

2016 Ex. Sess. 4

**SENATE
FINANCE**

MINUTES

Senate Committee on Finance
Thursday, December 15, 2016 at 10:30 AM
Room 544 of the Legislative Office Building

MINUTES

The Senate Committee on Finance met at 10:30 AM on December 15, 2016 in Room 544 of the Legislative Office Building. Twenty-nine members were present.

Senator Bill Rabon, Chair, presided.

SB 4 – Bi-Partisan Ethics, Elections & Court Reform.

Senator Tucker was recognized to explain and answer questions on the creation of a Bipartisan State Board of Elections and Ethics Enforcement. The bill would combine the functions of the State Ethics Commission, the lobbying section of the Office of the Secretary of State, and the State Board of Elections under a new State agency: the Bipartisan State Board of Elections and Ethics Enforcement.

Senator Rucho was recognized to explain redistricting section of the bill. It provides that the State Board of Elections and the county boards of elections do not have any authority to alter, amend, correct, impose, or substitute any plan apportioning or redistricting State legislative or congressional districts, even in emergency situations.

Senator Daniel was recognized to explain Parts 3 and 4. Part 3 would make various changes in the General statutes to restore partisan elections for the State Supreme Court and the Court of Appeals. Part 4 would establish new appeal procedures for the Court of Appeals, directing the future appeals from the State Supreme Court. Handouts of previous proposed legislation were distributed and copies are attached.

Senator Rucho requested that Mr. Ettefagh explain Part 5 which involves term lengths and vacancies in the Industrial Commission.

Erika Churchill was recognized to explain State Board of Elections filing fees and partisan election filing fees.

Michael Byrone, an attorney, was recognized to speak in opposition and pointed out that continuity already exists in the Appellate Court. Adding more lawyers and judges will expand costs. Melissa Price Kromm, Director of NC Voters for Clean Elections, was recognized to speak in opposition to the judges' partisan labels on ballots.

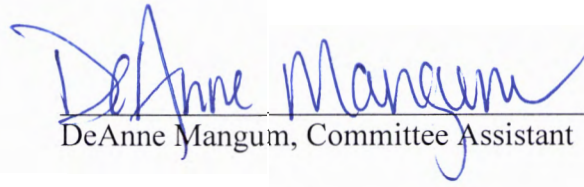
Senator Brown moved for a favorable report as amended and the motion carried. Senator Alexander seconded the motion. A copy of the bill, the handouts, and the summary is attached.



The meeting adjourned at 11:50 a.m.

A handwritten signature in black ink, appearing to be "Bill Rabon", written over a horizontal line.

Senator Bill Rabon, Chair
Presiding

A handwritten signature in blue ink, appearing to be "DeAnne Mangum", written over a horizontal line.

DeAnne Mangum, Committee Assistant



Principal Clerk
Reading Clerk

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The **Senate Committee on Finance** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	December 15, 2016	10:00 AM	544 LOB

Senator Bill Rabon, Co-Chair
Senator Bob Rucho, Co-Chair
Senator Jerry W. Tillman, Co-Chair



**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

FINANCE COMMITTEE REPORT

Senator Rabon, Co-Chair

Senator Rucho, Co-Chair

Senator Tillman, Co-Chair

Thursday, December 15, 2016

Senator Rabon,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL

SB 4

Bi-Partisan Ethics, Elections & Court Reform.

Draft Number: S4-PCS45005-STf-1

Sequential Referral: None

Recommended Referral: None

Long Title Amended: No

TOTAL REPORTED: 1

Senator Bob Rucho will handle SB 4



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GENERAL ASSEMBLY OF NORTH CAROLINA
FOURTH EXTRA SESSION 2016

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SENATE BILL 4

Short Title: Bi-Partisan Ethics, Elections & Court Reform. (Public)

Sponsors: Senators Rucho, Rabon, and Tucker (Primary Sponsors).

Referred to: Redistricting

December 14, 2016

A BILL TO BE ENTITLED

AN ACT TO CONSOLIDATE THE FUNCTIONS OF ELECTIONS, CAMPAIGN FINANCE, LOBBYING, AND ETHICS UNDER ONE STATE AGENCY BY CREATING THE NORTH CAROLINA BIPARTISAN STATE BOARD OF ELECTIONS AND ETHICS ENFORCEMENT; TO CLARIFY THE GENERAL ASSEMBLY'S AUTHORITY TO CORRECT DEFECTS IDENTIFIED BY A COURT IN APPORTIONMENT OR DISTRICTING PLANS; TO RESTORE PARTISAN ELECTIONS FOR THE NORTH CAROLINA SUPREME COURT AND COURT OF APPEALS; TO MODIFY APPELLATE REVIEW OF CERTAIN CASES; AND TO MODIFY THE TERM FOR INDUSTRIAL COMMISSIONERS.

The General Assembly of North Carolina enacts:

PART I. CREATION OF BIPARTISAN STATE BOARD OF ELECTIONS AND ETHICS ENFORCEMENT

SECTION 1. Recodification; Technical and Conforming Changes. – The Revisor of Statutes shall recodify Chapter 138A of the General Statutes, Chapter 120C of the General Statutes, as well as Chapter 163 of the General Statutes, as amended by this act, into a new Chapter 138B of the General Statutes to be entitled "Elections and Ethics Enforcement Act," as enacted by Section 2 of this act. The Revisor may also recodify into the new Chapter 138B of the General Statutes other existing statutory laws relating to elections and ethics enforcement that are located elsewhere in the General Statutes as the Revisor deems appropriate. The new Chapter 138B of the General Statutes shall have the following structure:

SUBCHAPTER I. GENERAL PROVISIONS

Article 1. Bipartisan State Board of Elections and Ethics Enforcement.

SUBCHAPTER II. ETHICS AND LOBBYING

Article 5. General Provisions.

Article 6. Public Disclosure of Economic Interests.

Article 7. Ethical Standards for Covered Persons.

Article 8. Lobbying.

Part 1. Registration

Part 2. Prohibitions and Restrictions

Part 3. Reporting

Part 4. Liaison Personnel

Part 5. Exemptions

Part 6. Miscellaneous

Article 9. Violation Consequences.



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SUBCHAPTER III. ELECTION AND ELECTION LAWS

Article 15. Time of Primaries and Elections.

Part 1. Time of Primaries and Elections

Part 2. Time of Elections to Fill Vacancies

Article 16. Election Officers.

Part 1. State Board Powers and Duties

Part 2. County Boards of Elections

Part 3. Political Activities by Board of Elections Members and Employees

Part 4. Precinct Election Officials

Article 17. Qualifying to Vote.

Part 1. Qualifications of Voters

Part 2. Registration of Voters

Part 3. Challenges

Part 4. HAVA Administrative Complaint Procedure

Article 18. Political Parties.

Article 19. Nomination of Candidates.

Part 1. Primary Elections

Part 2. Nomination by Petition

Part 3. Challenge to Candidacy

Article 20. Conduct of Primaries and Elections.

Part 1. Precincts and Voting Places

Part 2. Precinct Boundaries

Part 3. Voting

Part 4. Counting Official Ballots, Canvassing Votes, Hearing Protests, and
Certifying Results

Part 5. Members of United States House of Representatives

Part 6. Presidential Electors

Part 7. Presidential Preference Primary Act

Part 8. Petitions for Elections and Referenda

Article 21. Absentee Voting.

Part 1. Absentee Ballot

Part 2. Uniform Military and Overseas Voters Act

Article 22. Regulation of Election Campaigns.

Part 1. Corrupt Practices and Other Offenses Against the Elective Franchise

Article 23. Regulating Contributions and Expenditures in Political Campaigns.

Part 1. In General

Part 2. Disclosure Requirements for Media Advertisements

Part 3. Municipal Campaign Reporting

Article 24. The North Carolina Public Campaign Fund.

Article 25. The Voter-Owned Elections Act.

Article 26. Legal Expense Funds.

Article 27. Municipal Elections.

Part 1. Municipal Election Procedure

Part 2. Conduct of Municipal Elections

Article 28. Nomination and Election of Appellate, Superior, and District Court Judges.

When recodifying, the Revisor is authorized to change all references to the State Ethics Commission, to the State Board of Elections, or to the Secretary of State, to instead be references to the Bipartisan State Board of Elections and Ethics Enforcement. The Revisor may separate subsections of existing statutory sections into new sections and, when necessary to organize relevant law into its proper place in the above structure, may rearrange sentences that currently appear within subsections. The Revisor may modify statutory citations throughout the General

Statutes, as appropriate, and may modify any references to statutory divisions, such as "Chapter," "Subchapter," "Article," "Part," "section," and "subsection," adjust the order of lists of multiple statutes to maintain statutory order, correct terms and conform names and titles changed by this act, eliminate duplicative references to the Bipartisan State Board of Elections and Ethics Enforcement that result from the changes authorized by this section, and make conforming changes to catch lines and references to catch lines. The Revisor may also adjust subject and verb agreement and the placement of conjunctions. The Revisor shall consult with the State Ethics Commission, the State Board of Elections, the Secretary of State, and the new Bipartisan State Board of Elections and Ethics Enforcement on this recodification.

SECTION 2.(a) The General Statutes are amended by adding a new Chapter to read:

"Chapter 138B.

"Elections and Ethics Enforcement Act."

SECTION 2.(b) Chapter 138B of the General Statutes, as enacted by this act, is amended by adding a new Subchapter to read:

"SUBCHAPTER I. GENERAL PROVISIONS."

SECTION 2.(c) Subchapter I of Chapter 138B of the General Statutes, as enacted by this act, is amended by adding a new Article to read:

"Article 1.

"Bipartisan State Board of Elections and Ethics Enforcement.

"§ 138B-1. Bipartisan State Board of Elections and Ethics Enforcement established.

There is established the Bipartisan State Board of Elections and Ethics Enforcement, referred to as the State Board in this Chapter.

"§ 138B-2. Membership.

(a) The State Board shall consist of eight individuals registered to vote in North Carolina, as follows:

- (1) Four members shall be appointed by the Governor, two of whom shall be of the political party with the highest number of registered affiliates and two of whom shall be of the political party with the second highest number of registered affiliates, as reflected by the latest registration statistics published by the State Board. The Governor shall appoint two members each from a list of three nominees submitted by the State party chairs of the two political parties with the highest number of registered affiliates, as reflected by the latest registration statistics published by the State Board.
- (2) Two members shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, as provided in G.S. 120-121. One member shall be of the political party with the highest number of registered affiliates and one member shall be of the political party with the second highest number of registered affiliates, as reflected by the latest registration statistics published by the State Board. All appointments shall be from a list of three nominees submitted to the Speaker of the House of Representatives by the majority leader of the House of Representatives and a list of three nominees submitted to the Speaker of the House of Representatives by the minority leader of the House of Representatives.
- (3) Two members shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, as provided in G.S. 120-121. One member shall be of the political party with the highest number of registered affiliates and one member shall be of the political party with the second highest number of registered affiliates, as reflected by the latest registration statistics published by the State Board. All appointments shall be from a list of three nominees submitted to the President Pro Tempore by the

majority leader of the Senate and a list of three nominees submitted to the President Pro Tempore by the minority leader of the Senate.

(b) Members shall serve for four-year terms, beginning May 1 immediately following the election of the Governor.

(c) Members shall be removed by the member's appointing authority from the State Board only for misfeasance, malfeasance, or nonfeasance.

(d) Any vacancy occurring on the State Board shall be filled by an individual affiliated with the same political party of the vacating member. Any vacancy occurring in the State Board in an appointment made by the Governor shall be filled by the Governor, and the person so appointed shall fill the unexpired term. The Governor shall fill the vacancy from a list of two names submitted by the State party chair of the political party with which the vacating member was affiliated if that list is submitted within 30 days of the occurrence of the vacancy. Any vacancy occurring on the State Board in an appointment made by the General Assembly upon the recommendation of the Speaker of the House of Representatives shall be filled in accordance with G.S. 120-122 for the remainder of the unfulfilled term. Any vacancy occurring on the State Board in an appointment made by the General Assembly upon the recommendation of the President Pro Tempore of the Senate shall be filled in accordance with G.S. 120-122 for the remainder of the unfulfilled term.

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

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

(f) At the first meeting in May, the State Board shall organize by electing one of its members chair and one of its members vice-chair, each to serve a one-year term as such. In the odd-numbered year, the chair shall be a member of the political party with the highest number of registered affiliates, as reflected by the latest registration statistics published by the State Board, and the vice-chair a member of the political party with the second highest number of registered affiliates. In the even-numbered year, the chair shall be a member of the political party with the second highest number of registered affiliates, as reflected by the latest registration statistics published by the State Board, and the vice-chair a member of the political party with the highest number of registered affiliates.

(g) At the first meeting held after new appointments are made after taking the oath, the State Board shall elect one of its members secretary, to serve a four-year term as such.

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

(1) Make a reportable contribution to a candidate for a public office over which the State Board would have jurisdiction or authority.

(2) Register as a lobbyist under Article 8 of this Chapter.

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

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

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

(i) Members of the State Board shall receive per diem, subsistence, and travel, as provided in G.S. 138-5 and G.S. 138-6.

"§ 138B-3. Meetings; quorum; majority.

The State Board shall meet at least monthly and at other times as called by its chair or by six of its members. In the case of a vacancy in the chair, meetings may be called by the vice-chair. Six members of the State Board constitute a quorum for the transaction of business. Except where required by law to act unanimously, a majority vote for action of the State Board shall require six of the eight members.

"§ 138B-4. Powers of the State Board in the execution of State Board duties.

(a) In the performance of the duties enumerated in this Chapter, the State Board, upon a vote of six or more of its members, shall have power to administer oaths, issue subpoenas, summon witnesses, and compel the production of papers, books, records, and other evidence. Such subpoenas for designated witnesses or identified papers, books, records, and other evidence shall be signed and issued by the chair.

(b) In the absence of the chair or upon the chair's refusal to act, the vice-chair may sign and issue subpoenas, summon witnesses, and compel the production of papers, books, records, and other evidence approved in accordance with subsection (a) of this section. In the absence of the chair or upon the chair's refusal to act, any member of the State Board may administer oaths.

(c) The State Board, upon a vote of six or more of its members, may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Chapter. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Chapter. Subpoenas issued under this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any nonresident person, or that person's agent, who makes a reportable expenditure under this Chapter, and personal jurisdiction may be asserted under G.S. 1-75.4.

"§ 138B-5. Independent agency, staff, and offices.

(a) The State Board shall be and remain an independent regulatory and quasi-judicial agency and shall not be placed within any principal administrative department. The State Board shall exercise its statutory powers, duties, functions, and authority and shall have all powers and duties conferred upon the heads of principal departments under G.S. 143B-10.

(b) The State Board may employ professional and clerical staff, including an Executive Director.

"§ 138B-6. Executive Director of the State Board.

(a) There is hereby created the position of Executive Director of the State Board, who shall perform all duties imposed by statute and such duties as may be assigned by the State Board.

(b) The State Board shall appoint an Executive Director for a term of four years with compensation to be determined by the Office of State Human Resources. The Executive Director shall serve beginning May 15 after the first meeting held after new appointments to the State Board are made, unless removed for cause, until a successor is appointed. In the event of a vacancy, the vacancy shall be filled for the remainder of the term.

(c) The Executive Director shall be responsible for staffing, administration, execution of the State Board's decisions and orders, and shall perform such other responsibilities as may be assigned by the State Board.

(d) The Executive Director shall be the chief State elections official."

SECTION 3.(a) G.S. 138A-6 is repealed.

SECTION 3.(e) G.S. 138A-13 reads as rewritten:

- (2) Submit the rule and a notice of public hearing to the Codifier of Rules, and the Codifier of Rules shall publish the proposed rule and the notice of public hearing on the Internet to be posted within five business days.
- (3) Notify those on the mailing list maintained in accordance with G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a rule and of the public hearing.
- (4) Accept written comments on the proposed rule for at least 15 business days prior to adoption of the rule.
- (5) Hold at least one public hearing on the proposed rule no less than five days after the rule and notice have been published.

A rule adopted under this subsection becomes effective the first day of the month following the month the final rule is submitted to the Codifier of Rules for entry into the North Carolina Administrative Code, and applies prospectively. A rule adopted by the Commission that does not comply with the procedural requirements of this subsection shall be null, void, and without effect. For purposes of this subsection, a rule is any CommissionState Board regulation, standard, or statement of general applicability that interprets an enactment by the General Assembly or Congress, or a regulation adopted by a federal agency, or that describes the procedure or practice requirements of the CommissionState Board.

