of the one-stop period provided in G.S. 163-227.2,
29 or may apply to register on election day by submitting an application form described in
30 G.S. 163 82.3(a) or (b) to:

31 (1) A member of the county board of elections;

32 (2) The county director of elections; or

33 (3) The chief judge or a judge of the precinct in which the person is
34 eligible to vote,

35 and, if the application is approved, that person may vote the same day. The official in
36 subdivisions (1) through (3) of this subsection to whom the application is submitted
37 shall decide whether the applicant is eligible to vote. The applicant shall present to the
38 official written or documentary evidence that the applicant is the person he represents
39 himself to be. The official, if in doubt as to the right of the applicant to register, may
40 require other evidence satisfactory to that official as to the applicant's qualifications. If
41 the official determines that the person is eligible, the person shall be permitted to vote in
42 the election and the county board shall add the person's name to the list of registered
43 voters. If the official denies the application, the person shall be permitted to vote a
44 challenged ballot under the provisions of G.S. 163 88.1, and may appeal the denial to

1 the full county board of elections. The State Board of Elections shall promulgate rules
2 for the county boards of elections to follow in hearing appeals for denial of election day
3 applications to register. No person shall be permitted to register on the day of a second
4 primary unless he shall have become qualified to register and vote between the date of
5 the first primary and the date of the succeeding second primary.

6 (e) For purposes of subsection (d) of this section, persons who "become qualified
7 to register and vote" during a time period:

8 (1) Include those who during that time period are naturalized as citizens of
9 the United States or who are restored to citizenship after a conviction
10 of a felony; but

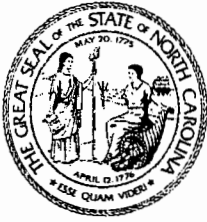
11 (2) Do not include persons who reach the age of 18 during that time
12 period, if those persons were eligible to register while 17 years old
13 during an earlier period."

14 **SECTION 3.** G.S. 163-227.2(a) reads as rewritten:

15 "(a) Any voter eligible to vote by absentee ballot under G.S. 163-226 may request
16 an application for absentee ballots, complete the application, and vote under the
17 provisions of this ~~section~~ section and of G.S. 163-82.6A, as applicable."

18 **SECTION 4.** The State Board of Elections shall provide counties with the
19 access to the databases described in G.S. 163-82.6A(b), monitor the implementation of
20 this act, analyze its use in the counties during 2006, and determine the feasibility and
21 timetable for expanding same-day registration and voting to all voting places on election
22 day. The State Board shall report its findings no later than March 1, 2007, to the Joint
23 Legislative Commission on Governmental Operations of the General Assembly. There
24 is appropriated from the General Fund to the State Board of Elections for the 2005-2006
25 fiscal year the sum of seventy-five thousand dollars (\$75,000) for this purpose.

26 **SECTION 5.** Sections 1, 2, and 3 of this act become effective January 1,
27 2006, and shall apply to all primaries and elections held on or after that date. The
28 remainder of this act becomes effective July 1, 2005.



HOUSE BILL 851: Same Day Reg. at One-Stop Sites

BILL ANALYSIS

Committee:	House Election Law and Campaign Finance Reform	Date:	July 6, 2005
Introduced by:	Reps. Ross, McComas, Parmon, Holliman	Summary by:	William R. Gilkeson
Version:	First Edition H851-CSRR-44[v.3]		Committee Co-Counsel

SUMMARY: *This Proposed Committee Substitute for House Bill 851 would allow residents of a county to register to vote at one-stop (early voting) site in that county and then vote at the site immediately. Effective in 2006. The bill would also appropriate \$75,000 to the State Board of Elections to provide counties with online access to databases in the sites and to monitor and analyze the program.*

CURRENT LAW: Residents of NC must apply to register 25 days before an election to be able to vote in that election. They may do so by mail by filling out and signing a mail-in voter registration form. Or they may do so in person while applying for a new or renewal driver's license at a DMV office. Or they may register at a public assistance or unemployment office. But they must submit the application by the 25th day before the election.

The only people who are allowed to register after the 25-day deadline and still vote in the election are people who become naturalized citizens after the deadline, felons whose citizenship is restored after the deadline, and military and certain other people serving their country overseas. The new citizens may register and vote on election day. A separate absentee registration provision covers the military and overseas voters.

Currently, the one-stop (early voting) period begins on the third Thursday before the election and ends on the Saturday before the election. The registration deadline occurs before the one-stop period begins. During the one-stop period, registered voters may go to the county board of elections office or another site set up by the county board and vote what is technically an absentee ballot in person.

BILL ANALYSIS: The bill would allow an unregistered resident of a county to go to a one-stop site in that county during the one-stop period, register to vote, and vote right then at the site. *Section 1 of the bill. 163-82.6A(a).*

State and county boards of elections would be required, to the maximum extent practical, to provide electronic access to an updated statewide voter registration database at every place where same day registration and voting is conducted. The personnel in the sites would have to be capable of using the equipment. *Section 1. 163-82.6A(b).*

Everyone must show a form of identification at the one-stop site to be able to register and vote there. The acceptable forms of I.D. would be the same required by the Help America Vote Act (HAVA) for certain first-time voters at the polls, although the State Board of Elections could add other types of I.D. If the person presents a valid NC drivers license showing the same address the voter uses to register to vote, and the one-stop site has online a drivers license database and a voter registration database, then the voter may vote a ballot like other one-stop voters. If they present another kind of I.D., then they vote a provisional ballot. *Section 1. 163-82.6A(c) and (d).*

The person who registers at a one-stop site may vote on the strength of that registration only if they do so immediately. If they don't vote immediately, then their registration is cancelled, but they may come back during the one-stop period and register and vote again. *Section 1. 163-82.6A(e).*

After the person registered and voted, the county boards of elections would proceed with their usual process to verify the qualifications and address of the voter. The vote would be counted unless the county board determined the voter was not qualified to vote. *Section 1. 163-82.6A(f).*

People who may now register and vote on election day -- those naturalized or restored to citizenship after the 25-day registration deadline -- could register and vote at one-stop sites or, as now, on election day. *Section 2 of the bill.*

The bill would appropriate \$75,000 to the State Board of Elections to provide county boards with access to databases and to analyze the feasibility of extending same-day registration/voting to election day. *Section 4 of the bill.*

EFFECTIVE DATE: Changes are effective Jan. 1, 2006, except the appropriation, which is effective July 1, 2005.

BACKGROUND: [As introduced, H851 was identical to S954 (Sen. Lucas), now in Senate Judiciary I.]

HB 851: Same Day Registration at One Stop Sites

Increases Voter Participation

- Approximately 950,000 North Carolinians are unregistered and eligible to vote.
 - Largest demographic groups of the unregistered population are young people, and men.
- North Carolina ranked 38th in voter turnout in the 2004 General Election¹

Reduces Barriers to Voting

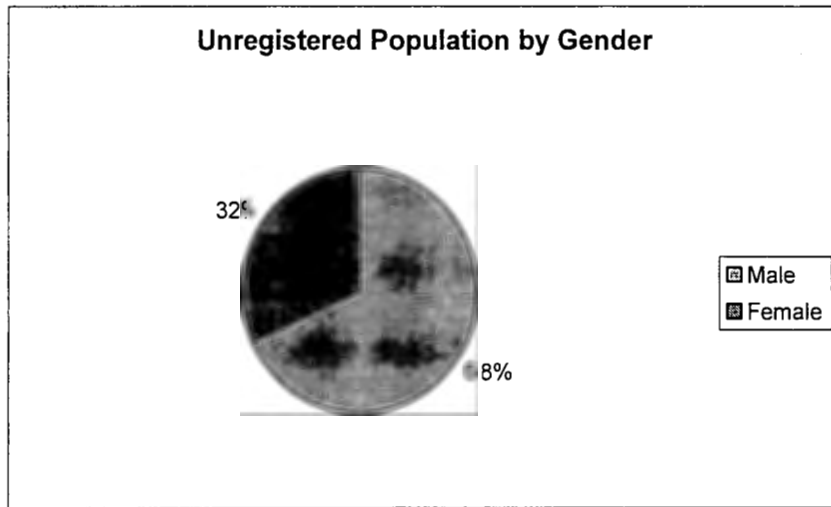
- Citizens who have moved recently, people in rural areas, and those who become interested close to Election Day especially benefit from being able to register and vote at a One Stop Site.
- Provides a last chance for eligible citizens to vote after the registration deadline.

Insures Voter Verification

- The State Board of Elections verifies the registrant's NC Driver's license at a One Stop Polling site.
- The address of a Same Day Registrant is verified before the vote is counted.
- The registrant gives their information under the penalty of perjury. A violation is a felony.
- Requires One Stop Sites to have accurate and accessible voter and DMV databases to verify information against.

¹ Ranking provided by Committee on the Study of the American Electorate

Analysis of Unregistered Voting Age Population



Approximate Numbers of Unregistered Voters by Sex

Sex	Number	Percent	Whole Population	Percent of Pop.
Male	649,125	68.2%	3,144,466	48.6%
Female	302,631	31.8%	3,327,282	51.4%
Total Unregistered	951,756	100.0%	6,471,748	100.0%

VISITOR REGISTRATION SHEET

Election Law and Campaign Finance Reform

July 13, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Johniqua Williams	Democracy Center (extern.)
Katie White	" "
Elizabeth Costello	" "
Keith Robinson	" "
Stephanie Caplin	NC DOST
Chad Hinton	Civitas Institute
Mary Klentz	League of Women Voters NC
Erin Byrd	SEJ/NC FAIR SHARE
Elizabeth Waugh-Stewart	Democracy NC
MOLLY BEACHAM	Democracy NC
Carrie H. Bolton	Democracy NC

VISITOR REGISTRATION SHEET

Election Law and Campaign Finance Reform

July 13, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Elizabeth Onizts	NCPAC
Sean Thompson	Democracy NC
Adam Sotela	Democracy NC
Phil W. J.	Dem NC
AJ Holson	Rep. Cunningham
Antony Khumala	Democracy - NC
Amanda Smith	Democracy - NC
M. Brubaker	N + R
Will McPherson	Env. Aff

VISITOR REGISTRATION SHEET

Election Law and Campaign Finance Reform

July 13, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Clayton Lindsay	Democracy NC 105 W. Main, Carrboro, 27510
Linda Tran	" "
Juliana Berde	" "
Shanta Farrington	" "
Mike McLoughlin	N.C. Center for Public Policy Research
KATHERINE DUNN	" "
JANE PINSKY	NCHSA
Michael Houser	NCAE
John Phelps	NCLM
Suzanne Buckley	GOV OFFICE
W. Todd Brown	Capital Press

MINUTES
House Committee on Election Law and Campaign Finance Reform
July 20, 2005
1:00 p.m., Room 1425
Representative Moore, Presiding

The House Committee on Election Law and Campaign Finance Reform met at 1:00 p.m. on Tuesday, July 20, 2005, in Room 1425 of the State Legislative Building.

Members present were: Representative Tim Moore, Co-Chair; Representative Deborah Ross, Co-Chair; Representative Joe Kiser, Vice-Chair; Representative Paul Luebke, Vice-Chair; Representative Mickey Michaux, Vice-Chair; Representative John Blust, Representative Walter Church, Representative Pricey Harrison; Representative Hugh Holliman; Representative George Holmes; Representative David Lewis; Representative Edd Nye; and Representative Edgar Starnes. Also present were Representative Bill Culpepper, Representative Pete Cunningham, Representative Rick Eddins, and Representative Joe Hackney, ex-officio members.

There was one bill on the agenda: Senate Bill 223, Public Confidence in Elections, sponsored by Senator Kinnaird.

Co-Chair Tim Moore called the meeting to order and introduced the pages and sergeants-at-arms.

Co-Chair Moore recognized Representative Kiser to present an amendment to SB 223. Representative Kiser explained the amendment and moved for its adoption. After discussion, the amendment was adopted unanimously.

The Chair recognized Representative Holliman, a co-sponsor of the bill. Representative Holliman said the bill was explained at the last meeting, but there was a technical amendment to be presented by Representative Ross.

The Chair recognized Representative Ross for her amendment. She said amending the bill on page 1, lines 21 and 22, would assure the bill was consistent with other election laws. She moved for adoption of the amendment, and the amendment was adopted unanimously.

Representative Michaux pointed out a grammatical error on line 25, saying there should be a capital "A" following the colon.

The Chair recognized Mr. Chris Heagarty with the North Carolina Center for Voter Education who spoke in favor of the bill.

Representative Culpepper moved to change the effective date of the bill from July 1, 2005, to "when it becomes law." The amendment was passed unanimously.

After questions of Mr. Heagarty by the committee, Mr. Phil Stach, Deputy General County for the State Republican Party, spoke in opposition to Senate Bill 223. Mr. Forrest Hinton, Student Senate President and a member of NC State College Republicans, spoke on favor of the bill, and he was rebutted by Mr. Devane Barbour, Director of Government Relations for North Carolina State University and Executive Director for the North Carolina State University Young Republicans. Ms. Elizabeth Dukes who represented PIRG, a statewide non-profit, non-partisan, public-interest advocacy organization; Mr. Zachary Wynne, UNC Association of Student Governments; and Louise Romanoff, League of Women Voters, all spoke in favor of SB 223.

The committee questioned the speakers and discussed the bill. Mr. Gary Bartlett, Director of the North Carolina Board of Elections, and Mr. Bill Gilkeson from the General Assembly Research staff were also present to answer questions.

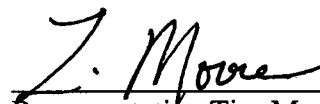
Representative Michaux moved that the amendments be incorporated into a House committee substitute for Senate Bill 233 and the committee substitute be given a favorable report, the original bill be given an unfavorable report, and the committee substitute be re-referred to the Committee on Appropriations.

Representative Holmes asked for the ayes and noes, which was sustained. The roll was called and the motion of Representative Michaux was adopted by a vote of 9 to 7.

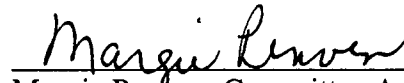
There being no further business, the meeting was adjourned at 1:45 p.m.

A verbatim transcript of this meeting is attached hereto along with all pertinent documents and handouts.

Respectfully submitted,



Representative Tim Moore, Presiding Chair



Margie Penven, Committee Assistant

TRANSCRIPT
House Committee on Election Law and Campaign Finance Reform

1:00 p.m. on July 20, 2005

Room 1425, LOB

Representative Moore, Presiding

Rep. Moore: Would the meeting please come to order. Good afternoon, and welcome to the House Committee on Election on Law and Campaign Finance Reform. I want to introduce our pages today. We have Lorna Fink from Forsyth County who is here sponsored by Representative Brown, Lauren Smith from New Hanover County who is sponsored by Representative McComas, Kirby Grady from Duplin County who is sponsored by Representative Tucker, Jana Rust from Wake County sponsored by Representative Weiss, and Jamie Keener from Wake County sponsored by Representative Ross. And also, we have my page, Tucker Craig who is here from Cleveland County. And I want to welcome all of you here today, also our sergeants-at-arms James Worth, Fred Hines, and Mark Cone. We appreciate you all being here with us today.

The committee is going to resume deliberations on House Bill 851, which is the Same Day Registration at One-Stop Sites. The bill is co-sponsored by Co-Chair Ross and by Representative Holliman, and I believe she said she wanted Representative Holliman to present the bill, so I'm going to turn it over to Representative Holliman for a few minutes. I understand you're going to have a technical amendment and then I think the thought was to maybe allow some testimony from folks in the audience. Representative Holliman, welcome to the committee.

Rep. Holliman: Thank you very much, Mr. Chair. Thank you members of the committee and other interested people. This bill, as we discussed last time, would simply allow people to register to vote at early voting sites...to register to vote and then vote. And so I think we discussed it fairly thoroughly the other day, so at this point, Mr. Chair, if you want to we'll go ahead and handle the amendment.

Rep. Moore: Who's moving the amendment?

Rep. Ross: I have a technical amendment, Mr. Chairman, and I also believe that Representative Lewis might have an amendment. It's up to him.

Rep. Moore: Okay. Co-Chair Ross, you're recognized for your amendment.

Rep. Ross: I think the committee members have copies of the amendment. It's just a technical amendment. It's to amend the bill on page 1, lines 21 and 22, by deleting the term "which includes signing" and substituting the term "as prescribed in G.S.163-82.4. On that form the person shall sign". That's just so that we are consistent and that you follow the same law here that you do in other parts of the election laws.

Rep. Moore: The committee has heard the amendment. Is there further debate or discussion on the amendment? Seeing not, is the committee ready for the question? Seeing no objection, all those in favor please say aye. Those opposed no. It appears to the chair that the ayes have it, the ayes do have it, the amendment is adopted. We're now back in debate on the bill. Representative Michaux.

Rep. Michaux: There's just a little grammatical error now on line 25. You got a capital A, and I think staff can change that. See where I'm talking about there?

Rep. Ross: Oh, yeah.

Bill Gilkeson: Right. That's after a colon; you have a sentence.

Rep. Moore: We have a few folks who...in the audience today, we have four folks who have provided their names. Before, I'm going to recognize them to speak, and then I'm going to open it up to other members of the public to speak. First we have on tap Chris Heagarty, and whenever you're called to speak if you would introduce yourself, state the county where you reside, and if you're representing an organization, please state that. Chris, welcome to the committee.

Chris Heagarty: I'm Chris Heagarty with the North Carolina Center for Voter Education. I'm happy to speak to you today. We're a statewide organization based here in Wake County, Raleigh, North Carolina. At the Center for Voter Education, one of the things that we do each year in the even numbered years and then for municipal elections in the odd numbered years, is that we run a program called Go Vote. And what we do is we put up public service ads that tell people when the election is and they need to go and they need to vote. We have information on line that tells them how to register and everything they need to do, who they need to contact to vote. Without fail, every year we get someone who calls us who wants to vote, is not registered, wants to know how to register. And, often times, we have to tell them they can't vote because they've missed the registration date. Now we have been called basically every name in the book. We have had people yell at us over the phone, tell us that this has to be illegal, that we are Communists, that we are Socialists, that by God it's America and they have the right

to vote. And we're just the messengers. You know, we're just the people on the other end of the phone. Now there is, I think, some popular demand for something like this. Any time you get a program like this, what we've tried to do at the Center is take a look and see how has it worked in other states. Have states had it and dropped it? Have states expanded to it? What have they done? Many states, as you probably heard, do already have it. It has generally worked well in those states, and it is popular. Now here's some things you may not know. Same-day registration is the only state-level procedural reform that has enhanced voter turnout. When you look at things that we say we do, and we try to get people to turn out to vote, this reform is one that actually works. In the six states that permit same-day registration, Minnesota, Maine, Wisconsin, New Hampshire, Wyoming, and Idaho, they saw the average voter turnout increase five percent between 1996 and 2000. Now the states that have same-day registration, they're among the highest turnout states in the nation. Their aggregate turnout figures in '96 and 2000 are sixty percent and sixty-five percent. You compare that to nationwide turnout those years, it's forty-eight percent and fifty percent. So more people are taking advantage of this. More people are going out there, and they are voting. Now the best part about this proposal that you have before you, and I have to admit I looked at it very critically because any time you start messing with the election laws you have to see, you know, what are you going to do? Are you going to disenfranchise anybody? Are you going to open things up to voter fraud? This proposal would be the most secure of any of these proposals in the nation. It has within it the toughest requirements. Now, if you look at the states that already have same-day registration, we have found there is no evidence of any voter fraud. In fact these are states generally have very good records and reputations concerning their elections. Maine, Minnesota, Wisconsin—they've all had these for over 25 years without some of the problems that we've had in North Carolina just in the last election and in the election before that. Second, there are remedies that can protect against these kinds...against any potential fraud that could be out there. You have, you know, having them sign oaths and affidavits, proof of identity and residence, requiring them to have everything by paper certificate—all these requirements that other states have still do not add up to the requirements that are in this bill that is being proposed. So if we have something that is stronger than all of the other jurisdictions that use this, and this is something that has worked in these other states, then it is something that we feel that we can recommend to you as a safe and a popular reform that will work to increase voter turnout and get more qualified people voting. Now I would also suggest to you that there are some ways this might help clean up some of our existing problems. And what I mean by that is if you look at the voter identification requirements that are in this bill, if

you have people who do register and do vote same day, and they are voting, and they are presenting this information, then these votes are going to be more secure than some votes that are cast on Election Day now. And, in fact, if you look at problems cast with perhaps even some of the provisional balloting, here's a situation that rather people can register, they can re-register, they can get the correct legally-identified, you know, with proof of legal residence—where they are and their _____ when they register and when they vote. And that's more secure than any ballot we've had in North Carolina. Now I'm not a psychic, but I have a feeling how I think a lot of the votes are going to be cast on this bill. Let me just read one last statement and I'll close my remarks. This is a statement that says advanced registration like we have in North Carolina is part and parcel of last century's sad tradition of voter registration laws, which has always had more to do with turning the electoral process into a game rather than opening up democracy. But the spirit of Jim Crow in the South and the anti-immigrant laws in the North and West should be left with the past. We're in a new century, and there's no real justification for advanced registration laws with today's technology. In short, the time has come for same-day registration. And that's from Susan Reefer, a Republican pollster and media strategist in New York City where, in fact, you have the Republican party, which has been trying and pushing for this for some time and being blocked by Democratic legislators in the Democratic State Assembly. Thank you.

Rep. Moore: Thank you, Mr. Heagarty. Yes, sir.

Rep. Culpepper: On page 4, line 28 of the bill, shouldn't we take away July 1, 2005, and say when it becomes law?

Rep. Moore: I think we can accept that without it even being in writing as a.... Representative Culpepper, would you propose another date on that?

Rep. Culpepper: I said when it becomes law.

Rep. Moore: When it becomes law? Does the committee need a copy of that? Any further debate or discussion? Seeing not, all those in favor of the amendment proposed by Representative Culpepper please say aye. Opposed no. The ayes have it, the amendment's adopted.
Representative Harris.

Rep. Harris: Could I ask a question of Mr. Heagarty?

Rep. Moore: Sure.

Rep. Harris: About how many other states do this, did you say? And also, have there been any allegations of fraud _____? (Unintelligible).

Mr. Heagarty: The states which do permit same-day registration, again there are six of them—Minnesota, Maine, Wisconsin, New Hampshire, Wyoming and Idaho. And those are a mix of Democratic and Republican majority states, and in those states there have not been any stories of election fraud related to this same-day voting and registration. If you look around the country, you can look at websites that could show you election news and where a lot of the scandal has taken place, you do not find them in these states. Often times you find them in places like New York, Illinois, and actually several Southern states.

Rep. Moore: Representative Ross.

Rep. Ross: Just as a point of clarification for the committee, this bill is not Election Day registration. It's only same-day registration at one-stop sites. So you would still have to show up up to three days before the election. You couldn't show up on Election Day. But it would give you the opportunity to use the one-stop sites and register to vote and vote on the same day. So as a matter of clarification for the committee....

Rep. Moore: If there's no objection, I'm going to move on to the other list. We have Bill Strach here to speak. Mr. Strach if you'd introduce yourself.

Phil Strach: Thank you, Mr. Chairman. I'm Phil Strach. I'm the Deputy General Council for the State Republican Party and just here to give the State Republican Party's two cents worth on this bill. It's interesting that Mr. Heagarty mentioned Minnesota. I think they were the first state to adopt this sort of election scheme in the 1970s. And they're also the same state that elected Jessie the Body Ventura as their governor, so I say take it for what it's worth. But I think it's interesting that even though Minnesota started this in the 70s, only six states have decided to adopt some sort of Election Day registration scheme. I think it's very telling. It speaks volumes that 44 other states despite having the benefit of Minnesota's experience have not done so.

Rep. Moore: Do you have a question for the speaker, Representative Luebke.

Rep. Luebke: Yes.

Rep. Moore: You're recognized.

Rep. Luebke: Why do you call it a scheme?

Phil Strach: That's just my terminology for it.

Rep. Luebke: Well that suggests something unsavory about it, and it seems to me that it's very much going to help get younger people to register to vote. Do you not want younger people to register?

Phil Strach: I'll get to that, okay? If you don't like the word scheme, I'll be happy to use a different word. What I would like to say for the State Republican Party, which I think is what is indicative of what most of the Republicans here feel, is that we believe that every eligible voter should be able to register to vote. And we feel like every registered voter obviously should be able to vote. And we believe that high turnout is good for democracy. We believe high turnout is good for North Carolina. But what I would point out is that we should not sacrifice public confidence in the integrity of our elections just for the sake of high turnout. And here's what I'd like to say on that. We do know that in some of these states that have the Election Day registration, they're having allegations of fraud and abuse. And there's no reason to think that North Carolina would be immune to such allegations. And let me just sort of point out an example of one potential problem with the bill as constructed. And this is strictly intended to be constructive criticism. In North Carolina, the purpose of registration is to make sure that people who vote are in fact eligible to vote and to make sure that they are voting in the right elections. We want to make sure that their residency is in fact where they live. In North Carolina we have basically two ways of...we have two safeguards for determining whether somebody lives where they say they live. The first is the county board of elections. When they get a voter registration form in the mail they send a mailing to that voter to make sure that they live where they say they live. That obviously takes time, and the law says you have to give the voter two opportunities for that mailing to come back before you can reject a registration. Our concern is that somebody who registers to vote say on the last Saturday of the same day or the one-stop voting, the county boards of elections may not have time before the canvas to send out those mailings and to verify that person actually lives where they say they live. So you may have a situation where you're not able to say that people who voted for a particular representative in one district...they may be eligible to vote in the county, but they may have voted in the wrong election. But more importantly, the second safeguard we have for the voters themselves—every eligible voter in the state is entitled to challenge somebody's residency on Election Day, and one way a lot of voters choose to do that is by themselves obtaining a list of the registered voters and sending a mailing to them because the law says that proof that you sent somebody a piece of mail and it's been returned to you is initial proof that that person doesn't live where they

say they live. The problem with this bill is that it's almost impossible to get a list of the people who register same day during the one-stop period to test—as a voter—to be able to test whether they live where, in fact, they say they live. And so is that necessarily going to lead to fraud abuse? Not necessarily, but when voters are not able to test for themselves whether somebody lives where they say they live, and they don't have that list well in advance like you do now to be able to go through and see if that's where they live, then I submit that that reduces, that diminishes, the public confidence in these elections. I think that's something that I hope the committee will consider. But that's not the primary point that I came here to make. The primary point that I came here to make is the extent to which this bill results in on a burden on the county boards of elections. And I'm sure you'll hear from the State Board, you'll probably hear from some county boards of elections, and they're good. They do a wonderful job. They are good foot soldiers in the elections—every election battle that crops up every year—and I'm sure that they will do whatever it takes to implement this bill. I have no doubt about that. But what I'm concerned about and what the Party's concerned about, is (unintelligible) bill still may be an unfunded mandate. The bill says that every one-stop site is going to have to have a computer where the staff can go on that computer and check driver's licenses and voter registrations. It also says that they're going to have to provide staff who are able to operate that computer and operate that database. It also, assuming that Mr. Heagarty is correct, says that this system will increase voter turnout...

Rep. Moore: I think the co-chair had a question for you.

Mr. Strach: Yes, ma'am.

Rep. Ross: My question was under the Help America Vote Act. Aren't we supposed to be implementing these more electronic means in every single polling place, and doesn't the State have \$10 million to do that kind of work?

Mr. Strach: The State Board may very well. I don't know necessarily if the county boards do, and I would be happy to be stood corrected on that point, if that's the case. What I do know is that there's no appropriation in this bill. I realize there's a \$75,000 appropriation to study the bill's effect, but there's no appropriation from this body to give the county boards of elections the kind of resources that they will need to implement this thing right. And if they are given the resources, then they have to use their existing volunteer base, and I think all of us in this room know that the precinct workers, poll workers, they work their butts off on Election Day, they're already over stretched, overworked, and

underpaid. And what I am concerned (about) is that we'll be putting an unnecessarily layer of requirements on this, and I worry that, you know, my own personal view is that elections are a lot like sausage. We appreciate the hard work that goes into making them work, but we don't necessarily want to see how they're made. And what I'm concerned (about) is that we overtax our volunteers on Election Day—it's already hard enough to recruit them--that eventually, eventually, maybe not in those six, but eventually the door to the sausage factory is going swing wide open and it won't be pretty. So I would just...these are simply offered to be constructive criticism of ways... of things that could be addressed in this bill, and I'll be happy to answer any questions.

Rep. Moore: Let me do this. We've got several folks from the public. I know several members want to make a comment in response. Can we get more public comment and then come back to the members of the committee? We have a lot of folks who came in, and we actually have two students with us today. I'm going to recognize Forrest Hinton, who, I believe, is a student at North Carolina State. If you'd like to introduce yourself to the committee and address us.... It's good to have you here today.

Forrest Hinton: Thank you, Mr. Chairman. I am Forrest Hinton and I come here today as student senate president and a member of our College Republicans at NC State. I thought I'd begin by giving you some statistics that you may have heard and you may not have. This came from the *Washington Post* and the U. S. Census Bureau. College students, and I'm referring to students between the ages of 18 and 24, nationally 47% voted in our election in 2004. In North Carolina, only 38% in the same age group voted—way below the national average—only about one third. And if you look at the registration percentages, it's only 52 of that same age group. Student Government and College Republicans do recognize that this is a problem that our young people in America and North Carolina are not voting, so it's one of our main priorities to make sure that we get as many people registered to vote and get people really excited about the process; however, we have a time crunch problem. You see, a lot of people come from their home district, they just turned 18, they got their license when they were 16, and when you're 16 nobody says, have you registered to vote yet? You know they're 18 years old coming into college, so they haven't been asked. It's a really complicated system, and we see this as our mission. But our Student Government starts up in August. By the time we get appointments through, by the time we have people come in and plan our projects, it seems like it's already mid-September or the beginning of October. And we literally have three weeks to register people to vote at North Carolina State University. So I'm here today to ask of

you, extend that time period. It think it's important as I've asked a lot of my friends, you know, as you inch up to that Election Day, it seems like people get really excited about voting. They get really excited based on the news and they've done their research, and some people that didn't know they had to register, didn't know how to register, go to the polling sites, show up, and think they're going to be able to vote, and they're really sad to find out that they can't. So, anyway, it's important that we give people, especially college students, as many opportunities to vote as possible. And I will....

Rep. Moore: You have a question for the speaker?

Rep. Luebke: So you do support the bill?

Forrest Hinton: I do support the bill wholeheartedly.

Rep. Luebke: Thank you, very much.

Rep. Moore: Thank you, Mr. Hinton. All right. We have another student at NC State. DeVane Barbour.

Mr. Barbour: Yes, Mr. Chairman. Ladies and gentlemen of the committee, I'm DeVane Barbour from Johnston County. I'm the Director of Government Relations for North Carolina State University. I'm also the Executive Director for the North Carolina State University Young Republicans. I want to clear the air and address the committee and let you know that President Hinton does not represent the views and opinion of the Student Government at North Carolina State University nor the views and opinions of the College Republicans of North Carolina State University. The College Republicans at NC State strongly oppose this piece of legislation. I asked a few friends of mine, on the way to class today I passed them and they said why are you so dressed up? I told them I was coming. And they said, well what's going on? I didn't tell them what I was coming to talk about, I just asked them a question. I said during the election season last year did you have any problem finding anywhere to register to vote? They kind of shrugged it off. Well I guess not. I'm already registered. Why do you ask? NC State's a beautiful campus and one of the greatest things about it is being able to walk from one end to the other and through the trees and the brickyard and all the people. For about four-and-a-half or five-week span before the November elections, you could not walk from one end of that campus to the other without having somebody ask you if you were registered to vote. There were at least three organizations on that campus at all times—College Democrats, College Republicans, and NC PIRG registering voters for four-and-a-half or five weeks prior to the election. College Democrats and

College Republicans at some times had 10-15 people together, each group, 30 people, in one area on the brickyard covering the highest volume of traffic. NC PIRG didn't even give them time enough to count eight or nine people on Hillsborough Street alone. We will fight hard, and we will continue to fight to raise student involvement in government relations and student involvement in elections, but we've also wanted to make sure that people are educated and informed when they do make their choices in the voter's booth. We feel that picking somebody up and rushing them to the voter spots on that Tuesday when they go to vote just in a split second doesn't exactly lead to the kind of education and involvement that would be best for the students down the road. I appreciate everything y'all are doing, but I just wanted to clear the air and let you know that the NC State College Republicans strongly oppose this piece of legislation, and North Carolina State Student Government has not taken a position as of now. Thank you.

Rep. Moore: We're not used to seeing Republicans fight amongst themselves up here. Thank you for coming. Could we have other comments from members of the public here with us today? Yes, ma'am.

Elizabeth Dukes: Thank you, Mr. Chairman. My name is Elizabeth Dukes. I'm the Director of North Carolina PIRG, as referenced. PIRG is the Public Interest Research Group. We're a statewide non-profit, non-partisan, public-interest, advocacy organization; and I won't take up a lot of your time, but I just want to be on record in support of this bill. I think it's very simple. In the last election voter turnout for eligible voters was less than 60 percent, and so anything that we can do to increase voter participation and increase participation in our democracy is certainly a good thing, and I urge your support. Thanks.

Rep. Moore: Further comments from the public? Yes, sir.

Zachary Wynne: I just want to introduce myself. I'm ZachWynne of the new student...ah student...UNC Association of Student Governments. Last fall, I believe it was, this was one of our legislative priorities passed by delegates from all 16 campuses in the UNC system in support of same-day voter registration, and we do support this bill. And those of you who voted to give me a vote on the Board of Governors, we tried.

Rep. Moore: Further comments from members of the public. Gary did you want to say anything on behalf of the State Board of Elections? You were referenced at one point also.

Gary Bartlett: I just wanted to follow-up on what Mr. Strach...and Chairman Ross talking about the \$10 million. There is \$10 million set aside in HAVA

for this. The State Board of Elections has done what it will cost us and it is incorporated in those columns—monies. Information that we cannot.... Well first of all, we think that this legislation will impact the counties in that they will need at least one and in some cases two additional persons for this. Also, at the end of each day in absentee voting, one-stop, we place on our website those that went to the polls that day, and it's available to both parties and any other interested members of the public the day after that. I just wanted to clear that up.

Rep. Moore: Thank you very much. Do we have further comments from members of the public? Yes, ma'am.

Louise Romanoff: I'm Louise Romanoff. I'm with the League of Women Voters, and I would like to tell you that the League is in very strong support of this bill, and anything we could do to improve voter turnout is going in the right direction. Thank you.

Rep. Moore: Further comments from members of the public? Seeing no hands, we're going to come to the committee. Representative Starnes, I saw your hand a while ago. You're recognized to debate the bill.

Rep. Starnes: Thank you. I have a question of Mr. Gilkeson and the staff. Normally when we're thinking about registering on the same day that we vote, you think in terms of new registers—people who have not been registered who are wanting to register and then vote. As I read this bill, the language would allow a person to re-register. If _____ (unintelligible) lived in Caldwell County and moved to Wake County, then they could come in on this and re-register at the new sites and show proof that they had moved. Is that correct.

Bill Gilkeson: Right. I mean, they would need to show some sort of ID, but yes, the fact that they had been registered somewhere else certainly wouldn't prevent them from taking advantage of this. They would have to have lived in the new place for more than thirty days before the election in order to vote in that election. But the fact that they'd been registered in another county wouldn't prevent them from voting in the new county here.

Rep. Moore: Further debate or discussion? Representative Kiser?

Rep. Kiser: Thank you, Mr. Chairman. My heart's really warm today because since I've been here I've seen these ID bills come before us for proof of residency and everything else, and it appears to me that my friends from the other side of the aisle are here in force, even the floaters, to vote a limited ID bill for voting. I never thought I'd see that happen, and my heart's just warm because of that. And I want to return to this

residency bill here, the residency. Looking at this bill, Mr. Gilkeson, is it not a requirement that you live in North Carolina for six months?

