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Elections

Two unexpected events in the 2004 elections brought elections law issues to the fore in the 2005 General Assembly. First, an electronic voting system in Carteret County failed to record the votes of more than 4,500 voters, leaving the outcome of the statewide Commissioner of Agriculture race in question and casting doubt on the credibility of the elections process. Second, a post-election ruling of the state supreme court regarding the use of provisional ballots blocked the certification of the results in the statewide Superintendent of Public Instruction race, resulting in a historic and unprecedented joint session of the General Assembly to decide the contested election.

The legislature responded with wide-ranging new laws regarding voting equipment and a new procedure for resolving contested legislative and council of state races. Other new legislation addresses voter registration, vote counting, and campaign finance regulation.

Overhaul of the Law on Voting Machines

For decades, North Carolina county boards of elections could choose between five types of voting systems: traditional hand-counted paper ballots, mechanical lever machines, punch-card ballot machines, optical-scan paper ballots counted by electronic tabulators, and direct-record electronic machines (commonly called “DREs” and usually requiring the voter to touch a video screen). In the aftermath of the well-known difficulties experienced in Florida in the 2000 elections, the General Assembly enacted legislation in 2001 and 2003 prohibiting the future use of punch-card and lever machines, reducing the North Carolina options to three.

The Carteret County problem mentioned above involved DREs used in an early-voting site in the early-voting period prior to election day. Before the election, employees of the DRE manufacturer told county elections officials that the system could handle up to 10,000 votes. The voting system, however, was incorrectly set up by a technician and as a result could handle only about 3,000 votes. Had it been set up correctly, as the DRE employees assumed, it would have had the capacity to handle the 10,000 votes. Failure to click one switch caused the system to run below its full capacity. During the early voting period, approximately 7,500 voters voted using the DREs. For the first 3,005 votes, the system worked properly and the votes were properly tabulated. Beginning with vote 3,006, however, the next 4,531 votes were not tabulated at all. The error was discovered on election night when the

written poll books and daily logs showed that 7,536 voters had voted, but the machine's vote tabulation totaled only 3,005.

Consequently, more than 4,500 votes went uncounted. There was no local race in Carteret County with a margin of fewer than 4,500 votes, so the missing votes could not have affected the outcome of any of those races. But the statewide race for Commissioner of Agriculture was within that margin. A contest of that election resulted. The State Board of Elections (SBE) first ordered a revote by the 4,500 voters whose votes were lost (these voters were identifiable because early voting is a form of absentee voting) plus any Carteret voters who had not voted in the election. That order was thrown out by the superior court. The SBE then ordered a statewide election, and that order was also thrown out by the superior court. The matter was resolved only when one candidate dropped his election contest and conceded.

In 2004, before the Carteret DRE problem occurred, the General Assembly established the Electronic Voting Systems Study Commission, charged with, among other tasks, considering whether DREs used in North Carolina elections should be required to produce a voter-verifiable paper record suitable for a recount or a manual audit. This committee started to meet in the fall of 2004 after the Carteret incident and made recommendations to the General Assembly as it convened early in 2005. Armed with the recommendations of that study commission and concerned about eroding public confidence in the administration of elections, the General Assembly enacted S.L. 2005-323 (S 223) on August 16, 2005, shortly before it adjourned, entitled (in part) An Act to Restore Public Confidence in the Election Process.

Uniform Oversight by the State Board of Elections

The SBE has long had the responsibility of certifying voting machines for use in North Carolina, and G.S. 163-165.7 has long provided that only machines so certified may be used. Traditionally counties have independently determined which voting machines to acquire, from among those certified, and dealt with vendors on a county-by-county basis. S.L. 2005-323 creates a more uniform system, placing new obligations on the SBE with respect to certification of voting machines and supervision of their use. Under the new system, the SBE will create standards voting machines must meet, set mandatory terms for contracting for the various machines (including terms relating to maintenance, support, and training), and negotiate a uniform statewide price. These requirements are found principally in amendments to G.S. 163-165.7 and in new G.S. 163-165.9A. The SBE will issue a Request for Proposal (RFP) to obtain uniform prices for the voting systems and to ensure that the standards and contract terms for the systems are attained. The SBE will select the voting systems submitted in response to the RFP that meet both the state standards and conditions set out in S.L. 2005-323 as well as the federal standards under the Help America Vote Act (HAVA). The uniform system will authorize only optical-scan machines and DREs.