~~(d) For purposes of G.S. 150B-21.3(b2), a written objection filed by the Commission to a rule adopted by the Secretary of State pursuant to this Chapter shall be deemed written objections from 10 or more persons under that statute. Notwithstanding G.S. 150B-21.3(b2), a rule adopted by the Secretary of State pursuant to this Chapter objected to by the Commission under this subsection shall not become effective until an act of the General Assembly approving the rule has become law. If the General Assembly does not approve a rule under this subsection by the day of adjournment of the next regular session of the General Assembly that begins at least 25 days after the date the Rules Review Commission approves the rule, the permanent rule shall not become effective and any temporary rule associated with the permanent rule expires. If the General Assembly fails to approve a rule by the day of adjournment, the Secretary of State may initiate rulemaking for a new permanent rule, including by the adoption of a temporary rule.~~

"§ 120C-102. Request for advice.

(a) At the request of any person, State agency, or governmental unit affected by this Chapter, the CommissionState Board shall render advice on specific questions involving the meaning and application of this Chapter and that person's, State agency's, or any governmental unit's compliance therewith. Requests for advice and advice rendered in response to those requests shall relate to real or reasonably anticipated fact settings or circumstances.

(a1) A request for a formal opinion under subsection (a) of this section shall be in writing, electronic or otherwise. The CommissionState Board shall issue formal advisory opinions having prospective application only. An individual, State agency, or governmental unit who relies upon the advice provided to that individual, State agency, or governmental unit on a specific matter addressed by a requested formal advisory opinion shall be immune from all of the following:

- (1) Investigation by the CommissionState Board.
- (2) Any adverse action by the employing entity.
- ~~(3) Investigation by the Secretary of State.~~

(b) Staff to the CommissionState Board may issue advice, but not formal advisory opinions, under procedures adopted by the CommissionState Board.

(c) The CommissionState Board shall publish its formal advisory opinions within 30 days of issuance, edited as necessary to protect the identities of the individuals requesting opinions.

(d) Except as provided under subsections (c) and (d1) of this section, a request for advice, any advice provided by CommissionState Board staff, any formal advisory opinions, any supporting documents submitted or caused to be submitted to the CommissionState Board or CommissionState Board staff, and any documents prepared or collected by the CommissionState

Board or the ~~Commission~~State Board staff in connection with a request for advice are confidential. The identity of the individual, State agency, or governmental unit making the request for advice, the existence of the request, and any information related to the request may not be revealed without the consent of the requestor. An individual, State agency, or governmental unit who requests advice or receives advice, including a formal advisory opinion, may authorize the release to any other person, the State, or any governmental unit of the request, the advice, or any supporting documents.

For purposes of this section, "document" is as defined in G.S. 120-129. Requests for advice, any advice, and any documents related to requests for advice are not "public records" as defined in G.S. 132-1.

~~(d1) Staff to the Commission may share all information and documents related to requests under subsection (a) and (a1) of this section with staff of the Office of the Secretary of State. The information and documents in the possession of the staff of the Office of the Secretary of State shall remain confidential and not public records. The Commission shall forward an unedited copy of each formal advisory opinion under this section to the Secretary of State at the time the formal advisory opinion is issued to the requestor, and the Secretary of State shall treat that unedited advisory opinion as confidential and not a public record.~~

(e) Requests for advisory opinions may be withdrawn by the requestor at any time prior to the issuance of a formal advisory opinion.

...

"§ 120C-601. Powers and duties of the ~~Commission~~State Board.

(a) The ~~Commission~~State Board may investigate complaints of violations of this Chapter and shall refer complaints related solely to Articles 2, 4, or 8 of this Chapter to the Secretary of State.~~Chapter.~~

(b) The ~~Commission~~State Board may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Chapter. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Chapter. Subpoenas issued under this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any nonresident person, or that person's agent, who makes a reportable expenditure under this Chapter, and personal jurisdiction may be asserted under G.S. 1-75.4.

(c) Complaints of violations of this Chapter and all other records accumulated in conjunction with the investigation of these complaints shall be considered confidential records and may be released only by order of a court of competent jurisdiction. Any information obtained by the ~~Commission~~State Board from any law enforcement agency, administrative agency, or regulatory organization on a confidential or otherwise restricted basis in the course of an investigation shall be confidential and exempt from G.S. 132-6 to the same extent that it is confidential in the possession of the providing agency or organization.

(d) The ~~Commission~~State Board shall publish annual statistics on complaints, including the number of complaints, the number of apparent violations of this Chapter referred to a district attorney, the number of dismissals, and the number and age of complaints pending.

"§ 120C-602. Punishment for violation.

(a) Whoever willfully violates any provision of Article 2 or Article 3 of this Chapter shall be guilty of a Class 1 misdemeanor, except as provided in those Articles. In addition, no lobbyist who is convicted of a violation of the provisions of this Chapter shall in any way act as a lobbyist for a period of two years from the date of conviction.

(b) ~~In addition to the criminal penalties set forth in this section, the Secretary of State may levy civil fines for a violation of any provision of Articles 2, 4, or 8 of this Chapter up to five thousand dollars (\$5,000) per violation. In addition to the criminal penalties set forth in this~~

section, the ~~Commission~~State Board may levy civil fines for a violation of any provision of this Chapter except Article 2, 4, or 8 of this Chapter up to five thousand dollars (\$5,000) per violation.

"§ 120C-603. Enforcement by district attorney and Attorney General.

(a) ~~The Commission or the Secretary of State, as appropriate,~~ State Board may investigate complaints of violations of this Chapter and shall report apparent violations of this Chapter to the district attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person or governmental unit who violates any provisions of this Chapter.

(b) Complaints of violations of this Chapter involving the ~~Commission~~State Board or any member employee of the ~~Commission~~State Board shall be referred to the Attorney General for investigation. The Attorney General shall, upon receipt of a complaint, make an appropriate investigation thereof, and the Attorney General shall forward a copy of the investigation to the district attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person or governmental unit who violates any provisions of this Chapter.

...."

SECTION 5.(a) G.S. 163-19 is repealed.

SECTION 5.(b) G.S. 163-20 reads as rewritten:

"§ 163-20. Meetings of Board; quorum; minutes.

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

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

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

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

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

SECTION 5.(c) G.S. 163-21 is repealed.

SECTION 5.(d) G.S. 163-23 is repealed.

SECTION 5.(e) G.S. 163-26 is repealed.

SECTION 5.(f) G.S. 163-27 is repealed.

SECTION 5.(g) G.S. 163-28 is repealed.

SECTION 5.(h) G.S. 163-30 reads as rewritten:

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

1 In every county of the State there shall be a county board of elections, to consist of ~~three-four~~
2 persons of good moral character who are registered voters in the county in which they are to act.
3 Two of the members of the county board of elections shall be of the political party with the
4 highest number of registered affiliates and two shall be of the political party with the second
5 highest number of registered affiliates, as reflected by the latest registration statistics published by
6 the State Board. Members of county boards of elections shall be appointed by the State Board of
7 Elections on the last Tuesday in June ~~1985, 2017,~~ and every two years thereafter, and their terms of
8 office shall continue for two years from the specified date of appointment and until their
9 successors are appointed and qualified. ~~Not more than two members of the county board of~~
10 ~~elections shall belong to the same political party.~~

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

14 No person who holds any office in a state, congressional district, county or precinct political
15 party or organization, or who is a campaign manager or treasurer of any candidate or political
16 party in a primary or election, shall be eligible to serve as a member of a county board of
17 elections, provided however that the position of delegate to a political party convention shall not
18 be considered an office for the purpose of this section.

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

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

27 The State ~~chairman-chair~~ of each political party shall have the right to recommend to the State
28 Board of Elections ~~three~~ registered voters in each county for appointment to the board of elections
29 for that county. If such recommendations are received by the Board 15 or more days before the
30 last Tuesday in June ~~1985, 2017,~~ and each two years thereafter, it shall be the duty of the State
31 Board of Elections to appoint the county boards from the names thus recommended.

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

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

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

47 At the first meeting in July annually, the county boards shall organize by electing one of its
48 members chair and one of its members vice-chair, each to serve a one-year term as such. In the
49 odd-numbered year, the chair shall be a member of the political party with the highest number of
50 registered affiliates, as reflected by the latest registration statistics published by the State Board,
51 and the vice-chair a member of the political party with the second highest number of registered

1 affiliates. In the even-numbered year, the chair shall be a member of the political party with the
2 second highest number of registered affiliates, as reflected by the latest registration statistics
3 published by the State Board, and the vice-chair a member of the political party with the highest
4 number of registered affiliates.

5 Each member of the county board of elections shall attend each instructional meeting held
6 pursuant to G.S. 163-46, unless excused for good cause by the ~~chairman~~-chair of the board, and
7 shall be paid the sum of twenty-five dollars (\$25.00) per day for attending each of those
8 meetings."

9 SECTION 5.(i) G.S. 163-31 reads as rewritten:

10 "§ 163-31. Meetings of county boards of elections; quorum; majority; minutes.

11 In each county of the State the members of the county board of elections shall meet at the
12 courthouse or board office at noon on the Tuesday following the third Monday in July in the year
13 of their appointment by the State Board of Elections and, after taking the oath of office provided in
14 G.S. 163-30, they shall organize by electing one member ~~chairman~~chair and another member
15 secretary of the county board of elections. On the Tuesday following the third Monday in August
16 of the year in which they are appointed the county board of elections shall meet and appoint
17 precinct chief judges and judges of elections. The board may hold other meetings at such times as
18 the ~~chairman~~-chair of the board, or any ~~two~~-three members thereof, may direct, for the
19 performance of duties prescribed by law. ~~A majority of the~~Three members shall constitute a
20 quorum for the transaction of board business. Except where required by law to act unanimously, a
21 majority vote for action of the board shall require three of the four members. The ~~chairman~~-chair
22 shall notify, or cause to be notified, all members regarding every meeting to be held by the board.

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

28 SECTION 5.(j) G.S. 163-182.13 reads as rewritten:

29 "§ 163-182.13. New elections.

30 (a) When State Board May Order New Election. – The State Board of Elections may order
31 a new election, upon agreement of at least ~~four~~-six of its members, in the case of any one or more
32 of the following:

- 33 (1) Ineligible voters sufficient in number to change the outcome of the election
34 were allowed to vote in the election, and it is not possible from examination of
35 the official ballots to determine how those ineligible voters voted and to correct
36 the totals.
- 37 (2) Eligible voters sufficient in number to change the outcome of the election were
38 improperly prevented from voting.
- 39 (3) Other irregularities affected a sufficient number of votes to change the outcome
40 of the election.
- 41 (4) Irregularities or improprieties occurred to such an extent that they taint the
42 results of the entire election and cast doubt on its fairness.

43 (b) State Board to Set Procedures. – The State Board of Elections shall determine when a
44 new election shall be held and shall set the schedule for publication of the notice, preparation of
45 absentee official ballots, and the other actions necessary to conduct the election.

46 (c) Eligibility to Vote in New Election. – Eligibility to vote in the new election shall be
47 determined by the voter's eligibility at the time of the new election, except that in a primary, no
48 person who voted in the initial primary of one party shall vote in the new election in the primary
49 of another party. The State Board of Elections shall ~~promulgate~~-adopt rules to effect the provisions
50 of this subsection.

1 (d) Jurisdiction in Which New Election Held. – The new election shall be held in the entire
2 jurisdiction in which the original election was held.

3 (e) Which Candidates to Be on Official Ballot. – All the candidates who were listed on the
4 official ballot in the original election shall be listed in the same order on the official ballot for the
5 new election, except in either of the following:

6 (1) If a candidate dies or otherwise becomes ineligible between the time of the
7 original election and the new election, that candidate may be replaced in the
8 same manner as if the vacancy occurred before the original election.

9 (2) If the election is for a multiseat office, and the irregularities could not have
10 affected the election of one or more of the candidates, the new election, upon
11 agreement of at least ~~four~~ six members of the State Board, may be held among
12 only those candidates whose election could have been affected by the
13 irregularities.

14 (f) Tie Votes. – If ineligible voters voted in an election and it is possible to determine from
15 the official ballots the way in which those votes were cast and to correct the results, and
16 consequently the election ends in a tie, the provisions of G.S. 163-182.8 concerning tie votes shall
17 apply."

18 **SECTION 5.(k)** G.S. 163-278.22(7) reads as rewritten:

19 "(7) To make investigations to the extent the State Board deems necessary with
20 respect to statements filed under the provisions of this Article and with respect
21 to alleged failures to file any statement required under the provisions of this
22 Article or Article 22M of the General Statutes and, upon complaint under oath
23 by any registered voter, with respect to alleged violations of any part of this
24 Article or Article 22M of the General Statutes, The State Board shall conclude
25 all investigations no later than one year from the date of the start of the
26 investigation, unless the State Board has reported an apparent violation to the
27 proper district attorney and additional investigation of the apparent violation is
28 deemed necessary by the State Board."

29 **SECTION 6.** G.S. 120-70.141 reads as rewritten:

30 **"§ 120-70.141. Purpose and powers of Committee.**

31 (a) The Joint Legislative Elections Oversight Committee shall examine, on a continuing
32 basis, election administration and campaign finance regulation in North Carolina, in order to make
33 ongoing recommendations to the General Assembly on ways to improve elections administration
34 and campaign finance regulation. In this examination, the Committee shall do the following:

35 (1) Study the budgets, programs, and policies of the Bipartisan State Board of
36 Elections and Ethics Enforcement and the county boards of elections to
37 determine ways in which the General Assembly may improve election
38 ~~administration and campaign finance regulation administration.~~

39 (1a) Study the budgets, programs, and policies of the Bipartisan State Board of
40 Elections and Ethics Enforcement and the county boards of elections to
41 determine ways in which the General Assembly may improve campaign finance
42 regulation.

43 (2) Examine election statutes and court decisions to determine any legislative
44 changes that are needed to improve election administration and campaign
45 finance regulation.

46 (3) Study other states' initiatives in election administration and campaign finance
47 regulation to provide an ongoing commentary to the General Assembly on these
48 initiatives and to make recommendations for implementing similar initiatives in
49 North Carolina; and

50 (4) Study any other election matters that the Committee considers necessary to
51 fulfill its mandate.

(b) The Committee may make interim reports to the General Assembly on matters for which it may report to a regular session of the General Assembly. A report to the General Assembly may contain any legislation needed to implement a recommendation of the Committee."

SECTION 7. Any previous assignment of duties of a quasi-legislative or quasi-judicial nature by the Governor or General Assembly to the agencies or functions transferred by this act shall have continued validity with the transfer under this act. Except as otherwise specifically provided in this act, each enumerated commission, board, or other function of State government transferred to the Bipartisan State Board of Elections and Ethics Enforcement, as created in this act, is a continuation of the former entity for purposes of succession to all the rights, powers, duties, and obligations of the former. Where the former entities are referred to by law, contract, or other document in their former name, the Bipartisan State Board of Elections and Ethics Enforcement, as created in this act, is charged with exercising the functions of the former named entity.

SECTION 8. No action or proceeding pending on January 1, 2017, brought by or against the State Board of Elections, the State Ethics Commission, or the Secretary of State regarding the lobbyist registration and lobbying enforcement of the Secretary of State shall be affected by any provision of this act, but the same may be prosecuted or defended in the name of the Bipartisan State Board of Elections and Ethics Enforcement, as created in this act. In these actions and proceedings, the Bipartisan State Board of Elections and Ethics Enforcement or its Executive Director, as appropriate, shall be substituted as a party upon proper application to the courts or other administrative or quasi-judicial bodies.

Any business or other matter undertaken or commanded by any State program or office or contract transferred by this act to the Bipartisan State Board of Elections and Ethics Enforcement pertaining to or connected with the functions, powers, obligations, and duties set forth herein, which is pending on January 1, 2017, may be conducted and completed by the Bipartisan State Board of Elections and Ethics Enforcement in the same manner and under the same terms and conditions and with the same effect as if conducted and completed by the original program, office, or commissioners or directors thereof.

SECTION 9. The consolidation provided for under this act shall not affect any ongoing investigation or audit. Any ongoing hearing or other proceeding before the State Ethics Commission or State Board of Elections on January 1, 2017, shall be transferred to the Bipartisan State Board of Elections and Ethics Enforcement, as created by this act, on January 1, 2017. Prosecutions for offenses or violations committed before January 1, 2017, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

SECTION 10. Rules adopted by the State Ethics Commission, Secretary of State related to lobbying, and the State Board of Elections shall remain in effect as provided in G.S. 150B-21.7. Policies, procedures, and guidance shall remain in effect until amended or repealed by the Bipartisan State Board of Elections and Ethics Enforcement. The list of covered boards adopted by the State Ethics Commission under G.S. 138A-11 as of December 31, 2016, shall continue in effect until amended or repealed by the Bipartisan State Board of Elections and Ethics Enforcement.

