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Elections

What a year 2001 was for elections legislation in the North Carolina General Assembly. Every ten years—after the United States Census—the legislature must undertake the politically grueling task of redrawing the district lines for the United States House of Representatives, the state Senate, and the state House of Representatives. The job was just as difficult this year as it usually is. In addition, this year saw the report of the Elections Laws Revision Study Commission, which was established in recognition of the unsatisfactory condition of the state’s laws governing elections. In response, the General Assembly enacted sweeping revisions to portions of G.S. Chapter 163. Finally, the work of that study commission coincided with the difficulties that Florida encountered in its conduct of the 2000 presidential election. The study commission recommended changes in our statutes in response, and the General Assembly made some of those changes.

Reminder: In compliance with Section 5 of the Voting Rights Act of 1965, statewide election law passed by the General Assembly cannot be implemented until it has been approved by the United States Justice Department.

Redistricting

S.L. 2001-458 (S 798) sets the new districts for electing members to the North Carolina Senate. S.L. 2001-459 (H 1025) sets the new districts for electing members to the North Carolina House of Representatives. S.L. 2001-479 (H 32) sets the new districts for electing members to the U.S. House of Representatives. Maps showing the new sets of districts are on pages 86–88.

Delay of Filing Periods and Primaries

S.L. 2001-466 (H 1046) delays the filing period for 2002 primary elections so that the new filing period begins at noon on February 18, 2002, and ends at noon on March 1, 2002. If by 10:00 A.M. on February 18 any of the redistricting acts for state House, state Senate, or U.S. House have not been precleared by the U.S. Justice Department under Section 5 of the federal Voting Rights Act, then the State Board of Elections is to postpone the primary elections for all offices until a date the State Board determines is fair to all parties, potential candidates, and voters. The

State Board is to promulgate rules for all aspects of the new election schedule (after consultation with the President Pro Tempore of the Senate, the Speaker of the House, and the Majority and Minority Leaders of the House and Senate). Under the new schedule, there is to be one filing period for all candidates and one primary election date for all offices. The filing period is to be at least ten days long. The new schedule is to include provision for a second primary.

Recodification of Parts of Chapter 163

In 1994, the General Assembly took on the task of revising, renewing, and refreshing North Carolina's elections laws, and it made some progress. It repealed from Chapter 163 the old statutes regarding voter registration and enacted new Article 7A, containing a completely revised system for voter registration and voter list maintenance.

The 2001 General Assembly took on the revision task anew, and it also made progress, repealing from Chapter 163 all of Articles 13, 14, 15, and 16 and enacting new legislation governing ballot preparation, voting systems, voting procedures, ballot counting, canvassing, the hearing of protests, the certification of results, the consideration of protests, and the ordering of recounts. In doing so, the General Assembly closely followed the recommendations of the Elections Laws Revision Study Commission, which noted that the last comprehensive revision of those statutory provisions occurred in 1967. The commission said this in its final report to the General Assembly:

At that time, paper ballots counted by hand at the precinct were the predominant method of voting in North Carolina. The statutes prescribe in detail the interior furnishings of a 1967 polling place, the roles to be played by the different precinct officials, and the procedures to be followed in the hand-counting of paper ballots in the precinct. Many of the provisions of Articles 13 and 15, particularly, would serve admirably as a blueprint for building a museum exhibit or as a script for producing a historical re-enactment. They serve poorly, however, as a guide to conducting elections in the 21st century. Now, only three small counties rely primarily on hand-counted paper ballots. The other 97 counties use mechanical, optical-scan, or direct-record electronic 'voting systems.' The statute essentially treats these 97 counties as the exception rather than the rule. Article 14, titled "Voting Systems," gives the State Board of Elections broad rule-making authority over the conduct of voting on the newer systems, but gives the State Board very little guidance in how to write those rules.

By fortuitous coincidence, the Study Commission began its work on Articles 15 and 16 of Chapter 163, which deal with counting ballots, canvassing results, and handling disputed results, just as the aftermath of the 2000 Presidential Election unfolded. . . . The lessons taught by Florida that North Carolina should learn include the following:

- When counties try to save money by failing to replace unreliable election equipment, they risk having a situation in which the margin of victory is within the margin of error . . .
- When an election is protested, one may expect trouble in the courts if different standards are used in different counties to count the votes . . .
- When an election is protested, one may expect trouble on all fronts when the law is unclear about the procedure to be followed in hearing a complaint, ordering a recount, or ordering a new election.

With these considerations in mind, the 2001 General Assembly largely followed the recommendations of the study commission, enacting two major bills. One, S.L. 2001-460 (S 17), repeals old Articles 13 and 14 replaces them with new Article 13A, simply entitled "Voting." The other, S.L. 2001-398 (S 14), repeals old Articles 15 and 16 replaces them with new Article 15A, entitled "Counting Official Ballots, Canvassing Votes, Hearing Protests, and Certifying Results."

Ballot Preparation and Certification

The new ballot preparation and certification provisions in S.L. 2001-460 apply equally to the ballots for all kinds of voting systems, eliminating the distinction in the old law between paper ballots and ballots used with voting machines. The new provisions also introduce a new definitions section, for the first time defining *ballot* as “an instrument on which a voter indicates a choice so that it may be recorded as a vote for or against a certain candidate or referendum proposal. The term ‘ballot’ may include a paper ballot to be counted by hand, a paper ballot to be counted on an electronic scanner, the face of a lever voting machine, the image on a direct record electronic unit, or a ballot used on any other voting system.”