Bill Gilkeson: No.

Rep. Kiser: What is it now?

Bill Gilkeson: You would need to have lived in North Carolina for thirty days before the election and in the jurisdiction in the county in which you're trying to register to vote.

Rep. Kiser: I understand that in the county.

Bill Gilkeson: But also in North Carolina. There's no additional requirement for living in North Carolina.

Rep. Kiser: There is nothing in here, which requires, as I can read it, the time specification here.

Bill Gilkeson: Well actually the technical amendment that was just done states that...to make it clear...that the registration form that you fill out at the one-stop site would be the same registration form that everybody else fills out according to the same provisions that everybody else fills them out, and you would state on there that you had lived...that you were a U. S. citizen, that you had been a resident of North Carolina and of the county and at the address that you are stating for 30 days before the next election.

Rep. Kiser: Another question.

Rep. Moore: Recognized for a follow-up.

Rep. Kiser: How would the board of elections be able to determine that a person was a citizen of the United States? Can someone explain that to me?

Bill Gilkeson: Well the...you would be signing...you would be one checking a box at the top of the form that's required by HAVA, and you would be signing under penalty of perjury that you're a citizen of the United States, which is the same requirement that anybody registering through mail or at a DMV office would have.

Rep. Moore: You're recognized for a third question.

Rep. Kiser: My question is, how do they prove...how does the board of elections prove that this person is a citizen in the time span that would be before the provisional ballot would be counted?

Bill Gilkeson: There is not currently a requirement that the board of elections do that kind of background check on the person who's seeking to register to vote.

Rep. Moore: Further debate or discussion? Representative Michaux.

Rep. Michaux: Just a couple of points on that. We've had limited ID before, y'all. We did it when we passed the HAVA bill a couple of years ago, so there's nothing new here at all. That's number one. Number two is I don't know how you prove that you're an American citizen, but you prove that you were one.

Rep. Moore: I want to see if there's any more debate before we take a motion. Further debate or discussion? Representative Lewis.

Rep. Lewis: Thank you, Mr. Chairman. Is it in order to see if the young man from the ASG would yield for just a minute?

Rep. Moore: Certainly. Do you yield?

Zachary Wynne: Yes, sir.

Rep. Lewis: Do you know if the ASG has tried to encourage the schools in the admission process to include a notice of rights—that they got the right to vote or perhaps include a registration form at the time that the individuals enroll in the school?

Zachary Wynne: I don't know. I don't believe so. I think, you know, by law the schools are required to promote the idea that yes, you can register; yes, the forms are available here on campus for you. I just got done serving as president at UNC-W. We went through a whole bunch of different things last fall like how are we going to register students? And the idea came up, and my concern as president for not promoting that was at the time of admission, they will not have lived in North Carolina for the required 30 days or whatever, and so we did not do that. Now a month into school...you know... then, safely, I was willing to go out and do whatever. But...so for my particular experience, we did not do that. And I don't think that happened in discussion by everybody else around the state.

Rep. Lewis: Mr. Chairman, would Mr. Heagarty?

Rep. Moore: You're recognized for that.

Rep. Lewis: At the time that our students graduate from school, from high school, do you know if we do anything to encourage them to come to register to vote. I mean do we give them.... It's been so long, and I was so thrilled to actually get to walk across the stage, I don't recall it. What do we do to let these folks...most of them are about 18 years old and obviously live in the state when they get out of school. What do we do to let them know that they've got a right to vote?

Chris Heagarty: To the best of my knowledge, there is no state government plan that encourages or informs 18-year-olds and high school graduates about voting. Some local school boards may put something in as part of the curricula. If so, I'm not familiar with it. You do have several organizations in the non-profit community that try to promote that _____ (unintelligible) kids voting that takes place if you have young kids, but then they also have a curricula for the high school aged kids. There's a program called the National Parents-Students, that's not the best name, the National Parents-Student Mock Elections, which actually has a high school program that, again, tries to get kids who are about ready to graduate and about ready to get to voting age to participate. And then we run a program, again part of the Go Vote Program, so we try to get the kids to like submit posters, and some of them had the _____ classes and learned about why it's important to vote. We put information to that, but these are very local, very limited programs.

Rep. Lewis: Further debate or discussion on the bill? Representative Blust.

Rep. Blust: I don't mind the policy or the desire to try to get high participation rates in elections, but there's also got to be some controls. There's got to be a way to keep the election organized and administratable, if that's a word, so we can have an accurate vote count to determine winners. And we've seen, it seems like every election, it's getting harder and harder to do that. I mean, right now it's hard enough even when there's provisional voting and you come back two weeks later and try to count these things and you're got some documentation there, and yet there's arguments even then as to whether those provisional ballots should be counted—whether that person who cast it was entitled to vote. Here with this bill, we're going to say you can show up and vote at one of these places and register that same day and vote, and that's not even going to be a provisional. That will count. The reason we have registration and all is to have some control so that people will be protected knowing that their vote is going to be counted and counted the way that it ought to. And for _____ (unintelligible—others talking) you look no further than this committee to determine why that's important. And our rules say we're supposed to have committees made up to reflect the partisan makeup

of the House. But when there's an important issue like this that somebody wants, new people can come in and vote on the committee and it dilutes the votes of the people who are already on the committee. And that's what we're trying to do through our rules with elections. We're trying to make sure... your vote can be taken away if it is diluted just as much as it's taken away if you're not allowed to vote. And so we need some control, and there just isn't the time to do that in an instant. There has to be some time period to check the documentation and make sure this is a person who under our law is going to be eligible to vote. And when you go to the same-day registration, that's just not going to be there, and the problems are going to be compounded, and we're going to have more elections up in the air for a longer period of time. You're going to have more people.... I don't know why—I've got my theory—that people vote. There are votes voters who aren't entitled to vote. I've seen the Washington Governor's race where they documented that dead people voted. Now how does that happen? We're breaking down our control.

Rep. Moore: Do you yield for a question from Representative Ross?

Rep. Ross: I think this bill actually will prevent against dead people voting because, Representative Blust, the person has to physically show up at the place with their ID, sign under penalty of perjury, have that as a document that could be checked out so that if they did something wrong they can be charged with a felony. I mean it takes a lot more to do this than to vote a regular way.

Rep. Blust: Well, I yielded for a question.

Rep. Moore: There's a question in there somewhere.

Rep. Ross: So wouldn't you agree that in this situation, the chance that a dead person would vote would be pretty low?

Rep. Moore: Representative Blust, you can answer the question.

Rep. Blust: If you don't vote him on the one-stop, then you can still vote him on Election Day, and it happens.

Rep. Ross: But not under this bill.

Rep. Blust: But it happens, and it's documented. But my point is that the controls over who votes are important. They're lax enough now that several bases for important offices come into question, and the public is questioning the integrity of the election process. And I just think this bill is going the opposite way. We need to tighten it up, and I

understand Representative Luebke. Well, don't you want young people to vote? They can. You know they can. I wasn't particularly bright; maybe still am not. But I was able to vote every single time. How did I figure it out? It's not hard to register; it's not hard to vote in this country. I think we've reached the point where some people are mad that people are still not voting as easy as it is, and you're going to drag them kicking and screaming and they're going to vote whether they want to or not. We're going to somehow get them to vote. It's already easy enough, and we need to think about making sure the people who aren't entitled to vote won't be showing up to vote because that disenfranchises people who are entitled to vote. It does. It dilutes their vote, and that's happening. It's happening more and more, and this committee wants to pass this to make it able to happen more, but they don't want to do things like showing IDs before you vote. So I think we're going the wrong way on this. I wish people would vote; it's not hard. But this bill is going the wrong direction.

Rep. Moore: The chairs have agreed that this bill would be voted on. The hour...the minute has approached to do that. Is there a motion?

Rep. Michaux: Yes, sir. Mr. Chairman, I move that the amendments be incorporated to a committee substitute, and the committee substitute be given a favorable report, the original an unfavorable, and the committee substitute be re-referred to Appropriations.

Rep. Moore: You've heard the motion. All those in favor... Yes, sir.

Rep. Starnes: Well we've got another five minutes.

Rep. Moore: No. Session's at 2:00. One forty five, so....so we've....

Rep. Holmes: Mr. Chairman.

Rep. Moore: Yes, you're recognized for an inquiry of the Chair.

Rep. Holmes: May I ask for a division, please?

Rep. Moore: Is there a request for the ayes and noes? Is that what you're asking?

Rep. Holmes: Yes.

Rep. Moore: Is the call sustained?

Rep. Holmes: Yes.

Rep. Moore: Okay. The call is sustained. There will be an ayes and nays. The question will not be submitted. The clerk will now call the roll.

Nancy Garris: Blust-no, Church-aye, Harrison-aye, Holliman-aye, Holmes-no, Kiser-no, Lewis-no, Luebke-aye, Michaux-aye, Nye, Starnes-no, Moore-no, Ross-aye, Culpepper-aye, Cunningham-aye, Eddins-no, Hackney-aye. 9-7 the ayes have it.

Rep. Moore: The motion is adopted by a vote of 9 in the affirmative, 7 in the negative. There being no further business, the meeting is adjourned.

Meeting adjourned at 1:45.

AGENDA

**HOUSE OF REPRESENTATIVES
ELECTION LAW AND CAMPAIGN FINANCE REFORM
COMMITTEE**

**July 20, 2005
Representative Moore, Presiding**

HB 851, Same Day Reg. At One-Stop Sites

Representative Ross

Nancy Garriss (Rep. Tim Moore)

From: Margie Penven (Rep. Ross)

Sent: Monday, July 18, 2005 3:40 PM

To: @House/Election Laws & Campaign Finance Reform; @HouseCommitteeNotice; Bill Gilkeson (Research); Cherie Poucher, Wake County BOE; Erika Churchill (Research); interested parties

Subject: 07-20-05 Meeting Notice for Election Law and Campaign Finance Reform.doc

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION**

You are hereby notified that the Committee on Election Law and Campaign Finance Reform will meet as follows:

DAY & DATE: Wednesday, July 20, 2005

TIME: 1:00 p.m.

LOCATION: 1425

The following bills will be considered (Bill # & Short Title & Bill Sponsor):
HB 851, Same Day Reg. at One-Stop Sites, Rep. Ross

Respectfully,
Representatives Moore and Ross
Co-Chairs

I hereby certify this notice was filed by the committee assistant at the following offices at **3:40 on July 18, 2005.**

____ Principal Clerk
____ Reading Clerk - House Chamber

Margie Penven (Committee Assistant)

7/18/2005

7-20-05

**2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative Moore, Ross (Chairs) for the Committee on ELECTION LAW AND CAMPAIGN FINANCE REFORM.

☐ Committee Substitute for

HB 851 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR IN-PERSON REGISTRATION AND VOTING AT ONE-STOP EARLY VOTING SITES; AND TO APPROPRIATE FUNDS TO THE STATE BOARD OF ELECTIONS TO IMPLEMENT AND STUDY THE CHANGE.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill, and recommendation that the committee substitute bill # be re-referred to the Committee on Appropriations.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No. _____) is placed on the Calendar of _____. (The original bill resolution No. _____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. _____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. _____) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

D

HOUSE BILL 851
PROPOSED COMMITTEE SUBSTITUTE H851-CSRR-44 [v.3]

7/6/2005 11:02:28 AM

Short Title: Same Day Reg. at One-Stop Sites.

(Public)

Sponsors:

Referred to:

March 22, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR IN-PERSON REGISTRATION AND VOTING AT
ONE-STOP EARLY VOTING SITES; AND TO APPROPRIATE FUNDS TO THE
STATE BOARD OF ELECTIONS TO IMPLEMENT AND STUDY THE
CHANGE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 7A of Chapter 163 of the General Statutes is amended
by adding a new section to read:

"§ 163-82.6A. In-person registration and voting at one-stop sites.

(a) Who May Register in Person. – An individual who is qualified to register to
vote may register in person and then vote at a one-stop voting site in the individual's
county of residence during the period for one-stop voting provided under
G.S. 163-227.2.

(b) Readiness of One-Stop Sites. – The State Board of Elections and the county
boards of elections shall provide to the maximum extent practical electronic access to an
updated statewide voter registration database and the North Carolina drivers license
database at each site where in-person registration and voting take place. The county
board shall staff those sites with personnel capable of using the equipment to conduct
in-person registration and voting with competence and integrity.

(c) Identification Requirement. – To register under this section, the person shall
provide proof of identity and residence and shall complete a registration form which
includes signing a statement, under penalty of perjury, that the person is a citizen of the
United States and resides at the address given. The presentation of any of the following
valid documents that show the name and address of the person shall suffice as proof of
identity and residence: A North Carolina drivers license, photo identification from a
government agency, or a copy of a utility bill, bank statement, paycheck, government
check, or other government document. The State Board of Elections may designate

1 additional documents or methods that suffice and shall prescribe procedures for
2 establishing proof of identity and residence.

3 (d) How the In-Person Registrant Shall Vote. – An individual who registers
4 under this section shall vote a retrievable absentee ballot as provided in G.S. 163-227.2
5 if all of the following conditions are met:

6 (1) The individual presents as identification a currently valid North
7 Carolina drivers license.

8 (2) The address on the drivers license is the same address the individual
9 declares as residence address on the voter registration application.

10 (3) The one-stop site has accessible an online database of both drivers
11 license records for the county and voter registration records for the
12 county so that election officials can verify the voter registration
13 application immediately.

14 If the conditions in subdivisions (1), (2), and (3) in this subsection are not all met,
15 the voter shall vote by provisional ballot as provided in Article 14A of this Chapter.

16 (e) Requirement for Immediate Voting. – An individual who registers in person
17 under this section must vote immediately after registering. The county board of
18 elections shall ensure that the individual is informed of this requirement before
19 registering. If an individual who has registered under this section declines to vote
20 immediately, the registration shall be cancelled, but that individual may later register
21 and vote under this section in the same election.

22 (f) Verification of Registration; Counting of Ballot. – The county board of
23 elections shall proceed under G.S. 163-82.7 to verify the qualifications and address of
24 every individual who registers under this section. The individual's vote shall be counted,
25 unless the county board determines under G.S. 163-82.7(b) that the applicant is not
26 qualified to vote."

27 **SECTION 2.** G.S. 163-82.6 reads as rewritten:

28 **"§ 163-82.6. Acceptance of voter registration application forms.**

29 (a) How the Form May Be Submitted. – The county board of elections shall
30 accept any form described in G.S. 163-82.3 if the applicant submits the form by mail,
31 facsimile transmission, transmission of a scanned document, or in person. The applicant
32 may delegate the submission of the form to another person. Any person who
33 communicates to an applicant acceptance of that delegation shall deliver that form so
34 that it is received by the appropriate county board of elections in time to satisfy the
35 registration deadline in subdivision (1) or (2) of subsection (c) of this section for the
36 next election. It shall be a Class 2 misdemeanor for any person to communicate to the
37 applicant acceptance of that delegation and then fail to make a good faith effort to
38 deliver the form so that it is received by the county board of elections in time to satisfy
39 the registration deadline in subdivision (1) or (2) of subsection (c) of this section for the
40 next election. It shall be an affirmative defense to a charge of failing to make a good
41 faith effort to deliver a delegated form by the registration deadline that the delegatee
42 informed the applicant that the form would not likely be delivered in time for the
43 applicant to vote in the next election. It shall be a Class 2 misdemeanor for any person

1 to sell or attempt to sell a completed voter registration form or to condition its delivery
2 upon payment.

3 (b) Signature. – The form shall be valid only if signed by the applicant. An
4 electronically captured image of the signature of a voter on an electronic voter
5 registration form offered by a State agency shall be considered a valid signature for all
6 purposes for which a signature on a paper voter registration form is used.

7 (c) Registration Deadlines for an Election. – In order to be valid for an election,
8 except as provided in G.S. 163-82.6A, the form:

9 (1) If submitted by mail, must be postmarked at least 25 days before the
10 election, except that any mailed application on which the postmark is
11 missing or unclear is validly submitted if received in the mail not later
12 than 20 days before the election,

13 (2) If submitted in person, by facsimile transmission, or by transmission of
14 a scanned document, must be received by the county board of elections
15 by a time established by that board, but no earlier than 5:00 P.M., on
16 the twenty-fifth day before the election,

17 (3) If submitted through a delegatee who violates the duty set forth in
18 subsection (a) of this section, must be signed by the applicant and
19 given to the delegatee not later than 25 days before the election, except
20 as provided in subsection (d) of this section.

21 (c1) If the application is submitted by facsimile transmission or transmission of a
22 scanned document, a permanent copy of the completed, signed form shall be delivered
23 to the county board no later than 20 days before the election.

24 (d) ~~Instances When Person May Register and Vote on Election Day. After the~~
25 Standard Registration Deadline– If a person has become qualified to register and vote
26 between the twenty fifth day before an election and election day, then that person may
27 apply to register and vote at a one-stop site as provided in G.S. 163-82.6A if the person
28 has become qualified before the end of the one-stop period provided in G.S. 163-227.2,
29 or may apply to register on election day by submitting an application form described in
30 G.S. 163 82.3(a) or (b) to:

31 (1) A member of the county board of elections;

32 (2) The county director of elections; or

33 (3) The chief judge or a judge of the precinct in which the person is
34 eligible to vote,

35 and, if the application is approved, that person may vote the same day. The official in
36 subdivisions (1) through (3) of this subsection to whom the application is submitted
37 shall decide whether the applicant is eligible to vote. The applicant shall present to the
38 official written or documentary evidence that the applicant is the person he represents
39 himself to be. The official, if in doubt as to the right of the applicant to register, may
40 require other evidence satisfactory to that official as to the applicant's qualifications. If
41 the official determines that the person is eligible, the person shall be permitted to vote in
42 the election and the county board shall add the person's name to the list of registered
43 voters. If the official denies the application, the person shall be permitted to vote a
44 challenged ballot under the provisions of G.S. 163 88.1, and may appeal the denial to

1 the full county board of elections. The State Board of Elections shall promulgate rules
2 for the county boards of elections to follow in hearing appeals for denial of election day
3 applications to register. No person shall be permitted to register on the day of a second
4 primary unless he shall have become qualified to register and vote between the date of
5 the first primary and the date of the succeeding second primary.

6 (e) For purposes of subsection (d) of this section, persons who "become qualified
7 to register and vote" during a time period:

8 (1) Include those who during that time period are naturalized as citizens of
9 the United States or who are restored to citizenship after a conviction
10 of a felony; but

11 (2) Do not include persons who reach the age of 18 during that time
12 period, if those persons were eligible to register while 17 years old
13 during an earlier period."

14 **SECTION 3.** G.S. 163-227.2(a) reads as rewritten:

15 "(a) Any voter eligible to vote by absentee ballot under G.S. 163-226 may request
16 an application for absentee ballots, complete the application, and vote under the
17 provisions of this ~~section~~ section and of G.S. 163-82.6A, as applicable."

18 **SECTION 4.** The State Board of Elections shall provide counties with the
19 access to the databases described in G.S. 163-82.6A(b), monitor the implementation of
20 this act, analyze its use in the counties during 2006, and determine the feasibility and
21 timetable for expanding same-day registration and voting to all voting places on election
22 day. The State Board shall report its findings no later than March 1, 2007, to the Joint
23 Legislative Commission on Governmental Operations of the General Assembly. There
24 is appropriated from the General Fund to the State Board of Elections for the 2005-2006
25 fiscal year the sum of seventy-five thousand dollars (\$75,000) for this purpose.

26 **SECTION 5.** Sections 1, 2, and 3 of this act become effective January 1,
27 2006, and shall apply to all primaries and elections held on or after that date. The
28 remainder of this act becomes effective July 1, 2005.



HOUSE BILL 851: Same Day Reg. at One-Stop Sites

BILL ANALYSIS

Committee:	House Election Law and Campaign Finance Reform	Date:	July 6, 2005
Introduced by:	Reps. Ross, McComas, Parmon, Holliman	Summary by:	William R. Gilkeson
Version:	First Edition H851-CSRR-44[v.3]		Committee Co-Counsel

SUMMARY: *This Proposed Committee Substitute for House Bill 851 would allow residents of a county to register to vote at one-stop (early voting) site in that county and then vote at the site immediately. Effective in 2006. The bill would also appropriate \$75,000 to the State Board of Elections to provide counties with online access to databases in the sites and to monitor and analyze the program.*

CURRENT LAW: Residents of NC must apply to register 25 days before an election to be able to vote in that election. They may do so by mail by filling out and signing a mail-in voter registration form. Or they may do so in person while applying for a new or renewal driver's license at a DMV office. Or they may register at a public assistance or unemployment office. But they must submit the application by the 25th day before the election.

The only people who are allowed to register after the 25-day deadline and still vote in the election are people who become naturalized citizens after the deadline, felons whose citizenship is restored after the deadline, and military and certain other people serving their country overseas. The new citizens may register and vote on election day. A separate absentee registration provision covers the military and overseas voters.

Currently, the one-stop (early voting) period begins on the third Thursday before the election and ends on the Saturday before the election. The registration deadline occurs before the one-stop period begins. During the one-stop period, registered voters may go to the county board of elections office or another site set up by the county board and vote what is technically an absentee ballot in person.

BILL ANALYSIS: The bill would allow an unregistered resident of a county to go to a one-stop site in that county during the one-stop period, register to vote, and vote right then at the site. *Section 1 of the bill. 163-82.6A(a).*

State and county boards of elections would be required, to the maximum extent practical, to provide electronic access to an updated statewide voter registration database at every place where same day registration and voting is conducted. The personnel in the sites would have to be capable of using the equipment. *Section 1. 163-82.6A(b).*

Everyone must show a form of identification at the one-stop site to be able to register and vote there. The acceptable forms of I.D. would be the same required by the Help America Vote Act (HAVA) for certain first-time voters at the polls, although the State Board of Elections could add other types of I.D. If the person presents a valid NC drivers license showing the same address the voter uses to register to vote, and the one-stop site has online a drivers license database and a voter registration database, then the voter may vote a ballot like other one-stop voters. If they present another kind of I.D., then they vote a provisional ballot. *Section 1. 163-82.6A(c) and (d).*

The person who registers at a one-stop site may vote on the strength of that registration only if they do so immediately. If they don't vote immediately, then their registration is cancelled, but they may come back during the one-stop period and register and vote again. *Section 1. 163-82.6A(e).*

After the person registered and voted, the county boards of elections would proceed with their usual process to verify the qualifications and address of the voter. The vote would be counted unless the county board determined the voter was not qualified to vote. *Section 1. 163-82.6A(f).*

People who may now register and vote on election day -- those naturalized or restored to citizenship after the 25-day registration deadline -- could register and vote at one-stop sites or, as now, on election day. *Section 2 of the bill.*

The bill would appropriate \$75,000 to the State Board of Elections to provide county boards with access to databases and to analyze the feasibility of extending same-day registration/voting to election day. *Section 4 of the bill.*

EFFECTIVE DATE: Changes are effective Jan. 1, 2006, except the appropriation, which is effective July 1, 2005.

BACKGROUND: [As introduced, H851 was identical to S954 (Sen. Lucas), now in Senate Judiciary I.]



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 851

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

H851-ARR-92 [v.2]

Page 1 of 1

Date _____, 2005

Comm. Sub. [YES]
Amends Title [NO]
H851-CSRR-44 [v.3]

Representative Ross

- 1 moves to amend the bill on page 1, line 20,
- 2 by inserting after the word "register" the term "and vote"; and
- 3
- 4 on page 1, lines 21 and 22,
- 5 by deleting the term "which includes signing" and substituting the term "as prescribed in
- 6 G.S. 163-82.4. On that form the person shall sign".
- 7

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

ROLL CALL VOTE

$$\frac{9}{\text{YES}} \quad \frac{7}{\text{NO}} = \underline{\hspace{2cm}} (\text{TOTAL})$$

HB# 851
SB# _____

HOUSE COMMITTEE ON ELECTION LAW AND CAMPAIGN FINANCE REFORM

[illegible]

HB 851: Same Day Registration at One Stop Sites

Increases Voter Participation

- Approximately 950,000 North Carolinians are unregistered and eligible to vote.
 - Largest demographic groups of the unregistered population are young people, and men.
- North Carolina ranked 38th in voter turnout in the 2004 General Election¹

Reduces Barriers to Voting

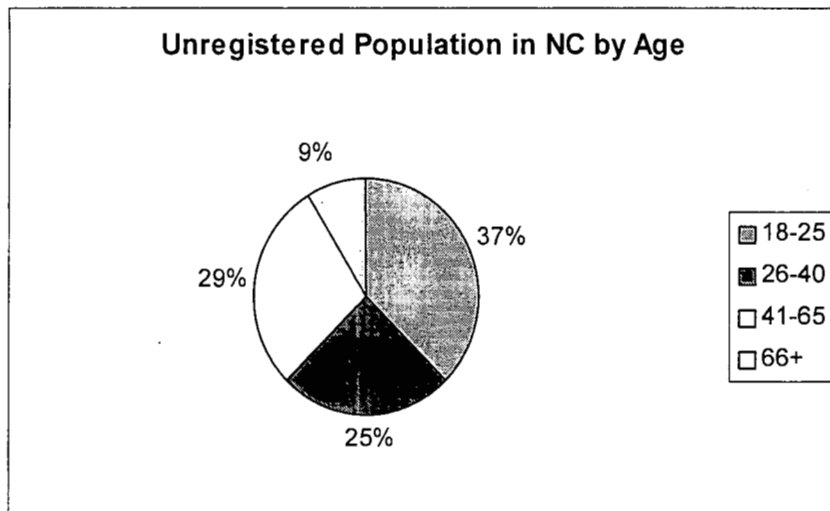
- Citizens who have moved recently, people in rural areas, and those who become interested close to Election Day especially benefit from being able to register and vote at a One Stop Site.
- Provides a last chance for eligible citizens to vote after the registration deadline.

Insures Voter Verification

- The State Board of Elections verifies the registrant's NC Driver's license at a One Stop Polling site.
- The address of a Same Day Registrant is verified before the vote is counted.
- The registrant gives their information under the penalty of perjury. A violation is a felony.
- Requires One Stop Sites to have accurate and accessible voter and DMV databases to verify information against.

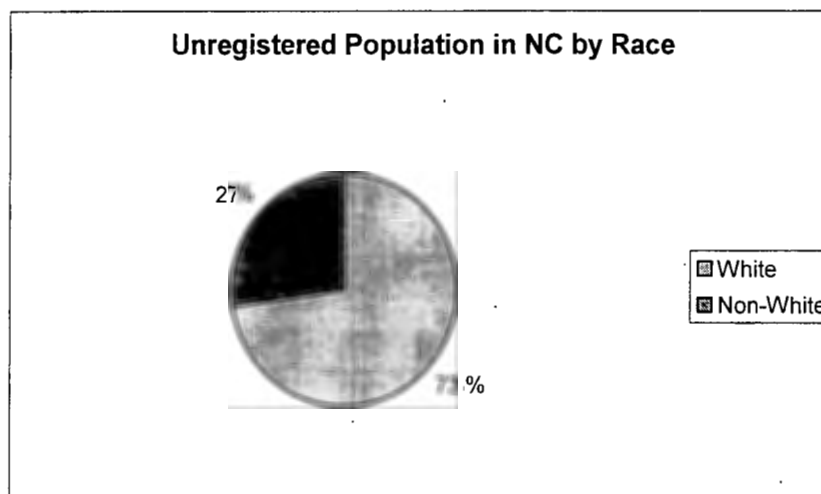
¹ Ranking provided by Committee on the Study of the American Electorate

Analysis of Unregistered Voting Age Population



Approximate Numbers of Unregistered Voters by Age

Age Group	Number	Percent	Whole Population	Percent of Pop.
18-25	357,157	37.5%	1,008,039	15.6%
26-40	233,977	24.6%	1,852,837	28.6%
41-65	279,318	29.3%	2,657,871	41.1%
66+	81,314	8.6%	953,011	14.7%
Total Unregistered	951,756	100.0%	6,471,758	100.0%



Approximate Numbers of Unregistered Voters by Race

Race	Number	Percent	Whole Population	Percent of Pop.
White	693,677	72.9%	4,942,616	76.4%
Non-White	258,079	27.1%	1,529,132	23.6%
Total Unregistered	951,756	100.00%	6,471,748	100.00%

VISITOR REGISTRATION SHEET

Election Law and Campaign Finance Reform

July 20, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Katherine Dunn	NC Center for Public Policy Research
Forrest Hinton	NC State University Student Gov.
Zack Wynne	UNC Assoc. of Student Governments
Ginny Franks	UNC Assoc. of Student Governments
Adam Sotak	Democracy NC
Suzanne Buckley	Gov. Office
Eve Vitagliano	League of Women Voters
Louise Romanow	League of Women Voters
Stephanie Cohn	WCPST
BOB PHILLIPS	CCNC
Cassie Gann	NCPKB

VISITOR REGISTRATION SHEET

Election Law & Campaign Finance Reform

Name of Committee

Date

July 20, 2005

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Chris Heagy	NC Center for Voter Education
Phil Strach	NC Republican Party
Dolan Balbour IV	NCSU Dir. of Govt Relations
Whit Pavis	NCSU
Clayton Lindsay	Democracy NC
Juliana Berde	Dem NC
Shanta Ferrington	Dem. NC
Linda Tran	Dem. NC
Katherine Dunn	NC Center for Public Policy Research
Elizabeth Ouzts	NCAIRG
Kim Strach	SBE

MINUTES
House Committee on Election Law and Campaign Finance Reform
August 3, 2005
1:00 p.m., Room 1425
Representative Ross, Presiding

The House Committee on Election Law and Campaign Finance Reform met at 1:00 p.m. on Tuesday, August 3, 2005, in Room 1425 of the State Legislative Building.

Members present were: Representative Tim Moore, Co-Chair; Representative Deborah Ross, Co-Chair; Representative Joe Kiser, Vice-Chair; Representative John Blust, Representative Walter Church, Representative Pricey Harrison; Representative Hugh Holliman; Representative George Holmes; Representative David Lewis; and Representative Edgar Starnes.

There was one bill on the agenda: Senate Bill 223, Public Confidence in Elections, sponsored by Senator Kinnaird.

Co-Chair Deborah Ross called the meeting to order and introduced the pages and sergeants-at-arms.

The Chair recognized Senator Kinnaird and Senator Allran, who were sponsors of the Senate bill and members of the Joint Select Committee on Electronic Voting Systems, to give background on Senate Bill 223. Representative Ross then recognized Representative Insko and Representative Preston, also members of the Joint Select Committee on Electronic Voting Systems and sponsors of the identical House bill, and gave them an opportunity to comment on the proposed legislation.

Ms. Erika Churchill, committee staff, walked the committee through the provisions of the Senate Bill 223.

The committee discussed the bill, and Representative Holliman raised a question as to whether the vendors were in agreement with the section of the bill that required them to post a bond. Comments on this question were heard from Ms. Johnnie McLean from the State Board of Elections, Mr. Paul Meyer with the County Commissions Association, Steve Metcalf representing DeBold Voting Systems, and Mr. Ed Turlington who represented Owen Dunn Company, a paper ballot printing company that in turn represented ES&S, a voting machine company.

Representative Kiser proposed an amendment rewriting Section 7 dealing with HAVA and funding for counties in order to meet HAVA and State mandates.

After further discussion by the committee and comments from Mr. Bob Hall, member of the State Advisory Council for HAVA, it was decided that the committee would hold Representative Kiser's amendment over until the next meeting to give him an opportunity to confer with the bill sponsors and members of the Appropriations Committee.

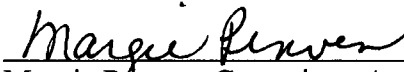
There being no further business, the meeting was adjourned at 1:59 p.m.

A verbatim transcript of this meeting is attached hereto along with all pertinent documents and handouts.

Respectfully submitted,



Representative Deborah Ross, Presiding Chair



Margie Penven, Committee Assistant

TRANSCRIPT
House Committee on Election Law and Campaign Finance Reform

1:00 p.m. on August 3, 2005

Room 1425, LOB

Representative Ross, Presiding

Rep. Ross: Okay. Welcome to Election Law and Campaign Finance Reform. You know it's always fun in here. Our pages today are Eric Till from Wake County. Eric where are you? There's Eric. He's sponsored by Representative Capps. Justin Cox from Cumberland County sponsored by Representative Glazier. April Vang from Montgomery County, who is sponsored by Representative Goodwin. Kelly Brackett from Rutherford County, who is sponsored by Representative Bob England. Mason James from Wake County, sponsored by Representative Rick Eddins, and then Etta Steward from Wake County, who is my page. And our sergeants-at-arms are Mark Cone, Lesli Oakley, and James Worth.

Today we have Senate Bill 223, Public Confidence in Elections. There is a companion House bill to this bill, so we have the Senate bill sponsors here, that would be Senator Kinnaird and Senator Allran; and we have the House sponsors, Representative Insko and Representative Preston. And so what we're going to do, members of the committee, initially, is give Senator Kinnaird and Senator Allran an opportunity to say some...to say a few words on the bill, give our House sponsors, if they would like, an opportunity to say a few words on the bill, and then we're going to have Erika Churchill walk us through this bill because I know there's been a lot of information in the media about what this bill says and you've heard a lot about it, but I'd like to get the whole bill out on the table and then we'll have some committee discussion, and I understand Representative Kiser has an amendment and we'll take up his amendment. So let's start with Senator Kinnaird and then Senator Allran.

Sen. Kinnaird: First of all I want to thank so many people that we are here at this point. And I want to say also that I think this is probably the most important bill that will be brought up this time in all of the stuff that we have done. It really is far reaching and has involved many, many people. I want to say this, of course, arose, as we all know, out of the problems that come out of Carteret County, Gaston County, and others where the system simply failed, and there were citizens all over the state who were very concerned that we fix those problems. And the most important in their view was that we have a paper ballot so that if they lost some votes because the electronic system didn't work, we had some way to verify how they had voted. So those are the folks I want to thank first—the real grassroots people who have persisted, who have followed this every inch of the way, every line, every word. And secondly I wanted to thank my co-chairs,

Representative Insko, and she and I were the ones who really started when the grassroots people came to us and said we need to do something. We had several meetings with them. Senator Allran wrote to me and said this is something I'm very concerned over, and so we were glad that he was joining us. And then we had Representative Preston—where'd she go? There she is—on the House side also. And we met many, many, many times. We heard from experts, we heard from citizens, we heard from our own staff. And the person I really want to say thank you most to, Bill Gilkeson, is not here. But he spent more time because we are on the 30th, maybe 31st version of this, Erika, and I also want to thank Erika who was there. Each of them took pieces of this and put it together. It was an extraordinary effort. And I think what we have is a good bill. I want to thank Justin Moore who is in computer science over at Duke and who was our ad hoc expert in addition to all of the other experts that we heard periodically in testifying. It was such a detailed bill that people would write and say this is not working; fix it. We would get our staff in, we would get Justin in, we'd get other experts in, and we would fix, literally, line by line, word by word, section by section. So I think you will be pleased with the results. It is an important bill. It has to be done. Federal mandates are coming down. The people really are very concerned that this works the next time around. And so I'm very pleased to be joining these folks here in walking you through this bill. Apparently _____'s going to walk it through. I spent many hours walking it through. I'll give it to Verla. She can do it on the floor. And so, anyway, I do want to say thank you again so much, and I think we're going to have a good outcome for the people of North Carolina.

Rep. Ross: Senator Allran.

Sen. Allran: Thank you so much. Is this on.

Rep. Ross: I believe so. Let's see. Whoops.