New G.S. 163-165.7(c) requires that before certifying a new machine, the SBE must (1) review (or designate an expert to review) all source code made available by the machine's vendor and (2) assess the security of the machine. A report made after this review might contain trade secret information and, if so, that information is not subject to public disclosure under the public records law.

Automatic Certification of Hand-Counted Paper Ballots

Amended G.S. 163-165.7 provides that paper ballots marked by the voter and counted by hand are deemed a certified voting system. That is, any election may be conducted using hand-counted paper ballots. Counties should be aware, however, that voting systems using hand-counted paper ballots alone may have trouble meeting the federal accessibility requirements under HAVA. That statute requires there be at least one voting system in each precinct that allows full accessibility for visually impaired and other disabled voters to vote with "privacy and independence" [42 USCA § 15481(a)(3)(A) (2005)].

New Obligations of Vendors

As part of the uniform system, the SBE will impose four significant new requirements on vendors who wish to sell voting machines to North Carolina counties. First, the vendor must post a bond or letter of credit to cover damages resulting from any defects in the machines. Damages may include, among other things, the costs of conducting a new election held as a consequence of machine defects.

Second, the vendor must place in escrow (with an SBE-approved agent) all software relating to the function, setup, configuration, and operation of the voting machine, including a complete copy of the source code. The vendor's chief executive officer must sign a sworn affidavit that the source code and other material in escrow are the same as that being used in the vendor's voting machines in North Carolina. The vendor must notify the SBE of any changes in any escrowed item, of the decertification of the machine in any state, or of any defects known to have occurred with the machine anywhere or in similar machines. Material in escrow may be examined by designated SBE agents, the state Office of Information Technology Services, the state chairs of each political party, and the purchasing county.

Third, the vendor must maintain an office in North Carolina with staff to service the machines. Fourth, the vendor must agree that if it is granted a contract to provide software for a voting machine but fails to maintain or update the software as required, or if the vendor enters bankruptcy, the escrow agent will release the source code to the counties using the vendor's machines.

Willful violation of any of these requirements is a Class G felony, and substitution of source code without proper notification is a Class I felony. In addition the SBE may impose civil penalties of up to \$100,000.

Paper Record Requirements

In the Carteret County incident, the 4,500 votes that went unrecorded by the DRE were simply lost. S.L. 2005-323 requires that each voting machine (or connected group of machines) generate a paper record of each individual vote cast, a paper record that can be subsequently counted by hand. This requirement adds no new element in the case of optical-scan machines, because the electronic tabulator in these machines counts a paper ballot marked by the voter, and that ballot itself constitutes the newly required paper record. For DREs, however, the requirement adds a significant new component. No DREs ever certified for use in North Carolina have been able to produce the required paper record. In fact, no such paper record DREs have ever been used on a large scale anywhere in the nation.

The new statute requires that in an approved DRE system, (1) the voter must be able to see the paper record before casting the vote electronically, (2) the voter must be able to correct any discrepancy between the electronic vote and the paper record before the vote is cast, and (3) the machine must make it impossible for the voter to alter the paper record or remove it from the voting enclosure. G.S. 163-167.7(c), regarding the process of voting, is amended to conform to these requirements.

S.L. 2005-323 permits the SBE to conduct in 2006, in a maximum of nine counties, experiments using machines that provide a paper vote record along with an alternative method of recording votes cast. The experiment may be conducted in no more than two voting sites per county, and voters must have the option of voting on a nonexperimental machine. For all votes cast on the experimental machines, the county elections board must conduct a full hand-to-eye recount.

The new paper records will, by virtue of amended G.S. 163-165.1, have the same confidentiality as ballots themselves.