The new provisions specify that the county board of elections prepares and produces official ballots for all elections in the county and submits the format of the ballot and all instructions to the State Board of Elections for certification. The State Board is not required to certify or review every official ballot style in the county but may require that county boards submit a composite official ballot showing races that will appear in every district in the county. The new provisions set out the standards for certification by the State Board.

The provisions for determining the order in which candidates and parties appear on the ballots are restated but substantively unchanged.

Straight-Ticket Voting

Following current practice in most counties, the new provisions specify that straight-ticket voting applies to all contests other than the vote for president of the United States. They are found in new G.S. 163-182.1(7).

Candidate Filing Period

S.L. 2001-466—an act that is not part of the recodification legislation—amends G.S. 163-106 to change the period for filing notices of candidacy. The filing period is presently the first Monday in January through the first Monday in February before a primary. Effective January 1, 2003, the filing period will be the second Monday in February through the last business day in February before a primary.

Approval of Voting Systems

The provisions of old Article 15 gave the State Board of Elections the authority to approve “types of voting systems” that could be used in elections in the state. The new provisions extend that to the authority to approve “types, makes, and models.” Only systems approved by the State Board may be used in an election, though the State Board may approve for a specific county a system not approved for general use. The State Board may also, after notice and a hearing, disapprove particular systems and determine how disapproved systems are to be phased out of use in any county (allowing a minimum of four years in cases where the county can show that discontinuing a system would cause financial hardship). A county may appeal a phase-out order to the Superior Court of Wake County.

Hours of Voting

Old G.S. 163-2 (repealed by the new provisions) required that the polls be open from 6:30 A.M. until 7:30 P.M. except in precincts using machines, where the county board could keep the polls open until 8:30 P.M. New G.S. 163-166 continues the 6:30 A.M. to 7:30 P.M. time requirement but provides that for all precincts the county board may direct that the polls are to stay open until 8:30 P.M. in “extraordinary circumstances.” The new statute specifically provides that if a voter is in line to vote at the time the polls are closed, that voter is to be permitted to vote.

Setting Up the Voting Place

Old G.S. 163-145 and -146 contained remarkably detailed instructions on how the voting place was to be physically arranged, providing, for example, that the boundary of the voter enclosure could be no closer to a ballot box than ten feet and no further away than twenty feet. New G.S. 163-166.1 and -166.2 replace that detail with instructions that the county board is to ensure that adequate procedures are in place at each voting place for a safe, secure, fair, and honest election, with a sufficient number of private spaces for voters to mark their ballots and with adequate space and furniture for checking voter registration, distributing ballots, and holding private discussions with voters concerning irregular situations. The new statute requires that each voting place have a telephone or other technology for communicating with the county board office.

Electioneering

Old G.S. 163-147 strictly prohibited anyone from loitering, congregating, distributing campaign material, or in any way electioneering within fifty feet of the entrance to the voting place. New G.S. 163-166.4 calls for the creation of a buffer zone in which all election-related activity would be prohibited. The zone is to be fifty feet from the door where practicable, but in no case less than twenty-five feet from the door. The county board is to provide, where practicable, an area adjacent to the buffer zone for the conduct of election-related activity.

Procedures at the Voting Place

The old statutes laid out in some detail the actions that were to be taken at the polling place before the polls opened, occasionally specifying which election official was to undertake which task. New G.S. 163-166.5 and -166.6 replace those provisions with directions to the State Board to promulgate rules for precinct officials to follow in setting up the voting place and delegating tasks. The rules emphasize the need to place primary managerial responsibility on the chief judge, the need to have maximum multiparty participation in all duties where questions of partisan partiality might be raised, and the need to provide management flexibility to the county board and the chief judge.

Procedures for Voting

As with other parts of the old statutes, the old provisions for voting laid out in fair detail how the act of voting was to be undertaken. The new provisions in G.S. 163-166.7 largely do away with that statutory detail and replace it with direction to the State Board to promulgate rules for voting that ensure that the voting system remains secure; that only properly voted official ballots are used; that no official ballots leave the voting enclosure (except for curbside voting); that all improperly voted ballots are returned to precinct officials to be marked as spoiled; that voters leave the voting place promptly; that voters not clearly eligible to vote in the precinct but who seek to vote there are given proper assistance in voting a provisional ballot or guidance to another voting place where they are eligible; that information that would be helpful to the administration of elections is passed on to the county board; that registration records are kept secure; and that party observers are given access to current information about which voters have voted (to the extent permitted by law).

Assistance to Voters and Curbside Voting

While simplifying the language, the new provisions largely continue the old provisions for assistance to voters. With respect to curbside voting, the new provisions eliminate much of the detail from the statute and direct the State Board to promulgate rules.

Procedures at the Close of Voting

New G.S. 163-166.10 directs the State Board to promulgate rules for closing the voting place and delivering voting information to the county board, emphasizing the need for the appearance as well as the reality of security, accuracy, participation by representatives of more than one political party, openness of the process to public inspection, and honesty.

New G.S. 163-182.3 puts into statutory form an obligation of the chief judge to transmit ballots to the county board office.

Voter Clear Intent

The statutory provision found in old G.S. 163-169(b) provided that no ballot should be rejected because of technical errors in marking it, unless it was impossible “to determine the voter’s choice under the rules for counting ballots.” If the chief judge and judges could not determine a voter’s choice, then the county board was to make the determination. The statutory provision in new G.S. 163-182.1 provides that technical errors do not disqualify a ballot “unless it is impossible to *clearly* determine the voter’s choice.” (emphasis added) The provision that the chief judge and judges make the initial determination is removed from the statute, in keeping with the introduction of the notion of *initial counting*, as described in the second paragraph below.