Sen. Allran: There we go. Now is it on? Okay. Thank you madam Chair and ladies and gentlemen of the committee. I just want to tell you that if there was ever a bill that is the product of a study commission and the way that a study commission really ought to function, this is it. We've met for not just hours and not just days or weeks, we actually met for months to come up with this bill, and we started out with a whole lot of questions, not very many answers, and we just worked through the issues as best we could as a study commission, taking testimony and comments from everybody who was interested. The study commission was completely bipartisan. We emphasized from the very beginning that we had we were not interested in anything that had anything to do with partisan politics. We simply wanted to ensure that elections were fair, honest, and accurate. And Senator Kinnaid and Representative Insko and Representative Preston were

wonderful, and all the people who came and gave us input—we've got some of these people in the audience right now—were just great. And this bill that we have right now is the bill that is the product of all these many weeks and months of work, and I will just say this: If somebody thinks that there's not a problem a bill that needs to be addressed in this state, then just tell Representative Preston that. Or just tell Representative Starnes or me that, because in Burke County in the last election, for example, I won't talk about Carteret, I'll talk about Burke because at the time I was actually representing Burke. Excuse me, Representative Church. In Burke County, as you know, there as gross under vote for president when the election county came out. And that defies all common sense and logic that people would go to the polls and vote down the chain but not vote for somebody for president as if they didn't have a view on who they wanted to elect as president. But it was a gross under vote that tells people emphatically that something went wrong. And that's just one example. I can sum up the point of this bill very easily, and that is we want to assure people that when they go to vote on Election Day that the vote that they cast will be recorded accurately, and then after it is recorded accurately in the machine, that it will be tabulated accurately after it is recorded accurately in the machine. That's the whole thing we're interested in. We just want fair, honest, and accurate elections in the State of North Carolina so that people will have confidence in the integrity of the system.

Rep. Ross: Thank you very much, Senator Allran. We're going to give the House sponsors an opportunity if they want to come forward. Representative Insko.

Rep. Insko: Thank you, madam Chair. I'll just take a minute to add a...to thank Jean Preston for her involvement in the committee, and as you know, she's from Carteret County so she was also very eager to serve on this committee. Also in the audience are Roger Knight who served on the committee and Warren Murphy who were members of the committee, and we're happy to have them here today. When I looked at the bill, the original title of this bill said restore confidence in voting. And I thought, well we really haven't lost confidence yet. We asked that the title be changed to just confidence in elections because what I think we are doing is that we've seen that there are some problems, and we took the step immediately to respond to those before the public lost confidence in our election system. A lot of questions were raised, a lot of people began questioning the system, and this bill is to make sure that the voters do have confidence in our election system. I see the bill as actually doing two things. Certainly our goal was to accomplish what Senator Allran said, was to make sure that the voters know that their vote is counted the way it was cast and the way it was tabulated. The bill does two things in my view to accomplish that. One is that it centralizes a lot of responsibility at the

state level—appropriate responsibilities, I think, because we don't...historically we've had local control in elections in North Carolina, and we did not to eliminate the local control that the locals should have, so we centralized some responsibilities at the state level and then clarified the difference between the local responsibilities and the state responsibilities. The other thing that we did was require a paper trail, and I think that that's basically...machines fail and when the machines fail we need to have some reliable backup to the machine failure. So I'm looking forward to working with you. I would agree that everybody...we've had a lot of input on this bill, and I think the Senate did a great job, too, of working through it again, and I'll be eager to work with you all in the House. Thanks.

Rep. Ross: All right. Representative Preston, would you like to address the committee?

Rep. Preston: Thank you very much, madam Chair and members of the committee. It was indeed a learning experience to serve on the interim committee. We did have experts from all over, and it just really solidified for me the importance of making sure that our votes do count. Let me just give you an update on where we are in Carteret County right now. The State Board has said to us in Carteret County that we cannot use our UniLect System that we've been using for this election in this fall because the decision on the Superintendent has not been decided. So those machines are off limits for us, and the county board has chosen to go with a paper ballot. And there's a lot of dissention about that. Some folks back home would like to have seen the correction to the UniLect System plus retro fitting it for a paper trail. But as of now, unless that Superintendent's race is decided, it is off limits to us. So we will be using the paper trail as of today. I hope that you all will look at this bill and consider its value. I think Senator Allran summed it up very well when he said we were just trying to make sure that we have a fair, honest election with a paper trail to verify if the machines go wrong. So I would ask you to please consider supporting the bill. It was certainly my pleasure to work with all the committee members and the folks that came to testify about machines. Thank you very much.

Rep. Ross: Thank you, Representative Preston. We're now going to have Erika Churchill come up and since she's intimately familiar with this bill, we really want her to walk you through each provision of it so the committee understands what this bill does.

E. Churchill: Good afternoon. I don't promise to be intimately familiar with all of the provisions, but first of all a little background on the existing mechanisms for purchasing voting equipment. Currently county commissioners are responsible for the purchase of voting equipment, and they can only purchase that equipment which has been approved by their county board of elections. The county board of elections can only approve and

recommend to the county board of commissioners the purchase of equipment that has been certified by the State Board of Elections for use in this state. The State Board of Elections has not specified in any way that our current, and under the current system, that a paper backup is required. And the bill would change two things. First of all, it would require paper backup on the voting system that used in the 2006 or any election after that or any equipment that is purchased after August 1st of 2005. And it would change the mechanism in which that equipment is purchased. It would require the State Board of Elections to send out one RFP for each type of equipment they chose to certify. The RFP would have to address all the things listed beginning on page 2, line 20, and the vender would have to post a bond or letter of credit to cover damages resulting from the defect of voting. The voting system will have to comply with all federal requirements. The voting system would have to have the capacity to include precinct returns by the votes cast by voters outside of the voter's precinct. With respect to electronic voting systems, the voting system would have to generate a paper record. That paper record would have to be viewable by the voter before the vote is cast and permit the voter to correct any discrepancy between the electronic version and the paper version. To electronic voting systems, the vendor would have to allow for access to any of the information placed in escrow, which is basically source code. The vendor would have to submit a statewide uniform price for each unit of the equipment, and the vendor must agree that if the vendor goes bankrupt, the source code that is put in escrow would be available to the purchasing county for use. In addition, the State Board would have to address the terms of the contract for the purchase and maintenance and training related to that particular system. And again, this would apply to all systems purchased on or after August 1st of 2005 and any system used in the 2006 election and thereafter. Before the State Board can certify a voting system under this process, they would have to review the source code of that system. That source code would be placed in escrow and would be available to review by the State Board of Elections, the Office of Information Technology Services, the State Chairs of each political party, and the purchasing county.

Beginning on page 5 with Section 1.(a), there are multiple conforming changes to the existing statutes that would bring all of this into compliance to work together. _____ (unintelligible) voting procedures that only properly voted official ballots or paper records of individual ballots can be introduced into the voting system. It would require general rule making by the State Board in compliance with this act, and it would rearrange some prior enacted law to one of the provisions—actually it's 163-165.7, which is the powers and duties of the State Board of Elections with regards to voting system—that was not supposed to come into effect until January 1st of 2006, which is the effective date of HAVA. The bill would rearrange where that goes in the statute. It would not change the language. It would

also clarify on page 6, line 15, that voting data maintained by precinct would include provisional ballots. Beginning on page 6, line 37, there would be a new statute setting forth the vendor of a voting system in North Carolina. The very first duty would be to place their source codes in escrow, and that would be a complete copy of the source and executable code, film strips, optic libraries, application program interfaces, complete documentation of all aspects of the system including compiling instructions, design documentation, technical documentation, user documentation, hardware and software specifications, drawings, records and data. The vendor would also be required to notify the State Board of Elections of any change in any of those items. The chief executive officer of the vendor has to sign a sworn affidavit that the source code and other materials placed in escrow is the same being used on that voting system, and that is on a continuing basis. The vendor shall also promptly notify the State Board of Elections and the purchasing county board of elections of any counties using that system of any decertification of the same system anywhere...in any state in the nation, any defect in that same system or of any relevant defects to have occurred in similar systems. The vendor would also have to maintain an office in North Carolina with staff to service the contract. The penalty if the vendor violated any of those prior requirements, they would be subject to being charged with a Class G felony. If it happened to be about not notifying anyone of a change, it would be a Class I felony. Additionally they would be subject to a civil penalty of up to \$100,000.00. Again, this applies to the purchase or upgrade of any systems on or after August 1st of this year.

Beginning in Section 3, the requirements and powers and duties of the county board of commissioners would be changed. They would only be allowed to acquire a system that is certified by the State Board of Elections, and they would not have to comply with Article 8, Chapter 143, which is the purchase and contract provisions, because the State Board of Elections would be doing the RFP in compliance with the State law.

Section 4 of the bill would change the powers and duties of the county board of elections, and they would now on or after August 1st, 2005, have to recommend to the county board of commissioners which type of voting system to be acquired, and they would have to comply with any requirements of the State Board regarding training and support of the voting system they use.

Beginning in Sections 5 and 6, they are about sample hand-to-eye counts. In Section 5, there would be a sample hand-to-eye count on a statewide ballot item in every county. This would be effective January 1st, 2006. If it is a presidential year, the presidential ballot item shall be subject to sampling. If there is a discrepancy between the hand-to-eye count and the mechanical or electronical count and it's significant, a complete hand-to-

eye would be conducted. If, and this is one of those areas that I don't promise to know everything is about how this intimately goes together... if the recount does not reverse the result and the candidate who had originally been entitled to a recount under existing statutes can demand a second recount on a hand-to-eye basis of sample precincts, if they do so within 24 hours of the completion of the first recount. That sample shall be in three percent of precincts casting ballots in each county in the jurisdiction of the office that issued. And 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 would result in reversing the results, then the State Board shall order a full hand-to-eye recount of that jurisdiction. And there is no cost to the candidate for that.

Section 7 would amend the HAVA election funds to allow those monies to be used for purposes permitted by HAVA to comply with State law.

Section 8 would require the State Board of Elections to recommend a model code of ethics for employees and members of county boards of elections and the State Board of Elections, and that would be done no later than sixty days after the Act becomes law.

Section 9 would allow for a pilot program for primaries and elections in 2006 in no more than nine counties. The pilot program would allow for an additional backup to be used. Paper would still be required, but the county board can test out equipment that would allow for another means of a backup vote that can be counted. The two counts would have to be taken, one of the paper record, one of the mechanical, and one of the new technology—whatever is used—and then compared. There would be a report to Gov Ops by February 1st of 2007.

Rep. Ross: Okay. Thank you, Erika. We're going to open it up to members of the committee for questions. Representative Holliman.

Rep Holliman: Thank you, Madam Chair. Am I right in here that it says the vendors for voting machines have to post a bond?

E. Churchill: Yes.

Rep Holliman: And how much is that going to be?

E. Churchill: It's not set in the bill.

Rep. Ross: So...do you have a follow-up question?

Rep Holliman: Did manufacturers have input into this and they agreed to that?

Rep. Ross: Senator Kinnaird.

Sen. Kinnaird: One of the problems is that Carteret County had to pay for the failure. The vendor did not participate in that. And what we want to make sure is that the county doesn't get stuck with the bill if the system fails. And so if the vendor puts up a bond, then they can pay for that.

Rep. Holliman: Shouldn't we then hear from the manufacturers. Do they have an agreement on doing this or is this something that's going to be a problem when the State Board of Elections tries to force it.

Sen. Kinnaird: Well, some of them.... It's amazing because the vendors came to all of the meetings, and I've met with them and nobody has said anything to me about any objection to any of this. None of the vendors have contacted us with objections. But we do know that the counties don't want to be stuck with the bill, so as far as we're concerned the vendors seems to think it's all right. In fact, it might even happen in other states.

Rep. Ross: I was going to let Representative Insko speak, and actually we have somebody from the State Board of Elections and somebody from the County Commissioners Association who might be able to shed some light. And then we'll take another question.

Rep. Insko: I'll pass.

Rep. Ross: Okay. Miss McLean from the State Board of Elections, do you have any insight on this?

Ms. McLean: I have personally not spoken with any of the vendors specifically about their willingness to post a bond. I do believe that there may be one or two vendors or their representatives in the audience today that might have something to add to that. It is a position that the committee, I believe, felt would be appropriate for the vendors to do. To this point, that has not been a requirement in North Carolina.

Rep. Ross: Mr. Meyer, do you have anything to share with us; and then we'll ask if any of the folks who represent vendors have any input.

Paul Meyer: Yeah. On this particular issue, not much to share. We obviously support the idea as protection for counties, but on this particular item...we have other things to talk about this bill, but this is not the key issue for us.

Rep. Ross: Before we open it up to the vendors, one of this bill's sponsors, Representative Insko, has something to add.

- Rep. Insko: I just wanted to point that this money would only be used if the vendor was at fault, so it's a way of protecting the counties if they're not at fault.
- Rep. Ross: Okay. Is there anybody here who represents any of these vendors who has a perspective or something to share on this issue? Stand up and state your name for the committee and then also please let us know which vendor you represent.
- S. Metcalf: Thank you, Madam Chairman. I'm Steve Metcalf representing DeBold Election Systems. Thank you, Representative Holliman for the question. I have shared this...I think all 31 drafts of this legislation...with my client on several occasions, and they've never raised that issue with me. And I've asked them specifically if there was anything particularly that they had concerns with, and they haven't taken this a _____. (unintelligible)
- Rep. Ross: Anybody else have...Mr. Turlington.
- Turlington: Representative Ross, I'm Ed Turlington from Raleigh. I represent a New Bern Company—the Owen Dunn Company for decades who printed the ballots for the State of North Carolina when we used paper ballots, and as the bill sponsors have correctly said, they also represent ES&S, which is a voting machine company. They are aware of the bonding requirements, and I don't have any specific instructions on a dollar amount, but Representative Holliman, it might be interesting to know if other states do have a dollar amount so that if this is in the law that North Carolina passes something that works and is comparable to other states. But frankly, Madam Chair, prior to today's committee meeting, I'd not been instructed to make any comments or try to make any changes on this provision.
- Rep. Ross: Representative (sic) Allran on this point. And then we'll go back to....
- Sen. Allran: I just wanted to speak on this point and say that in Indiana they made ES&S post a \$10 million bond.
- Rep. Ross: Any other members of the committee on this point before we go back to Representative Holliman and then Representative Harrison? Representative Kiser.
- Rep. Kiser: Question to the vendors. This think looks like it's open ended to me, and it could last for years. And it looks like that you might in a case like we had in Carteret County in the future have to pay for a new election. Have you considered that?
- Rep. Ross: Any comments from our friends?

S. Metcalf: Representative Kiser, again I, just like my friend Ed Turlington, my client hasn't brought this issue to my attention at all...given me any direction to it at all. It's something I will certainly raise to them, but I don't have anything to....

Rep. Kiser: Have you brought this to their attention?

S. Metcalf: Well, they've had the bill, sir. They've looked at the bill several times. As I say, each version that came along I shared with them, not only the representatives in North Carolina, but also the _____ in Ohio and other places, and Texas, to review it, and I would get at various times e-mails back. They'd raise certain questions, and I'd try to get some answers for them. But they have never...none of us ever raised that issue. I'll certainly...and it one that should be...it should be addressed. I will certainly do that.

Rep. Ross: Representative Kiser had a follow-up question, and then....

Rep. Kiser: Wouldn't you agree that this would drive the cost of the machine up with the regulations that we put on it here?

S. Metcalf: I can't say for certain. Certainly the requirements that the State is requiring us to follow for the federal and State are just good election practices. I don't necessarily feel like it would drive it up. I can't comment. I'm looking for an answer, but I don't have one. I honestly don't know.

Rep. Ross: Mr. Turlington, did you want to say anything. And then we're going to let Sen. Kinnaird say one more thing and then move off this point because I think there's....

E. Turlington: Just to add, Madam Chair and members of the committee, to make clear that my client, the New Bern company, who has been in this business for years representing ES&S, supports the state's effort to strengthen the laws on voting this year. So I want to be clear to all of you that in no way are we opposed to or trying to stop this bill. We think there's a lot of good public policy in here. Prior to Representative Holliman's question, we did not have a specific recommendation on the dollar amount of the financial responsibility, but the folks I represent have been well aware of it and have accepted it was probably going to be a part of this law. I would say to you as an unsolicited suggestion, it might make some sense as Senator Allran said to look what other states have done and have work on the dollar amount. But just to be clear, we're not opposing the financial responsibility requirement.

Rep. Ross: And also to be clear with the member of the committee, this bill will go, after it makes it through this committee, if it does make it through this

committee, will then go to Appropriations, so we can figure out where that might be most appropriate to deal with. Do you have something to say, Senator Kinnaird?

Sen. Kinnaird: I just want to say, it can't be open ended because this is fault based—specific to the fault of whatever the damage was. I mean if it failed and it was the fault of the machine at that time, at that place, that's how it would be triggered. It wouldn't be triggered twenty years down by some other thing.

Rep. Ross: Okay. Representative Starnes, did not have a question on this point?

Rep. Starnes: Yes, I did, Madam Chair. Well I guess the question's for the bill sponsor as to what your intent is. It does appear to me like the amount of the bond is open ended. I guess they would have to post a bond that would cover a worst-case scenario, which would be a statewide election. So the first part of my question was, in your mind, what's the dollar amount of the bottom to be. And then the second question is do you envision the companies posting this bond every election or just having a permanent bond to cover any election from now as long as their machine is used in an election?

Sen. Kinnaird: Well, if I may, first of all this is a contract and specific to a county or to the State Board of Elections. So you know it wouldn't be statewide if it failed in Carteret County. We're going to stop picking on Carteret County. If it failed in your county, the vendor wouldn't be liable for the whole state, only for that contract.

Rep. Ross: It sounds like this might be something that the committee wants to think about because it it's unlikely, I think, that we're going to finish up with things today. Representative Insko and then we're going to get to some more committee questions and some other issues. I want to get them on the table.

Rep. Insko: Let me just say there's a lot in this bill that is not unlike the question that starts coming up, and many of these details would be handled at the State Board of Elections process through rule making. So there are really the ones that have the expertise and know the elections process throughout the state so I'm not even sure it's appropriate to put a lot of those details in the bill because they would want to be able to have the flexibility to change them easily if they need to.

Rep. Ross: Representative Holliman, did you have a follow-up to any of this? Okay. Representative Harrison.

Rep. Harrison: Thanks. First of all I want to commend the bill sponsors. This looks like a great piece of legislation, and I have heard from a lot of constituents on

mainly the paper trail. So I appreciate ya'll's hard work on this. I had two questions. One was the funding, and maybe this is more appropriate in Appropriations, but there's been a Senate debate on this and there was some discussion on \$20 million that was part of the bill, and it's no longer a part of the bill. I was just wondering about the cost of this. I've heard figures like \$75 million, and there's \$55 million in HAVA money, and then that's \$20 million that was going to be appropriated with the bill and that got taken out in Senate Appropriations.

Rep. Ross: Why don't we have Erika Churchill...do you have any...?

E. Churchill: I'm sorry. Marilyn Chism would be the appropriate person for the money.

Rep. Ross: To ask the money issue. I will say this again; this bill will be going to the House Appropriations Committee. It would need to go there because of eligibility questions, and so there is no question that all appropriations will be considered by the Appropriations Committee. Representative Kiser, and I know you have another question, Representative Harrison. But do you have something on this issue, Representative Kiser.

Rep. Kiser: I do. I have an amendment that I think will partially take care of this.

Rep. Ross: Okay. When we finish with Representative Harrison we'll take Representative Kiser's then, and I want to do that before the end of the committee meeting.

Rep. Harrison: I had another question. Our board of elections is opposed to the notion of a paper trail, and I just have to say that I think I disagree with them, but part of the problem is the logistics of handling paper ballots, and I'm not very familiar with this but maybe it's not stated in the legislation that something's going to be worked out with the board, but I think part of the problem is the logistics in hundreds of thousands of paper ballots and storage and that sort of thing. Did that come up, Representative Insko?

Rep. Insko: Of course this is the central point on the issue, and I would just say that we all agreed at the beginning and at the middle and at the end of this process that there is no perfect system...that in order to have confidence in our system we have to have enough redundancy in the system, and machines do fail. They don't fail all the time, but eventually a machine will fail. And when they do, there needs to be some reliable source of information about what the voter's intent was or we would have to do a whole statewide recount. And so paper ballots are not perfect, and they do have to be stored, and they have to be printed, and that's a cost—it's not to the extent that some of the other mechanisms that we use—but we have done that for years, and we can continue to do it. It's not impossible to do.

Rep. Ross: Representative Kiser, you're recognized for your amendment.

Rep. Kiser: Thank you, Madam Chairman. My amendment...has it been passed out?

Rep. Ross: Does everybody have copies of the amendment? Okay.

Rep. Kiser: It just rewrites Section 7 dealing with HAVA, and this is an attempt to address the \$20 million that mysteriously disappeared from this bill that no one seems to know how it got out of there. But the important part of this is in 7.(b)—“Section 7.(b) The State shall reimburse counties for expenses associated with an implementation of HAVA and this Act, should the funds available in HAVA Election Fund be insufficient to meet those expenses.” And this is very important. I don't think we should make counties buy new equipment and go to their expenses when we have all this money coming down from the federal government and we should use it for this purpose because this is a good bill and an important bill, and we ought to use the HAVA funds to pay for it and not expect the counties to do it. I move for the adoption of the amendment.

Rep. Ross: Okay. We're going to let one of the bill sponsors speak on it and then we'll have committee discussion. Senator Kinnaird.

Sen. Kinnaird: Yes. What I think...this certainly addresses a couple of questions that need to be discussed. I'd rather do it in Appropriations because I think we haven't spoken to the Board of Elections about this. They have...this is the first time they've seen it as well as we, as sponsors, have seen it. And I think we need to work out in detail some of the language. You're absolutely right. We've got to deal with this question, but I think Appropriations is a much better place to deal with it than right here, and then we can tweak the language a little bit. There is a person who is on the National HAVA Advisory Board, and he can speak to how the HAVA money was...or Johnnie McLean...one of you.

Rep. Ross: Bob? Would you like for....

Sen. Kinnaird: I'd like Bob to talk about how the HAVA money was arrived at because we had to file with the federal government...HAVA. So I would like him to just address that just momentarily, Madam Chair, if that's possible, for just a minute.

Rep. Ross: Bob, would you like to stand up and identify yourself for the committee and attempt to answer Sen. Kinnaird's question?

Bob Hall: Bob Hall, and I was on the State Advisory Council for HAVA, and Johnnie McLean can explain it a little better than I, but I think the point is that the money the state is receiving from HAVA has to be in accordance

with a plan that this Advisory Council developed, was approved by the State Board, went through a whole federal review process, all the states had to do it, it's a complicated thing so that all they money is actually designated for different areas, and they are important areas. There's not...there is...so it's a complicated issue there. If you're going to start to add additional burdens to that money...whether or not it complies with the agreements...and the State Board does need to be involved in that.

Rep. Ross: Let's hear from Johnnie McLean, if she has any comment on it. Johnnie, do you have any comment on this amendment?

Ms. McLean: I don't think I can explain intelligently on what Mr. Hall has stated other than the State Plan is published on the State Board's website, it has been filed and published at the Federal Register. Any changes would have to go through the same process that that we've been approved initially to have it published there, and there is a public comment period. I believe it's either thirty or sixty days that it would have to be open for comment before it could be considered an amendment to the State Plan.

Rep. Ross: Okay. Representative Kiser.

Rep. Kiser: You know when we voted on HAVA, I thought that the funds that were coming down were to be used to buy equipment for voting in the counties that didn't meet the qualifications. Is that not what this bill would do? And where have we spent the money, if it's not available?

Rep. Ross: Senator Kinnaird.

Sen. Kinnaird: Some of it, in fact most, I believe, is for training for the county, and all of the counties have indicated to us that they need that training because they can't do it. Some of the counties have very old equipment that they would already have to buy it anyway. Some of the money will go to upgrading some of the existing equipment, so it's a variety of places that it goes.

Rep. Ross: Representative Holliman and then Representative Starnes.

R. Holliman: Well it seemed like to me, any monies in excess of the federal money would have to be borne by the State. Is that not what the amendment says?

Rep. Ross: Exactly.

Rep. Kiser: That's what the amendment says.

R. Holliman: But up to now, the counties have been responsible for purchasing the equipment. All right. Would this relieve the counties of that responsibility?

Rep. Kiser: In my opinion, it would relieve the counties of that responsibility where the State Board of Elections told them that their systems were not adequate. If we pass this bill the way I've read it and understand it, the State Board of Elections can tell your county, we don't like the machine you're using any more and you need to buy one like this over here. Don't matter if you've had it three years or two years or twenty years. Then the State Board of Elections will tell you what they approve, and your county has to buy it. And that to me is an unfunded mandate on our local counties, and I have a problem with that.

Rep. Ross: Representative Holliman.

R. Holliman: Does this get mixed up with this old equipment that might need to be replaced because ordinary wear and tear? I mean you could get this all mixed together.

Rep. Kiser: I understand that, but you know there have been some members...some people over at the State Board of Elections who didn't like optical scanners, and optical scanners is proved to be, to me, the most accurate system that we have in place now, and at one time they was indicated that some of them wanted us to do away with all the optical scanners and go to this system they're using down in Carteret County.

Rep. Ross: Representative Holliman and then I want to just take a little time check because its five of two and... (Tape ran out.)

Okay, what I think we're going to do, I want to ask Representative Kiser a question, if you don't mind. Representative Kiser, we are not going to, obviously, vote on this vote bill today. Would you be willing to hold off on your amendment until the next committee meeting so there's an opportunity to talk to the bill sponsors and maybe some Appropriations folks and then we'll be all straight?

Rep. Kiser: Sure. I'd be happy to. I believe people will be more favorable to my amendment when they have a chance to look at it.

Rep. Ross: Okay. The committee's adjourned. We'll at the very least meet next Wednesday, but we might meet in between.

Meeting adjourned at 1:59 p.m.

AGENDA

**HOUSE OF REPRESENTATIVES
ELECTION LAW AND CAMPAIGN FINANCE REFORM
COMMITTEE**

August 3, 2005

Representative Ross, Presiding

SB 223, Public Confidence in Elections

Senator Kinnaird

Nancy Garriss (Rep. Tim Moore)

From: Margie Penven (Rep. Ross)

Sent: Tuesday, August 02, 2005 3:42 PM

To: Sen. Ellie Kinnaird

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
2005-2006 SESSION**

You are hereby notified that the Committee on **Election Law and Campaign Finance Reform** will meet as follows:

DAY & DATE: **Wednesday, August 3, 2005**

TIME: **1:00 p.m.**

LOCATION: **1425 LB**

The following bills will be considered (Bill # & Short Title & Bill Sponsor):
SB 223, Public Confidence in Elections--Sen. Kinnaird

Respectfully,

Representatives Moore and Ross
Co-chairs

I hereby certify this notice was filed by the committee clerk at the following offices at **3:45 on August 2, 2005, 2005.**

____ Principal Clerk
____ Reading Clerk - House Chamber

Margie Penven (Committee Assistant)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S

3

SENATE BILL 223

Judiciary I Committee Substitute Adopted 7/26/05
Appropriations/Base Budget Committee Substitute Adopted 7/27/05

Short Title: Public Confidence in Elections.

(Public)

Sponsors:

Referred to:

February 28, 2005

A BILL TO BE ENTITLED

AN ACT TO RESTORE PUBLIC CONFIDENCE IN THE ELECTION PROCESS BY
REQUIRING THAT THE STATE BOARD OF ELECTIONS, THROUGH THE
DEVELOPMENT OF A REQUEST FOR PROPOSAL, ENSURE THAT ALL
VOTING SYSTEMS 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; BY PROVIDING
STATUTORY GUIDANCE AS TO COUNTING; BY STANDARDIZING
PURCHASING OF VOTING SYSTEMS IN NORTH CAROLINA, INCLUDING
A REVIEW OF SOURCE CODE FOR SOFTWARE RELATED TO THOSE
VOTING SYSTEMS AND AUTHORIZATION TO ESTABLISH THE ROLE OF
THE STATE BOARD OF ELECTIONS AND COUNTY BOARD OF
ELECTIONS RELATED TO TRAINING AND SUPPORT OF VOTING
SYSTEMS; BY REQUIRING POSTELECTION TESTING OF VOTING
SYSTEMS, INCLUDING A PAPER SAMPLE-COUNT; BY EXPANDING THE
RIGHT TO A HAND-TO-EYE RECOUNT OF PAPER BALLOTS; AND BY
PERMITTING A PILOT PROGRAM TO EXPERIMENT WITH NONPAPER
MEANS OF VOTER VERIFICATION AND BALLOT BACKUP.

The General Assembly of North Carolina enacts:

SECTION 1.(a) 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, G.S. 163-165.7 reads as rewritten:

"§ 163-165.7. Voting systems: powers and duties of State Board of Elections.

(a) ~~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~~

1 ~~referendum held in any county or municipality. The State Board may, upon request of a~~
2 ~~local board of elections, authorize the use of a voting system not approved for general~~
3 ~~use. Only voting systems that have been certified by the State Board of Elections in~~
4 ~~accordance with the procedures and subject to the standards set forth in this section and~~
5 ~~that have not been subsequently decertified shall be permitted for use in elections in this~~
6 ~~State. Those certified voting systems shall be valid in any election held in the State or in~~
7 ~~any county, municipality, or other electoral district in the State. Subject to all other~~
8 ~~applicable rules adopted by the State Board of Elections and, with respect to federal~~
9 ~~elections, subject to all applicable federal regulations governing voting systems, paper~~
10 ~~ballots marked by the voter and counted by hand shall be deemed a certified voting~~
11 ~~system. The State Board may certify additional voting systems only if they meet the~~
12 ~~requirements of the request for proposal process set forth in this section and only if they~~
13 ~~generate either a paper ballot or a paper record by which voters may verify their votes~~
14 ~~before casting them and which provides a backup means of counting the vote that the~~
15 ~~voter casts. Those voting systems may include optical scan and direct record electronic~~
16 ~~(DRE) voting systems. In consultation with the Office of Information Technology~~
17 ~~Services, the State Board shall develop the requests for proposal subject to the~~
18 ~~provisions of this Chapter and other applicable State laws. Among other requirements,~~
19 ~~the request for proposal shall require at least all of the following elements:~~

- 20 (1) That the vendor post a bond or letter of credit to cover damages
21 resulting from defects in the voting. Damages shall include, among
22 other items, any costs of conducting a new election attributable to
23 those defects.
- 24 (2) That the voting system comply with all federal requirements for voting
25 systems.
- 26 (3) That the voting system must have the capacity to include in precinct
27 returns the votes cast by voters outside of the voter's precinct as
28 required by G.S. 163-132.5G.
- 29 (4) With respect to electronic voting systems, that the voting system
30 generate a paper record of each individual vote cast, which paper
31 record shall be maintained in a secure fashion and shall serve as a
32 backup record for purposes of any hand-to-eye count, hand-to-eye
33 recount, or other audit. Electronic systems that employ optical scan
34 technology to count paper ballots shall be deemed to satisfy this
35 requirement.
- 36 (5) With respect to DRE voting systems, that the paper record generated
37 by the system be viewable by the voter before the vote is cast
38 electronically, and that the system permit the voter to correct any
39 discrepancy between the electronic vote and the paper record before
40 the vote is cast.
- 41 (6) With respect to all voting systems using electronic means, that the
42 vendor provide access to all of any information required to be placed
43 in escrow by a vendor pursuant to G.S. 163-165.9A for review and
44 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.

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.

(b) The State Board may also, upon notice and hearing, ~~disapprove-decertify~~ types, makes, and models of voting systems. Upon ~~disapproving-decertifying~~ a type, make, or model of voting system, the State Board shall determine the process by which the ~~disapproved-decertified~~ 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~~ the process by which the decertified system is discontinued in that county to the superior court in that county or 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 ~~discontinuance~~ 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

1 confidential and shall be accessed only under the rules adopted pursuant to subdivision
2 (9) of subsection (d) of this section. The State Board may hear and discuss the report of
3 any such review under G.S. 143-318.11(a)(1).

4 (d) Subject to the provisions of this Chapter, the State Board of Elections shall
5 prescribe rules for the adoption, handling, operation, and honest use of certified voting
6 systems, ~~including, but not limited to,~~ including all of the following:

7 (1) Procedures for county boards of elections to utilize when
8 recommending the purchase of a Types, makes, and models of
9 certified voting systems approved system for use in this Statethat
10 county.

11 (2) Form of official ballot labels to be used on voting systems.

12 (3) Operation and manner of voting on voting systems.

13 (4) Instruction of precinct officials in the use of voting systems.

14 (5) Instruction of voters in the use of voting systems.

15 (6) Assistance to voters using voting systems.

16 (7) Duties of custodians of voting systems.

17 (8) Examination and testing of voting systems in a public forum in the
18 county before and after use in an election.

19 (9) Notwithstanding G.S. 132-1.2, procedures for the review and
20 examination of any information placed in escrow by a vendor pursuant
21 to G.S. 163-165.9A by only the following persons:

22 a. State Board of Elections.

23 b. Office of Information Technology Services.

24 c. The State chairs of each political party recognized under
25 G.S. 163-96.

26 d. The purchasing county.

27 Each person listed in sub-subdivisions a. through d. of this subdivision
28 may designate up to three persons as that person's agents to review and
29 examine the information. No person shall designate under this
30 subdivision a business competitor of the vendor whose proprietary
31 information is being reviewed and examined. For purposes of this
32 review and examination, any designees under this subdivision and the
33 State party chairs shall be treated as public officials under G.S. 132-2.

34 (10) With respect to electronic voting systems, procedures to maintain the
35 integrity of both the electronic vote count and the paper record. Those
36 procedures shall at a minimum include procedures to protect against
37 the alteration of the paper record after a machine vote has been
38 recorded and procedures to prevent removal by the voter from the
39 voting enclosure of any paper record or copy of an individually voted
40 ballot or of any other device or item whose removal from the voting
41 enclosure could permit compromise of the integrity of either the
42 machine count or the paper record.

43 Any rules adopted under this subsection shall be in conjunction with procedures and
44 standards adopted under G.S. 163-182.1, are exempt from Chapter 150B of the General

1 Statutes, and are subject to the same procedures for notice and publication set forth in
2 G.S. 163-182.1.

3 (e) The State Board of Elections shall facilitate training and support of the voting
4 systems utilized by the counties."

5 **SECTION 1.(a1)** G.S. 163-166.7(c) reads as rewritten:

6 "(c) The State Board of Elections shall promulgate rules for the process of voting.
7 Those rules shall emphasize the appearance as well as the reality of dignity, good order,
8 impartiality, and the convenience and privacy of the voter. Those rules, at a minimum,
9 shall include procedures to ensure that all the following occur:

- 10 (1) The voting system remains secure throughout the period voting is
11 being conducted.
- 12 (2) Only properly voted official ballots or paper records of individual
13 voted ballots are introduced into the voting system.
- 14 (3) Except as provided by G.S. 163-166.9, no official ballots leave the
15 voting enclosure during the time voting is being conducted there. The
16 rules shall also provide that during that time no one shall remove from
17 the voting enclosure any paper record or copy of an individually voted
18 ballot or of any other device or item whose removal from the voting
19 enclosure could permit compromise of the integrity of either the
20 machine count or the paper record.
- 21 (4) All improperly voted official ballots or paper records of individual
22 voted ballots are returned to the precinct officials and marked as
23 spoiled.
- 24 (5) Voters leave the voting place promptly after voting.
- 25 (6) Voters not clearly eligible to vote in the precinct but who seek to vote
26 there are given proper assistance in voting a provisional official ballot
27 or guidance to another voting place where they are eligible to vote.
- 28 (7) Information gleaned through the voting process that would be helpful
29 to the accurate maintenance of the voter registration records is
30 recorded and delivered to the county board of elections.
- 31 (8) The registration records are kept secure.
- 32 (9) Party observers are given access as provided by G.S. 163-45 to current
33 information about which voters have voted.
- 34 (10) The voter, before voting, shall sign that voter's name on the pollbook,
35 other voting record, or voter authorization document. If the voter is
36 unable to sign, a precinct official shall enter the person's name on the
37 same document before the voter votes."

38 **SECTION 1.(b)** Section 11 of S.L. 2003-226, which would have made
39 amendment to G.S. 163-165.7 effective January 1, 2006, is repealed.