SECTION 11. Any evaluation of a statement of economic interest issued by the State Ethics Commission pursuant to Article 3 of Chapter 138A of the General Statutes in 2016 shall remain in effect until amended or repealed by the Bipartisan State Board of Elections and Ethics Enforcement.

SECTION 12. The authority, powers, duties and functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, including the functions of budgeting and purchasing, of the State Ethics Commission are transferred to the Bipartisan State Board of Elections and Ethics Enforcement, as created in Part I of this act. The authority, powers, duties and functions, records, personnel, property, and unexpended balances of

1 appropriations, allocations, or other funds, including the functions of budgeting and purchasing, of
2 the State Board of Elections are transferred to the Bipartisan State Board of Elections and Ethics
3 Enforcement, as created in Part I of this act. The authority, powers, duties and functions, records,
4 personnel, property, and unexpended balances of appropriations, allocations, or other funds,
5 including the functions of budgeting and purchasing, of the lobbying registration and lobbying
6 enforcement functions of the Secretary of State are transferred to the Bipartisan State Board of
7 Elections and Ethics Enforcement, as created in Part I of this act. The Director of the Budget shall
8 resolve any disputes arising out of this transfer.

9 **SECTION 13.** The members of the State Ethics Commission serving on December
10 31, 2016, shall constitute and serve as the Bipartisan State Board of Elections and Ethics
11 Enforcement, as constituted and authorized by this act until June 30, 2017. The chair and
12 vice-chair of the State Ethics Commission serving on December 31, 2016, shall continue to serve
13 as the chair and vice-chair of Bipartisan State Board of Elections and Ethics Enforcement, as
14 constituted and authorized by this act until June 30, 2017. Notwithstanding G.S. 138B-2, members
15 of the Bipartisan State Board of Elections and Ethics Enforcement appointed by the Governor and
16 General Assembly in 2017 shall take office July 1, 2017.

17 **SECTION 14.** Until such time as the Bipartisan State Board of Elections and Ethics
18 Enforcement appointed in 2017 appoints an Executive Director, the Executive Director of the
19 State Board of Elections under G.S. 163-26, as of December 31, 2016, shall be acting Executive
20 Director.

21 **SECTION 15.** The appropriations and resources of the State Ethics Commission is
22 transferred to the Bipartisan State Board of Elections and Ethics Enforcement, and the transfer
23 shall have all the elements of a Type I transfer under G.S. 143A-6.

24 **SECTION 16.** The appropriations and resources of the State Board of Elections,
25 including any office space of the State Board of Elections, is transferred to the Bipartisan State
26 Board of Elections and Ethics Enforcement, and the transfer shall have all the elements of a Type I
27 transfer under G.S. 143A-6, with the Budget Code for the newly established State Board being the
28 previous State Board of Elections budget code of 18025.

29 **SECTION 17.** The appropriations and resources of the lobbying registration and
30 lobbying enforcement functions of the Secretary of State are transferred to the Bipartisan State
31 Board of Elections and Ethics Enforcement, and the transfers shall have all the elements of a Type
32 I transfer under G.S. 143A-6. Specifically, the following positions shall be transferred: Lobbying
33 Compliance Director (Position 60008800), Law Enforcement Agent (Position 60008806),
34 Administrative Assistant II (Position 60008801), Administrative Assistant II (Position 60008802),
35 and Administrative Assistant II (Position 60008803).

36 **SECTION 18.** The Bipartisan State Board of Elections and Ethics Enforcement shall
37 report to the Joint Legislative Commission on Governmental Operations, Joint Legislative
38 Elections Oversight Committee, and the Legislative Ethics Committee on or before April 1, 2018,
39 and again on or before March 1, 2019, as to recommendations for statutory changes necessary to
40 further implement this consolidation.

41 **SECTION 19.** This Part becomes effective January 1, 2017.

42 43 **PART II. CLARIFY LEGISLATIVE AUTHORITY TO APPORTION DISTRICTS**

44 **SECTION 20.(a)** G.S. 120-2.4 reads as rewritten:

45 **"§ 120-2.4. Opportunity for General Assembly to remedy defects.**

46 **(a)** If the General Assembly enacts a plan apportioning or redistricting State legislative or
47 congressional districts, in no event may a court impose its own substitute plan unless the court first
48 gives the General Assembly a period of time to remedy any defects identified by the court in its
49 findings of fact and conclusions of law. That period of time shall not be less than two weeks. In
50 the event the General Assembly does not act to remedy any identified defects to its plan within
51 that period of time, the court may impose an interim districting plan for use in the next general

election only, but that interim districting plan may differ from the districting plan enacted by the General Assembly only to the extent necessary to remedy any defects identified by the court.

(b) Notwithstanding any other provision of law or authority of the State Board of Elections under Chapter 163 of the General Statutes, the State Board of Elections shall have no authority to alter, amend, correct, impose, or substitute any plan apportioning or redistricting State legislative or congressional districts other than a plan imposed by a court under this section or a plan enacted by the General Assembly."

SECTION 20.(b) G.S. 163-22 is amended by adding two new subsections to read:

"(r) Nothing in this Chapter shall grant authority to the State Board of Elections to alter, amend, correct, impose, or substitute any plan apportioning or redistricting State legislative or congressional districts other than a plan imposed by a court under G.S. 120-2.4 or a plan enacted by the General Assembly.

(s) Nothing in this Chapter shall grant authority to the State Board of Elections to alter, amend, correct, impose, or substitute any plan apportioning or redistricting districts for a unit of local government other than a plan imposed by a court, a plan enacted by the General Assembly, or a plan adopted by the appropriate unit of local government under statutory or local act authority."

SECTION 20.(c) G.S. 163-33 is amended by adding two new subdivisions to read:

"(15) Nothing in this Chapter shall grant authority to county boards of elections to alter, amend, correct, impose, or substitute any plan apportioning or redistricting State legislative or congressional districts other than a plan imposed by a court under G.S. 120-2.4 or a plan enacted by the General Assembly.

(16) Nothing in this Chapter shall grant authority to county boards of elections to alter, amend, correct, impose, or substitute any plan apportioning or redistricting districts for a unit of local government other than a plan imposed by a court, a plan enacted by the General Assembly, or a plan adopted by the appropriate unit of local government under statutory or local act authority."

SECTION 20.(d) G.S. 163-27.1 reads as rewritten:

"§ 163-27.1. **Emergency powers.**

(a) The Executive Director, as chief State elections official, may exercise emergency powers to conduct an election in a district where the normal schedule for the election is disrupted by any of the following:

- (1) A natural disaster.
- (2) Extremely inclement weather.
- (3) An armed conflict involving Armed Forces of the United States, or mobilization of those forces, including North Carolina National Guard and reserve components of the Armed Forces of the United States.

In exercising those emergency powers, the Executive Director shall avoid unnecessary conflict with the provisions of this Chapter. The Executive Director shall adopt rules describing the emergency powers and the situations in which the emergency powers will be exercised.

(b) Nothing in this Chapter shall grant authority to the State Board of Elections to alter, amend, correct, impose, or substitute any plan apportioning or redistricting State legislative or congressional districts other than a plan imposed by a court under G.S. 120-2.4 or a plan enacted by the General Assembly.

(c) Nothing in this Chapter shall grant authority to the State Board of Elections to alter, amend, correct, impose, or substitute any plan apportioning or redistricting districts for a unit of local government other than a plan imposed by a court, a plan enacted by the General Assembly, or a plan adopted by the appropriate unit of local government under statutory or local act authority."

PART III. PARTISAN APPELLATE COURT ELECTIONS**SECTION 21.(a)** G.S. 163-106 reads as rewritten:**"§ 163-106. Notices of candidacy; pledge; with whom filed; date for filing; withdrawal.**

...

(c) Time for Filing Notice of Candidacy. – Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the second Monday in February and no later than 12:00 noon on the last business day in February preceding the primary:

Governor

Lieutenant Governor

All State executive officers

Justices of the Supreme CourtJudges of the Court of Appeals

United States Senators

Members of the House of Representatives of the United States

District attorneys

Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the county board of elections no earlier than 12:00 noon on the second Monday in February and no later than 12:00 noon on the last business day in February preceding the primary:

State Senators

Members of the State House of Representatives

All county offices.

(d) Notice of Candidacy for Certain Offices to Indicate Vacancy. – In any primary in which there are two or more vacancies for associate justices for the Supreme Court, two or more vacancies for the Court of Appeals, or two vacancies for United States Senator from North Carolina, each candidate shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the vacancy to which ~~he~~the candidate seeks nomination. Votes cast for a candidate shall be effective only for ~~his~~ nomination to the vacancy for which ~~he~~the candidate has given notice of candidacy as provided in this subsection.

...."

SECTION 21.(b) 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~~the candidate files under the provisions of G.S. 163-106 a filing fee for the office ~~he seeks sought~~ 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 Justices of the Supreme Court,Judges of the Court of Appeals, and

One percent (1%) of the annual salary of the office sought

District Attorneys of the General

Court of Justice

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

1 State Senator One percent (1%) of the annual salary of the
 2 office sought
 3 Member of the State House of One percent (1%) of the annual salary of
 4 Representatives the office sought
 5 All county offices not compensated by fees One percent (1%) of the annual salary of the
 6 office sought
 7 All county offices compensated partly One percent (1%) of the first annual
 8 by salary and partly by fees salary to be received (exclusive of fees)
 9 The salary of any office that is the basis for calculating the filing fee is the starting salary for
 10 the office, rather than the salary received by the incumbent, if different. If no starting salary can be
 11 determined for the office, then the salary used for calculation is the salary of the incumbent, as of
 12 January 1 of the election year."

13 **SECTION 21.(c)** G.S. 163-107.1(b) reads as rewritten:

14 "(b) If the candidate is seeking the office of United States Senator, Governor, Lieutenant
 15 Governor, ~~or~~ any State executive officer, Justice of the Supreme Court, or Judge of the Court of
 16 Appeals, the petition must be signed by 10,000 registered voters who are members of the political
 17 party in whose primary the candidate desires to run, except that in the case of a political party as
 18 defined by G.S. 163-96(a)(2) which will be making nominations by primary election, the petition
 19 must be signed by five percent (5%) of the registered voters of the State who are affiliated with the
 20 same political party in whose primary the candidate desires to run, or in the alternative, the
 21 petition shall be signed by no less than 8,000 registered voters regardless of the voter's political
 22 party affiliation, whichever requirement is greater. The petition must be filed with the State Board
 23 of Elections not later than 12:00 noon on Monday preceding the filing deadline before the primary
 24 in which he seeks to run. The names on the petition shall be verified by the board of elections of
 25 the county where the signer is registered, and the petition must be presented to the county board of
 26 elections at least 15 days before the petition is due to be filed with the State Board of Elections.
 27 When a proper petition has been filed, the candidate's name shall be printed on the primary ballot."

28 **SECTION 21.(d)** G.S. 163-111(c)(1) reads as rewritten:

29 "(1) A candidate who is apparently entitled to demand a second primary, according
 30 to the unofficial results, for one of the offices listed below, and desiring to do
 31 so, shall file a request for a second primary in writing with the Executive
 32 Director of the State Board of Elections no later than 12:00 noon on the ninth
 33 day (including Saturdays and Sundays) following the date on which the primary
 34 was conducted, and such request shall be subject to the certification of the
 35 official results by the State Board of Elections. If the vote certification by the
 36 State Board of Elections determines that a candidate who was not originally
 37 thought to be eligible to call for a second primary is in fact eligible to call for a
 38 second primary, the Executive Director of the State Board of Elections shall
 39 immediately notify such candidate and permit ~~him~~ the candidate to exercise any
 40 options available to ~~him~~ the candidate within a 48-hour period following the
 41 notification:

42 Governor,
 43 Lieutenant Governor,
 44 All State executive officers,
 45 Justices of the Supreme Court, Judges of the Court of Appeals, or
 46 District Attorneys of the General Court of Justice,
 47 United States Senators,
 48 Members of the United States House of Representatives,
 49 State Senators in multi-county senatorial districts, and
 50 Members of the State House of Representatives in multi-county
 51 representative districts."

"SUBCHAPTER X. ELECTION OF APPELLATE, SUPERIOR, SUPERIOR AND DISTRICT COURT JUDGES.

"Nomination and Election of Appellate, Superior, Superior and District Court Judges.

...

• • •

...

• • •

...

...

(b) Notification of Local Boards. – No later than 10 days after the time for filing notices of candidacy under the provisions of G.S. 163-323(b) has expired, the chairman of the State Board of Elections shall certify to the chairman of the county board of elections in each county in the appropriate district the names of candidates for nomination to the offices of ~~justice of the Supreme Court, judge of the Court of Appeals, and~~ superior and district court judge who have filed the required notice and paid the required filing fee or presented the required petition to the State Board of Elections, so that their names may be printed on the official judicial ballot for ~~justice of the Supreme Court, judge of the Court of Appeals, and~~ superior and district court.

...
"§ 163-329. Elections to fill vacancy in office created after primary filing period opens.

(a) General. – If a vacancy is created in the office of ~~justice of the Supreme Court, judge of the Court of Appeals, or~~ judge of superior court after the filing period for the primary opens but more than 60 days before the general election, and under the Constitution of North Carolina an election is to be held for that position, such that the office shall be filled in the general election as provided in G.S. 163-9, the election to fill the office for the remainder of the term shall be conducted without a primary using the method provided in subsection (b1) of this section. If a vacancy is created in the office of ~~justice of the Supreme Court, judge of the Court of Appeals, or~~ judge of superior court before the filing period for the primary opens, and under the Constitution of North Carolina an election is to be held for that position, such that the office shall be filled in the general election as provided in G.S. 163-9, the election to fill the office for the remainder of the term shall be conducted in accordance with G.S. 163-322.

(b) Repealed by Session Laws 2006-192, s. 8(a), effective August 3, 2006, and applicable to vacancies occurring on or after that date.

(b1) Method for Vacancy Election. – If a vacancy for the office of ~~justice of the Supreme Court, judge of the Court of Appeals, or~~ judge of the superior court occurs more than 60 days before the general election and after the opening of the filing period for the primary, then the State Board of Elections shall designate a special filing period of one week for candidates for the office. If more than two candidates file and qualify for the office in accordance with G.S. 163-323, then the Board shall conduct the election for the office as follows:

(1) When the vacancy described in this section occurs more than 63 days before the date of the second primary for members of the General Assembly, a special primary shall be held on the same day as the second primary. The two candidates with the most votes in the special primary shall have their names placed on the ballot for the general election, held on the same day as the general election for members of the General Assembly.

(2) When the vacancy described in this section occurs less than 64 days before the date of the second primary, a general election for all the candidates shall be held on the same day as the general election for members of the General Assembly and the results shall be determined on a plurality basis as provided by G.S. 163-292.

(3) Repealed by Session Laws 2013-381, s. 51.1, effective January 1, 2014.

(c) Applicable Provisions. – Except as provided in this section, the provisions of this Article apply to elections conducted under this section.

(d) Rules. – The State Board of Elections shall adopt rules for the implementation of this section. The rules are not subject to Article 2A of Chapter 150B of the General Statutes. The rules shall include the following:

(1) If after the first-choice candidate is eliminated, a ballot does not indicate one of the uneliminated candidates as an alternative choice, the ballot is exhausted and shall not be counted after the initial round.

(2) The fact that the voter does not designate a second or third choice does not invalidate the voter's higher choice or choices.

(3) The fact that the voter gives more than one ranking to the same candidate shall not invalidate the vote. The highest ranking given a particular candidate shall count as long as the candidate is not eliminated.

(4) In case of a tie between candidates such that two or more candidates have an equal number of first choices and more than two candidates qualify for the second round, instant runoff voting shall be used to determine which two candidates shall advance to the second round.

...
"§ 163-332. Ballots.

(b) Ballots to Be Furnished by County Board of Elections. – It shall be the duty of the county board of elections to print official ballots for the following offices to be voted for in the primary:

~~Justice of the Supreme Court.~~

~~Judge of the Court of Appeals.~~

Superior court judge.

District court judge.

In printing ballots, the county board of elections shall be governed by instructions of the State Board of Elections with regard to width, color, kind of paper, form, and size of type.

Three days before the election, the chairman of the county board of elections shall distribute official ballots to the chief judge of each precinct in his county, and the chief judge shall give a receipt for the ballots received. On the day of the primary, it shall be the chief judge's duty to have all the ballots so delivered available for use at the precinct voting place.

...."

SECTION 21.(f) G.S. 163-323(h) is repealed.

SECTION 21.(g) G.S. 163-165.5(a)(4) reads as rewritten:

"(4) Party designations in partisan ballot items and in nonpartisan ballot items as required by G.S. 163-323(h) items."