County Acquisition of New Machines

The new statute continues from prior law the obligation of the county board of elections to recommend to the county commissioners the particular type of election machines the commissioners should acquire. The commissioners may reject the elections board recommendation, but they may not acquire any other machine unless the elections board specifically recommends the alternative machine. Under old G.S. 163-165.9, the county elections board was responsible for obtaining financial

statements from the vendor. Under the statute as amended, that obligation is deleted, because the SBE will, as described above, supervise a uniform statewide system of certifying voting equipment, through the voting system RFP and certification process.

Given that counties will be choosing among voting machines from the uniform SBE-certified list at the RFP uniform statewide prices, G.S. 163-165.9 is amended to specify that Article 8 of G.S. Chapter 143, setting out bidding and other related requirements, does not apply to county acquisition of voting machines.

S.L. 2005-323 provides that each county is to receive a grant of up to \$12,000 per polling place and one-stop early voting site for election equipment, providing for two backup units per county. In addition, each county is to receive a grant equal to \$1 per voter in the 2004 Presidential election (but not more than \$100,000 or less than \$10,000) for central administrative software for vote tabulation. The money comes from HAVA grant funds currently in the state's Election Fund. The Election Fund was created in 2003 by G.S. 163-82.28 as the depository for all federal and state HAVA funds that may be used by the SBE to implement HAVA requirements.

S.L. 2005-323 also directs the SBE to develop a model code of ethics for members and employees of county boards of elections addressing the appropriate relations between these individuals and the vendors who sell voting machines.

Effective Date

The uniform system operated by the SBE, the SBE certification of machines, the obligations of vendors, and the paper record requirement for DREs all are effective for elections beginning with the primaries in early 2006.

Different Machines in One Precinct

A separate enactment of the General Assembly, S.L. 2005-428 (H 1115), authorizes the executive director of the SBE to permit counties to have more than one type of voting machine in a precinct if necessary to comply with law (most likely meaning, if necessary to provide adequate access for disabled voters).

Machine Counting of Out-of-Precinct Provisional Ballots

G.S. 163-132.5G requires county boards of elections to maintain voting data by precinct and to include in the precinct election vote totals absentee ballots for that precinct, including absentee ballots cast by mail and by one-stop early voting at other sites. S.L. 2005-323 amends the statute to provide that the data must also include provisional ballots cast at that precinct. It also amends G.S. 163-165.7 to require that all voting machines must be able to include in precinct returns provisional votes cast by voters outside of the voter's precinct.

Contested Legislative and Council of State Races

Provisional voting has been used in North Carolina for about a decade. Under provisional voting, an individual who believes that he or she should be on the voter rolls but is not, or who for some other reason appears ineligible, can vote a ballot that will be held separately and counted later only if the voter's eligibility can be subsequently established. For the 2004 elections, the SBE interpreted 2002 state and federal enactments to require that elections officials allow a registered voter of a county to vote a provisional ballot at any voting place in the county. That is, an eligible voter of a county was, in the 2004 elections, permitted to vote not only at his or her precinct of registration (where a regular ballot would be cast) but also at any other precinct in the county (where the voter would cast a provisional ballot). Such out-of-precinct provisional ballots would be counted for all the races in which the voter would have been eligible to vote if he or she had voted in his or home precinct.

In 2004, more than 11,000 voters statewide cast out-of-precinct provisional ballots.

In the Superintendent of Public Instruction race, the margin between the Democratic candidate (Atkinson) and the Republican candidate (Fletcher) was about 8,000 votes. Fletcher instituted a legal action, alleging that out-of-precinct provisional voting violated the North Carolina constitution. The courts stayed the certification of the election results until the matter could be resolved, so no one took office as Superintendent. In February 2005, the North Carolina Supreme Court ruled that there was no statutory authorization for out-of-precinct provisional ballots—that is, while it did not rule on Fletcher’s constitutional claim, it ruled that the SBE had improperly conducted the election.¹

Reaffirmation of Out-of-Precinct Provisional Voting

The General Assembly responded to the supreme court ruling with two pieces of legislation—one reasserting its intent to permit out-of-precinct provisional voting and another establishing a new procedure for resolving contested legislative and council of state races. The preamble of the first of these, S.L. 2005-2 (S 133), states that “The State Board of Elections and all county boards of elections were following the intent of the General Assembly when they administered [relevant portions of the elections laws] to count in whole or in part ballots cast by registered voters in the county who voted outside their resident precincts” in the 2004 elections. The act amended G.S. 163-55, 163-166.11, and 163-182.2 to clarify that out-of-precinct provisional voting was permitted. Further, it amended G.S. 163-82.15(e) to clarify that a voter who had moved from one precinct to another within a county more than thirty days before an election but had not reported the move to the county board of elections could vote a provisional ballot at the new precinct.