40 **SECTION 1.(c)** In order to carry forward the first of two amendments that
41 would have been made by Section 11 of S.L. 2003-226 to the old version of
42 G.S. 163-165.7, effective January 1, 2006, G.S. 163-165.7, as rewritten by subsection
43 (a) of this section, is amended by adding the following new subsection:

1 "(a) Federal Assistance. – The State Board may use guidelines, information,
2 testing reports, certification, decertification, recertification, and any relevant data
3 produced by the Election Assistance Commission, its Standards Board, its Board of
4 Advisors, or the Technical Guidelines Development Committee as established in Title II
5 of the Help America Vote Act of 2002 with regard to any action or investigation the
6 State Board may take concerning a voting system. The State Board may use, for the
7 purposes of voting system certification, laboratories accredited by the Election
8 Assistance Commission under the provisions of section 231(2) of the Help America
9 Vote Act of 2002."

10 **SECTION 1.(d)** In order to carry forward the second of two amendments
11 that would have been made by Section 11 of S.L. 2003-226 to the old version of
12 G.S. 163-165.7, effective January 1, 2006, G.S. 163-165.7(d), as rewritten by subsection
13 (a) of this section, is amended by adding the following new subdivision:

14 "(11) Compliance with section 301 of the Help America Vote Act of 2002."

15 **SECTION 1.(e)** G.S. 163-132.5G reads as rewritten:

16 **"§ 163-132.5G. Voting data maintained by precinct.**

17 To the extent that it can do so without compromising the secrecy of an individual's
18 ballot, each county board of elections shall maintain voting data by precinct so that
19 precinct returns for each item on the ballot shall include the votes cast by residents of
20 the precinct who voted by provisional ballot and by absentee ballot, both mail and
21 one-stop. The county board shall not be required to report provisional and absentee
22 voting data by precinct until 60 days after the election. The State Board of Elections
23 shall adopt rules for the enforcement of this section with the goal that all voting data
24 shall be reported by precinct by the 2006 election. ~~Those rules shall provide for~~
25 ~~exemptions where the expense of compliance would place a financial hardship on a~~
26 ~~county. Those rules shall provide for compliance by 2004 for counties the State Board~~
27 ~~determines are capable of complying by that year."~~

28 **SECTION 1.(f)** G.S. 163-165.1(e) reads as rewritten:

29 "(e) Voted ballots and paper records of individual voted ballots shall be treated as
30 confidential, and no person other than elections officials performing their duties may
31 have access to voted ballots or paper records of individual voted ballots except by court
32 order or order of the appropriate board of elections as part of the resolution of an
33 election protest or investigation of an alleged election irregularity or violation. Voted
34 ballots and paper records of individual voted ballots shall not be disclosed to members
35 of the public in such a way as to disclose how a particular voter voted, unless a court
36 orders otherwise."

37 **SECTION 2.(a)** Part 2 of Article 14A of Chapter 163 of the General Statutes
38 is amended by adding a new section to read:

39 **"§ 163-165.9A. Voting systems: requirements for voting systems vendors; penalties.**

40 (a) Duties of Vendor. – Every vendor that has a contract to provide a voting
41 system in North Carolina shall do all of the following:

42 (1) The vendor shall place in escrow with an independent escrow agent
43 approved by the State Board of Elections all software that is relevant
44 to functionality, setup, configuration, and operation of the voting

1 system, including, but not limited to, a complete copy of the source
2 and executable code, build scripts, object libraries, application
3 program interfaces, and complete documentation of all aspects of the
4 system including, but not limited to, compiling instructions, design
5 documentation, technical documentation, user documentation,
6 hardware and software specifications, drawings, records, and data. The
7 State Board of Elections may require in its request for proposal that
8 additional items be escrowed, and if any vendor that agrees in a
9 contract to escrow additional items, those items shall be subject to the
10 provisions of this section. The documentation shall include a list of
11 programmers responsible for creating the software and a sworn
12 affidavit that the source code includes all relevant program statements
13 in low-level and high-level languages.

14 (2) The vendor shall notify the State Board of Elections of any change in
15 any item required to be escrowed by subdivision (1) of this subsection.

16 (3) The chief executive officer of the vendor shall sign a sworn affidavit
17 that the source code and other material in escrow is the same being
18 used in its voting systems in this State. The chief executive officer
19 shall ensure that the statement is true on a continuing basis.

20 (4) The vendor shall promptly notify the State Board of Elections and the
21 county board of elections of any county using its voting system of any
22 decertification of the same system in any state, of any defect in the
23 same system known to have occurred anywhere, and of any relevant
24 defect known to have occurred in similar systems.

25 (5) The vendor shall maintain an office in North Carolina with staff to
26 service the contract.

27 (b) Penalties. – Willful violation of any of the duties in subsection (a) of this
28 section is a Class G felony. Substitution of source code into an operating voting system
29 without notification as provided by subdivision (a)(2) of this section is a Class I felony.
30 In addition to any other applicable penalties, violations of this section are subject to a
31 civil penalty to be assessed by the State Board of Elections in its discretion in an amount
32 of up to one hundred thousand dollars (\$100,000) per violation. A civil penalty assessed
33 under this section shall be subject to the provisions of G.S. 163-278.34(e)."

34 **SECTION 2.(b)** This section applies with respect to purchase or upgrade of
35 any voting system on or after August 1, 2005.

36 **SECTION 3.** Effective August 1, 2005, G.S. 163-165.8 reads as rewritten:
37 **"§ 163-165.8. Voting systems: powers and duties of board of county**
38 **commissioners.**

39 The board of county commissioners, with the approval of the county board of
40 elections, may adopt and ~~purchase or lease~~ acquire only a voting system of a type,
41 make, and model ~~approved~~ certified by the State Board of Elections for use in some or
42 all voting places in the county at some or all elections.

43 The board of county commissioners may decline to adopt and ~~purchase or lease~~
44 acquire any voting system recommended by the county board of elections but may not

1 adopt and ~~purchase or lease~~ acquire any voting system that has not been approved by
2 the county board of elections. Article 8 of Chapter 143 of the General Statutes does not
3 apply to the purchase of a voting system certified by the State Board of Elections."

4 **SECTION 4.** Effective August 1, 2005, G.S. 163-165.9 reads as rewritten:

5 **"§ 163-165.9. Voting systems: powers and duties of county board of elections.**

6 (a) Before approving the adoption and ~~purchase or lease~~ acquisition of any
7 voting system by the board of county commissioners, the county board of elections shall
8 do all of the following:

9 (1) ~~Obtain a current financial statement from the proposed vendor or~~
10 ~~lessor of the voting system and send copies of the statement to the~~
11 ~~county attorney and the chief county financial officer.~~ Recommend to
12 the board of county commissioners which type of voting system
13 should be acquired by the county.

14 (2) Witness a demonstration, in that county or at a site designated by the
15 State Board of Elections, of the type of voting system to be
16 recommended ~~by the proposed vendor or lessor~~ and also witness a
17 demonstration of at least one other type of voting system ~~approved~~
18 certified by the State Board of Elections.

19 (3) Test, during an election, the proposed voting system in at least one
20 precinct in the county where the voting system would be used if
21 adopted.

22 (b) After the acquisition of any voting system, the county board of elections shall
23 comply with any requirements of the State Board of Elections regarding training and
24 support of the voting system."

25 **SECTION 5.(a)** G.S. 163-182.1(b) reads as rewritten:

26 "(b) Procedures and Standards. – The State Board of Elections shall adopt uniform
27 and nondiscriminatory procedures and standards for voting systems. The standards shall
28 define what constitutes a vote and what will be counted as a vote for each category of
29 voting system used in the State. The State Board shall adopt those procedures and
30 standards at a meeting occurring not earlier than 15 days after the State Board gives
31 notice of the meeting. The procedures and standards adopted shall apply to all elections
32 occurring in the State and shall be subject to amendment or repeal by the State Board
33 acting at any meeting where notice that the action has been proposed has been given at
34 least 15 days before the meeting. These procedures and standards shall not be
35 considered to be rules subject to Article 2A of Chapter 150B of the General Statutes.
36 However, the State Board shall publish in the North Carolina Register the procedures
37 and standards and any changes to them after adoption, with that publication noted as
38 information helpful to the public under G.S. 150B-21.17(a)(6). Copies of those
39 procedures and standards shall be made available to the public upon request or
40 otherwise by the State Board. For optical scan and direct record electronic voting
41 systems, and for any other voting systems in which ballots are counted other than on
42 paper by hand and eye, those procedures and standards shall do both of the following:

43 (1) Provide for a sample hand-to-eye count of the paper ballots or paper
44 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 sample chosen by the State Board shall be of full precincts, full counts of absentee ballots, and full counts of 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.

(2) ~~provide~~ 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)a. Notify the voter that the voter has selected more than the correct number of candidates or proposals in the ballot item.
- (2)b. Notify the voter before the vote is accepted and counted of the effect of casting overvotes in the ballot item.
- (3)c. Provide the voter with the opportunity to correct the official ballot before it is accepted and counted."

SECTION 5.(b) G.S. 163-182.2 reads as rewritten:

"§ 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.

(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 sample chosen by the State Board shall be of full precincts, full counts of absentee ballots, and full counts of 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.

(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."

SECTION 5.(c) G.S. 163-182.5 reads as rewritten:

"§ 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 seventh day after every 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."

SECTION 5.(d) This section becomes effective January 1, 2006.

SECTION 6.(a) G.S. 163-182.7 reads as rewritten:

"§ 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.

1 The county board may not order a recount where the State Board of Elections has
2 already denied a recount to the petitioner.

3 (b) Mandatory Recounts for Ballot Items Within the Jurisdiction of the County
4 Board of Elections. – In a ballot item within the jurisdiction of the county board of
5 elections, a candidate shall have the right to demand a recount of the votes if the
6 difference between the votes for that candidate and the votes for a prevailing candidate
7 is not more than one percent (1%) of the total votes cast in the ballot item, or in the case
8 of a multiseat ballot item not more than one percent (1%) of the votes cast for those two
9 candidates. The demand for a recount must be made in writing and must be received by
10 the county board of elections by 5:00 P.M. on the first day after the canvass. The
11 recount shall be conducted under the supervision of the county board of elections.

12 (c) Mandatory Recounts for Ballot Items Within the Jurisdiction of the State
13 Board of Elections. – In a ballot item within the jurisdiction of the State Board of
14 Elections, a candidate shall have the right to demand a recount of the votes if the
15 difference between the votes for that candidate and the votes for a prevailing candidate
16 are not more than the following:

17 (1) For a nonstatewide ballot item, one percent (1%) of the total votes cast
18 in the ballot item, or in the case of a multiseat ballot item, one percent
19 (1%) of the votes cast for those two candidates.

20 (2) For a statewide ballot item, one-half of one percent (0.5%) of the votes
21 cast in the ballot item, ~~or in the case of a multiseat ballot item, one-half~~
22 ~~of one percent (0.5%) of the votes cast for those two candidates, or~~
23 10,000 votes, whichever is less.

24 The demand for a recount must be in writing and must be received by the State Board of
25 Elections by noon on the second Thursday after the election. If on that Thursday the
26 available returns show a candidate not entitled to a mandatory recount, but the
27 Executive Director determines subsequently that the margin is within the threshold set
28 out in this subsection, the Executive Director shall notify the eligible candidate
29 immediately and that candidate shall be entitled to a recount if that candidate so
30 demands within 48 hours of notice. The recount shall be conducted under the
31 supervision of the State Board of Elections.

32 (d) Rules for Conducting Recounts. – The State Board of Elections shall
33 promulgate rules for conducting recounts. Those rules shall be subject to the following
34 guidelines:

35 (1) The rules shall specify, with respect to each type of voting system,
36 when and to what extent the recount shall consist of machine recounts
37 and hand-to-eye recounts. Hand-to-eye recounts shall also be ordered
38 as provided by G.S. 163-182.7A.

39 (2) The rules shall provide guidance in interpretation of the voter's choice.

40 (3) The rules shall specify how the goals of multipartisan participation,
41 opportunity for public observation, and good order shall be balanced."

42 **SECTION 6.(b)** Article 15A of Chapter 163 of the General Statutes is
43 amended by adding a new section to read:

44 **"§ 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."

SECTION 6.(c) This section becomes effective January 1, 2006.

SECTION 7. G.S. 163-82.28 reads as rewritten:

"§ 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, shall be deposited in that fund. The State Board of Elections shall use funds in the Election Fund only to implement HAVA. ~~HAVA~~ and for purposes permitted by HAVA to comply with State law."

SECTION 8. The State Board of Elections shall recommend a model code of ethics for members and employees of county boards of elections and of the State Board of Elections. The code shall address the appropriate relations between those members and staff and vendors who do business or seek to do business with boards of elections in North Carolina. It shall address how to avoid both the reality and the appearance of conflicts of interest and impropriety. The State Board shall report its recommended code to the Joint Select Committee on Electronic Voting Systems and to the Joint Legislative Commission on Governmental Operations no later than 60 days after this act becomes law.

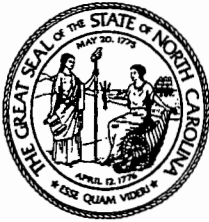
SECTION 9. The State Board of Elections may conduct, for primaries and elections in 2006 only, experiments with voting systems that use a means in addition to paper to fulfill the backup record and voter verification requirements of G.S. 163-165.7(a)(4) and G.S. 163-165.7(a)(5), as enacted by this act. 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. 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.



SENATE BILL 223: Public Confidence in Elections

BILL ANALYSIS

Committee:	House Election Law and Campaign Finance Reform	Date:	August 2, 2005
Introduced by:	Sen. Kinnaird	Summary by:	R. Erika Churchill
Version:	Third Edition		Committee Counsel

SUMMARY: *Senate Bill 223 would require, beginning August 1, 2005, that the State Board of Elections, through a request for proposal process, certify only voting systems that produce paper ballots or paper records that can be used as a backup means of counting and that the voters may use to verify their choices before they cast their votes. Any system, regardless of when purchased, would have to be submitted for compliance with the requirements of the process if the system is to be used in the 2006 elections. The bill also requires that, beginning in 2006, the State Board of Elections must provide for sample paper hand-to-eye counts in random precincts over the State. The bill would allow a limited experiment with voting systems that use non-paper means, in addition to paper means, of voter verification and ballot backup.*

[As introduced, this bill was identical to H238, as introduced by Reps. Insko, Preston, which is currently in House Election Law and Campaign Finance Reform.]

CURRENT LAW: Currently county commissioners are responsible for purchasing voting equipment. They may only purchase equipment that has been approved by the county board of elections. The county board of elections may approve only equipment that has been certified by the State Board of Elections. The State Board has broad rulemaking power over the approval and operation of voting systems. In addition to its authority to approve voting systems for purchase by counties, the State Board may disapprove systems already in use in a county. A county has four years to replace a voting system that has been disapproved.

BILL ANALYSIS:

Section 1 – State Board of Elections' Role in Purchasing. Effective with any upgrade or new voting system purchased beginning 8-1-05 and effective for any voting system used in the 2006 elections, the State Board of Elections is directed to develop a Request for Proposal (RFP). The RFP would have to include the following requirements:

- Posting a bond or letter of credit to cover damages from defects in its voting system, including the cost of a new election.
- Compliance with federal law.
- The capacity to include in precinct returns the votes cast by voters outside the voter's precinct as required by law.
- For electronic voting systems, the system must generate a paper record of each individual vote cast, which paper record shall be maintained in a secure fashion and serve as a backup record for purposes of hand-to-eye counts, hand-to-eye recounts, and other audits.
- For DREs, the paper record must be viewable by the voter before the vote is cast electronically, and the system must permit the voter to correct any discrepancy between the electronic summary of the vote and the paper record before the vote is cast.
- Review of source code by the county, the State Board of Elections, the NC Office of Information Technology, and the Chair of any legally recognized political party in NC. Those entities may designate up to 3 agents to assist in the review.
- A statewide price for each unit of the equipment.

Senate Bill 223

Page 2

- An agreement by the vendor that if it breaches the upkeep part of the contract or goes into bankruptcy, it will permit the software to be turned over to the county for continuing use during the term of the contract and for review by the people who have a right to review the source code.

The RFP would also address the mandatory terms of the contract for the purchase of voting system and the maintenance and training related to that voting system. The State Board would be given the duties of monitoring voting system contracts, and of facilitating training and support.

No voting system that was not certified through the RFP process could be acquired after 8-1-05 and no system, regardless of when purchased, may be used in elections during or after 2006 unless the State Board of Elections determines it complies with the RFP requirements.

The State Board is required to have procedures to maintain the integrity of both the paper record and the electronic count and to prevent removal from the voting enclosure of a paper record or other item whose removal would compromise the integrity of the paper record or the electronic count.

Section 1(e) adds the requirement that provisional votes must be reported by precinct, in addition to absentee and one-stop results. The section also removes the provision that counties be exempt from the requirement because of financial hardship. However, in Section 11, the bill gives boards of elections longer than the statutory 60 days for the 2006 elections --- The 2006 general election results must be reported by March 1, 2007, and the 2006 primary results must be reported by May 1, 2007. In subsequent years, all results must be reported within 60 days.

Section 2 -- Requirements for Voting System Vendors. Effective with any upgrade or new voting system purchased beginning 8-1-05, vendors of voting systems in NC must:

- Escrow their relevant software.
- Keep the escrowed material up to date, and must swear that it is the code used in operating voting systems.
- Maintain an active office in NC.
- Promptly notify the State Board of any decertification of the voting system elsewhere or of any known defect in a voting system used in NC, even if the defect shows up outside NC.

Willful violation of any of the requirements is a Class G felony. Substitution of source code into a voting system without notifying the State Board is a Class I felony. Violations are also punishable by civil penalties of up to \$100,000.

Section 3 -- County Commissioners' Role in Purchasing. Effective 8-1-05, county commissioners would continue to purchase voting equipment. But because of the State Board's new duties, counties would be exempt from the purchasing rules that normally apply to local governments.

Section 4 -- County Board of Elections' Role in Purchasing. Effective 8-1-05, the county board of elections would have the duty to recommend to the county commissioners which type of voting system the county should purchase. Currently, the county chooses from a list of types, makes, and models approved by the State Board. The county board of elections would also be required to abide by State Board rules regarding training and support.

Section 5 -- Sample Counts. Effective 1-1-06, State Board of Elections rules must require a hand-to-eye count of paper ballots in a sampling of precincts, early voting sites, or sets of mail absentee ballots in every county. The hand-to-eye sample counts would be of a sampling of statewide races, always including the presidential race when it is on the ballot. If there is no statewide race, then the State Board must have a plan for getting an adequate sample using district or local races. Unless there is clear evidence to believe otherwise, the hand-to-eye count will prevail. If the difference between the hand-to-eye and the electronic or machine county is significant, a complete hand-to-eye count will be conducted. This section states the general rule that, with optical scan and DRE systems, subject to sample hand counts and mandatory hand recounts, the boards of elections shall rely on an electronic or mechanical count. If there is a material discrepancy between electronic or mechanical counts and hand-to-eye

Senate Bill 223

Page 3

paper counts, the hand-to-eye prevails unless paper ballots have been lost or destroyed or there is another reason to conclude that the paper count is not the true count.

Section 6 -- Expansion of Right to Hand-to-Eye Recount. Effective 1-1-06, any candidate entitled to a recount under current law – that is, a candidate who was less than 1% behind in the initial count (or the lesser of 0.5% or 10,000 votes behind in a statewide race) – is entitled to a sample hand-to-eye recount. That sample would be of all the ballots in 3% of the precincts, randomly selected, in each county. If an extrapolation of the sample count to the whole count forecasts a reversal of the result, the candidate is entitled to a full hand-to-eye recount. This expanded right would not cost the candidate.

Section 7 -- Change in HAVA Fund Language. This section changes language of the statute that created, pursuant to federal law, the fund into which is placed federal money under the Help America Vote Act (HAVA) to clarify that the money may be used not only to comply with HAVA but for purpose permitted by HAVA to comply with State law.

Section 8 -- Code of Ethics. The State Board of Elections would be directed to recommend a code of ethics for members and employees of boards of elections at the county and State level. The code would address appropriate relations with voting system vendors. It would address how to avoid the reality and appearance of conflicts of interest and impropriety. The State Board would report to the Joint Select Committee on Electronic Voting Systems and to the Joint Legislative Commission on Governmental Operations within 60 days after the bill became law.

Section 9 - Pilot Program for Alternative Means of Voter Verification. – The State Board of Elections would be allowed to conduct an experiment, in no more than nine counties, with voting systems that use some means other than paper of letting the voter verify their electronic ballot and some non-paper backup. The pilot would have these limits:

- No more than 2 voting sites per county.
- At each voting site the voters would have a choice between a machine with only paper verification/backup and the experimental type of verification/backup.
- The experimental system must have some means for the voter to verify the electronically cast vote. Examples: audio technology, digital scanning. But no experimental system could be used that would record any image of any part of the voter.
- Even the experimental system must produce a paper record for recount purposes.
- There must be a full hand-to-eye paper count of all ballots cast on the experimental system. There would also be a comparison count of the paper to the alternative verification means.

Section 10 - Effective Date. The effective date section generally makes the bill effective when it becomes law, except as provided in internal sections. It also allows a longer-than-standard time for counties to report absentee and provisional votes by precinct in 2006, as noted in the summary of Section 1. And it relieves counties of the statutory duty to test a new voting system in an election, as long as the voting system is publicly demonstrated, until January 1, 2008.

S0223e3-SMST

Bill Gilkeson contributed substantially to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA



BILL NUMBER: Senate Bill 223 (Third Edition)

SHORT TITLE: Public Confidence in Elections.

SPONSOR(S): Senator Kinnaird

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>
COUNTIES					
Equip. Replacement	Amount cannot be determined; see assumptions and methodology				
Alt. 1 -All O/S	\$45,957,546	\$8,037,333	\$8,037,333	\$8,037,333	\$8,037,333
Alt. 2 -All DRE	\$135,130,995	\$7,500,000	\$7,500,000	\$7,500,000	\$7,500,000
Alt. 3 -O/S & DRE	\$87,831,031	\$7,500,000	\$7,500,000	\$7,500,000	\$7,500,000
Hand/Eye Recounts	Estimated to range from \$3,106 to \$8,824 per 1% of the ballots cast.				
STATE BOARD					
Developing RFP	Estimated to cost \$400,000 to \$600,00 of HAVA Funding				
Source Code Rev.	Estimated to range from \$1,200,000 to \$1,800,000 for initial reviews				
Board Meetings	Estimated to range from \$9,000 to \$12,000 annually				
Training/Support	\$945,320	\$705,320	\$705,320	\$705,320	\$705,320
POSITIONS (cumulative)	8	8	8	8	8
CORRECTION					
Exact amount cannot be determined; no substantial impact anticipated.					
JUDICIAL					
Exact amount cannot be determined; no substantial impact anticipated.					
ADDITIONAL PRISON BEDS*					
Exact amount cannot be determined; no substantial impact anticipated.					
EFFECTIVE DATE: Varies.					

BILL SUMMARY¹:

This bill would require that the State Board of Elections, through a Request For Proposal (RFP) process, certify only voting systems that produce paper ballots or paper records that can be used as a backup means of counting and that the voters may use to verify their choices before they cast their votes. Any voting system purchased or upgraded beginning August 1, 2005 would be subject

¹ Adopted from Bill Analysis Prepared by Senate J1 Committee Counsel

to this RFP process, and any system, regardless of when purchased, would have to be submitted for compliance with the requirements of the RFP process if the system is to be used in the 2006 elections. The bill makes specific requirements of any voting equipment vendor who does business in NC. The bill shifts from counties to the State Board of Elections the duty to produce an RFP for voting systems. It also requires that beginning in 2006 the State Board of Elections must provide for sample paper hand counts in random precincts over the State. The bill would allow a limited experiment with voting systems that use non-paper means, in addition to paper means, of voter verification and ballot backup. Further analysis of pertinent sections of the bill follows.

Section 1 -- State Board of Elections' Role in Purchasing. Effective with any upgrade or new voting system purchased beginning August 1, 2005 and effective for any voting system used in the 2006 elections, the State Board of Elections is directed to develop a Request for Proposal (RFP). The RFP would have to include the following requirements:

- Posting a bond or letter of credit to cover damages from defects in its voting system, including the cost of a new election.
- Compliance with federal law.
- The capacity to include in precinct returns the votes cast by voters outside the voter's precinct as required by law.
- For electronic voting systems, the system must generate a paper record of each individual vote cast, which paper record shall be maintained in a secure fashion and serve as a backup record for purposes of hand-to-eye counts, hand-to-eye recounts, and other audits.
- For DREs, the paper record must be viewable by the voter before the vote is cast electronically, and the system must permit the voter to correct any discrepancy between the electronic summary of the vote and the paper record before the vote is cast.
- Review of source code by the county, the State Board of Elections, the NC Office of Information Technology, and the Chair of any legally recognized political party in NC.
- A statewide price for each unit of the equipment.
- An agreement by the vendor that if it breaches the upkeep part of the contract or goes into bankruptcy, it will permit the software to be turned over to the county for continuing use during the term of the contract and for review by the people who have a right to review the source code.

The RFP would also address the mandatory terms of the contract for the purchase of voting system and the maintenance and training related to that voting system.

The State Board would be given the duties of monitoring voting system contracts, and of facilitating training and support.

No voting system that was not certified through the RFP process could be acquired after August 1, 2005 and no system, regardless of when purchased, may be used in elections during or after 2006 unless the State Board of Elections determines it complies with the RFP requirements.

Section 2 -- Requirements for Voting Systems Vendors. Effective with any upgrade or new voting system purchased beginning August 1, 2005, vendors of voting systems in NC must escrow their relevant source code, keep the escrowed source code up to date and swear that it is the code used in operating voting systems, maintain an active office in NC, and notify the State Board of any known defect in a voting system used in NC. This section also provides that a willful violation of any of the requirements is a Class G felony and that substitution of software into a voting system without notifying the State Board is a Class I felony. Other violations are punishable by civil penalties of up to \$100,000.

Section 3 -- County Commissioners' Role in Purchasing. Effective August 1, 2005, county commissioners would continue to purchase voting equipment. But because of the State Board's new duties, counties would be exempt from the purchasing rules that normally apply to local governments.

Section 4 -- County Board of Elections' Role in Purchasing. Effective August 1, 2005, the county board of elections would have the duty to recommend to the county commissioners which type of voting system the county should purchase. The county board of elections would be required to abide by State Board rules regarding training and support.

Section 5 -- Sample Counts. Effective January 1, 2006, State Board of Elections rules must require a hand-to-eye count of paper ballots in a sampling of precincts, early voting sites, or sets of mail absentee ballots in every county. The hand-to-eye sample counts would be of a sampling of statewide races, always including the presidential race when it is on the ballot. If there is no statewide race, then the State Board must have a plan for getting an adequate sample using district or local races.

Section 6 -- Expansion of Right to Hand-to-Eye Recount. Effective January 1, 2006, any candidate entitled to a recount under current law – that is, a candidate who was less than 1% behind in the initial count (or the lesser of 0.5% or 10,000 votes behind in a statewide race) – is entitled to a sample hand-to-eye recount. That sample would be of all the ballots in 3% of the precincts, randomly selected, in each county. If an extrapolation of the sample count to the whole count forecasts a reversal of the result, the candidate is entitled to a full hand-to-eye recount. This expanded right would not cost the candidate.

Section 7 -- Change in HAVA Fund Language. This section changes language of the statute that created, pursuant to federal law, the fund into which is placed federal money that the State received to implement the requirements of the Help America Vote Act (HAVA). The change clarifies that the money in the fund may be used not only to comply with HAVA but for purpose permitted by HAVA to comply with State law.

Section 8 -- Code of Ethics. The State Board of Elections would be directed to recommend a code of ethics for members and employees of boards of elections at the county and State level. The code would address appropriate relations with voting system vendors. It would address how to avoid the reality and appearance of conflicts of

interest and impropriety. The State Board would report to the Joint Select Committee on Electronic Voting Systems and to the Joint Legislative Commission on Governmental Operations within 60 days after the bill became law.

Section 9 - Pilot Program for Alternative Means of Voter Verification. – The State Board of Elections would be allowed to conduct an experiment, in no more than nine counties, with voting systems that use some means other than paper of letting the voter verify their electronic ballot and some non-paper backup.

ASSUMPTIONS AND METHODOLOGY:

As noted above, this bill, in pertinent part, makes changes to the requirements for the voting systems that can be used in elections in North Carolina beginning with the 2006 elections. It makes changes to the requirements for conducting hand-to-eye recounts. It requires the State Board of Elections (State Board or SBE) to recommend a code of ethics for members and employees of boards of elections at the county and State level. And, it allows the State Board to conduct a pilot program that experiments with voting systems that use some means other than paper of letting the voter verify their electronic ballot and some non-paper backup. This bill also establishes new criminal penalties for violations of the bill.

Fiscal Research believes that this bill has a fiscal impact. However, because of various factors, we cannot provide a reasonable estimate of the bill's total fiscal impact. Our analysis of the bill's fiscal impact and the reasons why we cannot estimate its total fiscal impact are discussed below in five broad categories: Voting System Requirements, Hand-to-Eye Recounts, Criminal Penalties, Code of Ethics Recommendation, and Voting System Pilot Program.

Voting System Requirements:

Section 1 provides that only systems that have been certified by the State Board may be used in North Carolina beginning with the 2006 election year. It provides that the use of paper ballots counted by hand is a certified voting system and it requires the State Board to certify additional voting systems through an RFP process that addresses what is required of the vendors (as prescribed in Section 2) as well as the requirements for the systems and the mandatory terms of the voting system contract. The State Board can only certify voting systems that provide paper ballots or paper records that can be used as a backup means of counting and that the voters may use to verify their choices before they cast their votes. Section 3 allows a board of county commissioners to only adopt and acquire a voting system that has been certified by the State Board. Section 1 also gives the State Board duties of monitoring the voting system contracts and facilitating training and support. Section 4 requires the county boards of elections to abide by the State Board rules regarding training and support.

Fiscal Research believes that completion of the RFP process is necessary to providing the most reasonable estimate of the cost resulting from the implementation of the changes in the voting system requirements. The RFP process is likely to result in the certification of both DRE and optical scan systems from multiple vendors. The unit cost will be dependent upon the minimum system requirements that are reflected in the RFP and the vendors that are selected. The extent of the training and support requirements is somewhat dependent upon the number of systems that are certified. Finally, the total cost will also depend upon the extent to which counties

must replace or can upgrade equipment to comply with the requirement of the bill as well as each county's choice of voting system and vendor from those certified by the State Board of Elections. Further, it has been reported that approximately 80-90 counties would have to replace their equipment even in the absence of this bill either because the equipment is outdated or to comply with the 2002 Federal Elections Commission (FEC) standards. Further, the Elections Assistance Commission (EAC) is also developing standards as required by HAVA. The EAC has indicated that the states will have two years from the adoption of the standards to comply, except that there are certain HAVA requirements for which there must be compliance by January 1, 2006. Considering this, it is reasonable to assume that several counties have budgeted for equipment replacement or will receive HAVA funding for equipment replacement and will not necessarily have to incur an unforeseen expense as a result of this bill as the requirements of this bill can be incorporated into the counties' existing plans to replace equipment. Taking those caveats into consideration, the discussion below addresses the estimated costs related to developing an RFP, equipment replacement, source code review, and training and support.

Request for Proposal Cost

The State Board of Elections did not provide an estimate of its cost to develop the RFP that is required by Section 1 of the bill. It reported that funds received from HAVA Title I grants are available to support the cost of developing the RFP. It also reported that it plans to use RFPs that have been developed by other states as the starting point for North Carolina's RFP. Fiscal Research believes, therefore, that the State Board can absorb the cost of developing the RFP with its existing resources. We will note, however, that the study and development of the RFP for the \$28 million information technology infrastructure project for the State's Retirement Systems was approximately \$400,000 and the study and development of the RFP for the State Controller's business infrastructure project that replaces the State's payroll and human resources systems was approximately \$600,000. We, therefore, estimate that developing the RFP could require an expenditure of \$400,000 to \$600,000 of the State Board's existing resources.

Equipment Cost

Based on information provided by the State Board, forty-eight (48) counties are using optical scan systems, forty (40) are using DRE systems, three (3) are using paper ballots, three (3) are using lever machines, and six (6) are using punch card systems. Existing law phases out the use of lever machines and punch cards and the nine (9) counties that are using lever machines and punch card systems are in the process of replacing those machines. The State's HAVA Budget Plan includes an allocation of the HAVA Title 1 grants to replace the lever machine and punch card systems in those 9 counties. Because the replacement of those systems is pending and because the bill specifies that paper ballot systems are certified voting systems, this fiscal analysis will focus on the 88 counties that are currently using DRE and optical scan systems.

As stated above, any system that is used in elections in 2006 and subsequent years would be subject to the RFP process. Acquisitions and upgrades occurring on or after August 1, 2005 must go through the RFP process. Any systems purchased prior to that date must be submitted for compliance with the RFP requirements. Considering these requirements, Fiscal Research believes this bill could require the 88 counties using DRE and optical scan systems to replace their equipment. For example, though the optical scan systems would be compliant with the paper record requirement, they may not have (1) the capacity to include in precinct returns the votes that were casts outside of the voters' precinct, (2) bonds or letters of credit from vendors to cover

damages, or (3) agreements that cover a breach of contract by the vendor. The DRE systems, on the other hand, would not be in compliance with the paper record requirement.

Though, we believe that the 88 counties may have to replace their equipment, we do not yet know which counties will actually have to purchase new systems or which can upgrade their existing systems. We also do not yet know which type of system each county may choose to purchase. Therefore, our fiscal analysis will include estimates for equipment replacement cost that are based on 3 different alternatives. Alternative 1 assumes that the 88 counties will replace their systems with new optical scan systems. Alternative 2 assumes that the 88 counties will replace their systems with new DRE systems that generate paper records (DRE-PR). Alternative 3 assumes that the 88 counties will replace their equipment with the same type of equipment currently in use. The estimates are based on information provided by the State Board. Please note that in consideration of the caveats noted above, we relied on the information provided by the State Board and did not verify the reasonableness of the information that was provided.

The State Board provided information on the number of registered voters and voting places by county. The State Board also estimated that the unit cost of a DRE with a paper record is \$4,000 and that a reasonable ratio is one unit per 185 registered voters. It estimated that the unit cost of an optical scan tabulator is \$5,500 and that at least one is needed for each precinct. Optical scan systems also require voting booths and paper ballots. The estimated cost of a voting booth is \$160 per unit. One booth is recommended for every 150 voters. The paper ballot cost range from \$0.16/ballot to \$0.27/ballot for an average per ballot cost of \$0.22. The State Board also estimates additional statewide cost as noted in the table that follows.

<i>Estimate of Statewide Cost Provided by State Board of Election</i>	
Nonrecurring	
Software and hardware – modem election results statewide	\$3,600,000
35,000 voter initialization units	\$1,575,000
Programming Software for CBE	\$5,000,000
Hardware for CBE	\$1,500,000
Management stations	\$319,000
Project management & training	\$15,000,000
Nonrecurring	\$26,994,000
Recurring	
Maintenance, subsequent training & software licenses	\$7,500,000

Based on the information that was provided by the State Board, Fiscal Research estimates that the cost under Alternative 1 - 88 Counties Replace Existing DRE and O/S Equipment with New O/S Equipment - would be \$45,420,213 nonrecurring and \$537,333 recurring for printing the ballots. The cost under Alternative 2 - 88 Counties Replace Existing Equipment with New DRE-PR equipment - would be \$135,130,995 nonrecurring. Finally, the cost under Alternative 3 - 88 Counties Replace Existing Equipment with Same Type - would be \$87,831,031 nonrecurring. Additional recurring cost of \$7,500,000 would be required under either alternative. See the tables that follow.

