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Elections

This year the General Assembly made relatively minor adjustments to the elections laws: it appropriated additional money as state matching funds for greater-than-expected federal elections funding, lifted the freeze on precinct boundary changes, and revised a portion of the state's campaign finance reporting laws. It also created a commission to study the use of electronic voting machines and whether to require that they produce verifiable paper records.

Additional State Appropriations to Match Increased Federal Funds

The federal Help America Vote Act (HAVA), enacted by Congress in 2002, requires each state receiving federal funds under the act to establish a special account for that money and to appropriate to the account matching state funds equal to 5 percent of the federal amount. The General Assembly, in response, created the Election Fund in 2003 and appropriated \$1,922,215 to it to constitute the 5 percent match over the biennium. Of that amount approximately \$1.2 million would be used in the first year of the biennium to match an expected \$22.6 million in federal funding that year, and the remaining \$0.7 million would be reserved to match an expected \$14 million in federal funds the second year of the biennium. However, the federal HAVA funding for the first year of the biennium was in fact \$23.4 million (as opposed to \$22.6 million), and the estimate for the second year funds is \$42.0 million (as opposed to \$14 million). In response to this increase, the General Assembly appropriated in the budget act [S.L. 2004-124 (H 1414)] an additional \$1,521,918 to the state Election Fund.

Precinct Boundaries

Freeze Lifted

Under Subsection (e) of G.S. 163-132.3, county boards have, for several years, been prohibited from changing precinct boundary lines, except under specific situations. The freeze had been enacted to keep precinct boundaries set during the course of lawsuits challenging some of the electoral districts drawn by the legislature after the 2000 census. S.L. 2004-127 (H 119) amends G.S. 163-132.3 to end the freeze, effective August 15, 2004.

Rules for New Precinct Boundaries

For some time G.S. 163-132.3 has required that when county boards of elections change precinct boundary lines, they must set the new boundary lines to coincide with the boundary lines of U.S. census blocks. The purpose of this requirement is to facilitate the creation of electoral districts for federal, state, and county elections from whole census blocks without splitting precincts. With the freeze on new precinct boundaries lifted, S.L. 2004-127 revises the rules by which county boards of elections may change precinct boundaries. It amends G.S. 163-132.3(a), which has set out the limited circumstances under which precinct boundaries could be changed, to provide that a county board may change precinct boundary lines in the following three ways:

1. By dividing an existing precinct into one or more new precincts. The lines according to which the new precincts are divided must follow census block boundaries.
2. By combining one or more existing precincts into a single precinct. The resulting new precinct cannot be redivided for at least four years.
3. By moving a precinct boundary line that does not follow a census block boundary so that it does follow the boundary.

All proposed new precincts must consist solely of contiguous territory.

Names for New Precincts

S.L. 2004-127 adds new G.S. 163-132.3A, providing that no county board of elections may assign to any precinct a name that has been used after January 1, 1999, for a precinct containing different territory. An exception exists when the new precinct includes territory from an older precinct that has been redrawn to match the census blocks (see 3 above). All precinct name changes must be submitted to the Executive Director of the State Board of Elections for approval.

Administration of Elections

Confidentiality of Date of Birth

S.L. 2004-127 amends G.S. 163-82.10B to provide that, effective June 1, 2005, boards of elections are to keep confidential the date of birth of every registered voter and every applicant for voter registration. The provision does not apply to disclosing an individual's age—say, 55 years old—only to the date of birth. It also does not apply when a registered voter becomes an elective officeholder or a candidate for elective office or when a voter's registration is challenged under the challenge procedures in Chapter 163. The prohibition does not prevent the board of elections from giving precinct workers access to date-of-birth information where that access is necessary for election administration.

Prohibited disclosure cannot give rise to a civil cause of action—that is, become grounds for a lawsuit—unless it was the result of gross negligence, wanton conduct, or intentional wrongdoing.

A conforming change to G.S. 132-1.2 (a portion of the state's public records law) prohibits agencies other than county boards of elections from revealing an individual's date of birth if the only way the agency has obtained that information is from a voter registration document.

A further conforming change is made to G.S. 163-82.10. That statute directs county boards of elections to make lists of registered voters available to anyone who requests them and permits the boards to break the lists down by party affiliation, gender, race, voting districts, and other criteria. S.L. 2004-127 amends the statute to provide that these lists may not contain voters' dates of birth but may be broken down by voters' ages. Similarly, the free lists provided to political parties by county boards of elections under G.S. 163-82.10(c) are to include voters' ages, but not dates of birth, as are copies of the statewide computerized voter registration file provided to the parties by the State Board of Elections under G.S. 163-82.13.

Finally, a conforming change to G.S. 163-42.1 provides that the date of birth of a student election assistant must be kept confidential.

Acceptance of Scanned Documents

Two provisions of G.S. Chapter 163 permit boards of elections to accept facsimile transmissions of documents in the same way they would accept such documents by mail: G.S. 163-82.6 (voter registration applications) and -257 (military absentee voting). S.L. 2004-127 amends these two statutes to provide that elections boards may also accept transmission of scanned documents.

New Party Petitions

G.S. 163-96(b) sets out the wording that must be included in petitions for the creation of a new political party. The required wording has included this statement: "The signers of this petition intend to organize a new political party to participate in the next succeeding general election." S.L. 2004-127 deletes this statement from the required wording, leaving: "The undersigned registered voters in _____ County hereby petition for the formation of a new political party to be named _____."