Section 7 of S.L. 2005-2 made the provisions of the act applicable to the 2004 elections, bringing the new statute into apparent conflict with the supreme court ruling.

New Procedures for Resolving Contested Council of State Elections

At issue before the North Carolina Supreme Court in the out-of-precinct provisional voting case was a little-known provision of the North Carolina state constitution, Article VI, Section 5, which provides that a contested election for a council of state office—such as Superintendent of Public Instruction—“shall be determined by joint ballot of both houses of the General Assembly in the manner prescribed by law.” To the surprise of most observers, it turned out that the legislation that had set out the “manner prescribed by law” under this constitutional provision had been repealed in 1971 and no subsequent legislation had replaced it.

In that circumstance, the supreme court held that the courts had jurisdiction over the contested Superintendent of Public Instruction race and remanded the case to the superior court for further proceedings consistent with the supreme court’s ruling that out-of-precinct provisional ballots should not have been permitted in 2004.

The General Assembly responded with S.L. 2005-3 (S 82), setting out a comprehensive scheme for resolving contested council of state elections, with the following characteristics, found in new G.S. 120-10.1 through G.S. 120-10.14, new G.S. 163-182.13A, and amended G.S. 163-182.14 and G.S. 163-182.15.

Beginning procedures. Under the new procedures, a candidate for a council of state office—Governor, Lt. Governor, Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Attorney General, Commissioner of Agriculture, Commissioner of Insurance, or Commissioner of Labor—who wishes to contest an election may appeal directly from the final decision of the SBE to the General Assembly. He or she first files a notice of intent to contest the election. The notice is filed with the clerk of the House of Representatives and may be based on either of two grounds: (1) that the opponent is ineligible or unqualified or (2) that there was an error in the conduct or results of the election. The opponent may, if he or she chooses, file an answer to the notice of intent. During a period of time specified in the statute, the parties may take depositions and prepare

1. James v. Bartlett, 359 N.C. 260, 607 S.E.2d 638 (2005).

for a proceedings before a special committee. If the contesting candidate wishes to continue with the contest, he or she may then file a petition and the opponent may file a reply.

Appointment and work of the special committee. The Speaker of the House and the President Pro Tempore of the Senate then each appoint five members of their chambers to the special committee, with no more than three being of the same political party. The committee is authorized to adopt rules, oversee fact investigation, conduct hearings, compel the testimony of witnesses, and, if proper, order the recounting of ballots. At the conclusion of its efforts, the committee reports its findings as to the law and the facts and makes recommendations to the General Assembly for its action.

Determination by the General Assembly. With the report of the special committee in hand, the two chambers of the General Assembly meet in joint session, with the Speaker of the House presiding. Each of the 170 members (120 representatives and 50 senators) has one vote. A majority of those 170 votes is needed for the General Assembly to order one of the candidates elected. If the issue is the eligibility or qualifications of the candidate who is the subject of the contest, the General Assembly determines whether that candidate is ineligible or unqualified. If he or she is found to be eligible and qualified, then the General Assembly orders a new election. If the issue is alleged error in the conduct or results of the election, the General Assembly determines which candidate received the most votes in the election. If it can make that determination, then that candidate is declared elected. If it cannot, then the General Assembly may order a new election or other appropriate relief.

Judicial proceedings stop; no review. Upon initiation of a contest in the General Assembly, any judicial proceedings regarding the election abate. The decision of the General Assembly is not reviewable in the courts.

Application of the New Procedures in 2005

S.L. 2005-3 provided that it applied to the 2004 elections, and, when candidate Atkinson filed a notice of intent to contest the Superintendent of Public Instruction race, the General Assembly invoked the new procedure.