<i>Alternative 1 - 88 Counties Replace Existing DRE and O/S Equipment with New O/S Equipment</i>								
	Reg. Voters	Polling Places	O/S Equipment @ \$5,500/Unit # Units	Total	Voting Booth Cost @ \$160/Booth*	Printing @ \$0.22**		Total
DRE Counties	2,442,423	1,228	1,417	\$7,793,077	16,283	\$2,605,251	\$537,333	\$10,935,661
O/S Counties	2,558,913	1,265	1,460	\$8,027,885	0	\$0	\$0	\$8,027,885
Total for Tabulators	5,001,336	2,493	2,877	\$15,820,962	16,283	\$2,605,251	\$537,333	\$18,963,546
Supporting Equipment/Hardware/Software								\$26,994,000
Total Cost to Counties								\$45,957,546
* No cost is estimated for existing O/S counties based on the assumption that they already have voting booths.								
** No cost is estimated for existing O/S counties based on the assumption their existing printing costs will not increase.								

<i>Alternative 2 - 88 Counties Replace Existing Equipment with New DRE-PR</i>				
	Registered Voters	Polling Places	DRE-PR Equipment @ \$4,000/Unit # of Units	Total
DRE Counties	2,442,423	1,228	13,202	\$52,809,146
O/S Counties	2,558,913	1,265	13,832	\$55,327,849
Total for Tabulators	5,001,336	2,493	27,034	\$108,136,995
Supporting Equipment/Hardware/Software				\$26,994,000
Total Cost to Counties				\$135,130,995

Alternative 3 - 88 Counties Replace Existing Equipment with Same Type

	Registered Voters	Polling Places	# of Units	Total
DRE Counties	2,442,423	1,228	13,202	\$52,809,146 @ \$4,000/Unit
O/S Counties	2,558,913	1,265	1,460	\$8,027,885 @ \$5,500/Unit
Total for Units and Tabulators				\$60,837,031
Supporting Equipment/Hardware/Software				\$26,994,000
Total Cost to Counties				\$87,831,031

Source of Funding for Equipment Replacement

Under current law, the county boards of commissioners are responsible for purchasing voting equipment. The bill does not change that responsibility. Thus, replacing voting systems to comply with this bill would be a cost to the counties. Please note, however, that the State received \$74,249,370 in federal funds that were appropriated by Congress to assist states in implementing the Help America Vote Act of 2002 (HAVA) and it appropriated \$3,444,133 as its required match for the federal funds. In part, Section 301 of HAVA requires states to have accessible voting equipment for the disabled as well as equipment that notifies a voter of an overvote and allows correction of the overvote. Therefore, the State Board has designated \$37,231,222 of the HAVA funds for replacement of voting systems to comply with HAVA. The State Board has also indicated that there is an additional \$16,000,000 of HAVA funds and State matching funds that are subject to being allocated to fund Section 301 voting system requirements. Thus, it appears that there is approximately \$53,000,000 in HAVA funds and related State matching funds that could be used to offset the cost of replacing voting equipment. As noted earlier 80-90 counties would have to replace their equipment to comply with the 2002 FEC standards. It is, therefore, reasonable to assume that there would be substantial overlap between those counties and the 88 counties that might be required to replace their equipment to comply with this bill. Therefore, it is also reasonable to assume that a substantial portion of the HAVA Funds can offset the counties' cost, considering that the bill's requirements can be incorporated into existing replacement plans. Further, Section 7 of the bill would amend the statutory language governing the fund in which the HAVA funds are maintained to clarify that the money can be used not only to comply with HAVA but for the purpose permitted by HAVA to comply with State law.

Source Code Review:

Section 1 of the bill requires the State Board of Elections to review, or designate an independent expert to review, all source code made available by the vendor pursuant to the requirement of the bill. This review must be done before a voting system is certified. The State Board of Elections estimates that the average cost for each source code review is \$100,000 to \$150,000. The State Board expects that separate source code reviews will be required for the software and firmware for each system that it certifies for a minimum of two reviews per vendor. The total cost of the source code reviews will be based on the number of systems and vendors that

are certified by the State Board. Assuming there are a total of 6 vendors that can provide DRE or optical scan systems, the cost of the source code review could range from \$1.2 million (2 reviews * 6 vendors * \$100,000/review) to \$1.8 million (2 reviews * 6 vendors * \$150,000/review). Recurring updates would cost less.

Approval of Voting Systems and/or Updates

The five-member Board of the State Board of Elections would be required to certify voting systems. The Board would meet in public session to do so. The State Board reports that the minimum cost per meeting is \$1,500 and it estimates that six to eight additional meetings could be required to certify voting systems. The total cost of the additional meetings would be approximately \$9,000 to \$12,000.

The State Board also reported that it could possibly incur legal fees if a lawsuit is brought as a result of its certification decisions. There is no basis for determining whether any lawsuits would be brought against the State Board.

Training and Support

Section 1 of the bill requires the State Board to facilitate training and support of the voting systems utilized by the counties. Section 4 requires the county boards of elections to comply with any requirements of the State Board regarding training and support of the voting system. The State Board estimates that it would need 8 additional employees to provide voting equipment support and training for the 100 county boards of elections. The total cost of the salary and fringe benefits for 8 positions as estimated by the State Board is \$528,000 (\$50,000 salary + \$16,000 benefits * 8 positions). Fiscal Research calculates benefits per position at \$3,432 for medical, 7.65% for Social Security, and 5.815% retirement. Based on those rates, the benefit cost for each position at a \$50,000 salary should be \$10,165, for a total of \$60,165 per position. Therefore, the adjusted estimate for salaries and benefits for the 8 positions would be \$481,320 (8 positions * \$60,165). In addition to the salary and benefits, the State Board estimates that it will need nonrecurring cost of \$240,000 for office furniture and computer equipment (\$40,000) and for training on specific voting equipment (\$200,000). It also estimates that it will need \$224,000 on a recurring basis for travel (\$24,000) and for continuing education (\$200,000).

Hand-to-Eye Recounts

Section 5 of the bill requires the State Board of Elections to develop rules that would provide for a hand-to-eye count of the paper ballots or paper records of a sampling of a statewide ballot item in every county. The size of the sample is to be chosen to produce a statistically significant result and is to be chosen after consultation with a statistician. Section 6 expands a candidates right to a sample hand-to-eye recount and to a complete hand-to-eye recount.

The State Board provided information obtained from the Guilford County Board of Elections on the cost of recounting paper ballots by hand. The ballot counting time reflected in the information was based on time tests conducted by the Guilford County Board using a sample of test ballots from the 2002 General Election. Based on that information, it would take one-tenth (.10) of a minute to count one contest per ballot. By current law, ballots must be counted by four-person teams. The daily cost of a four-person team is \$420 (based on an 8-hour day at \$13.12/hour). The cost for counting one contest per ballot is \$0.088 (\$420 / (8 hours * 60 minutes

per hour / .1 minutes per ballot)). Fiscal Research also has data that indicates that the cost of a recount in Washington State was \$0.25 per voter.

There are currently 5,514,863 registered voters. During the 2004 General Election, the voter turnout was approximately 64%. Assuming the voter turnout remains at that level, there would be approximately 3,529,512 ballots. For each 1% of those ballots, the cost could range from \$3,106 ($3,529,512 * .01 * \$0.088$) based on Guilford County data to \$8,824 ($3,529,512 * .01 * \$0.25$) based on Washington State data. Without knowing the size of the sample that will be chosen, Fiscal Research has no basis upon which to estimate the true cost of conducting a hand-to-eye count/recounts.

Code of Ethics Recommendation:

Section 8 of the bill requires the State Board to recommend a code of ethics for members and employees of boards of elections. The State Board considers this responsibility to be among its existing responsibilities and duties. Therefore, it does not anticipate that it would need any additional resources to comply with this section of the bill.

Voting System Pilot Program:

Section 9 of this bill authorizes the State Board of Elections to conduct programs in up to nine counties that would experiment with different types of voting systems. The State Board reported that it does not expect to incur any additional cost to conduct the pilot because voting system vendors are likely to supply the equipment that would be used in the experimental pilots.

Criminal Penalties:

As Section 2(a) of this bill would create a new Class I felony and several Class G felonies for failure to perform certain vendor duties, it would be expected to result in some additional charges and convictions and would, consequently, have a fiscal impact on the Courts and Department of Correction. Because the offenses would be new, there is no historical data from which to estimate the numbers of charges and convictions that would occur under the bill. However, as voting system vendors would be expected to predominantly comply with the provisions of the bill, it is unlikely that a substantial number of new Class G or I felony charges and convictions would occur. As such, a substantial fiscal impact due to the new criminal penalties is not anticipated.

Department of Correction

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2005 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory group, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon and beyond.*

As the Class G and I felonies created by this bill would be altogether new, the Sentencing Commission has no historical data from which to project the specific impact on prison population. In FY 2003-04, 11 percent of Class I and 44 percent of Class G convictions resulted in active

sentences with average active sentence lengths of 7 to 9 months and 15 to 19 months, respectively. If, for example, there were ten Class I felony convictions per year, one additional prison bed would be needed in the first year and three beds in the second year. If, for example, there were two Class G felony convictions per year, one additional prison bed would be needed in the first year and two beds in the second year. The average annual operating cost for one prison bed in FY 2006-07 will be an estimated \$24,740.

The remaining 89 and 56 percent of Class I and G convictions, respectively, resulted in non-active sentences. Probation officers in the Division of Community Corrections (DCC) supervise offenders with intermediates sanctions at an estimated cost of \$10.94 per day for the first six months and \$1.87 per day thereafter. (This cost estimate is based on the average cost and duration of intensive probation, the most common intermediate sanction.) The estimated cost for a supervised community offender is \$1.87 per day.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts (AOC) provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

For any new Class G or I felony charge due to this bill, there would be additional court and preparation time needed to dispose of the charge, thus increasing superior court workload. Based on the costs of attorney preparation time, time in court, and indigent defense AOC estimates the average cost per charge if settled via trial at \$5,835 for a Class I felony and \$7,657 for a Class G felony. If settled via guilty plea, AOC estimates the average cost at \$330 per plea for Class I and \$380 per plea for Class G.

SOURCES OF DATA: State Board of Elections; Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Marilyn Chism and Aaron Paul

APPROVED BY: James D. Johnson, Director
Fiscal Research Division



DATE: July 28, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 223

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S223-AST-67 [v.1]

Page 1 of 1

Date _____, 2005

Comm. Sub. [NO]
Amends Title [NO]
Third Edition

Representative Kiser

1 moves to amend the bill on page 13, lines 24-30 by rewriting those lines to read:

2
3 "SECTION 7.(a) G.S. 163-82.28 reads as rewritten:

4 '**§ 163-82.28. The HAVA Election Fund.**

5 There is established a special fund to be known as the Election Fund. All funds
6 received for implementation of the Help America Vote Act of 2002, Public Law
7 107-252, shall be deposited in that fund. The State Board of Elections shall use funds in
8 the Election Fund only to implement HAVA. HAVA and for purposes permitted by
9 HAVA to comply with State law, with the funds being dispersed to counties for
10 expenses incurred to the extent practicable.'

11 **SECTION 7.(b)** The State shall reimburse counties for expenses associated
12 with the implementation of HAVA and this Act, should the funds available in HAVA
13 Election Fund be insufficient to meet those expenses."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

VISITOR REGISTRATION SHEET

Election Law and Campaign Finance Reform

August 3, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Ed Turington	BRM
Alison Friedman	NCACC
Stephane Cohn	UCDST
Brett Vojak	UCDST
7/27/05	NOVA
Terry Williams	NCACC
Paul M...	NCACC
Carolyn Justice	State Rep
Brian Lewis	Covenant w/ NC's Children
Margaret Jordan	NC State Bar
Wm Warren Pritchard	COMMON CAUSE/NC

VISITOR REGISTRATION SHEET

Election Law and Campaign Finance Reform

August 3, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Justin Moore	Duke Univ. Comp. Sci. Net'l Comm for Public Integrity
Cassie Gann	NCPREG
Steve Metcalfe	Diebold
Johnnie McGowan	IEE
Bob Hall	Information Systems
Tom Murren	NCSA Intern
John Mitchell	Gov. Center
Joyce Webb	www.ncvoting.net
Kathleen Edwards	UNC-CH Institute of Gov't
R. Paul Williams	NCSA
Roger Knight	Wyrrick Robbins Yates & Pantan. LLP

VISITOR REGISTRATION SHEET

Election Law and Campaign Finance Reform

August 3, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

<i>Mr. [unclear]</i>	<i>[unclear]</i>
<i>Kelly [unclear]</i>	<i>Capital Group</i>
<i>Bob Phillips</i>	<i>CNCL</i>
<i>Chad [unclear]</i>	<i>Civitas Institute</i>
<i>Gary Robertson</i>	<i>AP</i>
<i>Matt Latrock</i>	<i>NCGA</i>
<i>[unclear]</i>	<i>[unclear]</i>

MINUTES
House Committee on Election Law and Campaign Finance Reform
August 10, 2005
1:00 p.m., Room 1425
Representative Moore, Presiding

The House Committee on Election Law and Campaign Finance Reform met at 1:00 p.m. on Tuesday, August 10, 2005, in Room 1425 of the State Legislative Building.

Members present were: Representative Tim Moore, Co-Chair; Representative Deborah Ross, Co-Chair; Representative Joe Kiser, Vice-Chair; Representative Paul Luebke, Vice-Chair; Representative John Blust, Representative Pricey Harrison; Representative Hugh Holliman; Representative George Holmes; Representative David Lewis; Representative Edd Nye; and Representative Edgar Starnes. Also present was Representative Joe Hackney, ex-officio member.

There was one bill on the agenda: Senate Bill 223, Public Confidence in Elections, sponsored by Senator Kinnaird.

Co-Chair Tim Moore called the meeting to order and introduced the pages and sergeants-at-arms.

Co-Chair Moore recognized Representative Kiser to present an amendment to SB 223. Representative Kiser explained the amendment and moved for its adoption. After discussion, the amendment was adopted unanimously.

The Chair recognized members of the audience to speak on the bill as amended. Mr. Perry Wood, representing the North Carolina Coalition of Voter Verified Election spoke in support of the bill. Mr. George Gilbert, representing the Guilford County Board of Elections, spoke in opposition. Mr. Gilbert opposed requiring a paper backup to the ballots as a matter of practical application rather than policy. Mr. Justin Moore, from the Computer Science Department at Duke University, spoke in favor of the bill and contradicted Mr. Gilbert's views. Mr. Paul Meyer with the County Commissions Association questioned the fiscal note and where the money would come from to comply with the HAVA and State mandates. Ms. Elizabeth Dukes, Director of North Carolina PIRG, a public interest research group, spoke in support of the bill.

Also present and answering questions of the public and committee members were Ms. Johnnie McLean from the State Board of Elections, Ms. Marilyn Chism from the General Assembly's Fiscal Research Staff, Mr. Bill Gilkeson from the General Assembly's Research Division, and Mr. Gerry Cohen, Director of the General Assembly's Bill Drafting Division.

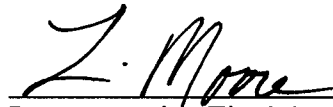
Following discussion by the committee, Representative Ross moved that the amendment be rolled into a House committee substitute for Senate Bill 233 and that the committee substitute be given a favorable report, unfavorable as to the original bill, and that the

committee substitute bill be sent to the Appropriations Committee. The motion carried unanimously.

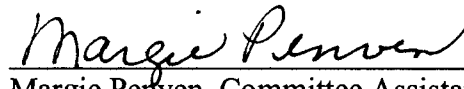
There being no further business, the meeting was adjourned at 1:55 p.m.

A verbatim transcript of this meeting is attached hereto along with all pertinent documents and handouts.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "T. Moore", written over a horizontal line.

Representative Tim Moore, Presiding Chair

A handwritten signature in cursive script, appearing to read "Margie Penven", written over a horizontal line.

Margie Penven, Committee Assistant

TRANSCRIPT
House Committee on Election Law and Campaign Finance Reform

1:00 p.m. on August 10, 2005
Room 1425, LOB
Representative Moore, Presiding

Rep. Moore: I wanted to ask the Committee on Election Law and Campaign Finance Reform to come to order. I want to welcome you to the committee today on behalf of myself and Co-Chair Deborah Ross. We have a number of pages with us today. We have Jordan Little who is from Mecklenburg County, sponsored by Representative Gulley; Jordan Spangenberg who is from Wake County, sponsored by Speaker Black; Rebecca Ellis from Beaufort, sponsored by Representative Arthur Williams; Brooke Thomas from Person County, sponsored by Representative Winkie Wilkins; Roxanne Wynne who is from Pitt County, sponsored by Representative McLawhorn; John Lyon who is a page from Wake County who is sponsored by Speaker Black; Cori Starling from Johnston County, sponsored by Representative Langdon; and Natasha Gumber from Wake County sponsored by Representative Martin. So we shouldn't have any problem getting things done. We've got plenty of pages here today. We're glad to have them. And our sergeants-at-arms are Earl Coker, Lesli Oakley, and James Worth. We want to thank you all for being here.

The Committee today is going to pick back up with Senate Bill 223, which is the Public Confidence in Elections bill. Senator Kinnaird is the primary sponsor, and I think in her absence Representative Insko is going to be here. I don't know...Representative Insko, did you desire further comment at this point on the bill?

Rep. Insko: No, I'm fine. I think the committee...we reviewed last week in the committee. I'll be glad to respond to questions.

Rep. Moore: Okay. Before we do that, I understand that there is an amendment from Representative Kiser. The Chair has received that amendment and will recognize Representative Kiser to debate his amendment. Have copies been distributed of the amendment?

Bill Gilkeson: Not yet.

Rep. Moore: Okay. We'll be at ease just a moment while those copies are distributed. Welcome back, Representative Luebke. You better win the award for who traveled the farthest for the Election Laws Committee today.

The committee would please come back to order. Have all the members received the text of the amendment? You have not. If you have not received the amendment, please raise your hand, and ask the sergeant-at-arms. We've got a few folks that haven't received the amendment yet.

Rep. Ross: Well, they're all being picked up at the end of the table, and we need to get them.

Rep. Moore: The committee would please come to order. It's a little loud and difficult for folks to hear. Thank you. The amendment has now been distributed. I'm going to recognize Representative Kiser to speak on the amendment at this time. Representative Kiser.

Rep. Kiser: Thank you, Mr. Chairman. During our last meeting we heard _____ (unintelligible) an amendment that attempted to make a _____ to everyone that's concerned. We've had a little more time and we have a more sophisticated document here now. We've made a few corrections, and I will start with the first one here on page 2, line 21. That deals with the posting of a bond and damages and so forth resulting from an election by the company that is supplying the voting machines, and it appeared to me and others that we should just hold them responsible if their system failed. So after the word, on line 21, after "voting" we insert the word "system" there. And then again on page 2, line 11, by inserting the following between "system." and "The": 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." Then we get back to page 13, lines 30 and 31 and we insert here a Section 7.1, which does the business of fairness for every county that is concerned with this. And I think it's all the counties. And it says simply that each county may receive a grant of up to \$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 may also include two backup units per county. Each county may be also receive a grant equal to \$1 per voter in the 2004 presidential election, but no less than \$10,000 or more than \$100,000, and this is for central administrative software for tabulation. Now this is the fairest way that any of us could figure out that this could be done to benefit all the counties. And I move that we approve this amendment.

Rep. Moore: I recognize Senator Kinnaird. Any comments on the amendment proposed by Representative Kiser.

Sen. Kinnaird: Well I think all the parties have worked very hard to find something acceptable to both the counties and everybody involved, so I think that's fine.

Rep. Moore: All right. Is there further debate or discussion on the amendment submitted by Representative Kiser? Representative Starnes, you're recognized to debate the amendment.

Rep. Starnes: I have a question for the Board of Elections. Well, let me ask Representative this question.

Rep. Moore: You're recognized.

Rep. Starnes: Is your language on page 2, line 11, certifying the optical systems and so forth...does that say that if the counties have those systems now that they can continue to use them?

Rep. Kiser: If they so choose to. If their system is old and maybe needs replacing, then they could write a grant and receive monies to replace the system, if they so desire.

Rep. Moore: You're recognized for a follow-up.

Rep. Starnes: Well let me follow-up to the State Board of Elections. The fiscal note says that under the original bill, probably 88 counties would have to replace their equipment. Will this language reduce the number of counties that have to completely replace their equipment?

Ms. McLean: Without the benefit of the listing of counties and the years that the pieces of equipment were purchased, I would hesitate to say that would limit that number because we do have a problem with old equipment out there. We already know that.

Rep. Moore: If we would, I think staff can answer this question. Mr. Gilkeson is aware of this issue.

Mr. Gilkeson: Well I think there are probably some optical-scan systems that in order to comply with the applicable requirements of federal law would have to make some changes to their optical-scan systems in order to accommodate the handicapped. Is that...?

Ms. McLean: That is accurate. Yes.

Mr. Gilkeson: And what this amendment says is that the State Board shall certify those systems if they meet all the applicable requirements of the federal and the State law. So they would have to meet all those requirements.

Rep. Moore: Representative Insko, you desire to comment on this?

Rep. Insko: Well, Representative Starnes, I just wanted to add about your question about the...well, or add to the comments about the questions for the \$12,000. It was the intent of the Select Committee that we provide funding for requirements that the State was adding over and above what they had to do now, and that we pay the minimum amount that we needed to do that because counties have historically paid for equipment, and I think they have agreed to continue paying for equipment. We want to give them enough money to get up and running, and this money is enough for every county to replace their equipment, if they need to do that.

Rep. Moore: Representative Kiser, you're recognized.

Rep. Kiser: One thing that I want to make clear that I didn't make clear and that is the fact that you have to have handicapped accessible marking systems for the voters, and we believe that the \$12,000 will take care of that. And that is not just...that's all 100 counties have to have that by federal law, and we believe that this amount will take care of the accumarking that we have to do.

Rep. Moore: Representative Starnes, you're recognized.

Rep. Starnes: Well I want to finish on follow-up, and I'll ask Mr. Gilkeson this. I know there were some counties, particularly Carteret, that were having some problems because they didn't have a paper trail, and I think that's what this is trying to address. In Caldwell County we've got the, I guess it's the optical-scan system where you have the paper ballot and you take a pen and you color into the arrow, and then you feed it into the machine and it tabulates it. And we've had numerous hand counts—recounts—in Caldwell County, and you can actually look at the ballot and figure it out. So I was always puzzled why would Caldwell County have to replace that type of machine, but this is saying we wouldn't necessarily have to replace those.

Mr. Gilkeson: You would not necessarily have to except to comply with federal or state law, and I mentioned one thing that optical-scan systems have to do to comply with federal law that some of them don't now. One is that at least in one polling place per precinct there has to be the handicapped accessible voting device that a blind person can use with the same degree of privacy and independence as anybody else. And there also has to be...the system has to tell the voter if they have over voted—if they voted for more than the number of people there, and I think some optical-scan systems that are used now don't do that. So they would have to be at least upgraded.

Rep. Moore: Representative (sic) Kinnaird.

Sen. Kinnaird: But that doesn't mean you have to replace all of them. It just means you have to have one per precinct. So they wouldn't have to replace them. And we have them where we vote, optical scans.

Rep. Moore: Further debate or discussion on the amendment? Seeing not, all those who favor the amendment please say aye. Those opposed no. The ayes have it. The amendment is adopted. (Unanimous.)

We are now back in debate on the bill as a whole. Co-Chair Ross.

Rep. Ross: Well, Mr. Chairman, I'm not trying to cut off debate, but I would just at the appropriate time would like to make a motion for a favorable report for the bill as amended.

Rep. Moore: We do...let me go ahead. I know we have some folks who came in to speak both pro and con on this bill, and I think probably the way to have this is to maybe alternate between for and against, so we're going to do that. I'm going to open the floor up to members of the public. You're going to have about minute to speak—maybe two minutes. We're going to try to keep it consistent. Is there someone here who would like to speak in support of this bill? If so, just raise your hand; you'll be recognized. Yes, sir. Would you please state your name and where you're from?

Perry Woods: Thank you, Representative Moore. I'm Perry Woods; I'm here from Wake County, and helping work with the North Carolina Coalition of Voter Verified Elections. First we want to thank you all for taking up this very important issue. No one knows better what happened with Carteret County, why it's an important issue. I also want to thank Senator Clodfelter, Senator Kinnaird for all the hard work they do in the Senate to make this bill work. We think this is something that, with this amendment, is equitable to everybody. We're sure that we'll have fair, verifiable elections, and we urge you to vote for this bill as it is.

Rep. Moore: Thank you, Mr. Woods. All right. Now we'll look from the floor. Is there someone here from the public who would like to speak against the bill? Mr. Gilbert.

George Gilbert: I'm George Gilbert, and I am representing the Guilford County Board of Elections here today. I've been Director of Elections in Guilford County for 17 years, and we've used DRE equipment for 17 years in Guilford County. And I'm here basically not on a matter of policy but on a matter of practical applications. I want you all to at least see one time what

you're looking at. (He holds up long tape.) This is a voter verifiable paper tape produced from one of the vendors that is currently having their system certified. Here's a single ballot. This ballot over here contains 55 votes, and so a fairly good-sized roll of paper. I'm not sure now we would handle it if we had to do a manual recount, but I'm sure we would find a way. I would have 3,545 of those tapes that size if I had had this system in place in 2004 in Guilford County. I did a recount a recount of our 194,000 ballot records. That is the individual ballot records for each voter in our electronic backup system last year when we had our recounts. It took me 14 seconds to do that recount. You can think about what it would take to manually recount 200,000 pieces of paper. Optical-scan ballots. Some are clear; some are very ambiguous. You saw what Florida did in 2000, which is really why we're here. Florida now bans the manual counting paper ballots. They learned their lesson. The State of Washington last year went through this. Finally certified their governor's race. It cost them not quite a million dollars to conduct that manual recount of one statewide race. Well we conducted a recount of two statewide races last year. If we had to do that manually on paper, it would have run us roughly \$2.4 million to conduct that recount using the exact same cost figures that they had in the State of Washington. The final thing is that I don't know if there's anyone left that honestly believes that North Carolina precinct officials or public officials can manually count 3.5 million ballots on paper accurately. They might be able to do it one time. They might not get it right the next time. You would have literally thousands and thousands of people sitting there looking these documents trying to coordinate what they're doing—trying to get it to add up properly. There's no way to test the accuracy of manual counting; there is no way to verify the accuracy of manual counting. All you can do is do it again, and you don't know which errors you made the first time or the second time. I can test electronic tabulating. It tests in a lot of different ways, and I've tested manual tabulations. We did it for over a hundred years in this country, and we've spent the last hundred years trying to find better systems to replace manual tabulation of paper ballots. We haven't gotten it perfect. Probably the most frequently used cliché in elections is there's no such thing as a perfect voting system. The paper certainly is not it.

Rep. Moore: Thank you.

Rep. Kiser: I had a question for the speaker.

Rep. Moore: Representative Kiser, you're recognized for a question.

Rep. Kiser: Mr. Gilbert, when you did this recount, did you come up with the same thing that you had to start with?

Mr. Gilbert: Yes, sir.

Rep. Kiser: I figured that.

Mr. Gilbert: That's the way it's supposed to work, sir.

Rep. Lewis: Question for the speaker.

Rep. Moore: Representative Lewis, you're recognized for a question.

Rep. Lewis: Yes, sir. Before I ask it, let me be sure to the bill sponsor. This bill requires that the voter be able to see what they marked before they leave. Right?

Rep. Insko: Yes. Regardless of what kind of system the voter votes on, this bill requires that there be a paper record created of that vote that the voter is able to look at and verify that they actually did vote that way before the vote is finally cast.

Rep. Lewis: Mr. Chairman, I'd like to ask the gentleman from Guilford...

Rep. Moore: You're recognized.

Rep. Lewis: I apologize. I don't know what is the right terminology. The roll would not even fly in this bill would it because the voter doesn't look at...they can't even look at that before they leave.

Mr. Gilbert: Yes, sir. That's the latest system being designed. The voter verified paper trail's on DRE systems—that is an actual system tape. And the voter looks at it under a plastic screen, and they have the option of verifying that that's the ones that they voted for and they push the vote button and then it rolls out of sight and then the next voter supposedly does the same thing.

Rep. Lewis: It prints that. They can look at it, if they choose.

Mr. Gilbert: Yes.

Rep. Lewis: I would imagine it would be quite long. I mean the _____ would be very long or is it in segments? Or how does it work?

Mr. Gilbert: That's 55 votes on that roll (indicates roll he brought with him), and the other document that I have, I'm not sure where it is right now, but that if you hold it up, that's one voter's vote right there on one of the systems, and the other roll that Chairman Ross has right now contains 55 votes from one of the other DRE systems that's currently under development.

Rep. Lewis: Mr. Chairman, this is an inquiry of the Chair or bill sponsor or perhaps staff, but in current law defines when there has to be an end to a recount and is that addressed in this bill?

Mr. Gilkeson: Well, currently there is a statute about recounts, and it gives the State Board of Elections the authority to decide how the recounts are to be done, and the State Board has some rules dealing with when they are to be hand-eye recounts or not. What the bill does is to give a candidate who has a right to get a hand recount...to get a recount because they are within the one percent range...gives them the right to attest to a sample hand-eye recount of certain precincts. There is also something in the bill to require a sample recount to be done just administratively by the boards of elections to determine if the system works right.

Rep. Lewis: Mr. Chairman, I'd like to follow-up.

Rep. Moore: You're recognized.

Rep. Lewis: I read about some sort of sample recount. What does that mean? Does that mean that they test certain votes or they have to test the entire precinct. I don't understand.

Mr. Cohen: There are two different types of hand-to-eye recounts in this bill. One is, as Mr. Gilkeson explained, is just you're within the margin that would entitle you to having the ballots run back through the machine—that kind of recount. But you can choose to also ask for a hand-to-eye recount. That would be done in a sample of three percent of the voting places. In other words, they would take all of...they might in Mecklenburg County take all of eight precincts or Orange County the three percent might be all of three different precincts, and count all of the votes in those precincts. Now there's a separate requirement for, I believe, it's in a general election, a partisan election, at least one item....

Mr. Gilkeson: Well in an election where there's something on the ballot statewide, there has to be a sample count of a certain number of precincts in each county in that race to determine...just to use that as a quality control.

Mr. Cohen: The bill says the State Board of Elections would determine what's a statistically significant, I think is the word, sample of which...but in any case it would be whole voting units used. It might pick out, you know, West... South Carrboro Precinct or Raleigh Precinct 7.

Rep. Lewis: One last follow-up.

Rep. Moore: You're recognized, Representative Lewis.

Rep. Lewis: And this will be done in each election cycle? Is that right? Or will it be done just once to make sure the machines works.

Mr. Cohen: The one that the candidate can ask for will occur if there's any race that's within the one percent margin, and a candidate chooses to ask for the three percent sample. The other one will be done at each time there is a statewide election, so it will occur basically every two years—that there will be this sample done. And there are several different reasons for doing sampling.

Rep. Moore: All right. Representative Holmes, you had your hand up first.

Rep. Holmes: Yes, I'd like to ask the gentleman a question.

Rep. Moore: Ask your question.

Rep. Holmes: I gathered from your remarks that you are not agreeable that any of these systems is going to answer the questions that we're trying to correct. I just wondered, what system would you think would be more accurate? In your opinion, and you've been Chairman of the Guilford County Board for 17 years.

Mr. Gilbert: Director. I'm not Chairman but the Director.

Rep. Holmes: Okay. All right. Excuse me.

Mr. Gilbert: There is a variety of technologies that are being developed that.... One of them is the Sentinel. You attach this to an electronic voting machine and using separate software, which is by the way open source software, it records electronically the same votes that are being cast on the voting machine, and it can display them back to the voter either visually or through audio so that the voter can verify what is being recorded here. Ted Selker, who is the Co-Chair of the MIT CalTech Voting Project, which is probably the most prestigious of the academic efforts that came out of the 2000 election, is recommending as a more effective way of verifying the votes for the voters a tape. You tape the audio output from the DRE machine and you can automatically, using separate software, open source if you wish, re-tabulate the votes from those tapes. There are video recording systems that record a video image of a DRE ballot face. The point being, the Elections Assistance Administration in Washington is developing standards right now—new voting system standards—and they talk about independent, dual verification systems. They purchased one independent verification system. This is another; this is another. All of these are very early in their development. They are almost experimental. For us to mandate one of them at this point in time and lock ourselves into the lowest technology and the least accurate technology, I think would be

a massive step backwards for the State of North Carolina, and we would be doing ourselves and our voters a disservice.

Rep. Moore: Representative Holmes.

Rep. Holmes: Yes. Then what you're saying is that we're not ready to _____ (unintelligible).

Mr. Gilbert: No, sir. I absolutely feel that we need independent, dual verification on our voting systems. I'm a member of the Election Center's National Task Force on Election Reform, and we have recommended that. I recommend it; my board recommends it. I think we need better back up and better security on our systems. No question about it. But I think that there are alternatives to paper that will work better and be far cheaper and more accurate.

Rep. Moore: I'm going to go back to the public unless I see any members of the committee.... Okay, Representative Luebke.

Rep. Luebke: Yeah, I had a question. In Durham County we have optical scanners, so when I vote I go over them one-by-one; I go back up to make sure that I've got what I want, and drop it in. Here, you were talking about how under DRE the paper record must be viewable by the voter. How would, with this list of 55, how would I see my vote if I'm voter number 26 among the 55?

Mr. Gilbert: You would see it at the point just before you cast it. You will not see it again after that. But before you press the vote button for the final time, you would have an opportunity to look at your paper printout and say, okay that's what I want. And then you press the vote button and it would scroll up and out of the way. After that...I mean, you've seen how you voted on a piece of paper. My concern is how can I count that accurately? You would have no way to know that vote was counted accurately if I got to....

Rep. Luebke: May I follow-up, Mr. Chairman.

Rep. Moore: You're recognized for a follow-up question.

Rep. Luebke: I've got a paper...essentially. I'm number 27, and so each paper is next to me. I can't see voter 26 or voter 28's place.

Mr. Gilbert: That's correct. But if somebody counted and you were the 27th voter on that paper roll, and they got their hands on that paper roll, they could see how you voted.

Rep. Luebke: Right. But if I may have made a mistake, I look at the piece of paper and say, oh, I made a mistake. How do I correct it?

Mr. Gilbert: They're equipped to allow you to void that paper copy, make the correction you want, and then it prints out another copy of your corrected ballot before it's cast. It prints void on the tape, is my understanding of the way these systems work. They do allow you to make those corrections.

Rep. Luebke: Thank you.

Rep. Moore: I want to go to other members of the public. I had a name here—Justin Moore—to speak. Mr. Moore? You've got a great last name. Welcome to the committee.

Justin Moore: My name is Justin Moore. I am in the Computer Science Department at Duke University, and I've been working with...basically working on this bill, going back to the Joint Select Committee, and I would like to thank pretty much everyone that's been involved with this. It's just a fantastic job of going through the issues and coming out with what I feel is a really, really good bill. I just want to respond briefly to Mr. Gilbert's comments. Mr. Gilbert does have some very good points in that people are infallible and people make mistakes. The thing is that this also includes people of my profession, computer scientists. When we're programming these systems we make mistakes, and even though the State of Washington might have spent millions of dollars to try and finish an election and it took forever to recount the paper, we here in North Carolina still do not have a Superintendent of Public Instruction in part because of one of these paperless machines. The task of verifying correctness of software is just massive. I mean if we're talking about certifying software to federal Aviation Administration or FDA-type standards commonly used for pacemakers, we're talking about \$1,000 a line. Boeing spent about \$2 billion verifying the correctness of the software for their 777, and that software's significantly smaller than and less complex than what's on most DRE machines. So to verify the correctness of software that's on most voting machines, we're talking billions of dollars, and the consequences of a mistake in even just one or two lines is massive. We're looking at another Carteret County. With regard to the paper roll that Mr. Gilbert brought out, that is one of the available systems that are out there. There are systems out there that create independent ballots, independent pieces of paper like more traditional optical-scan, and those are actually the systems that are supported by the verified voting community. We definitely opposed these ballot-on-a-roll systems. As Mr. Gilbert said, they are very difficult to read; they're difficult to recount; they're difficult to verify. We oppose them. But there are better systems out there, and we hope that the counties will use the money that they've have been given to get, you know, these quality systems that are out there.