New G.S. 163-182.7 directs the State Board to promulgate rules providing guidance in determining voter intent.

Ballots Rejected by Scanner

New G.S. 163-182.1 provides that if a ballot is rejected by a scanner or other counting machine, but human counters can clearly determine the voter’s choice, the ballot is to be counted by hand and eye.

Notion of Initial Counting

New Article 15A introduces a new statutory term, *initial counting*, in recognition of the fact that today, machine tallies are reported to the county board office, and in most cases the first counting happens there. Under new G.S. 163-182.2, the State Board is to promulgate rules for initial counting for each voting system used, and the rules are to specify the role of precinct officials and the county board in the initial counting.

Notion of Ballot Item

New G.S. 163-165 introduces the new statutory term *ballot item*, meaning a single item on a ballot in which the voters are to choose between or among the candidates or proposals listed. A race for sheriff would constitute one ballot item; a race for state House of Representatives would constitute another.

Provisional Ballots

New G.S. 163-182.2 specifically provides that if a county board finds that an individual voting a provisional ballot is not eligible to vote with respect to a particular ballot item, the board is to count the ballot for other items for which the voter was eligible.

Recounts

New G.S. 163-182.7 brings all the various recount provisions into one statutory provision. It does not change the substantive grounds for recounts, but it does direct the State Board to

promulgate rules for conducting recounts. The rules are to provide specifically, with respect to each kind of voting system, when and to what extent the recount is to consist of machine recounts and when it is to consist of hand and eye recounts. The rules are also to provide guidance on determining voter intent.

Tie Votes

New G.S. 163-182.8 completely revises the law on determining who wins in the case of a tie. If 5,000 votes or fewer were cast in the ballot item that ended in a tie, then the board of elections (county or state, as appropriate) breaks the tie by a method of random selection to be determined by the State Board. If more than 5,000 votes were cast, then the State Board is to order a new election. Eligibility to vote in the new election is to be determined by the voter's eligibility at the time of the new election.

Election Protests

Before now, there were no provisions in Chapter 163 for handling protests. Instead, the State Board adopted rules for election protests, which were found in the North Carolina Administrative Code. New G.S. 163-182.9 through -182.12 basically continues the same procedures found in the old rules. The new statutory provisions add instructions on how to handle protests that are filed before Election Day; the old rules did not deal with that circumstance.

New Elections

New G.S. 163-182.13 continues the old law on ordering new elections, with the following changes. First, it makes clear that the State Board may order a new election only on the vote of four of its five members, no matter what the reason for the new election is. Second, it makes clear that eligibility to vote in the new election is to be determined by the voter's eligibility at the time of the new election, except that in a primary, no person who voted in the initial primary of one party may vote in the new election in the primary of another party. Third, it makes clear that the new election is to be held in the entire jurisdiction, not just in particular precincts or other areas where problems occurred. And fourth, it makes clear that all the candidates who were on the ballot in the original election are to be on the ballot in the new election, in the same order. Two exceptions to this last provision are (1) if a candidate dies or becomes ineligible between the original and new elections, the candidate may be replaced in the same manner as if the vacancy occurred before the original election; and (2) if the race is multiseat and the irregularities could not have affected the election of one or more of the candidates receiving the most votes, the new election (upon agreement of four State Board members) may be held among only the remaining candidates.

Canvassing, Abstracts, and Certificates of Election

New G.S. 163-182.5 adds a definition of *canvass*, new G.S. 163-182 adds a definition of *abstract*, new G.S. 163-182.6 gives new details on the preparation of abstracts, and new G.S. 163-182.15 collects in one place instructions on the issuance of certificates of election. Before these new provisions, the elections statutes did not contain clear statements regarding these terms.

Lists of Duties

New G.S. 163-187.17 gives a nonexclusive summary of duties of precinct officials, county boards of elections, the State Board, the Secretary of State, and the Governor.

Voter Registration and Voter List Maintenance

Voter Registration Numbers

S.L. 2001-319 (H 831) adds new G.S. 163-82.10A directing each county board of elections to assign each voter a registration number. That number is to be permanent for that voter and is not to be changed or reassigned by the county board.

Voter Registration Deadline

G.S. 163-82.6(c) sets the deadlines by which a voter registration application must be received in order for the individual to be eligible to vote in the next upcoming election. If the application form is delivered in person to the county board of elections office, the statute provides that it must be received by 5:00 P.M. on the twenty-fifth day before the election. S.L. 2001-319 adds a provision to the statute permitting the county board to set a cutoff time later than 5:00 P.M.

Removing Voters from Voter List

G.S. 163-82.14 directs county boards of elections to take steps to remove ineligible individuals from the voter lists. One category of ineligible voters includes individuals who have moved to an address outside the county. Subsection (d) previously directed the county board to send a notice to anyone on the voter registration list who had had no contact with the board of elections in two successive presidential elections or in any election in between (and for whom the county board had not otherwise confirmed an address). If the individual failed to respond to a confirmation notice, the county board could initiate the individual's removal from the voter list by making him or her inactive. S.L. 2001-319 amends the statute to provide that the confirmation notice is to be sent *to everyone on the registration list* after every congressional election (if the county board has not confirmed the registrant's address by another means) and that anyone who fails to respond to the notice is to be removed from the list.