First, it notified the courts that the procedure had begun in the General Assembly, so that the abatement provision could be applied. The speaker and the president pro tempore appointed members to the Joint Select Committee on Council of State Contested Elections. That committee adopted rules for its procedure, received briefs of the parties, conducted a hearing at which it took the testimony of witnesses and questioned counsel for the parties, and made its report to the full General Assembly.

On August 23, 2005, in an unprecedented proceeding, the House and Senate met in joint session and, after brief debate, voted. Because the issue was alleged error in the conduct of the election, the question on the ballot was which candidate received the most votes in the election. Members had the option of indicating that Atkinson received the most votes, that Fletcher received the most votes, or that it was not possible to determine who received the most votes.

Atkinson received a majority of the votes cast and was declared elected.

New Procedures for Resolving Contested Legislative Elections

S.L. 2005-3 applies the new contested elections procedures to contested races for seats in the General Assembly itself, in light of Article II, Section 20, of the state constitution, which provides that each house of the General Assembly—the House of Representatives and the Senate—“shall be judge of the qualifications and elections of its own members.” There are a few differences in the procedure when the contest concerns a legislative seat as opposed to a council of state office.

First, all filings are with the clerk of the relevant chamber (for council of state contests, all filings are with the clerk of the House).

Second, the committee that conducts the investigation is the Committee on Rules in the appropriate chamber, not a special committee. The rules of the House or Senate may, however, specify a different committee.

And third, the contest is determined by the chamber at issue: if the contest is for a House seat, the House of Representatives determines the winner; if the contest is for a Senate seat, the Senate determines the winner.

In other principal aspects, the procedures are the same.

New Requirements for Ballot Counting and Recounts

In the aftermath of the Carteret County lost-votes difficulty, the General Assembly, in S.L. 2005-428 and S.L. 2005-323, enacted a number of changes to the laws regarding ballot counting and the conduct of recounts.

Mandatory Sample Hand-to-Eye Counting

With optical-scan voting machines, the electronic tabulator counts the paper ballots and produces the vote total. It has always been possible to retrieve the paper ballots and have human beings count them, and on occasion this kind of recount has been done. This procedure is commonly referred to as a hand-to-eye count.

In the case of DREs, the machine counts the electronically cast votes and, in all elections past, there has been no paper record available for a hand-to-eye count. The machine-reported total was the only available count. As described above, however, beginning with the 2006 elections, all machines, including DREs, must produce a paper record of each individual vote cast. That paper record will then be available for a hand-to-eye count.

Hand-to-eye sample counting in every election. S.L. 2005-323 amends G.S. 163-182.1(b) and G.S. 163-182.2 to require, beginning in 2006 and for every election, a hand-to-eye count of a sample of the paper ballots tabulated by optical scan machines or of the paper records produced by DREs. If a particular election includes a Presidential contest, that contest must be included in the sample. If there are statewide races on the ballot, then one of those must be included. If there is no statewide race, then the SBE must provide a process for selecting district or local races to be sampled. The sample, chosen by the SBE, must include full precincts, full counts of absentee ballots, and full counts of one-stop early voting sites. The size of the sample must produce a statistically significant result and is to be selected in consultation with a statistician. The actual units must be chosen at random.

Controlling count. The county board of elections is, in the normal course, to rely on the machine count rather than the hand-to-eye count. That is, if the difference is not significant or material, then the machine count is to be the official total.

Complete hand-to-eye counts. If, however, the hand-to-eye count differs “significantly”—a term that is not defined in the statute—then a complete hand-to-eye count of all votes must be conducted. In the event of a “material discrepancy”—also not defined in the statute—between the machine count and the full hand-to-eye count, the hand-to-eye count is to control, except where paper ballots or paper records have been lost or destroyed or where there is another reasonable basis to conclude that the hand-to-eye count is not the true count. These terms and procedures are to be clarified by rules to be adopted by the SBE as authorized in G.S. 163-182.2 and G.S. 163-182.7.

Candidate Right to Hand-to-Eye Sample Recount

In addition to the new requirement for sample hand-to-eye counts as described above, S.L. 2005-323 also enacts new G.S. 163-182.7A giving candidates the right to demand a sample hand-to-eye *recount* after an election.