Rep. Moore: Thank you. Do we have questions of the speaker? Representative Starnes.

Rep. Starnes: Yes. You said that your group's actually opposed to this type of verifiable ballot, but under this bill it's legal. Is that right?

Mr. Moore: It is allowed. We did push for a change to the bill to prohibit it, but you know, a good bill today is better than a perfect bill tomorrow.

Rep. Moore: That's the quote of the week right there. All right, Representative Starnes. You're recognized for a follow-up.

Rep. Starnes: This follow-up is to Mr. Gilbert or to the State Board of Elections. How many counties in the State would be using this type of system? You said Guilford. How many systems could potentially be out there?

Ms. McLean: Something like 43, if you meant with the counties that currently use the direct report electronic systems.

Rep. Starnes: Well, it was just my observation that if we say these types of paper trails are okay, if we get into a situation where we have to have a manual county statewide, we're going to be in a terrible mess trying to count these pieces of paper.

Rep. Moore: Representative Blust, you had your hand up.

Rep. Blust: I'm somewhat in a quandary. It seems like either side I talk to sounds right. Whoever I talked to last, sounds right. But I've got a question for some of the people who have talked to me in favor of the bill. If this passes, you all get to go home and still do whatever you do. Mr. Gilbert's got to actually implement whatever we do. So why should I give more weight to what you're saying that what Mr. Gilbert's saying?

Rep. Moore: Who wants to answer that question? I'll let Justin.... Mr. Moore, I'll let you answer that since you were last to be recognized to speak.

Mr. Moore: Well, I just wanted to point out that if we do go to a computerized system then I, or at least my profession, gets involved. And if you look at what professional computer scientists are saying about this, if you look at professional organizations such as the Association for Computing Machinery, they are vastly opposed to these kinds of systems. It is the public policy taken of the Association for Computing Machinery that every vote in this country be backed by a tangible, physical, paper version of the ballot. And this was something that was reported by 95% of members polled on this issue. So, while it is true that there are computer scientists such as Dr. Selker at MIT that support paperless technologies,

he's in the minority. So we're talking computer scientists who have done, you know, who have worked on the _____ (unintelligible) that say that the standards and the quality of the growing software, there's just no guarantee that it's anywhere close to where we needed to be, and that's a fact. That's from 40 years of software development experience. That's how it works out.

Rep. Moore: Further members of the public, is there anyone in the public who wants to speak against the bill? Yes, sir. You want to introduce....

Paul Meyer I'm staying out of the paper trail fray. I'm Paul Meyer with the County Commissioners Association. We don't have a position on paper, paperless, electronic. My question is about the fiscal note that you all have on your desk in front of you. If you look at it, and I believe this fiscal note is related to the amendment that the body adopted a few minutes ago, it talks about a possible equipment grant of up to \$33 million, 2004 voter turn out money—\$3.5 million, software grants around \$3 million. That's a maximum of what? Counties were under the impression that we would have about \$53 million dedicated for voting equipment and other types of equipment changes. If you add up 33, 3.5, and 3, you're looking at about \$38 million. So my question is where is the remaining \$15 million and will the counties be eligible to receive additional monies if, in fact, \$12,000 for polling places is inadequate to comply with HAVA and State mandates?

Rep. Moore: All right. Staff is going to answer that question. Gerry are you going to....

Mr. Cohen: I'll let Marilyn correct me, but...I mean this is basically minimums and allocates this much of the fund. It would be up to the State Board to decide that...within the federal law...to decide how to allocate the remaining funds. So I don't think this restricts them in their HAVA plan, but if were funds were available, they can make additional grants for equipment. Marilyn can speak better about, you know, how she got the numbers or the actual differences and what they're available for. This is basically a minimum grant program. It doesn't say the State Board can't use other money. This is basically a floor for each board in my opinion. But as to how much extra money there is, Marilyn from our Fiscal staff would be better able to say that.

Rep. Moore: Marilyn, would you like to comment on that.

Ms. Chism: Yes. I'm Marilyn Chism with Fiscal Research. Just wanted to comment. The numbers on this fiscal analysis are based strictly on the amendment that would say that each county would get \$12,000 per polling place and is based on the most recent data that I had from the State Board of Elections as well as \$1 per voter for a minimum of \$10,000 and a maximum of

\$100,000. So we would have the \$33 million plus the \$3 million. But again, as Gerry explained, my understanding is that there is approximately \$53 million from the HAVA fund. This amendment does not preclude the State Board of Elections from allocating the difference between the \$53 million and the sum that would be required for these grants.

Rep. Moore: Okay. And for what it's worth, I want to mention this bill goes to the Appropriations Committee after it leaves this committee, and we will probably let that committee address the money issues. We're trying to stick to mainly policy here. Representative Insko?

Rep. Insko: And I would just add that there's nothing in this bill or the amendment that Representative Kiser ran that limits what the State Board of Elections can do to assist counties. So I would support...I'm a former county commissioner, and I think if counties need the money that we ought to try to provide it for them.

Rep. Moore: Okay. Further comment from the public? This would be someone who supports the bill. We'll try to get one more pro comment. Yes, ma'am.

Ms. Dukes: Thank you, Mr. Chairman. My name is Elizabeth Dukes. I'm the Director of North Carolina PIRG, a Public Interest Research Group. We're a statewide public interest advocacy organization with about 8,000 members, and we do support the bill and appreciate all the work from Senator Kinnaird and Representative Insko and others in putting this bill together. I just want to point out briefly that certainly Carteret County was the highest profile instance of votes being lost because the lack of a paper trail, but there are numerous other counties. Craven County, Jackson, Guilford, Mecklenburg, Onslow, Pender, and Jackson all had problems or experienced problems with their voting machines in 2004, and so I think it's really important that the committee is considering this step. And then finally I just want to point out that, of course, counties do have a choice. The toilet paper roll, as it is called, is not mandated. It is simply permitted, and counties can implement whatever system these chose to ensure that there is a paper record of the ballot.

Rep. Moore: Thank you.

Ms. Dukes: Thank you.

Rep. Moore: And do we, so that we're balanced, do we have anyone else to speak against the bill? All right. Seeing no hands, we're going to cut off the public comment at this point. Is there further debate or discussion among the members of the committee? Representative Starnes?

Rep. Starnes: I'll ask Mr. Gilbert a question. Everybody just assumes that this is just an option that the counties have. I don't understand the machines well enough to know what the options are, but what's it going to cost Guilford County to go with a different option?

Mr. Gilbert: Well, I won't be able to keep the machines I've got because under HAVA they don't meet the proper requirements, and they will be both statutorily and technologically obsolete with two years. So even Guilford County is going to have to buy a new voting system. Will I buy a voting system that's touch screen with a paper roll like that? I don't know what the board of elections will choose to do. I do know that if we were to replace the touch screen system with something like the accessible optical scan system that it would cost about \$8 million instead of \$5 million. That's if there is a pure replacement.

Rep. Starnes: Is that just in Guilford County.

Mr. Gilbert: That's just Guilford County. Yes. The other thing about it is, no matter what kind of paper you're counting, the same applies. This would just be a little bit harder although we'll find ways to manage whatever we use. No matter how we manage it, it's.....tape ran out.

Mr. Gilbert: New tape begins....Oh, absolutely not. That amendment is basically...will pay for an optical scan system as opposed to a DRE system. That's what it was designed to do, I believe.

Rep. Moore: All right. Seeing no further debate or discussion...Representative...Yes, sir.

Rep. Lewis: I just want to make this one point. I think Mr. Gilbert made a very important point a while ago. I don't mean to quote you wrongly. If I do, please correct me. But he said he's not opposed to their being some way for the voter to verify their vote but that we are mandating the way in which that's done, and I believe the word he said was the lowest form to do that. So I think that was a very good point. I just wanted to....

Sen. Kinnaird: I have always understood that optical scan is the cheapest available system, but I'd like Ms. McLean to speak to the process.

Ms. McLean: Initially the cost of an optical scan system is lower than that of a direct record electronic. However, when you factor in the cost of printing the paper ballots, the storage of those ballots for the required period of time, and if it's federal offices on there they have to be stored for 22 months, over a period of time it's a kind of a wash that they balance out—the optical scan and the DRE.

Rep. Moore: All right. We're going to go ahead and take a vote. Representative Ross, you're recognized for your motion for a favorable report and to report the bill to the Appropriations Committee.

Rep. Ross: Right. Well to roll the amendment into a committee substitute, favorable for the committee substitute, unfavorable as to the original bill, and to send the bill to Appropriations.

Rep. Moore: Okay. You've heard the motion. Is it urgent, Representative Blust?

Rep. Blust: It's a question, I think, on an important section of it, and that's Section 5. As I understand the bill, most of the _____ (unintelligible) are going to kick in for the recount when there's a contested election within one percent. And we're going to hope that doesn't happen. But it seems like in Section 5 we're saying there's also going to be sample...statistically significant samples done...hand count just to check up, and I'm wondering when the full count kicks in under this language. It just says when it's significant 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. When is that going to be significant and are we.... My fear is we're just going to be starting to hand count everything, and I think a hand count of one race will be feasible, but I worry about a hand count of several races at one time, that that would just be beyond....

Rep. Moore: Mr. Cohen, do you want to take that question? We're going to take a vote here in just a minute.

Mr. Cohen: Well, on page 10 and 11, that sample count would be just in one race because it says a sampling of a statewide ballot item in every county, so it would be just one race. And as to whether it could delay the canvas, yes. I mean if it turns out that the hand-to-eye count shows a significant difference, yes it would delay the canvas because there is a possibility that the results are wrong.

Rep. Blust: What is significant though? What's the threshold of significance?

Mr. Cohen: I think that under this bill, I think the State Board is tasked with developing the policies for deciding what's a significant sampling, etc. So this bill does not deal with that. I think the State Board had rules for dealing with it.

Rep. Moore: All right. We're going to put the question at this time. You've heard the motion by Representative Ross. All those in favor of the motion please say aye. All those opposed no. In the opinion of the chair the ayes have it, the ayes do have it, and the motion is adopted. There being no further business, we stand adjourned. (1:55 p.m.)

AGENDA

**HOUSE OF REPRESENTATIVES
ELECTION LAW AND CAMPAIGN FINANCE REFORM
COMMITTEE**

August 10, 2005

Representative Moore, Presiding

SB 223, Public Confidence in Elections

Senator Kinnaird

Nancy Garriss (Rep. Tim Moore)

From: Margie Penven (Rep. Ross)

Sent: Monday, August 08, 2005 11:30 AM

To: Sen. Ellie Kinnaird

Subject: Election Law and Campaign Finance Reform Meeting Notice for Wednesday, August 10

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
2005-2006 SESSION**

You are hereby notified that the Committee on **Election Law and Campaign Finance Reform** will meet as follows:

DAY & DATE: Wednesday, August 10, 2005

TIME: 1:00 p.m.

LOCATION: 1425 LB

The following bills will be considered (Bill # & Short Title & Bill Sponsor):
SB 223, Public Confidence in Elections--Sen. Kinnaird

Respectfully,

Representatives Moore and Ross
Co-chairs

I hereby certify this notice was filed by the committee clerk at the following offices at **11:30** on **August 8, 2005, 2005**.

____ Principal Clerk
____ Reading Clerk - House Chamber

Margie Penven (Committee Assistant)

8/8/2005

8-10-03

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Moore, Ross (Chairs) for the Committee on ELECTION LAW AND
CAMPAIGN FINANCE REFORM.

☒ Committee Substitute for # 2

SB 223

A BILL TO BE ENTITLED AN ACT TO RESTORE PUBLIC CONFIDENCE IN THE ELECTION PROCESS BY REQUIRING THAT THE STATE BOARD OF ELECTIONS, THROUGH THE DEVELOPMENT OF A REQUEST FOR PROPOSAL, ENSURE THAT ALL VOTING SYSTEMS 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; BY PROVIDING STATUTORY GUIDANCE AS TO COUNTING; BY STANDARDIZING PURCHASING OF VOTING SYSTEMS IN NORTH CAROLINA, INCLUDING A REVIEW OF SOURCE CODE FOR SOFTWARE RELATED TO THOSE VOTING SYSTEMS AND AUTHORIZATION TO ESTABLISH THE ROLE OF THE STATE BOARD OF ELECTIONS AND COUNTY BOARD OF ELECTIONS RELATED TO TRAINING AND SUPPORT OF VOTING SYSTEMS; BY REQUIRING POSTELECTION TESTING OF VOTING SYSTEMS, INCLUDING A PAPER SAMPLE-COUNT; BY EXPANDING THE RIGHT TO A HAND-TO-EYE RECOUNT OF PAPER BALLOTS; AND BY PERMITTING A PILOT PROGRAM TO EXPERIMENT WITH NONPAPER MEANS OF VOTER VERIFICATION AND BALLOT BACKUP.

Com. Sub. # 2

☒ With a favorable report as to House committee substitute bill, unfavorable as to ~~House~~/Senate bill, and recommendation that the House committee substitute bill be re-referred to the Committee on APPROPRIATIONS.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No. _____) is placed on the Calendar of _____. (The original bill resolution No. _____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. _____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. _____) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S

3

SENATE BILL 223

Judiciary I Committee Substitute Adopted 7/26/05

Appropriations/Base Budget Committee Substitute Adopted 7/27/05

Short Title: Public Confidence in Elections.

(Public)

Sponsors:

Referred to:

February 28, 2005

A BILL TO BE ENTITLED

AN ACT TO RESTORE PUBLIC CONFIDENCE IN THE ELECTION PROCESS BY
REQUIRING THAT THE STATE BOARD OF ELECTIONS, THROUGH THE
DEVELOPMENT OF A REQUEST FOR PROPOSAL, ENSURE THAT ALL
VOTING SYSTEMS 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; BY PROVIDING
STATUTORY GUIDANCE AS TO COUNTING; BY STANDARDIZING
PURCHASING OF VOTING SYSTEMS IN NORTH CAROLINA, INCLUDING
A REVIEW OF SOURCE CODE FOR SOFTWARE RELATED TO THOSE
VOTING SYSTEMS AND AUTHORIZATION TO ESTABLISH THE ROLE OF
THE STATE BOARD OF ELECTIONS AND COUNTY BOARD OF
ELECTIONS RELATED TO TRAINING AND SUPPORT OF VOTING
SYSTEMS; BY REQUIRING POSTELECTION TESTING OF VOTING
SYSTEMS, INCLUDING A PAPER SAMPLE-COUNT; BY EXPANDING THE
RIGHT TO A HAND-TO-EYE RECOUNT OF PAPER BALLOTS; AND BY
PERMITTING A PILOT PROGRAM TO EXPERIMENT WITH NONPAPER
MEANS OF VOTER VERIFICATION AND BALLOT BACKUP.

The General Assembly of North Carolina enacts:

SECTION 1.(a) 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, G.S. 163-165.7 reads as rewritten:

"§ 163-165.7. Voting systems: powers and duties of State Board of Elections.

(a) ~~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~~

1 ~~referendum held in any county or municipality. The State Board may, upon request of a~~
2 ~~local board of elections, authorize the use of a voting system not approved for general~~
3 ~~use. Only voting systems that have been certified by the State Board of Elections in~~
4 ~~accordance with the procedures and subject to the standards set forth in this section and~~
5 ~~that have not been subsequently decertified shall be permitted for use in elections in this~~
6 ~~State. Those certified voting systems shall be valid in any election held in the State or in~~
7 ~~any county, municipality, or other electoral district in the State. Subject to all other~~
8 ~~applicable rules adopted by the State Board of Elections and, with respect to federal~~
9 ~~elections, subject to all applicable federal regulations governing voting systems, paper~~
10 ~~ballots marked by the voter and counted by hand shall be deemed a certified voting~~
11 ~~system. The State Board may certify additional voting systems only if they meet the~~
12 ~~requirements of the request for proposal process set forth in this section and only if they~~
13 ~~generate either a paper ballot or a paper record by which voters may verify their votes~~
14 ~~before casting them and which provides a backup means of counting the vote that the~~
15 ~~voter casts. Those voting systems may include optical scan and direct record electronic~~
16 ~~(DRE) voting systems. In consultation with the Office of Information Technology~~
17 ~~Services, the State Board shall develop the requests for proposal subject to the~~
18 ~~provisions of this Chapter and other applicable State laws. Among other requirements,~~
19 ~~the request for proposal shall require at least all of the following elements:~~

- 20 (1) That the vendor post a bond or letter of credit to cover damages
21 resulting from defects in the voting. Damages shall include, among
22 other items, any costs of conducting a new election attributable to
23 those defects.
- 24 (2) That the voting system comply with all federal requirements for voting
25 systems.
- 26 (3) That the voting system must have the capacity to include in precinct
27 returns the votes cast by voters outside of the voter's precinct as
28 required by G.S. 163-132.5G.
- 29 (4) With respect to electronic voting systems, that the voting system
30 generate a paper record of each individual vote cast, which paper
31 record shall be maintained in a secure fashion and shall serve as a
32 backup record for purposes of any hand-to-eye count, hand-to-eye
33 recount, or other audit. Electronic systems that employ optical scan
34 technology to count paper ballots shall be deemed to satisfy this
35 requirement.
- 36 (5) With respect to DRE voting systems, that the paper record generated
37 by the system be viewable by the voter before the vote is cast
38 electronically, and that the system permit the voter to correct any
39 discrepancy between the electronic vote and the paper record before
40 the vote is cast.
- 41 (6) With respect to all voting systems using electronic means, that the
42 vendor provide access to all of any information required to be placed
43 in escrow by a vendor pursuant to G.S. 163-165.9A for review and
44 examination by the State Board of Elections; the Office of Information

1 Technology Services; the State chairs of each political party
2 recognized under G.S. 163-96; the purchasing county; and designees
3 as provided in subdivision (9) of subsection (d) of this section.

4 (7) That the vendor must quote a statewide uniform price for each unit of
5 the equipment.

6 (8) That the vendor must separately agree with the purchasing county that
7 if it is granted a contract to provide software for an electronic voting
8 system but fails to debug, modify, repair, or update the software as
9 agreed or in the event of the vendor having bankruptcy filed for or
10 against it, the source code described in G.S. 163-165.9A(a) shall be
11 turned over to the purchasing county by the escrow agent chosen under
12 G.S. 163-165.9A(a)(1) for the purposes of continuing use of the
13 software for the period of the contract and for permitting access to the
14 persons described in subdivision (6) of this subsection for the purpose
15 of reviewing the source code.

16 In its request for proposal, the State Board of Elections shall address the mandatory
17 terms of the contract for the purchase of the voting system and the maintenance and
18 training related to that voting system.

19 No voting system acquired or upgraded by a county before August 1, 2005, shall be
20 used in an election during or after 2006 unless the county can demonstrate to the State
21 Board of Elections compliance with the requirements in subdivisions (1) through (8) of
22 this subsection, where those requirements are applicable to the type of voting system
23 involved.

24 (b) The State Board may also, upon notice and hearing, disapprove-decertify
25 types, makes, and models of voting systems. Upon disapproving-decertifying a type,
26 make, or model of voting system, the State Board shall determine the process by which
27 the disapproved-decertified system is discontinued in any county. If a county makes a
28 showing that discontinuance would impose a financial hardship upon it, the county shall
29 be given up to four years from the time of State Board disapproval to replace the
30 system. A county may appeal a decision by the State Board concerning discontinuance
31 of a voting system the process by which the decertified system is discontinued in that
32 county to the superior court in that county or to the Superior Court of Wake County.
33 The county has 30 days from the time it receives notice of the State Board's decision on
34 discontinuancethe process by which the decertified system is discontinued in that
35 county to make that appeal.

36 (c) Prior to certifying a voting system, the State Board of Elections shall review,
37 or designate an independent expert to review, all source code made available by the
38 vendor pursuant to this section and certify only those voting systems compliant with
39 State and federal law. At a minimum, the State Board's review shall include a review of
40 security, application vulnerability, application code, wireless security, security policy
41 and processes, security/privacy program management, technology infrastructure and
42 security controls, security organization and governance, and operational effectiveness,
43 as applicable to that voting system. Any portion of the report containing specific
44 information related to any trade secret as designated pursuant to G.S. 132-1.2 shall be

1 confidential and shall be accessed only under the rules adopted pursuant to subdivision
2 (9) of subsection (d) of this section. The State Board may hear and discuss the report of
3 any such review under G.S. 143-318.11(a)(1).

4 (d) Subject to the provisions of this Chapter, the State Board of Elections shall
5 prescribe rules for the adoption, handling, operation, and honest use of certified voting
6 systems, including, but not limited to, including all of the following:

7 (1) Procedures for county boards of elections to utilize when
8 recommending the purchase of a Types, makes, and models of
9 certified voting systems approved system for use in this State that
10 county.

11 (2) Form of official ballot labels to be used on voting systems.

12 (3) Operation and manner of voting on voting systems.

13 (4) Instruction of precinct officials in the use of voting systems.

14 (5) Instruction of voters in the use of voting systems.

15 (6) Assistance to voters using voting systems.

16 (7) Duties of custodians of voting systems.

17 (8) Examination and testing of voting systems in a public forum in the
18 county before and after use in an election.

19 (9) Notwithstanding G.S. 132-1.2, procedures for the review and
20 examination of any information placed in escrow by a vendor pursuant
21 to G.S. 163-165.9A by only the following persons:

22 a. State Board of Elections.

23 b. Office of Information Technology Services.

24 c. The State chairs of each political party recognized under
25 G.S. 163-96.

26 d. The purchasing county.

27 Each person listed in sub-subdivisions a. through d. of this subdivision
28 may designate up to three persons as that person's agents to review and
29 examine the information. No person shall designate under this
30 subdivision a business competitor of the vendor whose proprietary
31 information is being reviewed and examined. For purposes of this
32 review and examination, any designees under this subdivision and the
33 State party chairs shall be treated as public officials under G.S. 132-2.

34 (10) With respect to electronic voting systems, procedures to maintain the
35 integrity of both the electronic vote count and the paper record. Those
36 procedures shall at a minimum include procedures to protect against
37 the alteration of the paper record after a machine vote has been
38 recorded and procedures to prevent removal by the voter from the
39 voting enclosure of any paper record or copy of an individually voted
40 ballot or of any other device or item whose removal from the voting
41 enclosure could permit compromise of the integrity of either the
42 machine count or the paper record.

43 Any rules adopted under this subsection shall be in conjunction with procedures and
44 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."

SECTION 1.(a1) G.S. 163-166.7(c) reads as rewritten:

"(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.
- (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."

SECTION 1.(b) Section 11 of S.L. 2003-226, which would have made amendment to G.S. 163-165.7 effective January 1, 2006, is repealed.

SECTION 1.(c) In order to carry forward the first of two amendments that would have been made by Section 11 of S.L. 2003-226 to the old version of G.S. 163-165.7, effective January 1, 2006, G.S. 163-165.7, as rewritten by subsection (a) of this section, is amended by adding the following new subsection:

1 "(a1) Federal Assistance. – The State Board may use guidelines, information,
2 testing reports, certification, decertification, recertification, and any relevant data
3 produced by the Election Assistance Commission, its Standards Board, its Board of
4 Advisors, or the Technical Guidelines Development Committee as established in Title II
5 of the Help America Vote Act of 2002 with regard to any action or investigation the
6 State Board may take concerning a voting system. The State Board may use, for the
7 purposes of voting system certification, laboratories accredited by the Election
8 Assistance Commission under the provisions of section 231(2) of the Help America
9 Vote Act of 2002."

10 **SECTION 1.(d)** In order to carry forward the second of two amendments
11 that would have been made by Section 11 of S.L. 2003-226 to the old version of
12 G.S. 163-165.7, effective January 1, 2006, G.S. 163-165.7(d), as rewritten by subsection
13 (a) of this section, is amended by adding the following new subdivision:

14 "(11) Compliance with section 301 of the Help America Vote Act of 2002."

15 **SECTION 1.(e)** G.S. 163-132.5G reads as rewritten:

16 "**§ 163-132.5G. Voting data maintained by precinct.**

17 To the extent that it can do so without compromising the secrecy of an individual's
18 ballot, each county board of elections shall maintain voting data by precinct so that
19 precinct returns for each item on the ballot shall include the votes cast by residents of
20 the precinct who voted by provisional ballot and by absentee ballot, both mail and
21 one-stop. The county board shall not be required to report provisional and absentee
22 voting data by precinct until 60 days after the election. The State Board of Elections
23 shall adopt rules for the enforcement of this section with the goal that all voting data
24 shall be reported by precinct by the 2006 election. Those rules shall provide for
25 exemptions where the expense of compliance would place a financial hardship on a
26 county. Those rules shall provide for compliance by 2004 for counties the State Board
27 determines are capable of complying by that year."

28 **SECTION 1.(f)** G.S. 163-165.1(e) reads as rewritten:

29 "(e) Voted ballots and paper records of individual voted ballots shall be treated as
30 confidential, and no person other than elections officials performing their duties may
31 have access to voted ballots or paper records of individual voted ballots except by court
32 order or order of the appropriate board of elections as part of the resolution of an
33 election protest or investigation of an alleged election irregularity or violation. Voted
34 ballots and paper records of individual voted ballots shall not be disclosed to members
35 of the public in such a way as to disclose how a particular voter voted, unless a court
36 orders otherwise."

37 **SECTION 2.(a)** Part 2 of Article 14A of Chapter 163 of the General Statutes
38 is amended by adding a new section to read:

39 "**§ 163-165.9A. Voting systems: requirements for voting systems vendors; penalties.**

40 (a) Duties of Vendor. – Every vendor that has a contract to provide a voting
41 system in North Carolina shall do all of the following:

42 (1) The vendor shall place in escrow with an independent escrow agent
43 approved by the State Board of Elections all software that is relevant
44 to functionality, setup, configuration, and operation of the voting

1 system, including, but not limited to, a complete copy of the source
2 and executable code, build scripts, object libraries, application
3 program interfaces, and complete documentation of all aspects of the
4 system including, but not limited to, compiling instructions, design
5 documentation, technical documentation, user documentation,
6 hardware and software specifications, drawings, records, and data. The
7 State Board of Elections may require in its request for proposal that
8 additional items be escrowed, and if any vendor that agrees in a
9 contract to escrow additional items, those items shall be subject to the
10 provisions of this section. The documentation shall include a list of
11 programmers responsible for creating the software and a sworn
12 affidavit that the source code includes all relevant program statements
13 in low-level and high-level languages.

14 (2) The vendor shall notify the State Board of Elections of any change in
15 any item required to be escrowed by subdivision (1) of this subsection.

16 (3) The chief executive officer of the vendor shall sign a sworn affidavit
17 that the source code and other material in escrow is the same being
18 used in its voting systems in this State. The chief executive officer
19 shall ensure that the statement is true on a continuing basis.

20 (4) The vendor shall promptly notify the State Board of Elections and the
21 county board of elections of any county using its voting system of any
22 decertification of the same system in any state, of any defect in the
23 same system known to have occurred anywhere, and of any relevant
24 defect known to have occurred in similar systems.

25 (5) The vendor shall maintain an office in North Carolina with staff to
26 service the contract.

27 (b) Penalties. – Willful violation of any of the duties in subsection (a) of this
28 section is a Class G felony. Substitution of source code into an operating voting system
29 without notification as provided by subdivision (a)(2) of this section is a Class I felony.
30 In addition to any other applicable penalties, violations of this section are subject to a
31 civil penalty to be assessed by the State Board of Elections in its discretion in an amount
32 of up to one hundred thousand dollars (\$100,000) per violation. A civil penalty assessed
33 under this section shall be subject to the provisions of G.S. 163-278.34(e)."

34 **SECTION 2.(b)** This section applies with respect to purchase or upgrade of
35 any voting system on or after August 1, 2005.

36 **SECTION 3.** Effective August 1, 2005, G.S. 163-165.8 reads as rewritten:
37 **"§ 163-165.8. Voting systems: powers and duties of board of county**
38 **commissioners.**

39 The board of county commissioners, with the approval of the county board of
40 elections, may adopt and ~~purchase or lease~~ acquire only a voting system of a type,
41 make, and model ~~approved-certified~~ by the State Board of Elections for use in some or
42 all voting places in the county at some or all elections.

43 The board of county commissioners may decline to adopt and ~~purchase or lease~~
44 ~~acquire~~ any voting system recommended by the county board of elections but may not

1 adopt and ~~purchase or lease~~ acquire any voting system that has not been approved by
2 the county board of elections. Article 8 of Chapter 143 of the General Statutes does not
3 apply to the purchase of a voting system certified by the State Board of Elections."

4 **SECTION 4.** Effective August 1, 2005, G.S. 163-165.9 reads as rewritten:

5 **"§ 163-165.9. Voting systems: powers and duties of county board of elections.**

6 (a) Before approving the adoption and ~~purchase or lease~~ acquisition of any
7 voting system by the board of county commissioners, the county board of elections shall
8 do all of the following:

9 (1) ~~Obtain a current financial statement from the proposed vendor or~~
10 ~~lessor of the voting system and send copies of the statement to the~~
11 ~~county attorney and the chief county financial officer.~~ Recommend to
12 the board of county commissioners which type of voting system
13 should be acquired by the county.

14 (2) Witness a demonstration, in that county or at a site designated by the
15 State Board of Elections, of the type of voting system to be
16 recommended ~~by the proposed vendor or lessor~~ and also witness a
17 demonstration of at least one other type of voting system ~~approved~~
18 certified by the State Board of Elections.

19 (3) Test, during an election, the proposed voting system in at least one
20 precinct in the county where the voting system would be used if
21 adopted.

22 (b) After the acquisition of any voting system, the county board of elections shall
23 comply with any requirements of the State Board of Elections regarding training and
24 support of the voting system."

25 **SECTION 5.(a)** G.S. 163-182.1(b) reads as rewritten:

26 "(b) Procedures and Standards. – The State Board of Elections shall adopt uniform
27 and nondiscriminatory procedures and standards for voting systems. The standards shall
28 define what constitutes a vote and what will be counted as a vote for each category of
29 voting system used in the State. The State Board shall adopt those procedures and
30 standards at a meeting occurring not earlier than 15 days after the State Board gives
31 notice of the meeting. The procedures and standards adopted shall apply to all elections
32 occurring in the State and shall be subject to amendment or repeal by the State Board
33 acting at any meeting where notice that the action has been proposed has been given at
34 least 15 days before the meeting. These procedures and standards shall not be
35 considered to be rules subject to Article 2A of Chapter 150B of the General Statutes.
36 However, the State Board shall publish in the North Carolina Register the procedures
37 and standards and any changes to them after adoption, with that publication noted as
38 information helpful to the public under G.S. 150B-21.17(a)(6). Copies of those
39 procedures and standards shall be made available to the public upon request or
40 otherwise by the State Board. For optical scan and direct record electronic voting
41 systems, and for any other voting systems in which ballots are counted other than on
42 paper by hand and eye, those procedures and standards shall do both of the following:

43 (1) Provide for a sample hand-to-eye count of the paper ballots or paper
44 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 sample chosen by the State Board shall be of full precincts, full counts of absentee ballots, and full counts of 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.

(2) ~~provide~~ 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)~~a~~. Notify the voter that the voter has selected more than the correct number of candidates or proposals in the ballot item.
- (2)~~b~~. Notify the voter before the vote is accepted and counted of the effect of casting overvotes in the ballot item.
- (3)~~c~~. Provide the voter with the opportunity to correct the official ballot before it is accepted and counted."

SECTION 5.(b) G.S. 163-182.2 reads as rewritten:

"§ 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.

(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 sample chosen by the State Board shall be of full precincts, full counts of absentee ballots, and full counts of 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.

(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."

SECTION 5.(c) G.S. 163-182.5 reads as rewritten:

"§ 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 seventh day after every 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."

SECTION 5.(d) This section becomes effective January 1, 2006.

SECTION 6.(a) G.S. 163-182.7 reads as rewritten:

"§ 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.

1 The county board may not order a recount where the State Board of Elections has
2 already denied a recount to the petitioner.

3 (b) Mandatory Recounts for Ballot Items Within the Jurisdiction of the County
4 Board of Elections. – In a ballot item within the jurisdiction of the county board of
5 elections, a candidate shall have the right to demand a recount of the votes if the
6 difference between the votes for that candidate and the votes for a prevailing candidate
7 is not more than one percent (1%) of the total votes cast in the ballot item, or in the case
8 of a multiseat ballot item not more than one percent (1%) of the votes cast for those two
9 candidates. The demand for a recount must be made in writing and must be received by
10 the county board of elections by 5:00 P.M. on the first day after the canvass. The
11 recount shall be conducted under the supervision of the county board of elections.

12 (c) Mandatory Recounts for Ballot Items Within the Jurisdiction of the State
13 Board of Elections. – In a ballot item within the jurisdiction of the State Board of
14 Elections, a candidate shall have the right to demand a recount of the votes if the
15 difference between the votes for that candidate and the votes for a prevailing candidate
16 are not more than the following:

17 (1) For a nonstatewide ballot item, one percent (1%) of the total votes cast
18 in the ballot item, or in the case of a multiseat ballot item, one percent
19 (1%) of the votes cast for those two candidates.

20 (2) For a statewide ballot item, one-half of one percent (0.5%) of the votes
21 cast in the ballot item, ~~or in the case of a multiseat ballot item, one-half~~
22 ~~of one percent (0.5%) of the votes cast for those two candidates, or~~
23 10,000 votes, whichever is less.

24 The demand for a recount must be in writing and must be received by the State Board of
25 Elections by noon on the second Thursday after the election. If on that Thursday the
26 available returns show a candidate not entitled to a mandatory recount, but the
27 Executive Director determines subsequently that the margin is within the threshold set
28 out in this subsection, the Executive Director shall notify the eligible candidate
29 immediately and that candidate shall be entitled to a recount if that candidate so
30 demands within 48 hours of notice. The recount shall be conducted under the
31 supervision of the State Board of Elections.

32 (d) Rules for Conducting Recounts. – The State Board of Elections shall
33 promulgate rules for conducting recounts. Those rules shall be subject to the following
34 guidelines:

35 (1) The rules shall specify, with respect to each type of voting system,
36 when and to what extent the recount shall consist of machine recounts
37 and hand-to-eye recounts. Hand-to-eye recounts shall also be ordered
38 as provided by G.S. 163-182.7A.

39 (2) The rules shall provide guidance in interpretation of the voter's choice.

40 (3) The rules shall specify how the goals of multipartisan participation,
41 opportunity for public observation, and good order shall be balanced."

42 **SECTION 6.(b)** Article 15A of Chapter 163 of the General Statutes is
43 amended by adding a new section to read:

44 **"§ 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."

SECTION 6.(c) This section becomes effective January 1, 2006.

SECTION 7. G.S. 163-82.28 reads as rewritten:

"§ 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, shall be deposited in that fund. The State Board of Elections shall use funds in the Election Fund only to implement HAVA. ~~HAVA~~ and for purposes permitted by HAVA to comply with State law."

SECTION 8. The State Board of Elections shall recommend a model code of ethics for members and employees of county boards of elections and of the State Board of Elections. The code shall address the appropriate relations between those members and staff and vendors who do business or seek to do business with boards of elections in North Carolina. It shall address how to avoid both the reality and the appearance of conflicts of interest and impropriety. The State Board shall report its recommended code to the Joint Select Committee on Electronic Voting Systems and to the Joint Legislative Commission on Governmental Operations no later than 60 days after this act becomes law.