SECTION 21.(h) This Part becomes effective January 1, 2018, and applies to primaries and elections held on or after that date.

PART IV. MODIFY APPELLATE REVIEW OF CERTAIN CASES

SECTION 22.(a) G.S. 7A-16 reads as rewritten:

"§ 7A-16. Creation and organization.

The Court of Appeals is created effective January 1, 1967. It shall consist initially of six judges, elected by the qualified voters of the State for terms of eight years. The Chief Justice of the Supreme Court shall designate one of the judges as Chief Judge, to serve in such capacity at the pleasure of the Chief Justice. Before entering upon the duties of his office, a judge of the Court of Appeals shall take the oath of office prescribed for a judge of the General Court of Justice.

The Governor on or after July 1, 1967, shall make temporary appointments to the six initial judgeships. The appointees shall serve until January 1, 1969. Their successors shall be elected at the general election for members of the General Assembly in November, 1968, and shall take office on January 1, 1969, to serve for the remainder of the unexpired term which began on January 1, 1967.

Upon the appointment of at least five judges, and the designation of a Chief Judge, the court is authorized to convene, organize, and promulgate, subject to the approval of the Supreme Court, such supplementary rules as it deems necessary and appropriate for the discharge of the judicial business lawfully assigned to it.

Effective January 1, 1969, the number of judges is increased to nine, and the Governor, on or after March 1, 1969, shall make temporary appointments to the additional judgeships thus created. The appointees shall serve until January 1, 1971. Their successors shall be elected at the general

election for members of the General Assembly in November, 1970, and shall take office on January 1, 1971, to serve for the remainder of the unexpired term which began on January 1, 1969.

Effective January 1, 1977, the number of judges is increased to 12; and the Governor, on or after July 1, 1977, shall make temporary appointments to the additional judgeships thus created. The appointees shall serve until January 1, 1979. Their successors shall be elected at the general election for members of the General Assembly in November, 1978, and shall take office on January 1, 1979, to serve the remainder of the unexpired term which began on January 1, 1977.

On or after December 15, 2000, the Governor shall appoint three additional judges to increase the number of judges to 15.

The Court of Appeals shall sit in panels of three judges ~~each~~ and may also sit en banc to hear or rehear any cause upon a vote of the majority of the judges of the court. The Chief Judge insofar as practicable shall assign the members to panels in such fashion that each member sits a substantially equal number of times with each other member. ~~He~~ shall preside over the panel of which he is a member, when a member of a panel, and shall designate the presiding judge of the other panel or panels.

~~Three judges shall constitute a quorum for the transaction of the business of the court, except as may be provided in G.S. 7A-32. Except as may be provided in G.S. 7A-32, three judges shall constitute a quorum for the transaction of the business of the court when sitting in panels of three judges, and a majority of the then sitting judges on the Court of Appeals shall constitute a quorum for the transaction of the business of the court when sitting en banc.~~

In the event the Chief Judge is unable, on account of absence or temporary incapacity, to perform the duties placed upon him as Chief Judge, the Chief Justice shall appoint an acting Chief Judge from the other judges of the Court, to temporarily discharge the duties of Chief Judge."

SECTION 22.(b) G.S. 7A-27 reads as rewritten:

"§ 7A-27. Appeals of right from the courts of the trial divisions.

(a) Appeal lies of right directly to the Supreme Court in any of the following cases:

- (1) All cases in which the defendant is convicted of murder in the first degree and the judgment of the superior court includes a sentence of death.
- (2) From any final judgment in a case designated as a mandatory complex business case pursuant to G.S. 7A-45.4 or designated as a discretionary complex business case pursuant to Rule 2.1 of the General Rules of Practice for the Superior and District Courts.
- (3) From any interlocutory order of a Business Court Judge that does any of the following:
 - a. Affects a substantial right.
 - b. In effect determines the action and prevents a judgment from which an appeal might be taken.
 - c. Discontinues the action.
 - d. Grants or refuses a new trial.

~~(a1) Appeal lies of right directly to the Supreme Court from any order or judgment of a court, either final or interlocutory, that holds that an act of the General Assembly is facially invalid on the basis that the act violates the North Carolina Constitution or federal law. Nothing in this subsection shall be deemed to apply to appeals from orders of the trial courts pertaining to criminal proceedings, to proceedings under Chapter 15A of the General Statutes, to proceedings making a collateral attack on any judgment entered in a criminal proceeding, or to appeals from orders of the trial courts pertaining to civil proceedings filed by a taxpayer pursuant to G.S. 105-241.17.~~

(b) Except as provided in subsection (a) or ~~(a1)~~ of this section, appeal lies of right directly to the Court of Appeals in any of the following cases:

- (1) From any final judgment of a superior court, other than one based on a plea of guilty or nolo contendere, including any final judgment entered upon review of

- 1 a decision of an administrative agency, except for a final judgment entered
2 upon review of a court martial under G.S. 127A-62.
3 (2) From any final judgment of a district court in a civil action.
4 (3) From any interlocutory order or judgment of a superior court or district court in
5 a civil action or proceeding that does any of the following:
6 a. Affects a substantial right.
7 b. In effect determines the action and prevents a judgment from which an
8 appeal might be taken.
9 c. Discontinues the action.
10 d. Grants or refuses a new trial.
11 e. Determines a claim prosecuted under G.S. 50-19.1.
12 f. Grants temporary injunctive relief restraining the State or a political
13 subdivision of the State from enforcing the operation or execution of an
14 act of the General Assembly as applied against a party in a civil
15 action. Assembly. This sub-subdivision only applies where the State or a
16 political subdivision of the State is a party in the civil action. This
17 sub-subdivision does not apply to facial challenges to an act's validity
18 heard by a three-judge panel pursuant to G.S. 1-267.1.
19 (4) From any other order or judgment of the superior court from which an appeal is
20 authorized by statute.

21 (c) through (e) Repealed by Session Laws 2013-411, s. 1, effective August 23, 2013."

22 **SECTION 22.(c)** G.S. 7A-30 reads as rewritten:

23 **"§ 7A-30. Appeals of right from certain decisions of the Court of Appeals.**

24 Except as provided in G.S. 7A-28, an appeal lies of right to the Supreme Court from any
25 decision of the Court of Appeals rendered in a case:

- 26 (1) Which directly involves a substantial question arising under the Constitution of
27 the United States or of this State, or
28 (2) In which there is a ~~dissent~~ dissent when the Court of Appeals is sitting in a
29 panel of three judges. An appeal of right pursuant to this subdivision is not
30 effective until after the Court of Appeals sitting en banc has rendered a decision
31 in the case, if the Court of Appeals hears the case en banc, or until after the time
32 for filing a motion for rehearing of the cause by the Court of Appeals has
33 expired or the Court of Appeals has denied the motion for rehearing."

34 **SECTION 22.(d)** G.S. 7A-31(a) reads as rewritten:

35 "(a) In any cause in which appeal is taken to the Court of Appeals, Appeals, including any
36 cause heard while the Court of Appeals was sitting en banc, except a cause appealed from the
37 North Carolina Industrial Commission, the North Carolina State Bar pursuant to G.S. 84-28, the
38 Property Tax Commission pursuant to G.S. 105-345, the Board of State Contract Appeals pursuant
39 to G.S. 143-135.9, the Commissioner of Insurance pursuant to ~~G.S. 58-2-80~~, G.S. 58-2-80 or
40 G.S. 58-65-131(c), a court-martial pursuant to G.S. 127A-62, a motion for appropriate relief, or
41 valuation of exempt property pursuant to G.S. 7A-28, the Supreme Court may, in its discretion, on
42 motion of any party to the cause or on its own motion, certify the cause for review by the Supreme
43 Court, either before or after it has been determined by the Court of Appeals. A cause appealed to
44 the Court of Appeals from any of the administrative bodies listed in the preceding sentence may be
45 certified in similar fashion, but only after determination of the cause in the Court of Appeals. The
46 effect of such certification is to transfer the cause from the Court of Appeals to the Supreme Court
47 for review by the Supreme Court. If the cause is certified for transfer to the Supreme Court before
48 its determination in the Court of Appeals, review is not had in the Court of Appeals but the cause
49 is forthwith transferred for review in the first instance by the Supreme Court. If the cause is
50 certified for transfer to the Supreme Court after its determination by the Court of Appeals, the
51 Supreme Court reviews the decision of the Court of Appeals.

1 Except in courts-martial and motions within the purview of G.S. 7A-28, the State may move
2 for certification for review of any criminal cause, but only after determination of the cause by the
3 Court of Appeals."

4 **SECTION 22.(e)** G.S. 58-65-131(c) reads as rewritten:

5 "(c) Compliance Required in Certain Events. – A corporation governed by this Article shall
6 comply with the provisions of this section, G.S. 58-65-132, and G.S. 58-65-133 before it may do
7 any of the following:

8 ...

9 In determining whether the corporation must comply with the provisions of this section,
10 G.S. 58-65-132, and G.S. 58-65-133, the Commissioner may review and consolidate actions of the
11 corporation, its subsidiaries, and other legal entities in which the corporation directly or indirectly
12 owns an interest, and treat the consolidated actions as requiring a conversion. An appeal of the
13 Commissioner's order that consolidated actions require a conversion shall lie directly to the North
14 Carolina Court of Appeals, ~~provided that any party may petition the North Carolina Supreme~~
15 ~~Court, pursuant to G.S. 7A-31(b), to certify the case for discretionary review by the Supreme~~
16 ~~Court prior to determination by the Court of Appeals.~~ Appeals under this subsection must be filed
17 within 30 days of the Commissioner's order and shall be considered in the most expeditious
18 manner practical. The corporation must file a plan of conversion within 12 months of the later of
19 the issuance of the Commissioner's order or a final decision on appeal."

20 **SECTION 22.(f)** G.S. 120-2.5 is repealed.

21 **SECTION 23.(a)** G.S. 1A-1, Rule 42(b)(4) of the Rules of Civil Procedure, reads as
22 rewritten:

23 **"Rule 42. Consolidation; separate trials.**

24 ...

25 (b) Separate trials. –

26 ...

27 (4) Pursuant to G.S. 1-267.1, any facial challenge to the validity of an act of the
28 General Assembly, other than a challenge to plans apportioning or redistricting
29 State legislative or congressional districts, shall be heard by a three-judge panel
30 in the Superior Court of Wake County if a claimant raises such a challenge in
31 the claimant's complaint or amended complaint in any court in this State, or if
32 such a challenge is raised by the defendant in the defendant's answer,
33 responsive pleading, or within 30 days of filing the defendant's answer or
34 responsive pleading. In that event, the court shall, on its own motion, transfer
35 that portion of the action challenging the validity of the act of the General
36 Assembly to the Superior Court of Wake County for resolution by a three-judge
37 panel if, after all other matters in the action have been resolved, a determination
38 as to the facial validity of an act of the General Assembly must be made in
39 order to completely resolve any matters in the case. The court in which the
40 action originated shall maintain jurisdiction over all matters other than the
41 challenge to the act's facial ~~validity and validity.~~ For a motion filed under Rule
42 11 or Rule 12(b)(1) through (7), the original court shall rule on the motion,
43 however, it may decline to rule on a motion that is based solely upon Rule
44 12(b)(6). If the original court declines to rule on a Rule 12(b)(6) motion, the
45 motion shall be decided by the three-judge panel. The original court shall stay
46 all matters that are contingent upon the outcome of the challenge to the act's
47 facial validity pending a ruling on that challenge and until all appeal rights are
48 exhausted. Once the three-judge panel has ruled and all appeal rights have been
49 exhausted, the matter shall be transferred or remanded to the three-judge panel
50 or the trial court in which the action originated for resolution of any outstanding
51 matters, as appropriate."

1 **SECTION 23.(b)** This section becomes effective February 1, 2017, and applies to
2 motions filed on or after that date.

3
4 **PART V. MODIFY THE TERM FOR INDUSTRIAL COMMISSIONERS**

5 **SECTION 24.(a)** G.S. 97-77 reads as rewritten:

6 **"§ 97-77. North Carolina Industrial Commission created; members appointed by Governor;**
7 **terms of office; chairman.**

8 (a) There is hereby created a commission to be known as the North Carolina Industrial
9 Commission, consisting of six commissioners who shall devote their entire time to the duties of
10 the Commission. The Governor shall appoint the members of the Commission for terms of six
11 years. Three commissioners shall be persons who, on account of their previous vocations,
12 employment or affiliations, can be classed as representatives of employers. Three commissioners
13 shall be persons who, on account of their previous vocations, employment or affiliations, can be
14 classed as representatives of employees. No person may serve more than two terms on the
15 Commission, including any term served prior to the effective date of this section. In calculating
16 the number of terms served, a partial term that is less than three years in length shall not be
17 included.

18 (a1) Appointments of commissioners are subject to confirmation by the General Assembly
19 by joint resolution. The names of commissioners to be appointed by the Governor shall be
20 submitted by the Governor to the General Assembly for confirmation by the General Assembly on
21 or before March 1 of the year of expiration of the term. If the Governor fails to timely submit
22 nominations, the General Assembly shall appoint to fill the succeeding term upon the joint
23 recommendation of the President Pro Tempore of the Senate and the Speaker of the House of
24 Representatives in accordance with G.S. 120-121 not inconsistent with this section.

25 In case of death, incapacity, resignation, or any other vacancy in the office of any
26 commissioner prior to the expiration of the term of office, a nomination to fill the vacancy ~~for the~~
27 ~~remainder of the unexpired term~~ shall be submitted by the Governor within four weeks after the
28 vacancy arises to the General Assembly for confirmation by the General Assembly. Appointments
29 to fill a vacancy shall have a term of six years plus the remainder of the unexpired term. If the
30 Governor fails to timely nominate a person to fill the vacancy, the General Assembly shall appoint
31 a person to fill the remainder of the unexpired term upon the joint recommendation of the
32 President Pro Tempore of the Senate and the Speaker of the House of Representatives in
33 accordance with G.S. 120-121 not inconsistent with this section. If a vacancy arises or exists
34 pursuant to this subsection when the General Assembly is not in session, and the appointment is
35 deemed urgent by the Governor, the commissioner may be appointed and serve on an interim basis
36 pending confirmation by the General Assembly. For the purpose of this subsection, the General
37 Assembly is not in session only (i) prior to convening of the Regular Session, (ii) during any
38 adjournment of the Regular Session for more than 10 days, and (iii) after sine die adjournment of
39 the Regular Session.

40 No person while in office as a commissioner may be nominated or appointed on an interim
41 basis to fill the remainder of an unexpired term, or to a full term that commences prior to the
42 expiration of the term that the commissioner is serving.

43 ~~(b) One member, to be designated by the Governor, shall act as chairman. On December~~
44 30, 2016, and every four years thereafter, one member shall be designated by the Governor to act
45 as chairman for a term of four years. In case of death, incapacity, resignation, or any other vacancy
46 of the chairman, the Governor shall designate a new chairman from the remaining commissioners
47 for the remainder of the four-year term. The chairman shall be the chief judicial officer and the
48 chief executive officer of the Industrial Commission; such authority shall be exercised pursuant to
49 the provisions of Chapter 126 of the General Statutes and the rules and policies of the State
50 Human Resources Commission. Notwithstanding the provisions of this Chapter, the chairman
51 shall have such authority as is necessary to direct and oversee the Commission. The chairman may

1 delegate any duties and responsibilities as may be necessary to ensure the proper management of
2 the Industrial Commission. Notwithstanding the provisions of this Chapter, Chapter 143A, and
3 Chapter 143B of the General Statutes, the chairman may hire or fire personnel and transfer
4 personnel within the Industrial Commission.

5 The Governor may designate one vice-chairman from the remaining commissioners. The
6 vice-chairman shall assume the powers of the chairman upon request of the chairman or when the
7 chairman is absent for 24 hours or more. The authority delegated to the vice-chairman shall be
8 relinquished immediately upon the return of the chairman or at the request of the chairman."

9 **SECTION 24.(b)** G.S. 97-77(a1), as amended by subsection (a) of this section, reads
10 as rewritten:

11 "(a1) Appointments of commissioners are subject to confirmation by the General Assembly
12 by joint resolution. The names of commissioners to be appointed by the Governor shall be
13 submitted by the Governor to the General Assembly for confirmation by the General Assembly on
14 or before March 1 of the year of expiration of the term. If the Governor fails to timely submit
15 nominations, the General Assembly shall appoint to fill the succeeding term upon the joint
16 recommendation of the President Pro Tempore of the Senate and the Speaker of the House of
17 Representatives in accordance with G.S. 120-121 not inconsistent with this section.