DMV Voter Registration Instant Transfer to County Board of Elections

G.S. 163-82.19 requires that Division of Motor Vehicles (DMV) officials are to ask driver's license applicants at the time they apply for the driver's license whether they wish to register to vote. If the applicant wishes to register, then the DMV officials are to assist the applicant in filling out the voter registration application, and that application is to be forwarded to the appropriate county board of elections in compliance with rules promulgated by the State Board of Elections. S.L. 2001-319 adds a new provision to the statute, specifying that those rules are to provide for a paperless, instant, electronic transfer of the application to the appropriate county elections board.

Military Personnel Voter Registration

In general, an applicant for voter registration must submit his or her form by the twenty-fifth day before an election in order to be eligible to vote in that election. G.S. 163-254 creates an exception for military personnel, their spouses, members of the Peace Corps, disabled war veterans in government hospitals, and civilians attached to the military. The statute previously provided that any such individual absent from the county in connection with his or her duty could register to vote at any time, including on Election Day. S.L. 2001-353 (S 11) rewrites the statute to make clear that the right to register after the twenty-fifth day (up to and including Election Day) applies only if the individual's absence from the county because of duty caused him or her to be absent on the twenty-fifth day before the election.

Residence for Voting Purposes

To be eligible to vote in a jurisdiction in North Carolina, an individual must be a resident of that jurisdiction. G.S. 163-57 defines *residence* for purposes of registration and voting. One provision states that individuals who move to another county to engage in the service of the state government have not lost their residence in their original counties, unless they “demonstrate[] a contrary intention.” S.L. 2001-316 (H 1126) amends this provision to remove the quoted phrase and state that residence remains in the original county unless the individual votes in the new county. S.L. 2001-316 also adds a new provision to the statute specifying that the establishment of a second residence by an elected official outside the district of the elected official does not constitute prima facie evidence of a change of residence.

Voter Registration and Address Change by Fax

To be eligible to vote in an upcoming election, a registration applicant must submit a completed application form to the county board of elections by the twenty-fifth day before the election. G.S. 163-82.6 previously provided that the form could be submitted in person or by mail. S.L. 2001-315 (H 1186) adds a provision permitting the form to be submitted by facsimile transmission (fax), so long as a permanent copy of the completed, signed form is delivered to the county board no later than twenty days before the election.

In addition, S.L. 2001-314 (H 1193) amends G.S. 163-82.15 to permit a registered voter to report a change of address within the same county to the county board of elections by facsimile transmission.

Protection of Voter Records in Case of Court Order

Under the state’s Public Records Law and under G.S. 163-82.10, voter registration records are public records open to inspection and copying by the public. S.L. 2001-396 (H 1188) adds new G.S. 163-82.10(d) creating an exception. If a registered voter submits to the county board of elections a copy of a protective order or other lawful court order restricting one or more persons’ access to or contact with the voter, along with a signed statement by the voter that the voter has good reason to believe that his or her (or a family member’s) physical safety would be jeopardized if the voter’s address were open to public inspection, that voter’s address is to be kept confidential as long as the protective order is in effect. The voter’s address and signed statement are to be kept confidential; all other information is public. The court order may be from a North Carolina court or from a court outside of North Carolina.

Ballots and Voting

Butterfly and Punch-Card Ballots

S.L. 2001-310 (H 34) adds two new statutory provisions. The first, new G.S. 163-165.4A, provides that no ballot may be used in any election if it requires the voter to punch out a hole with a stylus or other tool. This prohibition is effective immediately for counties that do not currently use punch-card ballots. For those that do, the prohibition becomes effective January 1, 2006; such counties are to be given priority in any future appropriations to counties for voting equipment.

The second, new G.S. 163-165.4B, provides that no butterfly ballots—that is, ballots having more than one column listing ballot choices that share a common column for designating those choices—may be used in any election.

Voting Privacy

G.S. 163-145 sets up detailed requirements to ensure the privacy of voters in voting booths in voting places where voters mark paper ballots. The statute formerly provided that its requirements did not apply to voting places at which voting machines were used. S.L. 2001-353 amends the statute to add a provision that all voting places, including those using machines, must have a curtained or otherwise private area where a voter may mark the ballot unobserved. S.L. 2001-353 also amends G.S. 163-227.2 to add the same provision in one-stop absentee voting places.

Spanish Ballots

S.L. 2001-288 (H 1041) adds new G.S. 163-140.2 requiring that in every county or municipality in which the Hispanic population exceeds 6 percent according to the most recent U.S. census, all instructions to the voter are to be printed in both English and Spanish. The State Board of Elections has the duty to prepare the Spanish translation for local boards of elections.

Absentee Voting

No-Excuse Absentee Voting in All Elections

There are two distinct methods of absentee voting. By the traditional method, a voter requests an application to vote by absentee ballot. The county board of elections sends the application and the ballots to the voter. The voter fills out the application and the ballots and returns both to the elections board office. The elections board considers the application and, if it approves the application, the ballots are counted at the time of the election. By the one-stop method, the voter comes to the board of elections office and, in one transaction, fills out the application and marks the ballots. If the application is ultimately approved, then the ballot is counted, as in the traditional absentee method, on Election Day.