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. 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.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S

D

SENATE BILL 223
Judiciary I Committee Substitute Adopted 7/26/05
Appropriations/Base Budget Committee Substitute Adopted 7/27/05
PROPOSED HOUSE COMMITTEE SUBSTITUTE S223-PCS35264-LB-97

Short Title: Public Confidence in Elections.

(Public)

Sponsors:

Referred to:

February 28, 2005

A BILL TO BE ENTITLED

AN ACT TO RESTORE PUBLIC CONFIDENCE IN THE ELECTION PROCESS BY
REQUIRING THAT THE STATE BOARD OF ELECTIONS, THROUGH THE
DEVELOPMENT OF A REQUEST FOR PROPOSAL, ENSURE THAT ALL
VOTING SYSTEMS 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; BY PROVIDING
STATUTORY GUIDANCE AS TO COUNTING; BY STANDARDIZING
PURCHASING OF VOTING SYSTEMS IN NORTH CAROLINA, INCLUDING
A REVIEW OF SOURCE CODE FOR SOFTWARE RELATED TO THOSE
VOTING SYSTEMS AND AUTHORIZATION TO ESTABLISH THE ROLE OF
THE STATE BOARD OF ELECTIONS AND COUNTY BOARD OF
ELECTIONS RELATED TO TRAINING AND SUPPORT OF VOTING
SYSTEMS; BY REQUIRING POSTELECTION TESTING OF VOTING
SYSTEMS, INCLUDING A PAPER SAMPLE-COUNT; BY EXPANDING THE
RIGHT TO A HAND-TO-EYE RECOUNT OF PAPER BALLOTS; AND BY
PERMITTING A PILOT PROGRAM TO EXPERIMENT WITH NONPAPER
MEANS OF VOTER VERIFICATION AND BALLOT BACKUP.

The General Assembly of North Carolina enacts:

SECTION 1.(a) 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, G.S. 163-165.7 reads as rewritten:

"§ 163-165.7. Voting systems: powers and duties of State Board of Elections.

(a) ~~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~~

1 ~~voting systems that have been approved by the State Board shall be used to conduct~~
2 ~~elections under this Chapter, and the approved systems shall be valid in any election or~~
3 ~~referendum held in any county or municipality. The State Board may, upon request of a~~
4 ~~local board of elections, authorize the use of a voting system not approved for general~~
5 ~~use. Only voting systems that have been certified by the State Board of Elections in~~
6 accordance with the procedures and subject to the standards set forth in this section and
7 that have not been subsequently decertified shall be permitted for use in elections in this
8 State. Those certified voting systems shall be valid in any election held in the State or in
9 any county, municipality, or other electoral district in the State. Subject to all other
10 applicable rules adopted by the State Board of Elections and, with respect to federal
11 elections, subject to all applicable federal regulations governing voting systems, paper
12 ballots marked by the voter and counted by hand shall be deemed a certified voting
13 system. The State Board of Elections shall certify optical scan voting systems, optical
14 scan with ballot markers voting systems, and direct record electronic voting systems if
15 any of those systems meet all applicable requirements of federal and State law. The
16 State Board may certify additional voting systems only if they meet the requirements of
17 the request for proposal process set forth in this section and only if they generate either
18 a paper ballot or a paper record by which voters may verify their votes before casting
19 them and which provides a backup means of counting the vote that the voter casts.
20 Those voting systems may include optical scan and direct record electronic (DRE)
21 voting systems. In consultation with the Office of Information Technology Services, the
22 State Board shall develop the requests for proposal subject to the provisions of this
23 Chapter and other applicable State laws. Among other requirements, the request for
24 proposal shall require at least all of the following elements:

- 25 (1) That the vendor post a bond or letter of credit to cover damages
26 resulting from defects in the voting system. Damages shall include,
27 among other items, any costs of conducting a new election attributable
28 to those defects.
- 29 (2) That the voting system comply with all federal requirements for voting
30 systems.
- 31 (3) That the voting system must have the capacity to include in precinct
32 returns the votes cast by voters outside of the voter's precinct as
33 required by G.S. 163-132.5G.
- 34 (4) With respect to electronic voting systems, that the voting system
35 generate a paper record of each individual vote cast, which paper
36 record shall be maintained in a secure fashion and shall serve as a
37 backup record for purposes of any hand-to-eye count, hand-to-eye
38 recount, or other audit. Electronic systems that employ optical scan
39 technology to count paper ballots shall be deemed to satisfy this
40 requirement.
- 41 (5) With respect to DRE voting systems, that the paper record generated
42 by the system be viewable by the voter before the vote is cast
43 electronically, and that the system permit the voter to correct any

1 discrepancy between the electronic vote and the paper record before
2 the vote is cast.

3 (6) With respect to all voting systems using electronic means, that the
4 vendor provide access to all of any information required to be placed
5 in escrow by a vendor pursuant to G.S. 163-165.9A for review and
6 examination by the State Board of Elections; the Office of Information
7 Technology Services; the State chairs of each political party
8 recognized under G.S. 163-96; the purchasing county; and designees
9 as provided in subdivision (9) of subsection (d) of this section.

10 (7) That the vendor must quote a statewide uniform price for each unit of
11 the equipment.

12 (8) That the vendor must separately agree with the purchasing county that
13 if it is granted a contract to provide software for an electronic voting
14 system but fails to debug, modify, repair, or update the software as
15 agreed or in the event of the vendor having bankruptcy filed for or
16 against it, the source code described in G.S. 163-165.9A(a) shall be
17 turned over to the purchasing county by the escrow agent chosen under
18 G.S. 163-165.9A(a)(1) for the purposes of continuing use of the
19 software for the period of the contract and for permitting access to the
20 persons described in subdivision (6) of this subsection for the purpose
21 of reviewing the source code.

22 In its request for proposal, the State Board of Elections shall address the mandatory
23 terms of the contract for the purchase of the voting system and the maintenance and
24 training related to that voting system.

25 No voting system acquired or upgraded by a county before August 1, 2005, shall be
26 used in an election during or after 2006 unless the county can demonstrate to the State
27 Board of Elections compliance with the requirements in subdivisions (1) through (8) of
28 this subsection, where those requirements are applicable to the type of voting system
29 involved.

30 (b) The State Board may also, upon notice and hearing, disapprove-decertify
31 types, makes, and models of voting systems. Upon disapproving-decertifying a type,
32 make, or model of voting system, the State Board shall determine the process by which
33 the disapproved-decertified system is discontinued in any county. If a county makes a
34 showing that discontinuance would impose a financial hardship upon it, the county shall
35 be given up to four years from the time of State Board disapproval to replace the
36 system. A county may appeal a decision by the State Board concerning discontinuance
37 of a voting system the process by which the decertified system is discontinued in that
38 county to the superior court in that county or to the Superior Court of Wake County.
39 The county has 30 days from the time it receives notice of the State Board's decision on
40 discontinuancethe process by which the decertified system is discontinued in that
41 county to make that appeal.

42 (c) Prior to certifying a voting system, the State Board of Elections shall review,
43 or designate an independent expert to review, all source code made available by the
44 vendor pursuant to this section and certify only those voting systems compliant with

1 State and federal law. At a minimum, the State Board's review shall include a review of
2 security, application vulnerability, application code, wireless security, security policy
3 and processes, security/privacy program management, technology infrastructure and
4 security controls, security organization and governance, and operational effectiveness,
5 as applicable to that voting system. Any portion of the report containing specific
6 information related to any trade secret as designated pursuant to G.S. 132-1.2 shall be
7 confidential and shall be accessed only under the rules adopted pursuant to subdivision
8 (9) of subsection (d) of this section. The State Board may hear and discuss the report of
9 any such review under G.S. 143-318.11(a)(1).

10 (d) Subject to the provisions of this Chapter, the State Board of Elections shall
11 prescribe rules for the adoption, handling, operation, and honest use of certified voting
12 systems, ~~including, but not limited to, including all of~~ the following:

13 (1) Procedures for county boards of elections to utilize when
14 recommending the purchase of a Types, makes, and models of
15 certified voting systems approved system for use in this Statethat
16 county.

17 (2) Form of official ballot labels to be used on voting systems.

18 (3) Operation and manner of voting on voting systems.

19 (4) Instruction of precinct officials in the use of voting systems.

20 (5) Instruction of voters in the use of voting systems.

21 (6) Assistance to voters using voting systems.

22 (7) Duties of custodians of voting systems.

23 (8) Examination and testing of voting systems in a public forum in the
24 county before and after use in an election.

25 (9) Notwithstanding G.S. 132-1.2, procedures for the review and
26 examination of any information placed in escrow by a vendor pursuant
27 to G.S. 163-165.9A by only the following persons:

28 a. State Board of Elections.

29 b. Office of Information Technology Services.

30 c. The State chairs of each political party recognized under
31 G.S. 163-96.

32 d. The purchasing county.

33 Each person listed in sub-subdivisions a. through d. of this subdivision
34 may designate up to three persons as that person's agents to review and
35 examine the information. No person shall designate under this
36 subdivision a business competitor of the vendor whose proprietary
37 information is being reviewed and examined. For purposes of this
38 review and examination, any designees under this subdivision and the
39 State party chairs shall be treated as public officials under G.S. 132-2.

40 (10) With respect to electronic voting systems, procedures to maintain the
41 integrity of both the electronic vote count and the paper record. Those
42 procedures shall at a minimum include procedures to protect against
43 the alteration of the paper record after a machine vote has been
44 recorded and procedures to prevent removal by the voter from the

1 voting enclosure of any paper record or copy of an individually voted
2 ballot or of any other device or item whose removal from the voting
3 enclosure could permit compromise of the integrity of either the
4 machine count or the paper record.

5 Any rules adopted under this subsection shall be in conjunction with procedures and
6 standards adopted under G.S. 163-182.1, are exempt from Chapter 150B of the General
7 Statutes, and are subject to the same procedures for notice and publication set forth in
8 G.S. 163-182.1.

9 (e) The State Board of Elections shall facilitate training and support of the voting
10 systems utilized by the counties."

11 **SECTION 1.(a1)** G.S. 163-166.7(c) reads as rewritten:

12 "(c) The State Board of Elections shall promulgate rules for the process of voting.
13 Those rules shall emphasize the appearance as well as the reality of dignity, good order,
14 impartiality, and the convenience and privacy of the voter. Those rules, at a minimum,
15 shall include procedures to ensure that all the following occur:

- 16 (1) The voting system remains secure throughout the period voting is
17 being conducted.
- 18 (2) Only properly voted official ballots or paper records of individual
19 voted ballots are introduced into the voting system.
- 20 (3) Except as provided by G.S. 163-166.9, no official ballots leave the
21 voting enclosure during the time voting is being conducted there. The
22 rules shall also provide that during that time no one shall remove from
23 the voting enclosure any paper record or copy of an individually voted
24 ballot or of any other device or item whose removal from the voting
25 enclosure could permit compromise of the integrity of either the
26 machine count or the paper record.
- 27 (4) All improperly voted official ballots or paper records of individual
28 voted ballots are returned to the precinct officials and marked as
29 spoiled.
- 30 (5) Voters leave the voting place promptly after voting.
- 31 (6) Voters not clearly eligible to vote in the precinct but who seek to vote
32 there are given proper assistance in voting a provisional official ballot
33 or guidance to another voting place where they are eligible to vote.
- 34 (7) Information gleaned through the voting process that would be helpful
35 to the accurate maintenance of the voter registration records is
36 recorded and delivered to the county board of elections.
- 37 (8) The registration records are kept secure.
- 38 (9) Party observers are given access as provided by G.S. 163-45 to current
39 information about which voters have voted.
- 40 (10) The voter, before voting, shall sign that voter's name on the pollbook,
41 other voting record, or voter authorization document. If the voter is
42 unable to sign, a precinct official shall enter the person's name on the
43 same document before the voter votes."

1 SECTION 1.(b) Section 11 of S.L. 2003-226, which would have made
2 amendment to G.S. 163-165.7 effective January 1, 2006, is repealed.

3 SECTION 1.(c) In order to carry forward the first of two amendments that
4 would have been made by Section 11 of S.L. 2003-226 to the old version of
5 G.S. 163-165.7, effective January 1, 2006, G.S. 163-165.7, as rewritten by subsection
6 (a) of this section, is amended by adding the following new subsection:

7 "(a1) Federal Assistance. – The State Board may use guidelines, information,
8 testing reports, certification, decertification, recertification, and any relevant data
9 produced by the Election Assistance Commission, its Standards Board, its Board of
10 Advisors, or the Technical Guidelines Development Committee as established in Title II
11 of the Help America Vote Act of 2002 with regard to any action or investigation the
12 State Board may take concerning a voting system. The State Board may use, for the
13 purposes of voting system certification, laboratories accredited by the Election
14 Assistance Commission under the provisions of section 231(2) of the Help America
15 Vote Act of 2002."

16 SECTION 1.(d) In order to carry forward the second of two amendments
17 that would have been made by Section 11 of S.L. 2003-226 to the old version of
18 G.S. 163-165.7, effective January 1, 2006, G.S. 163-165.7(d), as rewritten by subsection
19 (a) of this section, is amended by adding the following new subdivision:

20 "(11) Compliance with section 301 of the Help America Vote Act of 2002."

21 SECTION 1.(e) G.S. 163-132.5G reads as rewritten:

22 "§ 163-132.5G. Voting data maintained by precinct.

23 To the extent that it can do so without compromising the secrecy of an individual's
24 ballot, each county board of elections shall maintain voting data by precinct so that
25 precinct returns for each item on the ballot shall include the votes cast by residents of
26 the precinct who voted by provisional ballot and by absentee ballot, both mail and
27 one-stop. The county board shall not be required to report provisional and absentee
28 voting data by precinct until 60 days after the election. The State Board of Elections
29 shall adopt rules for the enforcement of this section with the goal that all voting data
30 shall be reported by precinct by the 2006 election. ~~Those rules shall provide for~~
31 ~~exemptions where the expense of compliance would place a financial hardship on a~~
32 ~~county. Those rules shall provide for compliance by 2004 for counties the State Board~~
33 ~~determines are capable of complying by that year."~~

34 SECTION 1.(f) G.S. 163-165.1(e) reads as rewritten:

35 "(e) Voted ballots and paper records of individual voted ballots shall be treated as
36 confidential, and no person other than elections officials performing their duties may
37 have access to voted ballots or paper records of individual voted ballots except by court
38 order or order of the appropriate board of elections as part of the resolution of an
39 election protest or investigation of an alleged election irregularity or violation. Voted
40 ballots and paper records of individual voted ballots shall not be disclosed to members
41 of the public in such a way as to disclose how a particular voter voted, unless a court
42 orders otherwise."

43 SECTION 2.(a) Part 2 of Article 14A of Chapter 163 of the General Statutes
44 is amended by adding a new section to read:

"§ 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)."

SECTION 2.(b) This section applies with respect to purchase or upgrade of any voting system on or after August 1, 2005.

SECTION 3. Effective August 1, 2005, G.S. 163-165.8 reads as rewritten:

"§ 163-165.8. Voting systems: powers and duties of board of county commissioners.

1 The board of county commissioners, with the approval of the county board of
2 elections, may adopt and ~~purchase or lease~~ acquire only a voting system of a type,
3 make, and model ~~approved~~ certified by the State Board of Elections for use in some or
4 all voting places in the county at some or all elections.

5 The board of county commissioners may decline to adopt and ~~purchase or lease~~
6 acquire any voting system recommended by the county board of elections but may not
7 adopt and ~~purchase or lease~~ acquire any voting system that has not been approved by
8 the county board of elections. Article 8 of Chapter 143 of the General Statutes does not
9 apply to the purchase of a voting system certified by the State Board of Elections."

10 **SECTION 4.** Effective August 1, 2005, G.S. 163-165.9 reads as rewritten:
11 "**§ 163-165.9. Voting systems: powers and duties of county board of elections.**

12 (a) Before approving the adoption and ~~purchase or lease~~ acquisition of any
13 voting system by the board of county commissioners, the county board of elections shall
14 do all of the following:

- 15 (1) ~~Obtain a current financial statement from the proposed vendor or~~
16 ~~lessor of the voting system and send copies of the statement to the~~
17 ~~county attorney and the chief county financial officer. Recommend to~~
18 ~~the board of county commissioners which type of voting system~~
19 ~~should be acquired by the county.~~
20 (2) Witness a demonstration, in that county or at a site designated by the
21 State Board of Elections, of the type of voting system to be
22 recommended by the ~~proposed vendor or lessor~~ and also witness a
23 demonstration of at least one other type of voting system approved
24 certified by the State Board of Elections.
25 (3) Test, during an election, the proposed voting system in at least one
26 precinct in the county where the voting system would be used if
27 adopted.

28 (b) After the acquisition of any voting system, the county board of elections shall
29 comply with any requirements of the State Board of Elections regarding training and
30 support of the voting system."

31 **SECTION 5.(a)** G.S. 163-182.1(b) reads as rewritten:

32 "(b) Procedures and Standards. – The State Board of Elections shall adopt uniform
33 and nondiscriminatory procedures and standards for voting systems. The standards shall
34 define what constitutes a vote and what will be counted as a vote for each category of
35 voting system used in the State. The State Board shall adopt those procedures and
36 standards at a meeting occurring not earlier than 15 days after the State Board gives
37 notice of the meeting. The procedures and standards adopted shall apply to all elections
38 occurring in the State and shall be subject to amendment or repeal by the State Board
39 acting at any meeting where notice that the action has been proposed has been given at
40 least 15 days before the meeting. These procedures and standards shall not be
41 considered to be rules subject to Article 2A of Chapter 150B of the General Statutes.
42 However, the State Board shall publish in the North Carolina Register the procedures
43 and standards and any changes to them after adoption, with that publication noted as
44 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 sample chosen by the State Board shall be of full precincts, full counts of absentee ballots, and full counts of 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.

(2) ~~provide~~ 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)a. Notify the voter that the voter has selected more than the correct number of candidates or proposals in the ballot item.

(2)b. Notify the voter before the vote is accepted and counted of the effect of casting overvotes in the ballot item.

(3)c. Provide the voter with the opportunity to correct the official ballot before it is accepted and counted."

SECTION 5.(b) G.S. 163-182.2 reads as rewritten:

"§ 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

1 orderly counting of the official ballots. Witnesses shall not participate
2 in the official counting of official ballots.

- 3 (4) Provisional official ballots shall be counted by the county board of
4 elections before the canvass. If the county board finds that an
5 individual voting a provisional official ballot is not eligible to vote in
6 one or more ballot items on the official ballot, the board shall not
7 count the official ballot in those ballot items, but shall count the
8 official ballot in any ballot items for which the individual is eligible to
9 vote.

- 10 (5) Precinct officials shall provide a preliminary report of the vote
11 counting to the county board of elections as quickly as possible. The
12 preliminary report shall be unofficial and has no binding effect upon
13 the official county canvass to follow.

- 14 (6) In counties that use any certified mechanical or electronic voting
15 system, subject to the sample counts under G.S. 163-182.1 and
16 subdivision (1a) of subsection (b) of this section, and of a hand-to-eye
17 recount under G.S. 163-182.7 and G.S. 163-182.7A, a board of
18 elections shall rely in its canvass on the mechanical or electronic count
19 of the vote rather than the full hand-to-eye count of the paper ballots or
20 records. In the event of a material discrepancy between the electronic
21 or mechanical count and a hand-to-eye count or recount, the
22 hand-to-eye count or recount shall control, except where paper ballots
23 or records have been lost or destroyed or where there is another
24 reasonable basis to conclude that the hand-to-eye count is not the true
25 count.

26 (b) The State Board of Elections shall promulgate rules for the initial counting of
27 official ballots. All election officials shall be governed by those rules. In promulgating
28 those rules, the State Board shall adhere to the following guidelines:

- 29 (1) For each voting system used, the rules shall specify the role of precinct
30 officials and of the county board of elections in the initial counting of
31 official ballots.

- 32 (1a) For optical scan and direct record electronic voting systems, and for
33 any other voting systems in which ballots are counted other than on
34 paper by hand and eye, those rules shall provide for a sample
35 hand-to-eye count of the paper ballots or paper records of a sampling
36 of a statewide ballot item in every county. The presidential ballot item
37 shall be the subject of the sampling in a presidential election. If there is
38 no statewide ballot item, the State Board shall provide a process for
39 selecting district or local ballot items to adequately sample the
40 electorate. The sample chosen by the State Board shall be of full
41 precincts, full counts of absentee ballots, and full counts of one-stop
42 early voting sites. The size of the sample of each category shall be
43 chosen to produce a statistically significant result and shall be chosen
44 after consultation with a statistician. The actual units shall be chosen at

1 random. In the event of a material discrepancy between the electronic
2 or mechanical count and a hand-to-eye count, the hand-to-eye count
3 shall control, except where paper ballots or records have been lost or
4 destroyed or where there is another reasonable basis to conclude that
5 the hand-to-eye count is not the true count. If the discrepancy between
6 the hand-to-eye count and the mechanical or electronic count is
7 significant, a complete hand-to-eye count shall be conducted.

8 (2) The rules shall provide for accurate unofficial reporting of the results
9 from the precinct to the county board of elections with reasonable
10 speed on the night of the election.

11 (3) The rules shall provide for the prompt and secure transmission of
12 official ballots from the voting place to the county board of elections.

13 The State Board shall direct the county boards of elections in the application of the
14 principles and rules in individual circumstances."

15 **SECTION 5.(c)** G.S. 163-182.5 reads as rewritten:

16 **"§ 163-182.5. Canvassing votes.**

17 (a) The Canvass. – As used in this Article, the term "canvass" means the entire
18 process of determining that the votes have been counted and tabulated correctly,
19 culminating in the authentication of the official election results. The board of elections
20 conducting a canvass has authority to send for papers and persons and to examine them
21 and pass upon the legality of disputed ballots.

22 (b) Canvassing by County Board of Elections. – The county board of elections
23 shall meet at 11:00 A.M. on the seventh day after every election to complete the canvass
24 of votes cast and to authenticate the count in every ballot item in the county by
25 determining that the votes have been counted and tabulated correctly. If, despite due
26 diligence by election officials, the initial counting of all the votes has not been
27 completed by that time, the county board may hold the canvass meeting a reasonable
28 time thereafter. The canvass meeting shall be at the county board of elections office,
29 unless the county board, by unanimous vote of all its members, designates another site
30 within the county. The county board shall examine the returns from precincts, from
31 absentee official ballots, from the sample hand-to-eye paper ballot counts, and from
32 provisional official ballots and shall conduct the canvass.

33 (c) Canvassing by State Board of Elections. – After each general election, the
34 State Board of Elections shall meet at 11:00 A.M. on the Tuesday three weeks after
35 election day to complete the canvass of votes cast in all ballot items within the
36 jurisdiction of the State Board of Elections and to authenticate the count in every ballot
37 item in the county by determining that the votes have been counted and tabulated
38 correctly. After each primary, the State Board shall fix the date of its canvass meeting.
39 If, by the time of its scheduled canvass meeting, the State Board has not received the
40 county canvasses, the State Board may adjourn for not more than 10 days to secure the
41 missing abstracts. In obtaining them, the State Board is authorized to secure the
42 originals or copies from the appropriate clerks of superior court or county boards of
43 elections, at the expense of the counties."

44 **SECTION 5.(d)** This section becomes effective January 1, 2006.

1 **SECTION 6.(a)** G.S. 163-182.7 reads as rewritten:

2 **"§ 163-182.7. Ordering recounts.**

3 (a) Discretionary Recounts. – The county board of elections or the State Board of
4 Elections may order a recount when necessary to complete the canvass in an election.
5 The county board may not order a recount where the State Board of Elections has
6 already denied a recount to the petitioner.

7 (b) Mandatory Recounts for Ballot Items Within the Jurisdiction of the County
8 Board of Elections. – In a ballot item within the jurisdiction of the county board of
9 elections, a candidate shall have the right to demand a recount of the votes if the
10 difference between the votes for that candidate and the votes for a prevailing candidate
11 is not more than one percent (1%) of the total votes cast in the ballot item, or in the case
12 of a multiseat ballot item not more than one percent (1%) of the votes cast for those two
13 candidates. The demand for a recount must be made in writing and must be received by
14 the county board of elections by 5:00 P.M. on the first day after the canvass. The
15 recount shall be conducted under the supervision of the county board of elections.

16 (c) Mandatory Recounts for Ballot Items Within the Jurisdiction of the State
17 Board of Elections. – In a ballot item within the jurisdiction of the State Board of
18 Elections, a candidate shall have the right to demand a recount of the votes if the
19 difference between the votes for that candidate and the votes for a prevailing candidate
20 are not more than the following:

21 (1) For a nonstatewide ballot item, one percent (1%) of the total votes cast
22 in the ballot item, or in the case of a multiseat ballot item, one percent
23 (1%) of the votes cast for those two candidates.

24 (2) For a statewide ballot item, one-half of one percent (0.5%) of the votes
25 cast in the ballot item, ~~or in the case of a multiseat ballot item, one-half~~
26 ~~of one percent (0.5%) of the votes cast for those two candidates, or~~
27 10,000 votes, whichever is less.

28 The demand for a recount must be in writing and must be received by the State Board of
29 Elections by noon on the second Thursday after the election. If on that Thursday the
30 available returns show a candidate not entitled to a mandatory recount, but the
31 Executive Director determines subsequently that the margin is within the threshold set
32 out in this subsection, the Executive Director shall notify the eligible candidate
33 immediately and that candidate shall be entitled to a recount if that candidate so
34 demands within 48 hours of notice. The recount shall be conducted under the
35 supervision of the State Board of Elections.

36 (d) Rules for Conducting Recounts. – The State Board of Elections shall
37 promulgate rules for conducting recounts. Those rules shall be subject to the following
38 guidelines:

39 (1) The rules shall specify, with respect to each type of voting system,
40 when and to what extent the recount shall consist of machine recounts
41 and hand-to-eye recounts. Hand-to-eye recounts shall also be ordered
42 as provided by G.S. 163-182.7A.

43 (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."

SECTION 6.(b) Article 15A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 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."

SECTION 6.(c) This section becomes effective January 1, 2006.

SECTION 7. G.S. 163-82.28 reads as rewritten:

"§ 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, shall be deposited in that fund. The State Board of Elections shall use funds in the Election Fund only to implement HAVA. ~~HAVA~~ and for purposes permitted by HAVA to comply with State law."

SECTION 7.1. Each county may 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 may also include two backup units per county. Each county may 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 8. The State Board of Elections shall recommend a model code of ethics for members and employees of county boards of elections and of the State

1 Board of Elections. The code shall address the appropriate relations between those
2 members and staff and vendors who do business or seek to do business with boards of
3 elections in North Carolina. It shall address how to avoid both the reality and the
4 appearance of conflicts of interest and impropriety. The State Board shall report its
5 recommended code to the Joint Select Committee on Electronic Voting Systems and to
6 the Joint Legislative Commission on Governmental Operations no later than 60 days
7 after this act becomes law.

8 **SECTION 9.** The State Board of Elections may conduct, for primaries and
9 elections in 2006 only, experiments with voting systems that use a means in addition to
10 paper to fulfill the backup record and voter verification requirements of
11 G.S. 163-165.7(a)(4) and G.S. 163-165.7(a)(5), as enacted by this act. The pilot
12 program may be conducted in no more than nine counties. The county boards of
13 elections shall cooperate in conducting the pilot program. The pilot program shall be
14 conducted according to the following requirements:

- 15 (1) The experiment may be conducted in no more than two voting sites per
16 county. The voting sites may include election-day voting places or
17 one-stop sites.
- 18 (2) At each voting site in which the experiment is conducted, voters must
19 have a choice of voting on the experimental voting system or on a
20 voting system that is not part of the experiment.
- 21 (3) Each experimental voting system shall include an additional means for
22 the voter to verify the choices that the voter makes in the electronically
23 cast ballot, which means shall also provide for an additional count.
24 That additional means may utilize audio technology, digital scanners,
25 or some other material or technology that shall record the voters'
26 choices but shall not record any image of any part of the voter.
- 27 (4) On each voting machine or unit used in the experiment, the voting
28 system shall comply with all the applicable requirements of
29 G.S. 163-165.7, including the requirement in G.S. 163-165.7(a)(4) that
30 a DRE system must generate a paper backup record of each individual
31 vote cast electronically and the requirement in G.S. 163-165.7(a)(5)
32 that the paper record generated by the DRE system must be viewable
33 by the voter before the vote is cast electronically and that the system
34 allow the voter to correct any discrepancy between the electronic vote
35 and the paper record before the vote is cast. On every machine or unit,
36 the experimental means to fulfill those functions shall be used in
37 addition to, rather than instead of, the required paper means.
- 38 (5) For all votes cast on an experimental voting system under the pilot,
39 there shall be, in addition to an electronic count, a full hand-to-eye
40 paper count and a full comparison count of the experimental
41 verification technology.

42 The State Board of Elections shall report the results of the pilot program, together with
43 its recommendations, to the 2007 General Assembly and to the Joint Legislative
44 Commission on Governmental Operations by February 1, 2007.

1 **SECTION 10.** The requirement for testing a voting system in an election
2 provided in G.S. 163-165.9(a)(3), as enacted in Section 4 of this act, does not apply to
3 any voting system acquired before January 1, 2008, as long as the voting system is
4 demonstrated in a public forum in the county. Notwithstanding G.S. 163-132.5G, as
5 amended by this act, voting data by precinct shall be reported for the general elections
6 of 2006 by March 1, 2007, and for the primary elections of 2006 by May 1, 2007.
7 Except as otherwise provided in this act, the remainder of this act is effective when it
8 becomes law.



SENATE BILL 223: Public Confidence in Elections

BILL ANALYSIS

Committee:	House Election Law and Campaign Finance Reform	Date:	August 2, 2005
Introduced by:	Sen. Kinnaird	Summary by:	R. Erika Churchill
Version:	Third Edition		Committee Counsel

SUMMARY: *Senate Bill 223 would require, beginning August 1, 2005, that the State Board of Elections, through a request for proposal process, certify only voting systems that produce paper ballots or paper records that can be used as a backup means of counting and that the voters may use to verify their choices before they cast their votes. Any system, regardless of when purchased, would have to be submitted for compliance with the requirements of the process if the system is to be used in the 2006 elections. The bill also requires that, beginning in 2006, the State Board of Elections must provide for sample paper hand-to-eye counts in random precincts over the State. The bill would allow a limited experiment with voting systems that use non-paper means, in addition to paper means, of voter verification and ballot backup.*

[As introduced, this bill was identical to H238, as introduced by Reps. Insko, Preston, which is currently in House Election Law and Campaign Finance Reform.]

CURRENT LAW: Currently county commissioners are responsible for purchasing voting equipment. They may only purchase equipment that has been approved by the county board of elections. The county board of elections may approve only equipment that has been certified by the State Board of Elections. The State Board has broad rulemaking power over the approval and operation of voting systems. In addition to its authority to approve voting systems for purchase by counties, the State Board may disapprove systems already in use in a county. A county has four years to replace a voting system that has been disapproved.

BILL ANALYSIS:

Section 1 – State Board of Elections' Role in Purchasing. Effective with any upgrade or new voting system purchased beginning 8-1-05 and effective for any voting system used in the 2006 elections, the State Board of Elections is directed to develop a Request for Proposal (RFP). The RFP would have to include the following requirements:

- Posting a bond or letter of credit to cover damages from defects in its voting system, including the cost of a new election.
- Compliance with federal law.
- The capacity to include in precinct returns the votes cast by voters outside the voter's precinct as required by law.
- For electronic voting systems, the system must generate a paper record of each individual vote cast, which paper record shall be maintained in a secure fashion and serve as a backup record for purposes of hand-to-eye counts, hand-to-eye recounts, and other audits.
- For DREs, the paper record must be viewable by the voter before the vote is cast electronically, and the system must permit the voter to correct any discrepancy between the electronic summary of the vote and the paper record before the vote is cast.
- Review of source code by the county, the State Board of Elections, the NC Office of Information Technology, and the Chair of any legally recognized political party in NC. Those entities may designate up to 3 agents to assist in the review.
- A statewide price for each unit of the equipment.

Senate Bill 223

Page 2

- An agreement by the vendor that if it breaches the upkeep part of the contract or goes into bankruptcy, it will permit the software to be turned over to the county for continuing use during the term of the contract and for review by the people who have a right to review the source code.

The RFP would also address the mandatory terms of the contract for the purchase of voting system and the maintenance and training related to that voting system. The State Board would be given the duties of monitoring voting system contracts, and of facilitating training and support.

No voting system that was not certified through the RFP process could be acquired after 8-1-05 and no system, regardless of when purchased, may be used in elections during or after 2006 unless the State Board of Elections determines it complies with the RFP requirements.

The State Board is required to have procedures to maintain the integrity of both the paper record and the electronic count and to prevent removal from the voting enclosure of a paper record or other item whose removal would compromise the integrity of the paper record or the electronic count.

Section 1(e) adds the requirement that provisional votes must be reported by precinct, in addition to absentee and one-stop results. The section also removes the provision that counties be exempt from the requirement because of financial hardship. However, in Section 11, the bill gives boards of elections longer than the statutory 60 days for the 2006 elections --- The 2006 general election results must be reported by March 1, 2007, and the 2006 primary results must be reported by May 1, 2007. In subsequent years, all results must be reported within 60 days.

Section 2 -- Requirements for Voting System Vendors. Effective with any upgrade or new voting system purchased beginning 8-1-05, vendors of voting systems in NC must:

- Escrow their relevant software.
- Keep the escrowed material up to date, and must swear that it is the code used in operating voting systems.
- Maintain an active office in NC.
- Promptly notify the State Board of any decertification of the voting system elsewhere or of any known defect in a voting system used in NC, even if the defect shows up outside NC.

Willful violation of any of the requirements is a Class G felony. Substitution of source code into a voting system without notifying the State Board is a Class I felony. Violations are also punishable by civil penalties of up to \$100,000.

Section 3 -- County Commissioners' Role in Purchasing. Effective 8-1-05, county commissioners would continue to purchase voting equipment. But because of the State Board's new duties, counties would be exempt from the purchasing rules that normally apply to local governments.

Section 4 -- County Board of Elections' Role in Purchasing. Effective 8-1-05, the county board of elections would have the duty to recommend to the county commissioners which type of voting system the county should purchase. Currently, the county chooses from a list of types, makes, and models approved by the State Board. The county board of elections would also be required to abide by State Board rules regarding training and support.

Section 5 -- Sample Counts. Effective 1-1-06, State Board of Elections rules must require a hand-to-eye count of paper ballots in a sampling of precincts, early voting sites, or sets of mail absentee ballots in every county. The hand-to-eye sample counts would be of a sampling of statewide races, always including the presidential race when it is on the ballot. If there is no statewide race, then the State Board must have a plan for getting an adequate sample using district or local races. Unless there is clear evidence to believe otherwise, the hand-to-eye count will prevail. If the difference between the hand-to-eye and the electronic or machine count is significant, a complete hand-to-eye count will be conducted. This section states the general rule that, with optical scan and DRE systems, subject to sample hand counts and mandatory hand recounts, the boards of elections shall rely on an electronic or mechanical count. If there is a material discrepancy between electronic or mechanical counts and hand-to-eye

Senate Bill 223

Page 3

paper counts, the hand-to-eye prevails unless paper ballots have been lost or destroyed or there is another reason to conclude that the paper count is not the true count.

Section 6 – Expansion of Right to Hand-to-Eye Recount. Effective 1-1-06, any candidate entitled to a recount under current law – that is, a candidate who was less than 1% behind in the initial count (or the lesser of 0.5% or 10,000 votes behind in a statewide race) – is entitled to a sample hand-to-eye recount. That sample would be of all the ballots in 3% of the precincts, randomly selected, in each county. If an extrapolation of the sample count to the whole count forecasts a reversal of the result, the candidate is entitled to a full hand-to-eye recount. This expanded right would not cost the candidate.