G.S. 163-182.7 has for years provided to a trailing candidate the right to demand a recount if the margin between that candidate and the leading candidate is less than 1 percent (or 0.5 percent in statewide races). New G.S. 163-182.7A provides that if the recount is a machine recount and does not reverse the results of the original count, the trailing candidate may demand a hand-to-eye recount of all ballots in 3 percent of the precincts (including one-stop early voting sites) in each county voting in the

race. (Or, if the machine recount does reverse the original count, then the candidate who originally led may demand the hand-to-eye recount.) The precincts in which the hand-to-eye recount is to be held must be chosen at random.

If the results of the hand-to-eye recount differ from the machine results in the affected precincts to the extent that, if the same pattern held through all precincts, the results of the election would be reversed, the SBE must order a hand-to-eye recount of all precincts in which the election occurred.

Count and Recount Pattern

Consider an election in which the optical scan tabulators or DREs operate flawlessly, with no indication of malfunction or miscount. As a consequence of the new requirements for sample hand-to-eye counts and candidates' rights to call for sample hand-to-eye recounts, described above, the pattern for elections, even where there is no indication of machine trouble, will be this:

1. Election with count by machine
2. Automatic sample hand-to-eye paper count
3. Automatic right of candidate in close race to demand machine recount
4. Automatic right of candidate in close race to demand sample hand-to-eye paper recount

Delayed Canvass in the General Election

To provide the time necessary for the hand-to-eye counting that will follow the machine counts, S.L. 2005-428 amends G.S. 163-182.5 to provide that the canvass will be moved from the seventh day to the tenth day after the election for the general election in even-numbered years. In all other elections, the canvass will remain on the seventh day after the election.

Lost Ballots

The Carteret County lost-votes incident created a problem for the SBE. Because the lost votes were cast at an early-voting one-stop site and because early voting is a form of absentee voting, it was possible to identify the particular individual voters whose votes were not counted. Yet the statute giving the SBE authority to remedy problems in elections appeared to limit the possible responses by the SBE, and a satisfactory response proved difficult to identify. The matter was resolved only when the trailing candidate withdrew his protest, thereby allowing the original results—which did not include the lost votes—to stand.

S.L. 2005-428 addresses this problem by amending G.S. 163-182.12 to provide that where a known group of voters cast votes that are lost beyond retrieval, the SBE may authorize a county board of elections to allow those voters to recast their ballots during a two-week period following the election. The SBE must approve the county board's procedures for contacting those voters and allowing them to vote.

Election Wins

G.S. 163-111 sets out the procedure for determining who is the victor in a primary election. But a 2001 revision of portions of the General Statutes had deleted the previous statutory specification that in the general election the candidate with the most votes wins. S.L. 2005-428 enacts new G.S. 163-182.15(d) specifying just that, correcting the deletion.

Eligibility to Register and Vote

The General Assembly amended a number of statutory provisions related to voter registration and eligibility to vote.

Cancellation of Other-County Registration

The application form for voter registration contains a special provision for a voter who is registered to vote in one North Carolina county but has moved and is now applying to register in another North Carolina county. That special provision authorizes the cancellation of the old registration. S.L. 2005-428 amends G.S. 163-82.9 to provide for the automatic cancellation even if the voter fails to complete the special provision.

Affirmation of Citizenship

The application form for voter registration also asks the applicant to answer the question “Are you a citizen of the United States of America?” G.S. 163-82.4 provides that an applicant who has failed to answer that question is to be notified and given the opportunity to answer. S.L. 2005-428 amends the statute to clarify that the voter may correct the omission at any time up to and including election day and then proceed to vote.

Voting by Previously Removed Voter

G.S. 163-82.14(d) sets up a procedure for county boards of elections to follow to remove from the voter lists individuals who have moved out of the county. S.L. 2005-428 amends the statute to provide that if a voter appears at the polling place to vote but has been removed under this provision, the voter must be reinstated and allowed to vote if the voter gives oral or written affirmation that he or she has not moved out of the county but has maintained residence continuously within the county.