Previously, in order to vote by absentee ballot, the voter had to demonstrate one of the following excuses: (1) the voter expects to be absent from the county during the entire period that the polls will be open on Election Day; (2) the voter is unable to be present at the voting place on Election Day because of sickness or physical disability; (3) the voter is in jail; (4) the voter will be unable to cast a ballot on Election Day because that day is a holiday pursuant to the tenets of his or her religion; or (5) the voter is an employee of the board of election and will be working on Election Day.

In 1999 the General Assembly did away with the excuse requirement for one-stop absentee voting in even-year general elections. As a consequence, in the general election in 2000, a voter could come to the one-stop voting place, fill out an application, and cast his or her ballot without presenting any reason for voting that way rather than waiting to vote at the regular polls on Election Day.

This change was applicable *only* to even-year general elections. That is, it was not applicable to odd-year elections (which are primarily municipal elections for town council and mayor), and it was not applicable to party *primary* elections in the even years. For those elections, the requirement of a statutorily recognized excuse still applied.

The change also was not applicable to traditional absentee voting as opposed to one-stop absentee voting.

In 2001, after the experience with no-excuse absentee voting in the 2000 general elections, the General Assembly passed S.L. 2001-337 (H 977), permitting no-excuse absentee voting for *all* elections.¹ That is, no-excuse absentee voting will be permitted for elections in odd-numbered

1. That is, for all elections for which absentee voting is otherwise permitted. Absentee voting is not permitted in some specific kinds of elections, such as fire district elections and some municipal elections.

years as well as even-numbered years, for primaries as well as for general elections, and for traditional mail-in absentee voting as well as for one-stop absentee voting.

Satellite One-Stop Absentee Voting Places

Before 1999, each county was permitted by general law to have only one site available for one-stop absentee voting, and that one site had to be at the office of the county board of elections. A 1999 act permitted a county board of elections, by unanimous vote of all of its members, to provide additional sites at the kinds of places that can be used for polling places on Election Day. To have such remote one-stop sites, the county board of elections must prepare a Plan for Implementation and have the plan approved by the State Board of Elections.

The 2000 General Assembly amended the law to provide that if a county board of elections has considered a Plan for Implementation (or more than one) and has been unable to reach unanimity in favor of a plan, a member or members of that board may petition the State Board of Elections to adopt a plan for it. If petitioned, the state board may also receive and consider alternative petitions from other members of the board. The State Board may adopt a plan for the county, taking into consideration factors including geographic, demographic, and partisan interests.

The original 1999 legislation had a sunset provision; the law was to expire on January 1, 2002. The 2000 legislation continued that sunset provision. In 2001 the General Assembly, in S.L. 2001-319, removed the sunset provision, so the law is now indefinitely in place.

Absentee Ballot Deadline

G.S. 163-227.3(a) requires that, in those instances in which the State Board of Elections is the provider of absentee ballots, the State Board must provide the ballots to the county boards of elections at least fifty days before the election, unless there is present an appeal before the State Board or the courts, in which case the State Board is to provide the ballots as quickly as possible. S.L. 2001-353 amends the statute to add a requirement that in any case where absentee ballots are printed by county boards of elections (as opposed to provided by the State Board) and there is an appeal pending, the county board is to follow the directions of the State Board in delaying the absentee ballots while the appeal is pending and in providing them as soon as possible thereafter.

One-Stop Absentee Voting Deadline and Locations

G.S. 163-227.2 formerly provided that one-stop absentee voting was permitted during a period beginning on the twenty-fifth day before an election and ending at 5:00 P.M. on the Friday before the election. S.L. 2001-319 changes that period so that it runs from the third Thursday before the election until 1:00 P.M. on the Saturday before the election (with a local board of elections option to extend that time to 5:00 P.M. on the Saturday before the election).

The new act permits county boards of elections to conduct one-stop absentee voting during evenings and weekends, as long as the hours are part of a plan approved by the State Board of Elections.

The new act also permits county boards to opt not to permit one-stop absentee voting at the county board of elections office, which the law otherwise requires, so long as that option is part of an approved plan and the plan provides for one-stop absentee voting at a location reasonably close to the county board office.

Absentee Ballot Data

S.L. 2001-466 adds new G.S. 163-132.5G providing that each county board of elections is to maintain voting data by precinct, so that precinct returns for each ballot item include the votes cast by residents of the precinct who voted by absentee ballot, both mail and one-stop (to the extent that this can be done without compromising the secrecy of an individual's ballot). The county

board is not required to report the absentee voting data by precinct until sixty days after the election. The State Board is to adopt rules to have these provisions fully in place by the 2006 election.

Military Absentee Voting

S.L. 2001-466 contains several provisions designed to facilitate military absentee voting. As amended, G.S. 163-247(3) now provides that if a single application from an absentee uniformed voter is received by an election official, it is to be considered a valid absentee ballot with respect to all general, primary, and runoff elections for all offices in which absentee ballots are allowed. G.S. 163-253 formerly provided that upon discharge from the military, a voter who was registered under the military registration provisions was required to reregister before being eligible to vote. As amended, the statute now provides that the military registration remains effective until the end of the calendar year, and the voter may vote under the old registration without reregistering until then.

Sick or Disabled Voter Absentee Application

S.L. 2001-507 (H 1195) adds new G.S. 163-226 providing that if an application for absentee ballots indicates that the applicant has a sickness or physical disability that is expected to last the remainder of the calendar year, the application will constitute a request for absentee ballots for all elections for the remainder of the year.

State Administration of Elections

Executive Secretary-Director Title Change

The state's chief elections official has been stuck with the unwieldy title of "Executive Secretary-Director" of the State Board of Elections. S.L. 2001-319 changes the title to "Executive Director."