18 In case of death, incapacity, resignation, or any other vacancy in the office of any
19 commissioner prior to the expiration of the term of office, a nomination to fill the vacancy for the
20 remainder of the unexpired term shall be submitted by the Governor within four weeks after the
21 vacancy arises to the General Assembly for confirmation by the General Assembly. ~~Appointments~~
22 ~~to fill a vacancy shall have a term of six years plus the remainder of the unexpired term.~~ If the
23 Governor fails to timely nominate a person to fill the vacancy, the General Assembly shall appoint
24 a person to fill the remainder of the unexpired term upon the joint recommendation of the
25 President Pro Tempore of the Senate and the Speaker of the House of Representatives in
26 accordance with G.S. 120-121 not inconsistent with this section. If a vacancy arises or exists
27 pursuant to this subsection when the General Assembly is not in session, and the appointment is
28 deemed urgent by the Governor, the commissioner may be appointed and serve on an interim basis
29 pending confirmation by the General Assembly. For the purpose of this subsection, the General
30 Assembly is not in session only (i) prior to convening of the Regular Session, (ii) during any
31 adjournment of the Regular Session for more than 10 days, and (iii) after sine die adjournment of
32 the Regular Session.

33 No person while in office as a commissioner may be nominated or appointed on an interim
34 basis to fill the remainder of an unexpired term, or to a full term that commences prior to the
35 expiration of the term that the commissioner is serving."

36 **SECTION 24.(c)** Subsection (a) of this section is effective when it becomes law and
37 applies to appointments made on or after that date. Subsection (b) of this section becomes
38 effective December 31, 2016, and applies to appointments made on or after that date.

39 **PART VI. EFFECTIVE DATE**

40 **SECTION 25.** If any provision of this act or its application is held invalid, the
41 invalidity does not affect other provisions or applications of this act that can be given effect
42 without the invalid provisions or application, and to this end, the provisions of this act are
43 severable.
44

45 **SECTION 26.** Except as otherwise provided, this act is effective when it becomes
46 law.





SENATE BILL 4: Bi-Partisan Ethics, Elections & Court Reform.

2015-2016 General Assembly

Committee:	Senate Redistricting. If favorable, re-refer to Finance	Date:	December 15, 2016
Introduced by:	Sens. Rucho, Rabon, Tucker	Prepared by:	Denise Adams Susan Barham Erika Churchill Brad Krehely Bill Patterson, Legislative Staff
Analysis of:	First Edition		

OVERVIEW: *Senate Bill 4 would (i) combine the functions of the State Ethics Commission, the lobbying section of the Office of the Secretary of State, and the State Board of Elections under a new State agency: the Bipartisan State Board of Elections and Ethics Enforcement; (ii) clarify the General Assembly's authority in apportionment and redistricting matters; (iii) restore partisan elections for the North Carolina Supreme Court and Court of Appeals; (iv) modify appellate review of certain cases; and (v) modify the term of Industrial Commissioners appointed to fill a vacancy.*

BILL ANALYSIS: PART ONE

CURRENT LAW: The State Ethics Commission (SEC) administers the State Government Ethics Act, including providing ethics guidance to public servants and ethics education to covered persons and legislative employees. The advisory authority of the SEC includes advising all persons affected by the lobbying laws, Chapter 120C of the General Statutes. The SEC consists of eight members (four appointed by the Governor and four appointed by the General Assembly, two of whom are recommended by the Speaker of the House and two of whom are recommended by the President Pro Tempore of the Senate), with a bi-partisan make up. The Governor appoints the chair of the SEC. Members of the SEC serve four year terms and may be reappointed. Members may not: (i) hold or be a candidate for any office of the United States, North Carolina, or political subdivision of the State, (ii) hold office in any political party above the precinct level; (iii) participate in or contribute to political campaigns of covered persons; or (iv) be employed by the State, community college, school system, or serve as a member of any other State board.

The Department of the Secretary of State registers and regulates lobbying in North Carolina.

The State Board of Elections (SBE) administers elections and campaign finance and provides guidance, advice, and training for elections and campaign finance to the county boards of elections. The SBE consists of five members, all of whom are appointed by the Governor from a list of nominees submitted to the Governor by the State party chairman of each of the two political parties having the highest number of registered affiliates as reflected by the latest registration statistics published by the SBE. No more than three members can be of the same political party. The SBE organizes itself by electing one of its members chairman and another secretary. Members may not: (i) hold or be a candidate for any office under the government of the United States, North Carolina, or political subdivision of the State; (ii) hold

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Director



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any office in a political party or organization; or (iii) be a campaign manager or treasurer of any candidate in a primary or election.

County boards of elections consist of three registered voters of each county. No more than two members of the county board of elections may belong to the same political party.

Section 1 would direct the Revisor of Statutes to recodify Chapter 138A of the General Statutes (State Government Ethics Act), Chapter 120C of the General Statutes (Lobbying), and Chapter 163 of the General Statutes (Elections and Election Laws) into a new Chapter 138B of the General Statutes to be entitled "Elections and Enforcement Enforcement Act." Within the recodification process, the Revisor would be authorized to make other technical and conforming changes as the Revisor deems appropriate.

Section 2 would establish the new Bipartisan State Board of Elections and Ethics Enforcement (Board).

Membership of the Board:

- The Board would consist of eight individuals registered to vote in North Carolina. Members would be appointed as follows:
 - Governor would appoint four members. The State party chairs of the two parties with the highest voter registration would each submit a list of three names, and the Governor would select two each from the respective party's list.
 - Speaker of the House would recommend two members to be appointed by the General Assembly. Both the majority and minority leader of the House would submit a list of three names to the Speaker, who must recommend one member from the party with the highest voter registration, and one member from the party with the second highest voter registration from those lists.
 - President Pro Tempore would recommend two members to be appointed by the General Assembly. Both the majority and minority leader of the Senate would submit a list of three names to the President Pro Tempore, who must recommend one member from the party with the highest voter registration, and one member from the party with the second highest voter registration from those lists.
- Members would serve four year terms, beginning May 1 immediately following the election of the Governor.
- Members could be removed from the Board only for misfeasance, malfeasance, or nonfeasance by the member's appointing authority. Vacancies on the Board would be filled by an individual affiliated with the same political party as the vacating member.
- At the first meeting held after new appointments are made, and annually in May thereafter, members would organize themselves by electing one of its members chair and one of its members vice-chair, each to serve a year term. In an odd numbered year, the chair would be a member of the political party with the highest number of registered affiliates and the vice-chair would be a member of the political party with the second highest number of registered affiliates. In an even numbered year, the chair would be a member of the political party with the second highest number of registered affiliates and the vice-chair would be a member of the political party with the highest number of registered affiliates. The Board would also elect one of its members secretary, to serve a four year term.

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Membership eligibility:

- Members of the Board would be prohibited from:
 - Holding elective or appointive office under the federal government, State government, or any political subdivision of the State.
 - Holding office in a political party or organization.
 - Being a candidate for any office.
 - Serving as a campaign manager or treasurer of any candidate for office.
 - Making reportable contributions to candidates over which the Board would have jurisdiction.
 - Registering as a lobbyist.
 - Making written or oral statements for general distribution supporting or opposing clearly identified candidates for office or clearly identified referendum or ballot issue proposals.
 - Soliciting contributions for a candidate, political committee, or referendum committee.

Meetings and voting:

- The Board would be required to meet at least monthly.
- Six members of the Board would constitute a quorum.
- Except where required by law to act unanimously, a majority vote for action by the Board would require six of the eight members.

Powers of chair:

- The chair would have the power to administer oaths, issue subpoenas, summon witnesses, and compel evidence. In the absence of or refusal of the chair to act, any six members could exercise such powers, and any member may administer an oath.

Executive Director:

- The Board would appoint an Executive Director for a term of four years, beginning May 15 after the first meeting held after new appointments to the Board are made. The Executive Director would be the chief State elections official.

Sections 3 and 4 would make various technical and conforming changes.

Section 5 would make a variety of substantive, conforming, and technical changes, including:

- County boards of elections would increase from three to four members. Two members would be of the political party with the highest number of registered affiliates and two from the political party with the second highest number of registered affiliates. Three members would constitute a quorum, and unless required by law to act unanimously, a majority vote for action of the board would require three of the four members.
- The Board would have to conclude all campaign finance investigations no later than one year from the date of the start of the investigation, unless the Board has reported an apparent violation to the proper district attorney and additional investigation of the apparent violation is deemed necessary by the Board.

Section 6 would direct the Joint Legislative Elections Oversight Committee to study the budgets, programs, and policies of the State Board and county boards of elections.

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Sections 7-18 outline the transfer of authority, powers, duties and functions, records, personnel, property, and unexpended balances of appropriations from the SEC, SBE, and the lobbying registration and lobbying enforcement functions of the Secretary of State to the new Board. The bill requires the Board to report initially by April 1, 2018, and again by March 1, 2019, to the Joint Legislative Commission on Government Operations, the Joint Legislative Elections Oversight Committee, and the Legislative Ethics Committee on any recommendations for statutory changes needed for implementation of this consolidation.

The members of the SEC serving on December 31, 2016, would constitute and serve as members of the new Board until June 30, 2017. The new members of the Board would take office July 1, 2017. Until such time as the Board appointed in 2017 appoints an Executive Director, the Executive Director of the SBE will serve as the Executive Director of the Board.

EFFECTIVE DATE: Part One of Senate Bill 4 would become effective January 1, 2017.

BILL ANALYSIS: PART TWO

Section 20 would provide the State Board of Elections and the county boards of elections do not have any authority to alter, amend, correct, impose, or substitute any plan apportioning or redistricting State legislative or congressional districts, even in emergency situations.

EFFECTIVE DATE: Section 20 of Senate Bill 4 would become effective when the bill becomes law.

BILL ANALYSIS: PART THREE

CURRENT LAW: Prior to 1996, elections of judges in North Carolina were conducted in a partisan manner. In 1996, the law governing the elections of superior court judges was amended to make those elections nonpartisan. In 2001, the law governing the elections of district court judges was amended to make those elections nonpartisan. In 2002, the law governing the elections of appellate court judges was amended to make those elections nonpartisan, beginning with the 2004 elections. As a result, currently, all elections of appellate court, superior court, and district court judges in North Carolina are conducted in a nonpartisan manner.

Appellate Court justices are elected statewide, and serve eight year terms. In 2015, the General Assembly changed the law to require candidates running in non-partisan races for Court of Appeals judge to have the candidate's party affiliation printed on the ballot (S.L. 2015-292).

In 2015, the General Assembly also established a process for the initial contested election, and potential subsequent retention election, of justices of the North Carolina Supreme Court (S.L. 2015-66). The law would have allowed incumbent justices seeking reelection to run for reappointment in a retention election with no challengers. Only if voters did not support keeping the justice in office for another eight year term would other candidates be allowed to run for the seat. The law was challenged, and a three-judge panel overturned the law on the basis that this change could not be made without a statewide vote on whether to change the North Carolina Constitution. In *Faires v. State Board of Elections*, (filed May 6, 2016), the North Carolina Supreme Court was equally divided with three justices voting to affirm and three justices voting to reverse the three-judge panel. Accordingly, the ruling of the three-judge panel was left undisturbed and without precedential value.

The Superior and District Court Divisions of the General Court of Justice consist of various district courts organized in territorial districts, with at least one district judge in each district. The General Assembly determines the number of judges for each district. Each judge must be a resident of the

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district to which he or she is elected. Superior Court judges serve eight-year terms; district court judges serve four-year terms. Vacancies in the offices are filled for the unexpired term by appointment of the Governor from nominations submitted by the district bar. If elected from a district, nominees must be residents of the district who are licensed to practice law in the district and who are members of the same political party as the vacating judge.

The provisions for nonpartisan judicial races are set out in Article 25 of Chapter 163 of the General Statutes. Candidates run in nonpartisan primaries, held on the same day in May as the party primaries. The primaries reduce the field to twice the number to be elected, eliminating additional candidates. Then, the reduced field runs in the November general election. The system is patterned after the nonpartisan primary and elections used by some cities to elect their mayors and city councils. The nonpartisan primaries and elections are by district for superior and district court judges.

Section 21 would make various changes in the General Statutes to restore partisan elections for the North Carolina Supreme Court and the North Carolina Court of Appeals.

EFFECTIVE DATE: Part Three of Senate Bill 4 would become effective January 1, 2018, and would apply to primaries and elections on or after that date.

BILL ANALYSIS: PART FOUR

Section 22.(a)

Current law: G.S. 7A-16 provides that the Court of Appeals has 15 judges, the court is authorized to sit in panels of three judges each, and three judges constitute a quorum for the transaction of the court's business (except for issuance of certain writs).

Section 22.(a) of the bill would amend G.S. 7A-16 to permit the Court of Appeals to sit en banc to hear or rehear any appeal upon the vote of a majority of the judges on the court, and would revise the quorum requirement to provide that for the purpose of transacting business sitting en banc, a majority of the judges of the court constitute a quorum.

Section 22.(b)

Current law: G.S. 7A-27(a1) grants a right of direct appeal to the Supreme Court from any trial court order holding an act of the General Assembly to be invalid on its face because it violates the North Carolina Constitution or federal law. G.S. 7A-27(b)(3)f. authorizes appeal to the Court of Appeals from a trial court's order granting temporary injunctive relief enjoining the enforcement of an act of the General Assembly as applied against a party to a civil cause when the State is a party to the action. This authority does not apply with respect to appeals in facial challenges to an act's validity heard by a three-judge panel pursuant to G.S. 1-267.1.

Section 22.(b) of the bill would repeal G.S. 7A-27(a1), thereby eliminating the right to appeal directly to the Supreme Court from a trial court order holding an act to be facially invalid because it violates the North Carolina Constitution or federal law, and would make conforming changes to G.S. 7A-27(b) and (f).

Section 22.(c)

Current Law: G.S. 7A-30(2) provides a right of appeal to the Supreme Court from a decision of the Court of Appeals rendered in a case in which there is a dissent.

Section 23.(c) of the bill would amend G.S. 7A-30(2) to provide that:

Senate Bill 4

Page 6

- There is an appeal of right to the Supreme Court from a decision of the Court of Appeals sitting as a panel of three in which there is a dissent.
- This right of appeal does not arise until after:
 - The Court of Appeals sitting en banc has rendered a decision in the case, if the case was heard en banc, or
 - The time for filing a motion for rehearing of the cause by the Court of Appeals has expired or the Court of Appeals has denied the motion for rehearing.

Section 22.(d)

Current law: G.S. 7A-31(a) permits the Supreme Court, in its discretion, to certify for its review any appeal taken to the Court of Appeals, upon motion of any party or on its own motion, either before or after it has been determined by the Court of Appeals, except for appeals from specified agencies to which this provision expressly does not apply. G.S. 7A-31(b) sets forth the criteria that must be met in order for the appeal to be certified for review by the Supreme Court before its determination in the Court of Appeals; G.S. 7A-31(c) sets forth the criteria that must be met in order for an appeal to be certified for Supreme Court review after its determination in the Court of Appeals.

Section 22(d) of the bill amends G.S. 7A-31(a):

- By adding a reference to appeals heard by the Court of Appeals sitting en banc, to conform to the changes made in Section 22.(a) of the bill.
- By making appeals from the Commissioner of Insurance under G.S. 58-65-131(c) not authorized to be certified for discretionary review before a determination by the Court of Appeals, to conform to the changes made in Section 22.(e) of the bill.

Section 22.(e)

Current law: G.S. 58-65-131(c) provides that any party to an appeal to the Court of Appeals from certain orders of the Commissioner of Insurance may petition the Supreme Court to certify the case for discretionary review prior to determination by the Court of Appeals.

Section 22.(e) of the bill would amend G.S. 58-65-131(c) to eliminate language granting a party to an appeal from certain orders of the Commissioner of Insurance the right to seek discretionary review by the Supreme Court prior to the appeal's determination by the Court of Appeals.

Section 22.(f)

Current Law: G.S. 120-2.5 provides an appeal of right directly to the Supreme Court from any final order or judgment of a court declaring unconstitutional or otherwise invalid an act apportioning or redistricting State legislative or congressional districts.

Section 22.(f) of the bill would repeal G.S. 120-2.5 in its entirety.

EFFECTIVE DATE: Section 22 of Senate Bill 4 would become effective when the bill becomes law.

Section 23.(a)

Current law: G.S. 1A-1, Rule 42(b)(4) of the Rules of Civil Procedure, provides that, in an action making a facial challenge to an act of the General Assembly required to be transferred for hearing to a three-judge panel in Wake County Superior Court, the court in which the action originated retains jurisdiction over all matters other than the challenge to the act's facial validity.