Determination of Residency

Occasionally a question will arise as to the residency of an individual when that individual lives on property that is divided by the boundary line of a city, the boundary between two counties, or some other jurisdictional boundary. S.L. 2005-428 amends G.S. 163-57 to provide that in such an instance the location of the bedroom or usual sleeping area of that person determines the residence. This reflects the “bedroom rule” used by almost all states to determine voter residency in a home split by an electoral boundary. The amendments also provide that if the voter challenges the determination of his or her residency before the county board of elections, the presentation of an accurate and current representation of the residence and the boundary line by map or other means is to constitute prima facie evidence of the residence.

S.L. 2005-428 also enacts new G.S. 163-82.15A requiring the executive director of the SBE to direct county boards of elections to change the voter registration of a voter whose county of residence is changed when a county boundary line is altered. No action is to be required of the voter. But the affected voter may challenge the change in a hearing before the county board of elections if he or she so desires.

Access to Registration Records

G.S. 163-82.10 contains provisions specifying the circumstances under which county boards of elections are to provide information from the voter registration lists upon a request for such information. S.L. 2005-428 amends the statute to reflect the fact that all voter registration lists are now maintained electronically and to remove references to paper lists and exceptions for counties not maintaining lists electronically.

Conduct of Elections

The 2005 General Assembly enacted a number of statutory changes related to the conduct of the election itself.

Electronic Poll Books

S.L. 2005-428 amends G.S. 163-166.7 to permit the use of electronic registration records in the voting place in lieu of or in addition to a paper poll book or other registration record.

Voter with an Unreported Move and One-Stop Sites

S.L. 2005-428 amends G.S. 163-227.2 and G.S. 163-166.11 to provide that a voter who has moved within the county more than thirty days before election day but has not reported that move to the county board of elections may vote a regular ballot at a one-stop early voting site rather than a provisional ballot as long as the one-stop site has available all the information necessary to determine whether the voter is registered to vote in the county and which ballot the voter should receive.

Voter Assistance at One-Stop Sites

S.L. 2005-428 amends G.S. 163-227.2 and G.S. 163-226.3 to clarify that a voter voting at a one-stop absentee voting site may receive the same assistance in voting that is available at the polling place on election day.

One-Stop Ballot Counts

G.S. 163-234(2) has authorized county boards of elections to start counting absentee ballots at 5:00 p.m. on election day (or as early as 2:00 p.m. with the adoption of a proper resolution to that effect), but it has not permitted the electronic counting of one-stop absentee ballots before the close of the polls. S.L. 2005-159 (H 1102) amends the statute to remove that restriction and to permit the county board of elections to take preparatory steps for the count before 5:00 (or 2:00) p.m. as long as those steps do not reveal any results to any individual not engaged in the actual count. The statute specifies, by way of illustration, that a preparatory step could include the entry of tally cards from DREs into a computer for processing.

Observers and Runners

G.S. 163-45 permits the political parties to name individuals to serve as observers at the polls on behalf of the party. It also entitles the observers to receive on three occasions throughout election day lists of voters who have voted so far that day. S.L. 2005-428 makes two changes in this statute. First, it provides that the three lists may be provided to “runners” sent by the party chair to the polls rather than to observers. G.S. 163-166.3 is amended to permit the runner limited access to the voting enclosure. The party chair must notify the chair of the county board of elections of the identity of all runners. Second, the statute specifies that no candidate may serve as an observer or runner.

Candidate Filing Fees

Candidates pay filing fees when they file to run for office, and the fee is 1 percent of the salary of the office sought. S.L. 2005-428 amends G.S. 163-107 to clarify that the salary upon which the fee is to be based is the starting salary for that office, not the salary then being received by the incumbent, if different. If no starting salary can be determined, then the basis salary is the salary being paid to the incumbent as of January 1 of the election year.

Campaign Finance

The 2005 General Assembly made a few adjustments to several statutes regulating campaign finance.

Training for All Political Committee Treasurers

S.L. 2005-430 (H 1128) adds new G.S. 163-278.7(f) directing the SBE to provide training for every treasurer of a political committee prior to the election in which the committee is involved. The SBE must provide each treasurer with electronic materials and conduct regional seminars for in-person training free of charge to the treasurers. However, the treasurers are not required to take any training.