Technical Changes

S.L. 2004-127 includes numerous technical changes to G.S. Chapter 163, such as the correction of erroneous cross-references from one statute to another. Among the technical changes are: (1) a clarification of the statistical base to be used in several cases in which petitions must be signed by a certain percentage of registered voters, (2) the correction of a reference in G.S. 163-1 that failed to take into account the changing of judicial elections to nonpartisan, and (3) the conformation of language to correct inexplicable differences in wording in different sections of G.S. 163-112(d), which deals with filling candidacy vacancies.

Campaign Finance Reporting

"Electioneering Communications"

Under North Carolina's statutes regulating campaign finance (Article 22A of G.S. Chapter 163), candidates and their political committees must report expenditures they themselves make in attempting to influence an election's outcome. Similarly, individuals and entities that are not candidates or political committees must report "independent expenditures" they make in support of or in opposition to clearly identified candidates but without consultation or coordination with those candidates. One particular statutory provision, G.S. 163-278.12A, has also required reporting when an individual, political committee, or other entity makes an expenditure for printed material or broadcast advertisements that merely name a candidate, regardless of whether it appears the expenditure was made to support or oppose the candidate. In 2000, however, G.S. 163-278.12A was found to be unconstitutional in two federal court cases, *North Carolina Right to Life Inc. v. Leake*, 108 F. Supp. 2d 498 (E.D.N.C.) and *Perry v. Bartlett*, 231 F.3d 155 (4th Cir.). Then, in *McConnell v. Federal Election Comm'n*, 540 U.S. 93 (2003), the United States Supreme Court found certain provisions of the federal Better Campaign Reporting Act (BCRA) constitutional. Having learned the lessons of these cases, the General Assembly enacted S.L. 2004-125 (H 737), repealing G.S. 163-278.12A and replacing it with new provisions patterned after those portions of BCRA found to be constitutional. The results are Article 22E ("Electioneering Communications") and Article 22F ("Mass Mailings and Telephone Banks: Electioneering Communications") of G.S. Chapter 163.

When reporting required. Together the new provisions require reporting of disbursements made by any individual or other entity for broadcast, cable, or satellite communication, mass mailings, or telephone banks if the communication refers to a clearly identified candidate for a statewide office or the General Assembly and if the communication is made in the sixty days before a general election in which that candidate is running for election or within thirty days of a primary election in which that candidate is running for nomination (or within thirty days of a nominating convention). The reporting requirement does not apply to the following:

1. Broadcast news stories, commentaries, or editorials (unless a political party, committee, or candidate owns the broadcast facility)
2. Bona fide candidate debates
3. Communications that are primarily advertisements advocating for or against specific legislation pending while the General Assembly is in session, urging the audience to communicate with members of the General Assembly
4. Communications that constitute "independent expenditures" under the regular campaign finance reporting statutes and thus trigger the regular reporting requirements

The reporting requirements apply only if the electioneering communications are sent to specifically large audiences. For broadcast and cable communications, the requirements apply only if the audience includes at least 50,000 people in elections for statewide offices and at least 7,500 in General Assembly races. The requirements apply only to mass mailings targeting 50,000 or more addressees in the state in a thirty-day period in elections for statewide offices and 5,000 or more for General Assembly offices. For telephone banks, the requirements apply only if 50,000 calls are made in a thirty-day period in elections for statewide offices and 5,000 calls are made in a thirty-day period in elections for the General Assembly.

What must be reported. The reports must disclose the identity of the individuals or other entities making disbursements, the individuals' or entities' places of business, the amount of each disbursement greater than \$1,000, the elections involved and the candidates named, and certain information about the source of funds for the disbursements.

Prohibitions on corporate and labor disbursements. No corporation, labor union, insurance company, or professional association may make any disbursement that would be required to be reported.

Penalties. Violations are a Class 2 misdemeanor, and the civil remedies available to the State Board of Elections under the regular campaign finance reporting statutes apply.

Campaign Contributors

A provision of the regular campaign finance reporting statutes, G.S. 163-278.8(c), has provided that candidates and their treasurers may not accept any contribution of more than \$100 from outside the state unless the contribution is accompanied by a written statement setting out the name and address of the contributor. S.L. 2004-125 repeals this statute but leaves in place the requirement in G.S. 163-278.14 that contributions over \$100 must be made by check, draft, money order, credit card charge, debit card, or another noncash method that can be subject to written verification.

Voter Paper Trail Study

S.L. 2004-161 (H 1152) establishes the Electronic Voting Systems Study Commission, composed of nine members: four appointed by the President Pro Tempore of the Senate (one of whom must be a county commissioner and one a citizen who does not hold office and who has been an active advocate of prohibiting the use of direct record voting equipment without voter-verifiable paper records), four appointed by the Speaker of the House (one of whom must be a member of the State Board of Elections, one a county election board member, and one a person with computer security expertise), and the Executive Director of the State Board of Elections. The commission is to study whether direct record electronic voting systems should be prohibited in North Carolina unless each unit of the system produces a voter-verifiable paper record suitable for a recount or a manual audit and equivalent or superior to the paper record produced by a paper ballot system.

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