Senate Bill 4

Page 7

Section 23.(a) of the bill would amend Rule 42(b)(4) to provide that the original court shall rule on a motion filed under Rule 11 or a motion to dismiss filed under Rule 12(b)(1) through (7), except that it may decline to rule on a motion to dismiss under Rule 12(b) (6) based on a failure to state a claim upon which relief can be granted, in which case that motion shall be decided by the three-judge panel.

EFFECTIVE DATE: Section 23 of Senate Bill 4 would become effective February 1, 2017, and applies to motions filed on or after that date.

BILL ANALYSIS: PART FIVE

Section 24

Current law: Vacancies on the Industrial Commission are currently filled only for the remainder of the unexpired term.

Section 24.(a) of the bill would provide that appointments to fill vacancies on the Industrial Commission would be for a term of six years plus the remainder of the unexpired term.

Section 24.(b) of the bill would provide that appointments to fill vacancies on the Industrial Commission would be for the remainder of the unexpired term only.

EFFECTIVE DATE: Section 24.(a) of Senate Bill 4 would become effective when it becomes law, and applies to appointments made on or after that date. Section 24.(b) of Senate Bill 4 would become effective December 31, 2016, and applies to appointments made on or after that date.



North Carolina General Assembly

Boards, Committees and Commissions Information System

Search Criteria = AND (BRD.sBoardSortName Like 'ethics commission%')

Board Report - UnExpired Positions Only

Dec 09 , 2016

State Ethics Commission

Description: Scope: Provide reasonable assistance to covered persons; render advisory opinions as requested. Develop readily understandable forms, policies, and procedures to accomplish purposes of the Chapter. Receive and evaluate statements of economic interests filed. Investigate alleged violations. Oversee ethics educational programs. Conduct continuing study of governmental ethics in the State. Adopt procedures and guidelines to implement Chapter. Publish lists of non-advisory boards, covered persons, and, annually, statistics on complaints.

Reports: Report annually to the General Assembly and the Governor on the Commission's activities and generally on the subject of public disclosure, ethics, and conflicts of interest, including recommendations for administrative and legislative action, as the Commission deems appropriate.

Membership: 4-year terms. Governor appoints Chair annually. Membership elects Vice-Chair.

Meetings: Commission shall meet at least quarterly.

Created/effective 08-04-2006

Authority: G.S. 138A-6; SL2006-201 sec. 1; HB 1843

Expiration Date: Subject to GS 120-121: Y

Contact: Perry Newson **Contact Title:** Executive Director

ContactPhone: (919) 814-3600 **Contact Email:** ethics.commission@doa.nc.gov

WebPage: www.ethicscommission.nc.gov **Center Code:** **Number of Members:** 8

Member expenses paid according to G.S.120-3.1,138-5, or 138-6: Y

Requirements:

- * Member (2, not of same party) - appointed by GA on recommendation of Pro Tem
- * Member (2, not of same party) - appointed by GA on recommendation of Speaker
- * Member (4, no more than two of same political party) - appointed by Governor

Appointee/Positions:

Hon. Robert Farmer

Requirement: Member (4, no more than two of same political party) - appointed by Governor

Appointing Officer: Patrick McCrory

Appointment Date: 12/20/2013 **Term Begins:** 01/01/2014 **Term Ends:** 12/31/2017

Contact/Business Address: 107 Kipling Place
Raleigh, NC 27609 **Other Address:** Information not available for this Appointee

Phone: **FAX:** **Phone:** **FAX:**

County: Wake

North Carolina General Assembly

Boards, Committees and Commissions Information System

Ms. Jane Flowers Finch

Requirement: Member (4, no more than two of same political party) - appointed by Governor

Appointing Officer: Patrick McCrory

Appointment Date: 01/19/2016 **Term Begins:** 01/01/2016 **Term Ends:** 12/31/2019

Contact/Business Address:

1810 Craig Street
Raleigh, NC 27608

Other Address:

Information not available for this Appointee

Phone:

FAX:

Phone:

FAX:

County: Wake

Mr. Tommy D. McKnight

Requirement: Member (2, not of same party) - appointed by GA on recommendation of Speaker

Appointing Officer: Thomas R. Tillis

Appointment Date: 01/05/2015 **Term Begins:** 01/01/2015 **Term Ends:** 12/31/2018

Contact/Business Address:

1104 East 8th Street
Roanoke Rapids, NC 27870

Other Address:

Information not available for this Appointee

Phone:

FAX:

Phone:

FAX:

County: Halifax

Mr. Robert L. Moseley Jr.

Requirement: Member (2, not of same party) - appointed by GA on recommendation of Speaker

Appointing Officer: Thomas R. Tillis

Appointment Date: 12/31/2014 **Term Begins:** 01/01/2013 **Term Ends:** 12/31/2016

Contact/Business Address:

2820 Van Dyke Avenue
Raleigh, NC 27607

Other Address:

Information not available for this Appointee

Phone:

FAX:

Phone:

FAX:

County: Wake

North Carolina General Assembly

Boards, Committees and Commissions Information System

Dr. Clarence G. Newsome

Requirement: Member (2, not of same party) - appointed by GA on recommendation of Pro Tem

Appointing Officer: Philip Edward Berger

Appointment Date: 05/28/2015 **Term Begins:** 01/01/2014 **Term Ends:** 12/31/2018

Contact/Business Address:

Shaw University
118 East South Street
Raleigh, NC 27601

Other Address:

Information not available for this Appointee

Phone:

FAX:

Phone:

FAX:

County: Wake

Mr. Patrick Roberts

Requirement: Member (4, no more than two of same political party) - appointed by Governor

Appointing Officer: Patrick McCrory

Appointment Date: 01/28/2016 **Term Begins:** 01/01/2016 **Term Ends:** 12/31/2019

Contact/Business Address:

9825 San Remo Place
Wake Forest, NC 27587

Other Address:

Information not available for this Appointee

Phone:

FAX:

Phone:

FAX:

County: Wake

Hon. George L. Wainwright Jr.

Requirement: Member (4, no more than two of same political party) - appointed by Governor

Appointing Officer: Patrick McCrory

Appointment Date: 03/28/2014 **Term Begins:** 01/01/2014 **Term Ends:** 12/31/2017

Contact/Business Address:

5206 Driftwood Lane
Morehead City, NC 28557

Other Address:

Information not available for this Appointee

Phone:

FAX:

Phone:

FAX:

County: Carteret

North Carolina General Assembly

Boards, Committees and Commissions Information System

Mr. Daniel J. Zeller

Requirement: Member (2, not of same party) - appointed by GA on recommendation of Pro Tem

Appointing Officer: Philip Edward Berger

Appointment Date: 05/28/2015 **Term Begins:** 01/01/2013 **Term Ends:** 12/31/2016

Contact/Business Address:

1982 Cedar View Drive
Greensboro, NC 27455

Other Address:

Information not available for this Appointee

Phone:

FAX:

Phone:

FAX:

County: Guilford

Note: The date 1/1/3000 is used as a default date for 'Ex Officio' and 'At Pleasure of Appointing Officer' appointments when no other term limiting date is available.



NORTH CAROLINA GENERAL ASSEMBLY

FULL SITE SEARCH:	type search criteria	<input type="button" value="Go"/>
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Senate Bill 523

S524 >>

**Judicial Appointment/Voter Confirmation/CJ.
2005-2006 Session**

View Bill Digest	
Bill Text	Fiscal Note
Filed [HTML]	
Edition 1 [HTML]	
Edition 2 [HTML]	
Edition 3 [HTML]	

Last Action:	Re-ref Com On Judiciary I on 08/25/2005
Sponsors:	Clodfelter, (Primary) Rand;
Attributes:	Public; Text has changed; Affects Constitution;
Counties:	No counties specifically cited
Statutes:	7A, 163 (Chapters); 105-159.2, 163-1, 163-278.61, 163-278.62, 163-278.63, 163-278.64, 163-278.65, 163-278.66, 163-278.67, 163-278.68, 163-278.69, 163-278.70, 163-321, 163-323, 163-325, 163-326, 163-327, 163-329, 163-332, 163-9, 7, 7A-10, 7A-16, 7A-30, 7A-31, 7A-4.1, 7A-4.2, 7A-4.20, 7A-4.3, 7A-4.4, 7A-775, C-IV-16 (Sections)
Keywords:	APPOINTMENTS, CONSTITUTION, NC, COURT OF APPEALS, COURTS, GENERAL STATUTES, GOVERNOR, JUDGES, PUBLIC, PUBLIC OFFICIALS, SEN. CLODFELTER, SUPREME COURT, TITLE CHANGE

Vote History

Date	Subject	RCS #	Aye	No	N/V	Exc. Abs.	Exc. Vote	Total	Result
06/01/2005 3:28PM	Second Reading	[S] - 398	50	0	0	0	0	50	PASSED

Viewing Last 1 Vote(s)

[View All Votes](#)**History**

Date	Chamber	Action	Documents
03/10/2005	Senate	Filed	
03/15/2005	Senate	Ref To Com On Judiciary I	
05/31/2005	Senate	Reptd Fav Com Substitute	
05/31/2005	Senate	Com Substitute Adopted	
06/01/2005	Senate	Passed 2nd & 3rd Reading	
06/02/2005	House	Rec From Senate	
06/02/2005	House	Ref To Com On Rules, Calendar, and Operations of the House	
08/23/2005	House	Reptd Fav Com Substitute	
08/23/2005	House	Cal Pursuant Rule 36(b)	
08/25/2005	House	Withdrawn From Cal	
08/25/2005	House	Re-ref Com On Judiciary I	

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2005-2006 Session ▼

Bill Number: enter bill # (i.e., S253) [Look-Up](#)

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S

1

SENATE BILL 523

Short Title: En Banc Procedure. (Public)

Sponsors: Senators Clodfelter; and Rand.

Referred to: Judiciary I.

March 15, 2005

A BILL TO BE ENTITLED
AN ACT TO PROVIDE FOR THE NORTH CAROLINA COURT OF APPEALS TO
CONDUCT EN BANC PROCEEDINGS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-16 reads as rewritten:

"§ 7A-16. Creation and organization.

The Court of Appeals is created effective January 1, 1967. It shall consist initially of six judges, elected by the qualified voters of the State for terms of eight years. The Chief Justice of the Supreme Court shall designate one of the judges as Chief Judge, to serve in such capacity at the pleasure of the Chief Justice. Before entering upon the duties of his office, a judge of the Court of Appeals shall take the oath of office prescribed for a judge of the General Court of Justice.

The Governor on or after July 1, 1967, shall make temporary appointments to the six initial judgeships. The appointees shall serve until January 1, 1969. Their successors shall be elected at the general election for members of the General Assembly in November, 1968, and shall take office on January 1, 1969, to serve for the remainder of the unexpired term which began on January 1, 1967.

Upon the appointment of at least five judges, and the designation of a Chief Judge, the court is authorized to convene, organize, and promulgate, subject to the approval of the Supreme Court, such supplementary rules as it deems necessary and appropriate for the discharge of the judicial business lawfully assigned to it.

Effective January 1, 1969, the number of judges is increased to nine, and the Governor, on or after March 1, 1969, shall make temporary appointments to the additional judgeships thus created. The appointees shall serve until January 1, 1971. Their successors shall be elected at the general election for members of the General Assembly in November, 1970, and shall take office on January 1, 1971, to serve for the remainder of the unexpired term which began on January 1, 1969.

Effective January 1, 1977, the number of judges is increased to 12; and the Governor, on or after July 1, 1977, shall make temporary appointments to the additional



1 judgeships thus created. The appointees shall serve until January 1, 1979. Their
2 successors shall be elected at the general election for members of the General Assembly
3 in November, 1978, and shall take office on January 1, 1979, to serve the remainder of
4 the unexpired term which began on January 1, 1977.

5 On or after December 15, 2000, the Governor shall appoint three additional judges
6 to increase the number of judges to 15.

7 The Court of Appeals shall sit in panels of three judges ~~each~~ each and may also sit
8 en banc upon a vote of a majority of the judges of the court. The Chief Judge insofar as
9 practicable shall assign the members to panels in such fashion that each member sits a
10 substantially equal number of times with each other member. He shall preside over the
11 panel of which he is a member, and shall designate the presiding judge of the other
12 panel or panels.

13 ~~Three judges shall constitute a quorum for the transaction of the business of the~~
14 ~~court, except as may be provided in § 7A-32. Except as may be provided in G.S. 7A-32,~~
15 three judges shall constitute a quorum for the transaction of the business of the court
16 when sitting in panels of three judges, and a majority of the then sitting judges on the
17 Court of Appeals shall constitute a quorum for the transaction of the business of the
18 court when sitting en banc.

19 In the event the Chief Judge is unable, on account of absence or temporary
20 incapacity, to perform the duties placed upon him as Chief Judge, the Chief Justice shall
21 appoint an acting Chief Judge from the other judges of the Court, to temporarily
22 discharge the duties of Chief Judge."

23 **SECTION 2.** G.S. 7A-30 reads as rewritten:

24 **"§ 7A-30. Appeals of right from certain decisions of the Court of Appeals.**

25 Except as provided in G.S. 7A-28, an appeal lies of right to the Supreme Court from
26 any decision of the Court of Appeals rendered in a case:

- 27 (1) Which directly involves a substantial question arising under the
28 Constitution of the United States or of this State, or
29 (2) In which there is a ~~dissent~~ dissent when the Court of Appeals is sitting
30 in a panel of three judges."

31 **SECTION 3.** G.S. 7A-31(a) reads as rewritten:

32 "(a) In any cause in which appeal is taken to the Court of Appeals, Appeals
33 including any cause heard while the Court of Appeals was sitting en banc, except a
34 cause appealed from the North Carolina Industrial Commission, the North Carolina
35 State Bar pursuant to G.S. 84-28, the Property Tax Commission pursuant to
36 G.S. 105-345, the Board of State Contract Appeals pursuant to G.S. 143-135.9, or the
37 Commissioner of Insurance pursuant to G.S. 58-2-80, or a motion for appropriate relief
38 or valuation of exempt property pursuant to G.S. 7A-28, the Supreme Court may, in its
39 discretion, on motion of any party to the cause or on its own motion, certify the cause
40 for review by the Supreme Court, either before or after it has been determined by the
41 Court of Appeals. A cause appealed to the Court of Appeals from any of the
42 administrative bodies listed in the preceding sentence may be certified in similar
43 fashion, but only after determination of the cause in the Court of Appeals. The effect of
44 such certification is to transfer the cause from the Court of Appeals to the Supreme



1 Court for review by the Supreme Court. If the cause is certified for transfer to the
2 Supreme Court before its determination in the Court of Appeals, review is not had in the
3 Court of Appeals but the cause is forthwith transferred for review in the first instance by
4 the Supreme Court. If the cause is certified for transfer to the Supreme Court after its
5 determination by the Court of Appeals, the Supreme Court reviews the decision of the
6 Court of Appeals.

7 Except in motions within the purview of G.S. 7A-28, the State may move for
8 certification for review of any criminal cause, but only after determination of the cause
9 by the Court of Appeals."

10 **SECTION 4.** The Supreme Court, in consultation with the Court of Appeals,
11 is respectfully requested to adopt rules of procedure for en banc proceedings in the
12 Court of Appeals.

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





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Senate Bill 523

S524 >>

Judicial Appointment/Voter Confirmation/CJ. 2005-2006 Session

Bill Text	View Bill Digest	Fiscal Note
Filed [HTML]		
Edition 1 [HTML]		
Edition 2 [HTML]		
Edition 3 [HTML]		

Last Action:	Re-ref Com On Judiciary I on 08/25/2005
Sponsors:	Clodfelter; (Primary) Rand;
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Vote History									
Date	Subject	RCS #	Aye	No	N/V	Exc. Abs.	Exc. Vote	Total	Result
06/01/2005 3:28PM	Second Reading	[S] - 398	50	0	0	0	0	50	PASSED

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History				Documents
Date	Chamber	Action		
03/10/2005	Senate	Filed		
03/15/2005	Senate	Ref To Com On Judiciary I		
05/31/2005	Senate	Reptd Fav Com Substitute		
05/31/2005	Senate	Com Substitute Adopted		
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2005-2006 Session ▼

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S

1

SENATE BILL 523

Short Title: En Banc Procedure.

(Public)

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Referred to: Judiciary I.

March 15, 2005

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30 in a panel of three judges."