Audit of Contributions by Money Order

Campaign contributions in excess of \$100 may not, under G.S. 163-278.14, be made in cash, but must be made by check, draft, money order, credit card charge, debit, or other method subject to written verification. S.L. 2005-430 amends the statute to direct the SBE to prescribe methods to ensure an audit trail for contributions by money order so that the identity of the contributor can be determined.

Campaign Expenditures Other Than by Check

G.S. 163-278.8 has required that all campaign expenditures over \$50 and all campaign expenditures for media expenses regardless of amount must be made by check. S.L. 2005-430 amends the statute to provide that the payments may be made not only by check but by any verifiable form of payment by which the identity of the payee can be determined.

North Carolina Public Campaign Fund

In 2002 the General Assembly established the North Carolina Public Campaign Financing Fund in Article 22D of G.S. Chapter 163 to provide an optional method for candidates for the North Carolina Supreme Court and Court of Appeals to finance their campaigns. If a candidate agreed to certain limitations on contributions and expenditures, he or she would receive money from the fund for the campaign. The fund was first used in the 2004 elections. S.L. 2005-430 enacts the following modifications to the statutes: it clarifies which candidates are eligible to participate in the program, it clarifies the kinds of contributions and expenditures that can be made from moneys other than fund moneys, and it specifies when the mandated Judicial Voter Guide may be issued.

To help support the fund, the Current Operations and Capital Improvements Appropriations Act of 2005, S.L. 2005-276 (S 622), amends G.S. 84-34 to add a mandatory surcharge of \$50 to the annual state bar membership fee that active lawyers in the state must pay. Previously, the \$50 payment was optional. S.L. 2005-276 also changes the name of the fund from “Public Campaign Financing Fund” to “Public Campaign Fund.”

Duties of the Executive Director

G.S. 163-278.23 gives the executive director of the SBE certain responsibilities with respect to reports filed under the state’s chief campaign finance regulation statute (Article 22A of G.S. Chapter 163) and authorizes the executive director to issue written opinions upon which persons involved in campaign finance are entitled to rely. S.L. 2005-430 extends those duties and that authorization to other campaign finance statutory provisions, including those regulating the Political Parties Financing Fund, the Public Campaign Fund, and electioneering communications.

Electioneering Communications Expenditures

Statutes enacted by the General Assembly in 2004 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 for the General Assembly and if the communication is made within sixty days before a general election in which that candidate is running or within thirty days before a primary election in which that candidate is running for nomination (or within thirty days before a nominating convention). S.L. 2005-430

amends G.S. 163-278.81, 163-278.82, 163-278.91, and 163-278.92 to clarify that any disbursement for an electioneering communication of this sort must be made from a segregated account into which no funds from a prohibited source have been directly or indirectly introduced.

Corporate Contributions

In general, the campaign finance statutes prohibit contributions by corporations. S.L. 2005-430 amends G.S. 163-278.6(7) to conform that statute with others that clarify that the prohibition applies to corporations whether or not they are doing business in North Carolina.

Miscellaneous

Appointments to the State Board of Elections

Under G.S. 163-19, the Governor names five individuals to the SBE every four years, three of one party and two of the other. The statute has provided that the party chairs of each political party submit to the Governor a list of five nominees from which the Governor chooses. S.L. 2005-276 amends the statute to remove the requirement that the Governor choose from among those five nominees.

Terms of District Court Judges

G.S. 7A-140 has provided that terms of newly elected district court judges begin on the first Monday in December following their election. S.L. 2005-425 (H 650) amends that statute and G.S. 163-1 to provide that these terms begin on the first day of January following the election.

Participation in the Census Redistricting Data Program

G.S. 163-132.1 authorized the state of North Carolina to participate in the 2000 Census Redistricting Data Program and specified how census data was to be used in the creation of precinct boundaries for the principal purpose of avoiding splitting precincts in the creation of electoral districts. S.L. 2005-428 deletes the specifications and merely authorizes participation in the 2010 program.

Robert P. Joyce