Certification in Elections and Mandatory Participation by Directors

The State Board of Elections has for a number of years conducted a state program for certification in elections, offering course work, examinations, and certification for county elections board members, for county directors of elections, and for employees of county boards of elections. S.L. 2001-319 adds new G.S. 163-82.24(b), which by statute directs the State Board to conduct the certification program. Under the new law, the program must include training in election law and procedures, and the State Board must administer an examination designed to determine the proficiency of the examinee in law and procedures. The State Board must also set adequate standards for the passage of the exam.

In addition, S.L. 2001-319 adds new G.S. 163-35, which does two things. First, it directs the State Board to conduct a training program consisting of four weeks for each new county director of elections. Second, it mandates that each director appointed after May 1995 is to complete the certification program within three years of appointment or by January 1, 2003, whichever occurs later.

Local Administration of Elections

Elimination of Municipal Boards of Elections

At one time, many of North Carolina's cities conducted their own municipal elections through municipal boards of elections appointed by the city council. In other cities, the county board of elections conducted the municipal elections and the city reimbursed the county for the costs. Over the years, the number of cities using municipal boards was gradually reduced, so that by 1999 the number had declined into the fifties. In that year, the General Assembly imposed new reporting requirements on municipal boards of elections, and a number of cities gave up their municipal boards at that point. S.L. 2001-374 (S 16) completes the progression, abolishing all municipal boards of elections after the 2001 elections except the municipal boards in Morganton, Granite Falls, Rhodhiss, and Old Fort. The State Board of Elections is directed to inspect the operations of these municipal boards as needed.

Job Protection for Precinct Officials

S.L. 2001-169 (S 716) adds new G.S. 163-41.2 making it unlawful for an employer to discharge or demote an employee because the employee has been appointed a precinct official and is serving as a precinct official on Election Day or canvass day. An employee discharged or demoted in violation of this statute is entitled to reinstatement. The burden of proof is on the employer. For the protection to apply, the employee must give the employer thirty days' written notice of his or her intention to take leave in order to serve as a precinct official.

Dismissals and Suspensions of County Elections Directors

A county elections director cannot be dismissed by the county board of elections, but the county board has the power to begin the dismissal proceedings. G.S. 163-35(b) provides that the county board may recommend to the State Board of Elections that the director's employment be terminated. The director may respond to the recommendation, and the Executive Director of the State Board will make the decision. If the decision is for termination, the State Board may defer the termination and conduct a hearing. The statute formerly provided that the hearing was to be conducted by the full board or by one member designated by the remaining four. S.L. 2001-319 amends the statute to remove the provision for a one-member hearing and to remove the provision specifying that the hearing would be public.

S.L. 2001-319 also adds provisions permitting the proceedings for the termination of a director to begin with the State Board on the recommendation of the Executive Director, without the recommendation of the county board. If the State Board does initiate proceedings, it is to conduct a hearing before ordering termination.

Finally, S.L. 2001-319 adds provisions permitting the Executive Director to initiate a suspension of a director with pay, without warning, for causes relating to personal conduct detrimental to service in the county or to the State Board, in order to avoid the undue disruption of work, to protect the safety of individuals or property, or for other serious reasons. The suspension may be for a maximum of five days. The Executive Director is to prepare a written statement of reasons for the director, the member of the county board, the chair of the county commissioners, and the State Board. If no action for termination has been taken within five days, the director is to be fully reinstated.

Handling of Incorporation Petitions

Article 20 of G.S. Chapter 120 sets out procedures by which registered voters of an area may initiate the procedure to seek to have that area incorporated as a municipality, through a petition addressed to the Joint Legislative Commission on Municipal Incorporations and signed by at least 15 percent of the registered voters of the area. G.S. 120-163 requires that the county board of

elections is to verify the petition and is to return the petition to the person who presented it within fifteen working days of receipt. S.L. 2001-353 amends the statute to provide that that fifteen-day period is tolled for any period of time that is within two weeks before or one week after a primary or election being conducted by that board.

S.L. 2001-353 also adds a provision specifying that a voter who signs the petition must clearly print his or her name adjacent to the signature and that the petition must contain the voter's residence address and date of birth.

Presidential Elections

Legislative Appointment of Presidential Electors

Under our constitutional system for electing a president, each state chooses electors, and the electors meet in the Electoral College to cast the votes that actually elect the president. Article 18 of G.S. Chapter 163 sets out the rules for the conduct of the election in North Carolina to choose the state's presidential electors. By those rules, the names of the presidential candidates—not the names of the electors—appear on the ballots. A vote for the named candidate is actually a vote for a slate of electors associated with that candidate. Under G.S. 163-210, when the results of the election have been prepared by the State Board of Elections, the Secretary of State certifies to the Governor the names of the electors chosen, and the Governor issues a proclamation naming those individuals as North Carolina's electors. In Florida, disputes over the 2000 election results and ongoing court challenges made it appear that the state might not finalize the choice of its electors before the deadline under federal law (3 U.S.C. § 5) for naming them, and the Florida legislature came into session for the possibility of naming a slate of electors in the event that the regular election process could not get it done.

S.L. 2001-289 (H 31) is North Carolina's response to the possibility of the same situation arising in this state. It creates new G.S. 163-213 providing that whenever the appointment of a presidential elector has not been proclaimed under G.S. 163-210 by the deadline under federal law, then a special session of the General Assembly, called under the provisions of the state constitution, may fill any vacant elector positions. If the General Assembly has not acted by the day before the meeting of the Electoral College, then the Governor may appoint electors to fill vacant positions.