31 **SECTION 3.** G.S. 7A-31(a) reads as rewritten:

32 "(a) In any cause in which appeal is taken to the Court of Appeals, Appeals
33 including any cause heard while the Court of Appeals was sitting en banc, except a
34 cause appealed from the North Carolina Industrial Commission, the North Carolina
35 State Bar pursuant to G.S. 84-28, the Property Tax Commission pursuant to
36 G.S. 105-345, the Board of State Contract Appeals pursuant to G.S. 143-135.9, or the
37 Commissioner of Insurance pursuant to G.S. 58-2-80, or a motion for appropriate relief
38 or valuation of exempt property pursuant to G.S. 7A-28, the Supreme Court may, in its
39 discretion, on motion of any party to the cause or on its own motion, certify the cause
40 for review by the Supreme Court, either before or after it has been determined by the
41 Court of Appeals. A cause appealed to the Court of Appeals from any of the
42 administrative bodies listed in the preceding sentence may be certified in similar
43 fashion, but only after determination of the cause in the Court of Appeals. The effect of
44 such certification is to transfer the cause from the Court of Appeals to the Supreme

1 Court for review by the Supreme Court. If the cause is certified for transfer to the
2 Supreme Court before its determination in the Court of Appeals, review is not had in the
3 Court of Appeals but the cause is forthwith transferred for review in the first instance by
4 the Supreme Court. If the cause is certified for transfer to the Supreme Court after its
5 determination by the Court of Appeals, the Supreme Court reviews the decision of the
6 Court of Appeals.

7 Except in motions within the purview of G.S. 7A-28, the State may move for
8 certification for review of any criminal cause, but only after determination of the cause
9 by the Court of Appeals."

10 **SECTION 4.** The Supreme Court, in consultation with the Court of Appeals,
11 is respectfully requested to adopt rules of procedure for en banc proceedings in the
12 Court of Appeals.

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



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Senate Bill 800

S801 >>

EN BANC PROCEDURE 1999-2000 Session

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Bill Text	
Edition 1 [HTML]	

Last Action:	POSTPONED INDEFINITELY on 07/13/2000
Sponsors:	Rand; (Primary) Clodfelter; Cooper;
Attributes:	Public;
Counties:	No counties specifically cited
Statutes:	7A (Chapter); 007A-0016 (Section)
Keywords:	COURT OF APPEALS, COURTS, PUBLIC, SEN. RAND

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History			Documents
Date	Chamber	Action	
04/12/1999	Senate	Ref to Judiciary I	
04/22/1999	Senate	REPTD FAV	
04/26/1999	Senate	PASSED 2ND & 3RD READING	
04/28/1999	House	REC FROM SENATE	
04/28/1999	House	Ref to Judiciary IV	
06/08/1999	House	REPTD FAV	
06/08/1999	House	CAL PURSUANT RULE 36(B)	
06/10/1999	House	WITHDRAWN FROM CAL	
06/10/1999	House	Re-ref to Rules, Calendar, and Operations of the House	
07/13/2000	House	POSTPONED INDEFINITELY	

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1999-2000 Session ▼

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

1

SENATE BILL 800

Short Title: En Banc Procedure.

(Public)

Sponsors: Senators Rand; Clodfelter and Cooper.

Referred to: Judiciary I.

April 12, 1999

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR THE NORTH CAROLINA COURT OF APPEALS TO
3 CONDUCT EN BANC PROCEEDINGS.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 7A-16 reads as rewritten:

6 **"§ 7A-16. Creation and organization.**

7 The Court of Appeals is created effective January 1, 1967. It shall consist initially of
8 six judges, elected by the qualified voters of the State for terms of eight years. The Chief
9 Justice of the Supreme Court shall designate one of the judges as Chief Judge, to serve in
10 such capacity at the pleasure of the Chief Justice. Before entering upon the duties of his
11 office, a judge of the Court of Appeals shall take the oath of office prescribed for a judge
12 of the General Court of Justice.

13 The Governor on or after July 1, 1967, shall make temporary appointments to the six
14 initial judgeships. The appointees shall serve until January 1, 1969. Their successors shall
15 be elected at the general election for members of the General Assembly in November,
16 1968, and shall take office on January 1, 1969, to serve for the remainder of the
17 unexpired term which began on January 1, 1967.

18 Upon the appointment of at least five judges, and the designation of a Chief Judge, the
19 court is authorized to convene, organize, and promulgate, subject to the approval of the



1 Supreme Court, such supplementary rules as it deems necessary and appropriate for the
2 discharge of the judicial business lawfully assigned to it.

3 Effective January 1, 1969, the number of judges is increased to nine, and the
4 Governor, on or after March 1, 1969, shall make temporary appointments to the
5 additional judgeships thus created. The appointees shall serve until January 1, 1971.
6 Their successors shall be elected at the general election for members of the General
7 Assembly in November, 1970, and shall take office on January 1, 1971, to serve for the
8 remainder of the unexpired term which began on January 1, 1969.

9 Effective January 1, 1977, the number of judges is increased to 12; and the Governor,
10 on or after July 1, 1977, shall make temporary appointments to the additional judgeships
11 thus created. The appointees shall serve until January 1, 1979. Their successors shall be
12 elected at the general election for members of the General Assembly in November, 1978,
13 and shall take office on January 1, 1979, to serve the remainder of the unexpired term
14 which began on January 1, 1977.

15 The Court of Appeals shall sit in panels of three judges ~~each~~ each, and may also sit en
16 banc upon a vote of a majority of the judges of the court. The Chief Judge insofar as
17 practicable shall assign the members to panels in such fashion that each member sits a
18 substantially equal number of times with each other member. He shall preside over the
19 panel of which he is a member, and shall designate the presiding judge of the other panel
20 or panels.

21 Three judges shall constitute a quorum for the transaction of the business of the court,
22 except as may be provided in § 7A-32.

23 In the event the Chief Judge is unable, on account of absence or temporary incapacity,
24 to perform the duties placed upon him as Chief Judge, the Chief Justice shall appoint an
25 acting Chief Judge from the other judges of the Court, to temporarily discharge the duties
26 of Chief Judge."

27 Section 2. The Supreme Court, in consultation with the Court of Appeals, is
28 respectfully requested to adopt rules of procedure for en banc proceedings in the Court of
29 Appeals.

30 Section 3. This act is effective when it becomes law.



IONS.

third readings and is ordered sent to the House of

nt grants a leave of absence for the remainder of

A BILL TO BE ENTITLED AN ACT TO INSURANCE RATE MAKING, COMMERCIAL EXTENDED REPORTING, AND INSURANCE CORRECTION IN THE LITTERING LAW; TO TION OF NEW LAWS TO HEALTH BENEFIT VERNING CEASE AND DESIST ORDERS FOR LOW LICENSING OF A FOREIGN OR ALIEN R CERTAIN CIRCUMSTANCES, TO AMEND RER'S ACKNOWLEDGEMENT OF A CLAIM, S WRITTEN BY SURETY BONDSMEN ARE IING THE USE OF DEPOSITS FOR UNPAID

sses its second (49-0) and third readings and is atives.

A BILL TO BE ENTITLED AN ACT TO MAKE IN LAWS PERTAINING TO ADMINISTRATION TIONS, CERTIFICATES OF IMMUNIZATIONS TES, SUBMISSION OF IMMUNIZATION 3 FACILITIES AND SCHOOL AUTHORITIES, IICAL CHANGES TO THE IMMUNIZATION

asses its second (49-0) and third readings and is tatives.

COMMITTEES (Continued)

ary I Committee:

TLED AN ACT TO PROMOTE THE FREE FLOW PLE OF NORTH CAROLINA BY CODIFYING AL PRIVILEGE, with an unfavorable report as to substitute bill.

osed Committee Substitute bill 6665 is adopted and

ENDAR (Continued)

NTITLED AN ACT TO EXPAND THE LAW OF L PERSONNEL AND SCHOOL VOLUNTEERS and third readings and is ordered sent to the House of

, A BILL TO BE ENTITLED AN ACT TO REFORM KNOWLEDGMENT OF CORPORATE REAL

PROPERTY INSTRUMENTS AND THE EXECUTION OF REAL PROPERTY INSTRUMENTS GENERALLY.

The Committee Substitute bill passes its second reading (35-14).

Senator Webster objects to third reading of the measure. Pursuant to Rule 50, the President orders the measure placed on the Calendar for tomorrow, Tuesday, April 27.

S.B. 773, A BILL TO BE ENTITLED AN ACT TO CLARIFY THE TIME FOR ACTION ON REMAND FOLLOWING COURT REVIEW OF ANNEXATIONS ORDINANCES.

The bill passes its second (48-0) and third readings and is ordered sent to the House of Representatives.

S.B. 787, A BILL TO BE ENTITLED AN ACT TO REQUIRE THE DEPARTMENT OF TRANSPORTATION TO STUDY THE NEED FOR RECONSTRUCTING OVERPASSES TO REDUCE OR ELIMINATE THE POSSIBILITY OF THROWING OBJECTS FROM THEM.

The bill passes its second (47-1) and third readings and is ordered sent to the House of Representatives.

S.B. 789 (Committee Substitute), A BILL TO BE ENTITLED AN ACT TO MAKE CERTAIN CHANGES TO THE NOTICE TO BE GIVEN UPON THE SALE, LEASE, OR EXCHANGE OF THE ASSETS OF A CHARITABLE OR RELIGIOUS NONPROFIT CORPORATION UNDER THE NONPROFIT CORPORATION ACT.

The Committee Substitute bill passes its second (49-0) and third readings and is ordered sent to the House of Representatives.

S.B. 800, A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR THE NORTH CAROLINA COURT OF APPEALS TO CONDUCT EN BANC PROCEEDINGS.

The bill passes its second (48-0) and third readings and is ordered sent to the House of Representatives.

S.B. 812 (Committee Substitute), A BILL TO BE ENTITLED AN ACT TO REQUIRE THAT A FOOD OR RETAIL BUSINESS THAT HOLDS AN ABC PERMIT AND IS LOCATED IN AN URBAN REDEVELOPMENT AREA SHALL NOT HAVE ALCOHOLIC BEVERAGE SALES IN EXCESS OF FIFTY PERCENT OF THE BUSINESS'S TOTAL ANNUAL SALES.

The Committee Substitute bill passes its second (48-1) and third readings and is ordered sent to the House of Representatives.

S.B. 877 (Committee Substitute), A BILL TO BE ENTITLED AN ACT TO CLARIFY WHEN MEMBERS OF THE NORTH CAROLINA NATIONAL GUARD AND NORTH CAROLINA STATE GUARD ARE EMPLOYEES SUBJECT TO THE WORKERS' COMPENSATION ACT.

The Committee Substitute bill passes its second (49-0) and third readings and is ordered sent to the House of Representatives.

S.B. 885, A BILL TO BE ENTITLED AN ACT CLARIFYING THE AUTHORITY OF THE STATE AUDITOR TO EXAMINE STATE EMPLOYEE PERSONNEL RECORDS.

The bill passes its second (49-0) and third readings and is ordered sent to the House of Representatives.

April 26, 1999



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Dec 09 , 2016

State Ethics Commission

Description:

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Reports: Report annually to the General Assembly and the Governor on the Commission's activities and generally on the subject of public disclosure, ethics, and conflicts of interest, including recommendations for administrative and legislative action, as the Commission deems appropriate.

Membership: 4-year terms. Governor appoints Chair annually. Membership elects Vice-Chair.

Meetings: Commission shall meet at least quarterly.

Created/effective 08-04-2006

Authority:

G.S. 138A-6; SL2006-201 sec. 1; HB 1843

Expiration Date:

Subject to GS 120-121:

Y

Contact:

Perry Newson

Contact Title:

Executive Director

ContactPhone:

(919) 814-3600

Contact Email:

ethics.commission
@doa.nc.gov

Website:

www.ethicscommis
sion.nc.gov

Center Code:**Number of Members:**

8

Member expenses paid according to G.S.120-3.1,138-5, or 138-6: Y

Requirements:

- * Member (2, not of same party) - appointed by GA on recommendation of Pro Tem
- * Member (2, not of same party) - appointed by GA on recommendation of Speaker
- * Member (4, no more than two of same political party) - appointed by Governor

Appointee/Positions:

Hon. Robert Farmer

Requirement:

Member (4, no more than two of same political party) - appointed by Governor

Appointing Officer:

Patrick McCrory

Appointment Date:

12/20/2013

Term Begins:

01/01/2014

Term Ends:

12/31/2017

Contact/Business Address:

107 Kipling Place
Raleigh, NC 27609

Other Address:

Information not available for this Appointee

Phone:**FAX:****Phone:****FAX:****County:**

Wake

North Carolina General Assembly

Boards, Committees and Commissions Information System

Ms. Jane Flowers Finch

Requirement: Member (4, no more than two of same political party) - appointed by Governor

Appointing Officer: Patrick McCrory

Appointment Date: 01/19/2016 **Term Begins:** 01/01/2016 **Term Ends:** 12/31/2019

Contact/Business Address:

1810 Craig Street
Raleigh, NC 27608

Other Address:

Information not available for this Appointee

Phone:

FAX:

Phone:

FAX:

County: Wake

Mr. Tommy D. McKnight

Requirement: Member (2, not of same party) - appointed by GA on recommendation of Speaker

Appointing Officer: Thomas R. Tillis

Appointment Date: 01/05/2015 **Term Begins:** 01/01/2015 **Term Ends:** 12/31/2018

Contact/Business Address:

1104 East 8th Street
Roanoke Rapids, NC 27870

Other Address:

Information not available for this Appointee

Phone:

FAX:

Phone:

FAX:

County: Halifax

Mr. Robert L. Mcseley Jr.

Requirement: Member (2, not of same party) - appointed by GA on recommendation of Speaker

Appointing Officer: Thomas R. Tillis

Appointment Date: 12/31/2014 **Term Begins:** 01/01/2013 **Term Ends:** 12/31/2016

Contact/Business Address:

2820 Van Dyke Avenue
Raleigh, NC 27607

Other Address:

Information not available for this Appointee

Phone:

FAX:

Phone:

FAX:

County: Wake

North Carolina General Assembly

Boards, Committees and Commissions Information System

Dr. Clarence G. Newsome

Requirement: Member (2, not of same party) - appointed by GA on recommendation of Pro Tem

Appointing Officer: Philip Edward Berger

Appointment Date: 05/28/2015 **Term Begins:** 01/01/2014 **Term Ends:** 12/31/2018

Contact/Business Address:

Shaw University
118 East South Street
Raleigh, NC 27601

Other Address:

Information not available for this Appointee

Phone:

FAX:

Phone:

FAX:

County: Wake

Mr. Patrick Roberts

Requirement: Member (4, no more than two of same political party) - appointed by Governor

Appointing Officer: Patrick McCrory

Appointment Date: 01/28/2016 **Term Begins:** 01/01/2016 **Term Ends:** 12/31/2019

Contact/Business Address:

9825 San Remo Place
Wake Forest, NC 27587

Other Address:

Information not available for this Appointee

Phone:

FAX:

Phone:

FAX:

County: Wake

Hon. George L. Wainwright Jr.

Requirement: Member (4, no more than two of same political party) - appointed by Governor

Appointing Officer: Patrick McCrory

Appointment Date: 03/28/2014 **Term Begins:** 01/01/2014 **Term Ends:** 12/31/2017

Contact/Business Address:

5206 Driftwood Lane
Morehead City, NC 28557

Other Address:

Information not available for this Appointee

Phone:

FAX:

Phone:

FAX:

County: Carteret

North Carolina General Assembly

Boards, Committees and Commissions Information System

Mr. Daniel J. Zeller

Requirement: Member (2, not of same party) - appointed by GA on recommendation of Pro Tem

Appointing Officer: Philip Edward Berger

Appointment Date: 05/28/2015 **Term Begins:** 01/01/2013 **Term Ends:** 12/31/2016

Contact/Business Address:

1982 Cedar View Drive
Greensboro, NC 27455

Other Address:

Information not available for this Appointee

Phone:

FAX:

Phone:

FAX:

County: Guilford

Note: The date 1/1/3000 is used as a default date for 'Ex Officio' and 'At Pleasure of Appointing Officer' appointments when no other term limiting date is available.



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Why the North Carolina Court of Appeals Should Have a Procedure for Sitting En Banc

John V. Orth

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WHY THE NORTH CAROLINA COURT OF APPEALS SHOULD HAVE A PROCEDURE FOR SITTING EN BANC

JOHN V. ORTH*

Courts that sit in panels often have a procedure for sitting as a group, or en banc, to resolve difficult or potentially divisive issues, and to reconcile inconsistent rulings among panels. The twelve-judge North Carolina Court of Appeals sits in three-judge panels and has no rules providing a procedure for hearing cases en banc. In this Article, Professor Orth explains the historical roots of the current North Carolina rule, provides examples of the difficulties that arise as a result, and suggests a new rule of North Carolina appellate procedure that would solve the problem.