Section 7 -- Change in HAVA Fund Language. This section changes language of the statute that created, pursuant to federal law, the fund into which is placed federal money under the Help America Vote Act (HAVA) to clarify that the money may be used not only to comply with HAVA but for purpose permitted by HAVA to comply with State law.

Section 8 – Code of Ethics. The State Board of Elections would be directed to recommend a code of ethics for members and employees of boards of elections at the county and State level. The code would address appropriate relations with voting system vendors. It would address how to avoid the reality and appearance of conflicts of interest and impropriety. The State Board would report to the Joint Select Committee on Electronic Voting Systems and to the Joint Legislative Commission on Governmental Operations within 60 days after the bill became law.

Section 9 - Pilot Program for Alternative Means of Voter Verification. – The State Board of Elections would be allowed to conduct an experiment, in no more than nine counties, with voting systems that use some means other than paper of letting the voter verify their electronic ballot and some non-paper backup. The pilot would have these limits:

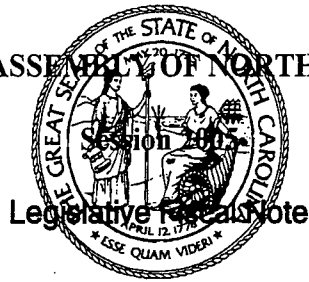
- No more than 2 voting sites per county.
- At each voting site the voters would have a choice between a machine with only paper verification/backup and the experimental type of verification/backup.
- The experimental system must have some means for the voter to verify the electronically cast vote. Examples: audio technology, digital scanning. But no experimental system could be used that would record any image of any part of the voter.
- Even the experimental system must produce a paper record for recount purposes.
- There must be a full hand-to-eye paper count of all ballots cast on the experimental system. There would also be a comparison count of the paper to the alternative verification means.

Section 10 - Effective Date. The effective date section generally makes the bill effective when it becomes law, except as provided in internal sections. It also allows a longer-than-standard time for counties to report absentee and provisional votes by precinct in 2006, as noted in the summary of Section 1. And it relieves counties of the statutory duty to test a new voting system in an election, as long as the voting system is publicly demonstrated, until January 1, 2008.

S0223e3-SMST

Bill Gilkeson contributed substantially to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA



BILL NUMBER: Senate Bill 223 (Third Edition)

SHORT TITLE: Public Confidence in Elections.

SPONSOR(S): Senator Kinnaird

	FISCAL IMPACT				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>
COUNTIES					
Equip. Replacement	Amount cannot be determined; see assumptions and methodology				
Alt. 1 -All O/S	\$45,957,546	\$8,037,333	\$8,037,333	\$8,037,333	\$8,037,333
Alt. 2 -All DRE	\$135,130,995	\$7,500,000	\$7,500,000	\$7,500,000	\$7,500,000
Alt. 3 -O/S & DRE	\$87,831,031	\$7,500,000	\$7,500,000	\$7,500,000	\$7,500,000
Hand/Eye Recounts	Estimated to range from \$3,106 to \$8,824 per 1% of the ballots cast.				
STATE BOARD					
Developing RFP	Estimated to cost \$400,000 to \$600,00 of HAVA Funding				
Source Code Rev.	Estimated to range from \$1,200,000 to \$1,800,000 for initial reviews				
Board Meetings	Estimated to range from \$9,000 to \$12,000 annually				
Training/Support	\$945,320	\$705,320	\$705,320	\$705,320	\$705,320
POSITIONS (cumulative)	8	8	8	8	8
CORRECTION					
Exact amount cannot be determined; no substantial impact anticipated.					
JUDICIAL					
Exact amount cannot be determined; no substantial impact anticipated.					
ADDITIONAL PRISON BEDS*					
Exact amount cannot be determined; no substantial impact anticipated.					
EFFECTIVE DATE: Varies.					

BILL SUMMARY¹:

This bill would require that the State Board of Elections, through a Request For Proposal (RFP) process, certify only voting systems that produce paper ballots or paper records that can be used as a backup means of counting and that the voters may use to verify their choices before they cast their votes. Any voting system purchased or upgraded beginning August 1, 2005 would be subject

¹ Adopted from Bill Analysis Prepared by Senate J1 Committee Counsel

to this RFP process, and any system, regardless of when purchased, would have to be submitted for compliance with the requirements of the RFP process if the system is to be used in the 2006 elections. The bill makes specific requirements of any voting equipment vendor who does business in NC. The bill shifts from counties to the State Board of Elections the duty to produce an RFP for voting systems. It also requires that beginning in 2006 the State Board of Elections must provide for sample paper hand counts in random precincts over the State. The bill would allow a limited experiment with voting systems that use non-paper means, in addition to paper means, of voter verification and ballot backup. Further analysis of pertinent sections of the bill follows.

Section 1 -- State Board of Elections' Role in Purchasing. Effective with any upgrade or new voting system purchased beginning August 1, 2005 and effective for any voting system used in the 2006 elections, the State Board of Elections is directed to develop a Request for Proposal (RFP). The RFP would have to include the following requirements:

- Posting a bond or letter of credit to cover damages from defects in its voting system, including the cost of a new election.
- Compliance with federal law.
- The capacity to include in precinct returns the votes cast by voters outside the voter's precinct as required by law.
- For electronic voting systems, the system must generate a paper record of each individual vote cast, which paper record shall be maintained in a secure fashion and serve as a backup record for purposes of hand-to-eye counts, hand-to-eye recounts, and other audits.
- For DREs, the paper record must be viewable by the voter before the vote is cast electronically, and the system must permit the voter to correct any discrepancy between the electronic summary of the vote and the paper record before the vote is cast.
- Review of source code by the county, the State Board of Elections, the NC Office of Information Technology, and the Chair of any legally recognized political party in NC.
- A statewide price for each unit of the equipment.
- An agreement by the vendor that if it breaches the upkeep part of the contract or goes into bankruptcy, it will permit the software to be turned over to the county for continuing use during the term of the contract and for review by the people who have a right to review the source code.

The RFP would also address the mandatory terms of the contract for the purchase of voting system and the maintenance and training related to that voting system.

The State Board would be given the duties of monitoring voting system contracts, and of facilitating training and support.

No voting system that was not certified through the RFP process could be acquired after August 1, 2005 and no system, regardless of when purchased, may be used in elections during or after 2006 unless the State Board of Elections determines it complies with the RFP requirements.

Section 2 -- Requirements for Voting Systems Vendors. Effective with any upgrade or new voting system purchased beginning August 1, 2005, vendors of voting systems in NC must escrow their relevant source code, keep the escrowed source code up to date and swear that it is the code used in operating voting systems, maintain an active office in NC, and notify the State Board of any known defect in a voting system used in NC. This section also provides that a willful violation of any of the requirements is a Class G felony and that substitution of software into a voting system without notifying the State Board is a Class I felony. Other violations are punishable by civil penalties of up to \$100,000.

Section 3 -- County Commissioners' Role in Purchasing. Effective August 1, 2005, county commissioners would continue to purchase voting equipment. But because of the State Board's new duties, counties would be exempt from the purchasing rules that normally apply to local governments.

Section 4 -- County Board of Elections' Role in Purchasing. Effective August 1, 2005, the county board of elections would have the duty to recommend to the county commissioners which type of voting system the county should purchase. The county board of elections would be required to abide by State Board rules regarding training and support.

Section 5 -- Sample Counts. Effective January 1, 2006, State Board of Elections rules must require a hand-to-eye count of paper ballots in a sampling of precincts, early voting sites, or sets of mail absentee ballots in every county. The hand-to-eye sample counts would be of a sampling of statewide races, always including the presidential race when it is on the ballot. If there is no statewide race, then the State Board must have a plan for getting an adequate sample using district or local races.

Section 6 -- Expansion of Right to Hand-to-Eye Recount. Effective January 1, 2006, any candidate entitled to a recount under current law – that is, a candidate who was less than 1% behind in the initial count (or the lesser of 0.5% or 10,000 votes behind in a statewide race) – is entitled to a sample hand-to-eye recount. That sample would be of all the ballots in 3% of the precincts, randomly selected, in each county. If an extrapolation of the sample count to the whole count forecasts a reversal of the result, the candidate is entitled to a full hand-to-eye recount. This expanded right would not cost the candidate.

Section 7 -- Change in HAVA Fund Language. This section changes language of the statute that created, pursuant to federal law, the fund into which is placed federal money that the State received to implement the requirements of the Help America Vote Act (HAVA). The change clarifies that the money in the fund may be used not only to comply with HAVA but for purpose permitted by HAVA to comply with State law.

Section 8 -- Code of Ethics. The State Board of Elections would be directed to recommend a code of ethics for members and employees of boards of elections at the county and State level. The code would address appropriate relations with voting system vendors. It would address how to avoid the reality and appearance of conflicts of

interest and impropriety. The State Board would report to the Joint Select Committee on Electronic Voting Systems and to the Joint Legislative Commission on Governmental Operations within 60 days after the bill became law.

Section 9 - Pilot Program for Alternative Means of Voter Verification. – The State Board of Elections would be allowed to conduct an experiment, in no more than nine counties, with voting systems that use some means other than paper of letting the voter verify their electronic ballot and some non-paper backup.

ASSUMPTIONS AND METHODOLOGY:

As noted above, this bill, in pertinent part, makes changes to the requirements for the voting systems that can be used in elections in North Carolina beginning with the 2006 elections. It makes changes to the requirements for conducting hand-to-eye recounts. It requires the State Board of Elections (State Board or SBE) to recommend a code of ethics for members and employees of boards of elections at the county and State level. And, it allows the State Board to conduct a pilot program that experiments with voting systems that use some means other than paper of letting the voter verify their electronic ballot and some non-paper backup. This bill also establishes new criminal penalties for violations of the bill.

Fiscal Research believes that this bill has a fiscal impact. However, because of various factors, we cannot provide a reasonable estimate of the bill's total fiscal impact. Our analysis of the bill's fiscal impact and the reasons why we cannot estimate its total fiscal impact are discussed below in five broad categories: Voting System Requirements, Hand-to-Eye Recounts, Criminal Penalties, Code of Ethics Recommendation, and Voting System Pilot Program.

Voting System Requirements:

Section 1 provides that only systems that have been certified by the State Board may be used in North Carolina beginning with the 2006 election year. It provides that the use of paper ballots counted by hand is a certified voting system and it requires the State Board to certify additional voting systems through an RFP process that addresses what is required of the vendors (as prescribed in Section 2) as well as the requirements for the systems and the mandatory terms of the voting system contract. The State Board can only certify voting systems that provide paper ballots or paper records that can be used as a backup means of counting and that the voters may use to verify their choices before they cast their votes. Section 3 allows a board of county commissioners to only adopt and acquire a voting system that has been certified by the State Board. Section 1 also gives the State Board duties of monitoring the voting system contracts and facilitating training and support. Section 4 requires the county boards of elections to abide by the State Board rules regarding training and support.

Fiscal Research believes that completion of the RFP process is necessary to providing the most reasonable estimate of the cost resulting from the implementation of the changes in the voting system requirements. The RFP process is likely to result in the certification of both DRE and optical scan systems from multiple vendors. The unit cost will be dependent upon the minimum system requirements that are reflected in the RFP and the vendors that are selected. The extent of the training and support requirements is somewhat dependent upon the number of systems that are certified. Finally, the total cost will also depend upon the extent to which counties

must replace or can upgrade equipment to comply with the requirement of the bill as well as each county's choice of voting system and vendor from those certified by the State Board of Elections. Further, it has been reported that approximately 80-90 counties would have to replace their equipment even in the absence of this bill either because the equipment is outdated or to comply with the 2002 Federal Elections Commission (FEC) standards. Further, the Elections Assistance Commission (EAC) is also developing standards as required by HAVA. The EAC has indicated that the states will have two years from the adoption of the standards to comply, except that there are certain HAVA requirements for which there must be compliance by January 1, 2006. Considering this, it is reasonable to assume that several counties have budgeted for equipment replacement or will receive HAVA funding for equipment replacement and will not necessarily have to incur an unforeseen expense as a result of this bill as the requirements of this bill can be incorporated into the counties' existing plans to replace equipment. Taking those caveats into consideration, the discussion below addresses the estimated costs related to developing an RFP, equipment replacement, source code review, and training and support.

Request for Proposal Cost

The State Board of Elections did not provide an estimate of its cost to develop the RFP that is required by Section 1 of the bill. It reported that funds received from HAVA Title I grants are available to support the cost of developing the RFP. It also reported that it plans to use RFPs that have been developed by other states as the starting point for North Carolina's RFP. Fiscal Research believes, therefore, that the State Board can absorb the cost of developing the RFP with its existing resources. We will note, however, that the study and development of the RFP for the \$28 million information technology infrastructure project for the State's Retirement Systems was approximately \$400,000 and the study and development of the RFP for the State Controller's business infrastructure project that replaces the State's payroll and human resources systems was approximately \$600,000. We, therefore, estimate that developing the RFP could require an expenditure of \$400,000 to \$600,000 of the State Board's existing resources.

Equipment Cost

Based on information provided by the State Board, forty-eight (48) counties are using optical scan systems, forty (40) are using DRE systems, three (3) are using paper ballots, three (3) are using lever machines, and six (6) are using punch card systems. Existing law phases out the use of lever machines and punch cards and the nine (9) counties that are using lever machines and punch card systems are in the process of replacing those machines. The State's HAVA Budget Plan includes an allocation of the HAVA Title 1 grants to replace the lever machine and punch card systems in those 9 counties. Because the replacement of those systems is pending and because the bill specifies that paper ballot systems are certified voting systems, this fiscal analysis will focus on the 88 counties that are currently using DRE and optical scan systems.

As stated above, any system that is used in elections in 2006 and subsequent years would be subject to the RFP process. Acquisitions and upgrades occurring on or after August 1, 2005 must go through the RFP process. Any systems purchased prior to that date must be submitted for compliance with the RFP requirements. Considering these requirements, Fiscal Research believes this bill could require the 88 counties using DRE and optical scan systems to replace their equipment. For example, though the optical scan systems would be compliant with the paper record requirement, they may not have (1) the capacity to include in precinct returns the votes that were casts outside of the voters' precinct, (2) bonds or letters of credit from vendors to cover

damages, or (3) agreements that cover a breach of contract by the vendor. The DRE systems, on the other hand, would not be in compliance with the paper record requirement.

Though, we believe that the 88 counties may have to replace their equipment, we do not yet know which counties will actually have to purchase new systems or which can upgrade their existing systems. We also do not yet know which type of system each county may choose to purchase. Therefore, our fiscal analysis will include estimates for equipment replacement cost that are based on 3 different alternatives. Alternative 1 assumes that the 88 counties will replace their systems with new optical scan systems. Alternative 2 assumes that the 88 counties will replace their systems with new DRE systems that generate paper records (DRE-PR). Alternative 3 assumes that the 88 counties will replace their equipment with the same type of equipment currently in use. The estimates are based on information provided by the State Board. Please note that in consideration of the caveats noted above, we relied on the information provided by the State Board and did not verify the reasonableness of the information that was provided.

The State Board provided information on the number of registered voters and voting places by county. The State Board also estimated that the unit cost of a DRE with a paper record is \$4,000 and that a reasonable ratio is one unit per 185 registered voters. It estimated that the unit cost of an optical scan tabulator is \$5,500 and that at least one is needed for each precinct. Optical scan systems also require voting booths and paper ballots. The estimated cost of a voting booth is \$160 per unit. One booth is recommended for every 150 voters. The paper ballot cost range from \$0.16/ballot to \$0.27/ballot for an average per ballot cost of \$0.22. The State Board also estimates additional statewide cost as noted in the table that follows.

<i>Estimate of Statewide Cost Provided by State Board of Election</i>	
Nonrecurring	
Software and hardware – modem election results statewide	\$3,600,000
35,000 voter initialization units	\$1,575,000
Programming Software for CBE	\$5,000,000
Hardware for CBE	\$1,500,000
Management stations	\$319,000
Project management & training	\$15,000,000
Nonrecurring	\$26,994,000
Recurring	
Maintenance, subsequent training & software licenses	\$7,500,000

Based on the information that was provided by the State Board, Fiscal Research estimates that the cost under Alternative 1 - 88 Counties Replace Existing DRE and O/S Equipment with New O/S Equipment - would be \$45,420,213 nonrecurring and \$537,333 recurring for printing the ballots. The cost under Alternative 2 - 88 Counties Replace Existing Equipment with New DRE-PR equipment - would be \$135,130,995 nonrecurring. Finally, the cost under Alternative 3 - 88 Counties Replace Existing Equipment with Same Type - would be \$87,831,031 nonrecurring. Additional recurring cost of \$7,500,000 would be required under either alternative. See the tables that follow.

<i>Alternative 1 - 88 Counties Replace Existing DRE and O/S Equipment with New O/S Equipment</i>								
	Reg. Voters	Polling Places	O/S Equipment @ \$5,500/Unit # Units	Total	Voting Booth Cost @ \$160/Booth*	Printing @ \$0.22**		Total
DRE Counties	2,442,423	1,228	1,417	\$7,793,077	16,283	\$2,605,251	\$537,333	\$10,935,661
O/S Counties	2,558,913	1,265	1,460	\$8,027,885	0	\$0	\$0	\$8,027,885
Total for Tabulators	5,001,336	2,493	2,877	\$15,820,962	16,283	\$2,605,251	\$537,333	\$18,963,546
Supporting Equipment/Hardware/Software								\$26,994,000
Total Cost to Counties								\$45,957,546
* No cost is estimated for existing O/S counties based on the assumption that they already have voting booths.								
** No cost is estimated for existing O/S counties based on the assumption their existing printing costs will not increase.								

<i>Alternative 2 - 88 Counties Replace Existing Equipment with New DRE-PR</i>				
	Registered Voters	Polling Places	DRE-PR Equipment @ \$4,000/Unit # of Units	Total
DRE Counties	2,442,423	1,228	13,202	\$52,809,146
O/S Counties	2,558,913	1,265	13,832	\$55,327,849
Total for Tabulators	5,001,336	2,493	27,034	\$108,136,995
Supporting Equipment/Hardware/Software				\$26,994,000
Total Cost to Counties				\$135,130,995

Alternative 3 - 88 Counties Replace Existing Equipment with Same Type

	Registered Voters	Polling Places	# of Units	Total
DRE Counties	2,442,423	1,228	13,202	\$52,809,146 @ \$4,000/Unit
O/S Counties	2,558,913	1,265	1,460	\$8,027,885 @ \$5,500/Unit
Total for Units and Tabulators				\$60,837,031
Supporting Equipment/Hardware/Software				\$26,994,000
Total Cost to Counties				\$87,831,031

Source of Funding for Equipment Replacement

Under current law, the county boards of commissioners are responsible for purchasing voting equipment. The bill does not change that responsibility. Thus, replacing voting systems to comply with this bill would be a cost to the counties. Please note, however, that the State received \$74,249,370 in federal funds that were appropriated by Congress to assist states in implementing the Help America Vote Act of 2002 (HAVA) and it appropriated \$3,444,133 as its required match for the federal funds. In part, Section 301 of HAVA requires states to have accessible voting equipment for the disabled as well as equipment that notifies a voter of an overvote and allows correction of the overvote. Therefore, the State Board has designated \$37,231,222 of the HAVA funds for replacement of voting systems to comply with HAVA. The State Board has also indicated that there is an additional \$16,000,000 of HAVA funds and State matching funds that are subject to being allocated to fund Section 301 voting system requirements. Thus, it appears that there is approximately \$53,000,000 in HAVA funds and related State matching funds that could be used to offset the cost of replacing voting equipment. As noted earlier 80-90 counties would have to replace their equipment to comply with the 2002 FEC standards. It is, therefore, reasonable to assume that there would be substantial overlap between those counties and the 88 counties that might be required to replace their equipment to comply with this bill. Therefore, it is also reasonable to assume that a substantial portion of the HAVA Funds can offset the counties' cost, considering that the bill's requirements can be incorporated into existing replacement plans. Further, Section 7 of the bill would amend the statutory language governing the fund in which the HAVA funds are maintained to clarify that the money can be used not only to comply with HAVA but for the purpose permitted by HAVA to comply with State law.

Source Code Review:

Section 1 of the bill requires the State Board of Elections to review, or designate an independent expert to review, all source code made available by the vendor pursuant to the requirement of the bill. This review must be done before a voting system is certified. The State Board of Elections estimates that the average cost for each source code review is \$100,000 to \$150,000. The State Board expects that separate source code reviews will be required for the software and firmware for each system that it certifies for a minimum of two reviews per vendor. The total cost of the source code reviews will be based on the number of systems and vendors that

are certified by the State Board. Assuming there are a total of 6 vendors that can provide DRE or optical scan systems, the cost of the source code review could range from \$1.2 million (2 reviews * 6 vendors * \$100,000/review) to \$1.8 million (2 reviews * 6 vendors * \$150,000/review). Recurring updates would cost less.

Approval of Voting Systems and/or Updates

The five-member Board of the State Board of Elections would be required to certify voting systems. The Board would meet in public session to do so. The State Board reports that the minimum cost per meeting is \$1,500 and it estimates that six to eight additional meetings could be required to certify voting systems. The total cost of the additional meetings would be approximately \$9,000 to \$12,000.

The State Board also reported that it could possibly incur legal fees if a lawsuit is brought as a result of its certification decisions. There is no basis for determining whether any lawsuits would be brought against the State Board.

Training and Support

Section 1 of the bill requires the State Board to facilitate training and support of the voting systems utilized by the counties. Section 4 requires the county boards of elections to comply with any requirements of the State Board regarding training and support of the voting system. The State Board estimates that it would need 8 additional employees to provide voting equipment support and training for the 100 county boards of elections. The total cost of the salary and fringe benefits for 8 positions as estimated by the State Board is \$528,000 (\$50,000 salary + \$16,000 benefits * 8 positions). Fiscal Research calculates benefits per position at \$3,432 for medical, 7.65% for Social Security, and 5.815% retirement. Based on those rates, the benefit cost for each position at a \$50,000 salary should be \$10,165, for a total of \$60,165 per position. Therefore, the adjusted estimate for salaries and benefits for the 8 positions would be \$481,320 (8 positions * \$60,165). In addition to the salary and benefits, the State Board estimates that it will need nonrecurring cost of \$240,000 for office furniture and computer equipment (\$40,000) and for training on specific voting equipment (\$200,000). It also estimates that it will need \$224,000 on a recurring basis for travel (\$24,000) and for continuing education (\$200,000).

Hand-to-Eye Recounts

Section 5 of the bill requires the State Board of Elections to develop rules that would provide for a hand-to-eye count of the paper ballots or paper records of a sampling of a statewide ballot item in every county. The size of the sample is to be chosen to produce a statistically significant result and is to be chosen after consultation with a statistician. Section 6 expands a candidates right to a sample hand-to-eye recount and to a complete hand-to-eye recount.

The State Board provided information obtained from the Guilford County Board of Elections on the cost of recounting paper ballots by hand. The ballot counting time reflected in the information was based on time tests conducted by the Guilford County Board using a sample of test ballots from the 2002 General Election. Based on that information, it would take one-tenth (.10) of a minute to count one contest per ballot. By current law, ballots must be counted by four-person teams. The daily cost of a four-person team is \$420 (based on an 8-hour day at \$13.12/hour). The cost for counting one contest per ballot is \$0.088 (\$420 / (8 hours * 60 minutes

per hour / .1 minutes per ballot)). Fiscal Research also has data that indicates that the cost of a recount in Washington State was \$0.25 per voter.

There are currently 5,514,863 registered voters. During the 2004 General Election, the voter turnout was approximately 64%. Assuming the voter turnout remains at that level, there would be approximately 3,529,512 ballots. For each 1% of those ballots, the cost could range from \$3,106 ($3,529,512 * .01 * \$0.088$) based on Guilford County data to \$8,824 ($3,529,512 * .01 * \$0.25$) based on Washington State data. Without knowing the size of the sample that will be chosen, Fiscal Research has no basis upon which to estimate the true cost of conducting a hand-to-eye count/recounts.

Code of Ethics Recommendation:

Section 8 of the bill requires the State Board to recommend a code of ethics for members and employees of boards of elections. The State Board considers this responsibility to be among its existing responsibilities and duties. Therefore, it does not anticipate that it would need any additional resources to comply with this section of the bill.

Voting System Pilot Program:

Section 9 of this bill authorizes the State Board of Elections to conduct programs in up to nine counties that would experiment with different types of voting systems. The State Board reported that it does not expect to incur any additional cost to conduct the pilot because voting system vendors are likely to supply the equipment that would be used in the experimental pilots.

Criminal Penalties:

As Section 2(a) of this bill would create a new Class I felony and several Class G felonies for failure to perform certain vendor duties, it would be expected to result in some additional charges and convictions and would, consequently, have a fiscal impact on the Courts and Department of Correction. Because the offenses would be new, there is no historical data from which to estimate the numbers of charges and convictions that would occur under the bill. However, as voting system vendors would be expected to predominantly comply with the provisions of the bill, it is unlikely that a substantial number of new Class G or I felony charges and convictions would occur. As such, a substantial fiscal impact due to the new criminal penalties is not anticipated.

Department of Correction

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2005 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory group, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon and beyond.*

As the Class G and I felonies created by this bill would be altogether new, the Sentencing Commission has no historical data from which to project the specific impact on prison population. In FY 2003-04, 11 percent of Class I and 44 percent of Class G convictions resulted in active

sentences with average active sentence lengths of 7 to 9 months and 15 to 19 months, respectively. If, for example, there were ten Class I felony convictions per year, one additional prison bed would be needed in the first year and three beds in the second year. If, for example, there were two Class G felony convictions per year, one additional prison bed would be needed in the first year and two beds in the second year. The average annual operating cost for one prison bed in FY 2006-07 will be an estimated \$24,740.

The remaining 89 and 56 percent of Class I and G convictions, respectively, resulted in non-active sentences. Probation officers in the Division of Community Corrections (DCC) supervise offenders with intermediates sanctions at an estimated cost of \$10.94 per day for the first six months and \$1.87 per day thereafter. (This cost estimate is based on the average cost and duration of intensive probation, the most common intermediate sanction.) The estimated cost for a supervised community offender is \$1.87 per day.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts (AOC) provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

For any new Class G or I felony charge due to this bill, there would be additional court and preparation time needed to dispose of the charge, thus increasing superior court workload. Based on the costs of attorney preparation time, time in court, and indigent defense AOC estimates the average cost per charge if settled via trial at \$5,835 for a Class I felony and \$7,657 for a Class G felony. If settled via guilty plea, AOC estimates the average cost at \$330 per plea for Class I and \$380 per plea for Class G.

SOURCES OF DATA: State Board of Elections; Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Marilyn Chism and Aaron Paul

APPROVED BY: James D. Johnson, Director
Fiscal Research Division



DATE: July 28, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

4
Fiscal Analysis of Amendment S223-AST-68[v.2]

COUNTY	Existing Equipment	Polling Places \$12K/Polling Place	Equipment Grants	2004 Voter Turnout \$1/Voter, \$10K min & \$100K max	Software Grants
Alamance	DREs	37	\$444,000	55,036	\$55,036
Alexander	O/S	16	\$192,000	15,983	\$15,983
Alleghany	DREs	7	\$84,000	5,006	\$10,000
Anson	O/S	11	\$132,000	9,365	\$10,000
Ashe	O/S	17	\$204,000	12,016	\$12,016
Avery	O/S	19	\$228,000	7,578	\$10,000
Beaufort	O/S	21	\$252,000	20,011	\$20,011
Bertie	DREs	12	\$144,000	8,256	\$10,000
Bladen	DREs	17	\$204,000	12,469	\$12,469
Brunswick	DREs	23	\$276,000	38,414	\$38,414
Buncombe	DREs	72	\$864,000	106,033	\$100,000
Burke	DREs	31	\$372,000	34,484	\$34,484
Cabarrus	P/C	42	\$504,000	61,989	\$61,989
Caldwell	O/S	24	\$288,000	31,918	\$31,918
Camden	O/S	3	\$36,000	3,931	\$10,000
Carteret	DREs	34	\$408,000	30,810	\$30,810
Caswell	DREs	11	\$132,000	9,683	\$10,000
Catawba	DREs	40	\$480,000	59,764	\$59,764
Chatham	O/S	24	\$288,000	26,316	\$26,316
Cherokee	DREs	16	\$192,000	11,427	\$11,427
Chowan	L/M	6	\$72,000	5,340	\$10,000
Clay	O/S	9	\$108,000	4,957	\$10,000
Cleveland	O/S	28	\$336,000	37,638	\$37,638
Columbus	O/S	26	\$312,000	21,386	\$21,386
Craven	DREs	26	\$312,000	37,931	\$37,931
Cumberland	O/S	65	\$780,000	97,511	\$97,511
Currituck	O/S	11	\$132,000	9,185	\$10,000
Dare	O/S	16	\$192,000	16,064	\$16,064
Davidson	DREs	42	\$504,000	60,611	\$60,611
Davie	DREs	14	\$168,000	16,893	\$16,893
Duplin	P/C	19	\$228,000	17,061	\$17,061
Durham	O/S	55	\$660,000	111,382	\$100,000
Edgecombe	O/S	21	\$252,000	21,313	\$21,313
Forsyth	P/C	102	\$1,224,000	140,354	\$100,000
Franklin	O/S	17	\$204,000	21,202	\$21,202
Gaston	DREs	46	\$552,000	64,703	\$64,703
Gates	O/S	5	\$60,000	4,278	\$10,000
Graham	P/B	4	\$48,000	4,040	\$10,000
Granville	O/S	14	\$168,000	18,881	\$18,881
Greene	DREs	10	\$120,000	6,615	\$10,000
Guilford	DREs	159	\$1,908,000	197,209	\$100,000
Halifax	O/S	30	\$360,000	19,734	\$19,734
Harnett	O/S	22	\$264,000	33,133	\$33,133
Haywood	O/S	29	\$348,000	26,390	\$26,390
Henderson	DREs	35	\$420,000	44,090	\$44,090
Hertford	DREs	13	\$156,000	8,229	\$10,000
Hoke	O/S	13	\$156,000	10,964	\$10,964
Hyde	P/B	7	\$84,000	2,306	\$10,000
Iredell	O/S	28	\$336,000	57,651	\$57,651
Jackson	DREs	18	\$216,000	13,912	\$13,912
Johnston	O/S	34	\$408,000	54,680	\$54,680
Jones	O/S	7	\$84,000	4,670	\$10,000

Fiscal Analysis of Amendment S223-AST-68[v.2]

COUNTY	Existing Equipment	Polling Places \$12K/Polling Place	Equipment Grants	2004 Voter Turnout \$1/Voter, \$10K min & \$100K max	Software Grants
Lee	DREs	13	\$156,000	19,787	\$19,787
Lenoir	DREs	22	\$264,000	23,671	\$23,671
Lincoln	O/S	29	\$348,000	30,206	\$30,206
Macon	DREs	15	\$180,000	15,487	\$15,487
Madison	DREs	12	\$144,000	9,606	\$10,000
Martin	O/S	13	\$156,000	10,740	\$10,740
McDowell	DREs	17	\$204,000	16,121	\$16,121
Mecklenburg	DREs	190	\$2,280,000	325,386	\$100,000
Mitchell	O/S	9	\$108,000	8,029	\$10,000
Montgomery	O/S	14	\$168,000	10,112	\$10,112
Moore	DREs	24	\$288,000	38,732	\$38,732
Nash	O/S	26	\$312,000	38,822	\$38,822
New Hanover	O/S	46	\$552,000	81,502	\$81,502
Northampton	O/S	18	\$216,000	9,030	\$10,000
Onslow	P/C	23	\$276,000	38,233	\$38,233
Orange	O/S	43	\$516,000	64,038	\$64,038
Pamlico	DREs	8	\$96,000	5,600	\$10,000
Pasquotank	DREs	13	\$156,000	13,771	\$13,771
Pender	DREs	17	\$204,000	17,346	\$17,346
Perquimans	DREs	7	\$84,000	5,042	\$10,000
Person	O/S	14	\$168,000	15,547	\$15,547
Pitt	DREs	38	\$456,000	53,997	\$53,997
Polk	DREs	9	\$108,000	9,488	\$10,000
Randolph	O/S	40	\$480,000	52,395	\$52,395
Richmond	O/S	16	\$192,000	16,538	\$16,538
Robeson	O/S	41	\$492,000	34,008	\$34,008
Rockingham	O/S	31	\$372,000	37,610	\$37,610
Rowan	O/S	46	\$552,000	52,438	\$52,438
Rutherford	DREs	24	\$288,000	24,914	\$24,914
Sampson	O/S	23	\$276,000	22,641	\$22,641
Scotland	L/M	10	\$120,000	11,706	\$11,706
Stanly	DREs	24	\$288,000	25,650	\$25,650
Stokes	O/S	20	\$240,000	20,064	\$20,064
Surry	DREs	29	\$348,000	26,719	\$26,719
Swain	L/M	5	\$60,000	4,926	\$10,000
Transylvania	DREs	18	\$216,000	15,827	\$15,827
Tyrrell	P/B	6	\$72,000	1,592	\$10,000
Union	DREs	46	\$552,000	61,938	\$61,938
Vance	P/C	16	\$192,000	16,141	\$16,141
Wake	O/S	183	\$2,196,000	353,902	\$100,000
Warren	DREs	14	\$168,000	6,318	\$10,000
Washington	O/S	6	\$72,000	5,572	\$10,000
Watauga	P/C	20	\$240,000	24,410	\$24,410
Wayne	O/S	30	\$360,000	41,066	\$41,066
Wilkes	O/S	29	\$348,000	28,151	\$28,151
Wilson	DREs	25	\$300,000	31,040	\$31,040
Yadkin	O/S	12	\$144,000	16,055	\$16,055
Yancey	O/S	11	\$132,000	9,733	\$10,000
Total		2,753	\$33,036,000	3,552,449	\$3,009,808



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 223

S223-ARR-103 [v.1]

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

Page 1 of 2

Date _____, 2005

Comm. Sub. [YES]
Amends Title [NO]
Third Edition

Representative _____

1 moves to amend the bill on page 2, line 21 by inserting "system" after "voting";

2
3 and on page 2, line 11 by inserting the following between "system." and "The":

4 "The State Board of Elections shall certify optical scan voting systems, optical scan
5 with ballot markers voting systems, and direct record electronic voting systems if any of
6 those systems meet all applicable requirements of federal and State law.";

7
8 and on page 13, lines 30-31 by inserting the following between those lines:

9 "SECTION 7.1. Each county may receive a grant of up to twelve thousand
10 dollars (\$12,000) per polling place and one-stop site from the Election Fund created
11 under G.S. 163-82.28 for voting equipment that complies with the requirements of
12 HAVA and this act. The grant may also include two backup units per county. Each
13 county may also receive a grant equal to one dollar (\$1.00) per voter in the 2004
14 presidential election, but no less than ten thousand dollars (\$10,000) or more than one
15 hundred thousand dollars (\$100,000), for central administrative software for tabulation.

16 "

17



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 223

S223-ARR-103 [v.1]

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

Page 2 of 2

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

VISITOR REGISTRATION SHEET

Election Law and Campaign Finance Reform

August 10, 2005

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Perry Triggs

NC-CVUE

Joyce Whitely

NC CVV and many, NC State

Cassie Gail

NCPIRG

Dennis Bowers

NCCVV

Erilyn Justice

NC House

Kathleen Edwards

UNC-CH Institute of Govt

Joseph Wynn

NCCVV

RT Ruppert

NCCVV

Justin Moore

NCCVV

Stephanie Cogh

UCDST

Brian Dwyer

BTE

VISITOR REGISTRATION SHEET

Election Law and Campaign Finance Reform

August 10, 2005

Name of Committee

Date _____

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME _____

FIRM OR AGENCY AND ADDRESS

[illegible]

Box 5 Contents
2005-06 Standing Committee Minutes

2005-2006 House Environment & Natural Resources
2005 House Federal Relations & Trade Issues
2005 House Finance (thru July 26)