The new statute provides that the General Assembly, and the Governor, if necessary, are to designate electors according to their best judgment of the will of the electorate. Their appointments are not subject to judicial review, except to ensure that applicable statutory and constitutional procedures were followed. Their judgment as to the will of the people is not subject to judicial review.

Vacancies in Presidential Nominees or Electors

It sometimes happens that a candidate for elective office who is nominated by a party dies or otherwise vacates the nomination before the election. G.S. 163-114 sets out the rules for filling the vacancy thus created, specifying how vacancies are filled in nominations for United States Senator, state offices, district offices (including U.S. House of Representatives), judicial and legislative offices, and county offices. Until now, there has been no statutory provision for filling a vacancy in nominee for president or vice president of the United States or for presidential elector. S.L. 2001-353 amends the statute to provide that vacancies in nominations for president and vice president are to be filled by appointment of the national executive committee of the political party in which the vacancy occurs, and vacancies in presidential electors or alternates are to be filled by appointment of the state executive committee of the party in which the vacancy occurs.

Judicial Elections

Nonpartisan Election of District Court Judges

In 1996 the General Assembly enacted Article 25 of G.S. Chapter 163, moving elections of superior court judges from partisan to nonpartisan. This legislation became effective with the elections of 1998. S.L. 2001-403 (S 119) does the same thing for district court judges. The new law requires candidates for district court judge to designate the seat desired when two or more seats are up for election or when election to a specialized judgeship (such as a family law judgeship, for example) is desired.

Write-Ins in Superior and District Court Judge Elections

G.S. 163-123 governs the counting of write-in votes in elections. In general, it provides that write-ins will be counted only in general elections (that is, write-ins are not counted in primary elections) and only when the write-in candidate has filed a declaration of intent and a petition signed by a designated number of voters. G.S. 163-123(g) formerly provided that these rules did not apply to municipal and nonpartisan elections. S.L. 2001-319 amends that subsection to provide that the rules *do* apply to nonpartisan superior court judge elections. S.L. 2001-403 amends the subsection to provide that the write-in provisions also apply to nonpartisan district court judge elections.

Elections to Fill Superior Court Judge Vacancies

S.L. 2001-460 adds new G.S. 163-327.1 setting out rules to apply when vacancies for superior court judge are to be voted on. If the vacancy occurs before the opening of the filing period, then nominations are to be made by primary election, without designation as to the vacancy. If the vacancy occurs after the opening of the filing period, but by the sixtieth day before the general election, candidate filing is to be governed by G.S. 163-329, under which the State Board of Elections sets out a filing period of at least five days. In either case, the election is to be determined by the plurality method.

Campaign Finance Regulation

New Civil Penalty Authority for the State Board of Elections

The campaign finance regulations found in G.S. Chapter 163 create criminal penalties for violations and very limited civil penalties for late filings of required campaign finance reports. S.L. 2001-419 (S 1002) amends G.S. 163-278.34 to add new provisions for civil penalties for illegal contributions.

Under the new provisions, if an individual, political committee, or other entity makes or accepts a contribution in violation of the regulations, then that entity must pay to the State Board of Elections a civil penalty plus the costs of investigation, assessment, and collection. The penalty is to be set by the State Board and is not to exceed three times the amount of the unlawful contribution. In addition, the State Board may order the amount unlawfully received to be paid to the State Board. Amounts received by the State Board are to be paid over to the state Civil Penalty and Forfeiture Fund.

In addition to the civil penalties, the State Board may issue an order requiring the violator to stop violating the law. It also may order the violator to stop receiving contributions and making expenditures until a delinquent report has been filed and any civil penalty has been satisfied; to take any remedial action the State Board deems appropriate; and to file any required reports. Additionally, the State Board may publicly reprimand the violator.

An entity that has received notice of a civil penalty may submit an affidavit stating facts in mitigation, and the State Board may waive a civil penalty in whole or in part if there is good cause for the waiver.

Before assessing a civil penalty, the State Board is to notify and consult with the district attorney who would be responsible for bringing any criminal prosecution regarding the violation.

A separate provision found in S.L. 2001-353 provides that if a form is filed by mail, no civil late penalty may be assessed for any day after the date of the postmark, and none may be assessed for any day that the board office at which the report was due was closed.

Criminal Penalty Provisions

S.L. 2001-419 amends G.S. 163-278.27 to make clear that the criminal violation provisions of the campaign finance regulations apply to violations of the provisions in G.S. 163-278.13 regarding limits on amounts that may be contributed or received and to G.S. 163-278.13B regarding limitations on fund-raising during legislative sessions.

S.L. 2001-419 also makes clear in G.S. 163-278.27 that the statute of limitations runs from the day the last report is due to be filed with the appropriate board of elections for the election cycle in which the violation occurred.

New Campaign Finance Reports for Municipal Elections

S.L. 2001-419 amends the various statutes that set out the campaign finance report requirements for city elections (G.S. 163-278.40B for municipal elections on the partisan method, -278.40C for the nonpartisan election and runoff method, -278.40D for the nonpartisan primary method, and -278.40E for the nonpartisan plurality method). The amendments add a new requirement for a report thirty-five days before the first election and replace the requirement for an annual report with a requirement for semiannual reports due on the last Friday in July and the last Friday in January.