The North Carolina Court of Appeals, which presently consists of twelve judges, sits in panels of three judges each.¹ Each panel is bound by precedents established by higher courts and by prior decisions of other panels of the court of appeals. Therein lies the problem. While it is easy to say, as the North Carolina Supreme Court has, that “[w]here a panel of the Court of Appeals has decided the same issue, albeit in a different case, a subsequent panel of the same court is bound by that precedent, unless it has been overturned by a higher court,”² the rule is sometimes hard to apply in practice. Whether the issue involved in one case is the “same issue” as that

* William Rand Kenan, Jr. Professor of Law, University of North Carolina at Chapel Hill. A.B. 1969, Oberlin College; J.D. 1974, M.A. 1975, Ph.D. 1977, Harvard University. Author of *The North Carolina State Constitution: A Reference Guide* (1993).

1. See N.C. GEN. STAT. § 7A-16 (1995) (“The Court of Appeals is created effective January 1, 1967. . . . Effective January 1, 1977, the number of judges is increased to 12. . . . The Court of Appeals shall sit in panels of three judges each. . . .”).

2. *In re Appeal from Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989). It is worth noting that in support of this proposition the North Carolina Supreme Court cited a case from the Eleventh Circuit of the United States Court of Appeals, *Monroe County v. United States Department of Labor*, 690 F.2d 1359 (11th Cir. 1982), which, referring to the operating procedure of the federal court of appeals, recognized “the firm rule of the Fifth Circuit (and subsequently the Eleventh Circuit) that a three-judge panel may not disregard precedent set by a prior panel absent an intervening Supreme Court decision or *en banc* circuit decision,” *id.* at 1363 (emphasis added). See *Appeal from Civil Penalty*, 324 N.C. at 384, 379 S.E.2d at 37 (citing *Monroe County*).

decided in a different case may be difficult to determine. One panel of the court of appeals may become convinced that an earlier panel misunderstood or misapplied (or simply missed) a relevant precedent. It may even be difficult to determine whether an acknowledged precedent has been "overturned" by a higher court or merely distinguished.³ In addition, since the overruling may have been implied rather than express, the effect of the subsequent decision may have to be examined; a judgment of some subtlety might be required, and reasonable judges (even panels of reasonable judges) might disagree. One answer, of course, would be to let the state supreme court resolve all such questions, and obviously only that court can finally determine state law.

But multi-member courts that sit in panels normally have another alternative: to refer the matter for resolution to the whole court sitting en banc, that is, all the judges sitting together. Needless appeals to a higher court are thereby avoided, and appeals that do go forward have the benefit of a fully developed record. A procedure for sitting en banc also preserves the dignity of the court—preventing it from speaking with many voices.

This Article will argue that the North Carolina Court of Appeals should have a procedure for sitting en banc. First, it will illustrate the problems arising in the present situation, without such a procedure. It will then examine the institutional arrangements necessary for the development of an en banc procedure. This will require examination of the state constitution as well as legislation concerning the court of appeals. Finally, it will recommend a rule of appellate procedure providing for the court of appeals, in exceptional cases, to sit en banc.

I. PROBLEMS IN THE ABSENCE OF AN EN BANC PROCEDURE

Without an en banc procedure, all succeeding panels of the court of appeals are constrained to follow a precedent set by a prior panel. In a real sense, the court of appeals as presently operated is not a single court at all, but only a collection of panels. Although further thought or practical experience may convince a later panel of the unsoundness or impracticability of a rule, it must continue to be applied until overruled by the supreme court. For example, compensatory damages may not be awarded in contempt

3. Cf. *Appeal from Civil Penalty*, 324 N.C. at 384, 379 S.E.2d at 36 ("[T]he Court will examine the effect of the subsequent decision, rather than whether the term 'overrule' was actually employed.").

proceedings in North Carolina because three judges of the court of appeals once ruled against them⁴ and the supreme court has not had occasion to examine the issue. Although a later panel acknowledged the persuasiveness of the arguments for changing the rule and although the rule is not applied in a majority of other states, the court of appeals is now irrevocably committed on the issue.⁵ The same is true concerning the rule that one hiring an independent contractor is not liable in tort to the independent contractor's employee. Because a panel of the court of appeals once ruled against such liability⁶ and the supreme court has not expressly changed the rule, a later panel of the court of appeals can do nothing but impotently note that "courts in other states have resolved this issue contrary to the position taken by this Court";⁷ it cannot revisit the issue. Further examples could be adduced, but the point of them all would be the same: not whether any particular rule is right or wrong, but whether all the panels of the court of appeals are doomed forevermore to follow a rule once established by a single panel, saved, if at all, only by the intervention of the supreme court.

Disagreements with precedents set by a prior panel are only one of the inconveniences caused by the absence of an en banc procedure. Far more serious is the possibility, already realized in one or two instances, of two inconsistent lines of cases developing on a single issue. In *Stegall v. Stegall*,⁸ the issue was whether the subsequent reconciliation of a separated married couple rescinds the executory provisions of a prior separation agreement. Holding that it does rescind such an agreement, the particular panel of the court of appeals refused to follow decisions to the contrary by earlier panels because it determined that they were inconsistent with the decision of a still earlier panel.⁹ Similarly, in *Brooks v. Ansco &*

4. See *Hartsell v. Hartsell*, 99 N.C. App. 380, 390, 393 S.E.2d 570, 577, *aff'd per curiam*, 328 N.C. 729, 403 S.E.2d 307 (1991).

5. See *Atassi v. Atassi*, 122 N.C. App. 356, 360, 470 S.E.2d 59, 62 (1996) ("We acknowledge the persuasiveness of plaintiff's arguments for changing this rule, a rule in which North Carolina is a minority jurisdiction However, this Court is without authority to dispense with rules adopted by our Supreme Court or another panel of this Court.").

6. See *Woodson v. Rowland*, 92 N.C. App. 38, 46-47, 373 S.E.2d 674, 678-79 (1988), *aff'd in part and rev'd in part*, 329 N.C. 330, 407 S.E.2d 222 (1991).

7. *Cook v. Morrison*, 105 N.C. App. 509, 518, 413 S.E.2d 922, 927 (1992).

8. 100 N.C. App. 398, 397 S.E.2d 306 (1990).

9. See *id.* at 402-10, 397 S.E.2d at 308-13 (disregarding *Small v. Small*, 93 N.C. App. 614, 621, 379 S.E.2d 273, 277 (1989), and *In re Estate of Tucci*, 94 N.C. App. 428, 380 S.E.2d 782 (1989), *aff'd per curiam*, 326 N.C. 359, 388 S.E.2d 768 (1990), but applying *Carlton v. Carlton*, 74 N.C. App. 690, 329 S.E.2d 682 (1985)).

Associates,¹⁰ where the issue was the scope of review of a final decision by an administrative agency, a divided panel of the court of appeals actually embodied the holdings of two divergent lines of cases, the majority applying one (de novo review if the agency's decision is based on an error of law, but whole record review if the agency's decision is not supported by substantial evidence)¹¹ and the concurring judge the other (review limited to whether the trial court committed an error of law).¹²

Even the viability of North Carolina Supreme Court precedents may be jeopardized by the absence of an en banc procedure. It is conceivable that successive panels of the court of appeals may develop a rule at variance with a prior supreme court precedent. If that were to happen, a later panel would be forced to choose between the earlier rule laid down by the supreme court and the more recent rule developed by the panels of the court of appeals. Although it would seem that the higher court's rule should be preferred unless the panels had purported to interpret or distinguish the earlier case, the decision could require considerable subtlety. In *Bromhal v. Stott*,¹³ the issue was whether a trial court could enforce a provision of a married couple's separation agreement providing for the award of attorney's fees to a successful plaintiff in an action to enforce the agreement. Although the majority on the panel upheld the award of attorney's fees and relied on the decisions of prior panels,¹⁴ a dissenting judge cited a supreme court decision clearly rejecting such awards in the absence of statutory authorization.¹⁵ Ironically, the supreme court subsequently upheld the panel and distinguished its prior holding.¹⁶

10. 114 N.C. App. 711, 443 S.E.2d 89 (1994).

11. See *id.* at 716, 443 S.E.2d at 92 (citing *Brooks v. Rebarco, Inc.*, 91 N.C. App. 459, 463, 372 S.E.2d 342, 344 (1988)).

12. See *id.* at 718, 443 S.E.2d at 93 (John, J., concurring) (citing *In re Kozy*, 91 N.C. App. 342, 344, 371 S.E.2d 778, 779-80 (1988)).

13. 116 N.C. App. 250, 447 S.E.2d 481 (1994), *aff'd*, 341 N.C. 702, 462 S.E.2d 219 (1995).

14. See *id.* at 254, 447 S.E.2d at 484 (citing *Edwards v. Edwards*, 102 N.C. App. 706, 712-13, 403 S.E.2d 530, 533 (1991); *Carter v. Foster*, 103 N.C. App. 110, 115, 404 S.E.2d 484, 488 (1991)).

15. See *id.* at 256, 447 S.E.2d at 485 (Greene, J., concurring in part and dissenting in part) (citing *Stillwell Enters. v. Interstate Equip. Co.*, 300 N.C. 286, 289, 266 S.E.2d 812, 814-15 (1980)).

16. See *Bromhal*, 341 N.C. at 706, 462 S.E.2d at 222.

II. STRUCTURE OF COURT OF APPEALS

The North Carolina Court of Appeals was established by statute effective January 1, 1967.¹⁷ The statute constituting the court was enacted pursuant to amendments to the North Carolina Constitution adopted in 1965.¹⁸ Now Article IV, Section 7 of the 1971 Constitution, the principal provision is as follows:

Court of Appeals. The structure, organization, and composition of the Court of Appeals shall be determined by the General Assembly. The Court shall have not less than five members, and may be authorized to sit in divisions, or other than en banc. Sessions of the Court shall be held at such times and places as the General Assembly may prescribe.¹⁹

At present, the court of appeals consists of twelve judges, with the statute authorizing the court to sit "in panels of three judges each."²⁰

Although not expressly required to do so by the state constitution, the supreme court always conducts its judicial business en banc, that is, with all the justices sitting together. By contrast, the state constitution expressly permits the General Assembly to authorize the court of appeals to sit "other than en banc."²¹ In context, the express constitutional permission to authorize sittings "other than en banc" seems designed to rebut a possible inference that the judges of the court of appeals necessarily would, like the supreme court, always sit en banc. In other words, the constitutional text seems to take en banc sittings of the court of appeals for granted, while permitting sittings in smaller units if authorized by legislation. The sentence in the constitution concerning en banc sittings begins by providing that the court "shall have not less than five members."²² It is, therefore, obvious that the present arrangement of three-member panels was not contemplated at the outset. Furthermore, the constitutional drafters' choice to set the minimum complement of judges for the court of appeals at five, an odd number, indicates that the court was originally designed so that it could function effectively en banc.

While the state constitution seems to permit the court of appeals

17. See N.C. GEN. STAT. § 7A-16 (1995).

18. See Act of June 9, 1965, ch. 877, 1965 N.C. Sess. Laws 1173. Voting returns are available in *North Carolina Manual* 1967, at 328.

19. N.C. CONST. art. IV, § 7.

20. N.C. GEN. STAT. § 7A-16.

21. N.C. CONST. art. IV, § 7.

22. *Id.*

to sit en banc, the legislation concerning the court's organization has always provided that "[t]he court of appeals shall sit in panels of three judges each,"²³ and the court's uniform practice has been to conduct its judicial business only in three-member panels. It may be argued that the legislation authorizing panels does not imply a prohibition of en banc proceedings, but only directs the ordinary course of business: when the court sits in panels, as it normally does, the panels shall consist of three judges. It may also be argued that the uniform practice of the court to operate through three-member panels does not indicate that the court may not operate otherwise. The court of appeals is a relatively new judicial institution; it observed its thirtieth anniversary on January 1, 1997.²⁴ The problems for which an en banc procedure is suited—to correct rules established by one panel in the light of subsequent experience and to resolve differences among panels—developed only over time. Not until 1977 did the court of appeals reach its present complement of twelve judges,²⁵ permitting the regular staffing of four panels.

III. PROPOSED RULE OF APPELLATE PROCEDURE

The supreme court has exclusive authority under the state constitution to make "rules of procedure and practice for the Appellate Division,"²⁶ that is, for the supreme court itself and for the court of appeals.²⁷ Establishment of an en banc procedure for the court of appeals could be accomplished by the adoption of a rule of appellate procedure. An analogy is provided by the Federal Rules of Appellate Procedure, which provide for en banc proceedings in the United States Courts of Appeals.²⁸ While the details would need

23. N.C. GEN. STAT. § 7A-16.

24. See *supra* note 1. For a history of the first 20 years of the court of appeals, see David M. Britt, *History of the Court of Appeals of North Carolina*, 84 N.C. App. 714 (1987).

25. See N.C. GEN. STAT. § 7A-16. From January 1, 1965 to January 1, 1967, the court consisted of six judges; from January 1, 1967 to January 1, 1977, the court consisted of nine judges. See *id.*

26. N.C. CONST. art. IV, § 13, cl. 2. The North Carolina Rules of Appellate Procedure appear in 287 N.C. 671 (1975). They occasionally are amended by rules appearing in later volumes of the North Carolina Reports.

27. See N.C. CONST. art. IV, § 5 ("The Appellate Division of the General Court of Justice shall consist of the Supreme Court and the Court of Appeals.").

28. See FED. R. APP. P. 35. The Federal Rules specifically address the appropriateness of en banc proceedings:

Determination of Causes by the Court in [sic] Banc

(a) When Hearing or Rehearing In Banc Will Be Ordered. A majority of the circuit judges who are in regular active service may order that an appeal

to be tailored to suit the particular situation, the general outline of a North Carolina rule would seem to be clear: By the vote of a majority of the active judges of the court of appeals, a hearing or rehearing en banc would be ordered. A party could suggest the appropriateness of a hearing or rehearing en banc. En banc proceedings would be appropriate to resolve differences among panels and to reconsider rules established by one panel that later panels, in the light of experience, have come to consider inadvisable. Above all, en banc proceedings would be rare. They should neither be favored nor routinely ordered; they are appropriate only in exceptional cases.

When the
use
en banc

Properly limited, an en banc procedure for the court of appeals would increase the effectiveness of that court by eliminating conflicts between panels and by permitting the judges' collective wisdom to be brought to bear on important issues. The establishment of an en banc procedure would make the court of appeals a single court, in other than an administrative sense, for the first time. It would also improve the quality of the records in those cases that do eventually go to the supreme court for final resolution. Of most importance, it would enhance the quality of justice for the people of North Carolina.

or other proceeding be heard or reheard by the court of appeals in banc. Such a hearing or rehearing is not favored and ordinarily will not be ordered except (1) when consideration by the full court is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance.

(b) Suggestion of a Party for Hearing or Rehearing In Banc. A party may suggest the appropriateness of a hearing or rehearing in banc. No response shall be filed unless the court shall so order. The clerk shall transmit any such suggestion to the members of the panel and the judges of the court who are in regular active service but a vote need not be taken to determine whether the cause shall be heard or reheard in banc unless a judge in regular active service or a judge who was a member of the panel that rendered a decision sought to be reheard requests a vote on such a suggestion made by a party.

(c) Time for Suggestion of a Party for Hearing or Rehearing In Banc; Suggestion Does Not Stay Mandate. If a party desires to suggest that an appeal be heard initially in banc, the suggestion must be made by the date on which the appellee's brief is filed. A suggestion for a rehearing in banc must be made within the time prescribed by Rule 40 for filing a petition for rehearing, whether the suggestion is made in such petition or otherwise. The pendency of such a suggestion whether or not included in a petition for rehearing shall not affect the finality of the judgment of the court of appeals or stay the issuance of the mandate.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 4

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

S4-AMC-2 [v.3]

Page 1 of 1

Amends Title [NO]
First Edition

Date Dec. 15, 2016

Senator Brock

- 1 moves to amend the bill on page 24, line 47, by deleting "term. The" and substituting the
2 following language to read:
3 "term. No member who has served less than one year on the Commission may be designated to
4 act as chairman.
5 The".

SIGNED

[Signature]
Amendment Sponsor

SIGNED

[Signature]
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____



* 5 4 - A M C - 2 - V - 3 *



VISITOR REGISTRATION SHEET

Senate Finance

December 15, 2016

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Date

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Jenna B. Clark	Link
Donna Greene	SA
Richard Wolfe	CITIZEN
Gary Sewell	SCST
Vicki Beyer	self
Dick Carlton	La Off. of R/Rw/ton, PLLC
TED DANCHI	NCIC
Jerry Schill	NC Fisheries Assoc
Flint Benson	SEANC
Jonathan Barbaker	Barbaker + Assoc.



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[illegible]