Electronic Filing Trigger

G.S. 163-278.9(j) requires that candidates for statewide office, executive committees of political parties (at the state, district, county, and precinct level), and political committees making contributions to candidates for statewide offices (or independent expenditures affecting contests for statewide offices) must file their campaign finance reports electronically if their reports show more than \$5,000 in contributions, expenditures, or loans. S.L. 2001-419 amends the statute to make clear that the obligation to make the filings electronically kicks in when the reports show that the \$5,000 level is reached as a cumulative total for the election cycle.

Certification of Campaign Finance Reports

G.S. 163-278.32 formerly required that campaign finance reports had to be verified by the oath or affirmation of the individuals filing them, taken before a notary public or other officer authorized to administer oaths. S.L. 2001-235 (H 573) changes the statute to eliminate the notarization requirement, so that the statute now requires that the individual certify that the report is true and correct to the best of his or her knowledge. A new provision specifies that it is perjury to make the certification knowing the information to be untrue.

Disclosure Statements in Campaign Ads

G.S. 163-278.39(b) requires that print media advertisements subject to the disclosure requirements of the campaign regulation statutes must contain certain disclosure statements regarding the sponsorship of the ad. The statute also provides that the disclosure statement must constitute at least 5 percent of the height of the printed space and be in type at least 12 points in

size. S.L. 2001-317 (H 57) adds to the statute a provision that in an advertisement in a newspaper or newspaper insert, the total height of the disclosure statement need not reach the 5 percent level if the disclosure statement is in at least 28 point type.

The same statute provides that in radio advertisements, the disclosure statement must be at least three seconds long. S.L. 2001-317 changes that requirement to two seconds, provided that the statement is spoken so that its contents may be easily understood.

Disclosure Modification

G.S. 163-278.39 sets out the basic disclosure requirements for covered political campaign advertisements. The statute formerly required the sponsor to state in the advertisement its position for or against the candidate if the advertisement supported or opposed the nomination or election of one or more clearly identified candidates. S.L. 2001-353 repeals this provision.

Precincts and Voting Places

Children in the Voting Enclosure

Prior to the passage of S.L. 2001-460 (which recodifies portions of G.S. Chapter 163), G.S. 163-153 specified the individuals allowed to be present in the voting enclosure, limiting presence chiefly to the elections officials, the voter, near relatives while assisting the voter, and a few specified others. S.L. 2001-292 (H 980) added a provision permitting the presence of minor children under the age of eighteen (either children of the voter or minors in the care of the voter) while under the control of the voter. This new provision is continued in the recodification under S.L. 2001-460 as new G.S. 163-166.3(6).

Two Voting Places in One Precinct

In 1999 the General Assembly created a pilot program permitting each of three designated county boards of elections (by unanimous vote of all of its members) to designate two voting places to be used temporarily for the same precinct, with the approval of the Executive Director of the State Board of Elections. The county board must demonstrate that the precinct has too many registered voters to be adequately accommodated by any single voting place available for the precinct; no boundary line that would qualify as a lawful precinct line is available to split the precinct; the county board can account for the location of every registered voter in the precinct and fix that voter's residence address on a map; no more than four precincts in the county will have two voting places; both voting places will be accessible to the disabled and the elderly; the plan does not unfairly favor or disfavor voters with respect to race or party; and both places have adequate security against fraud. The designation of two voting places lasts only for the term of office of the county board of elections making the designation. Every voter is to be assigned to one voting place or the other.

S.L. 2001-319 extends this pilot program to all 100 counties.

Precinct Boundaries

G.S. 163-132.3 formerly limited the authority of county boards of elections in changing precinct boundaries by requiring that new lines be coterminous with township lines or census block lines as established by the U.S. Census or with certain physical features such as roads, rail lines, ridgelines, and so forth. S.L. 2001-319 amends the statute to provide that the new precinct boundary lines must be coterminous only with census block lines, unless the state elections Executive Director determines that following this requirement would force the county board of elections to draw a precinct without an adequate voting place or would otherwise seriously hinder

the administration of elections. In that case, the Executive Director may permit the designation of different precinct lines, if the new lines are township boundaries, municipal boundaries, physical features (such as roads, rail lines, and so forth), or lines that are likely to become census block lines in the next federal decennial census, and if the new precinct could be combined with another precinct to form a unit whose outer boundaries would compose a census block.

Voting Place Change Notice

G.S. 163-128 requires that a county board of elections give certain kinds of notice to voters whose voting place will be changed when the county board makes a change in precinct designations or voting place designations. S.L. 2001-353 amends the statute to add two new elements of notice. First, the county board is now required to mail a notice of a precinct change, at least thirty days before an election, to each registered voter who, as a result of the change, will be assigned to a different voting place. Second, in addition to posting a notice at the door of the courthouse, the county board is also required to post a notice at its own office.

Budget

State Appropriation

The 2001 budget act (S.L. 2001-424, S 1005) appropriates to the State Board \$3,186,269 for each year of the 2001–2003 biennium. The comparable figure for the 1999–2001 biennium was \$3,199,660.

Early Voting Funds

Section 14B of the budget act directs the State Board to make grants to certain counties that provided additional one-stop absentee voting sites in the 2000 general election at locales other than the county board office or courthouse. The grants are to come from funds previously appropriated but not granted to the State Board. The grants are to the following counties: Buncombe (\$15,000); Chatham (\$5,000); Durham (\$10,000); Edgecombe (\$5,000); Lenoir (\$10,000); Orange (\$5,000); Wake (\$10,000).

Robert P. Joyce