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Elections

In 2007 the General Assembly was active in elections legislation. In its three most noteworthy acts, it permitted, for the first time in the state's history, potential voters to register and vote at the same time; it established a public financing program for candidates for three Council of State offices who choose to participate; and it enacted regulations on the legal defense funds of candidates.

Conduct of Elections

Registration and Voting at Same Time

To be eligible to vote in a North Carolina election, a voter must be registered. Traditionally, the registration books have closed twenty-five days before the election, so that a person who registered close to the election was not eligible to vote in that election, but had to wait until the next election to vote for the first time.

S.L. 2007-253 (H 91) works a major change to the registration requirement. It adds new G.S. 163-82.6A providing that a person who is qualified to register to vote may register and vote at the same time at "early voting" one-stop absentee voting sites in the county in the early voting period leading up to the election. Same-day registration and voting are not extended to the regular election day.

To register and vote on the same day at a one-stop absentee site, the person completes the regular voter registration form (which includes an attestation that the person meets all voter eligibility requirements, with falsification constituting a Class I felony), presents proof of residence, and casts a ballot. Residence may be proved with a North Carolina driver's license; a government-issued photo ID; a current utility bill; a bank statement, government check, paycheck, or other government document; or another document as designated by the State Board of Elections.

The ballot is a retrievable absentee ballot. Within the next two days, the county board of elections, in conjunction with the State Board of Elections, verifies the voter's driver's license number or Social Security number and updates the statewide voter registration database to include

the new voter. If the county board determines, as a result of this process, that the applicant is not qualified to vote, the ballot is retrieved and not counted.

Already-registered voters may also use this process at early voting sites to update and change registration information other than party affiliation.

An individual may submit the registration application on one day during the early voting period and return later within the early voting period to vote at that same one-stop site or another one-stop site in the county.

Voting Tabulation Districts and Precinct Boundaries

S.L. 2007-391 (H 1743) amends several sections of Article 12A (Precinct Boundaries) of G.S. Chapter 163, introducing the concept of the “voting tabulation district.” It directs the Executive Director of the State Board of Elections to report to the U.S. Bureau of the Census the state’s voting precincts (as they stand on January 1, 2008) as the state’s voting tabulation districts. From that time, the precinct boundaries as of January 1, 2008, remain the state’s voting tabulation districts even if precinct boundaries change, and county boards of elections have no power to change voting tabulation districts.

County boards are to report all election returns using voting tabulation districts. By sixty days after election day, the county boards must be able to report returns by voting tabulation district for all voting residents of the district, regardless of the voting tabulation district or precinct in which they actually cast their ballot.

County boards of elections may, with the approval of the executive director, change precinct boundaries, as long as they remain able to make the report of election returns by voting tabulation district.

Combination of Ballot Items

Some provisions of the general law and some provisions in local acts require that particular races or referendum questions be placed on separate ballots for voting. S.L. 2007-391 provides that, notwithstanding these provisions, ballot items may be combined on the same official ballots with the approval of the State Board of Elections.

Confidentiality of Ballots

G.S. 163-165.1 provides that voted ballots and paper records of individual voted ballots are confidential and are to be accessed only by elections officials performing their duties. S.L. 2007-391 amends the statute to (1) include electronic records of individual voted ballots as well as paper records and (2) make it a Class 1 misdemeanor to knowingly disclose an official voted ballot or record in violation of its confidentiality. A corresponding change is made in G.S. 163-274.

Confidentiality of Certain Voter Registration Information

G.S. 163-82.10(a) provides that dates of birth, full or partial Social Security numbers, and driver’s license numbers held in voter registration records are confidential. S.L. 2007-391 amends the statute to add that the identity of the public agency at which an individual registered is also confidential. The statute has provided that electronically captured images of signatures of voters are confidential. The act replaces that provision with a specification that signatures of voters, whether on paper or electronic, may be viewed by the public but may not be traced or copied, except by election officials. A copy made by election officials is not a public record.

Correction of Information on Voter Registration Forms

G.S. 163-82.4(e) has provided that an applicant for registration who fails to indicate on the voter registration application form that he or she is a citizen of the United States is to be given an opportunity to complete the form. S.L. 2007-391 amends the statute to provide that an applicant who fails to complete any required item on the application is to be given the opportunity to complete the form. If the applicant completes the form and is determined by election day to be eligible, he or she is to be permitted to vote. If the determination is made between election day and 5:00 p.m. on canvass day, the voter is to be permitted to vote a provisional ballot, and the ballot is to count for all races in which the voter is eligible.

Space for Write-Ins on Ballots

G.S. 163-165.5, in its instructions on ballot preparation, provides that a ballot must have space in which a voter may write in a name that does not appear on the ballot. S.L. 2007-391 amends the statute to clarify that this space is to be provided only in instances in which write-in votes are allowed.

Re-Voting in Certain Circumstances

G.S. 163-182.12 permits the State Board of Elections to authorize a county board of elections to allow recasting of ballots if there is a known group of voters whose cast votes were lost beyond retrieval. S.L. 2007-391 amends the statute to also permit recasting if a known group of voters was given an incorrect ballot. The statute has provided that when the recasting is authorized, it is to take place during a period of two weeks after the election. The amendment changes the period to two weeks after the canvass.

Buffer Zones at One-Stop Voting Sites

G.S. 163-166.4 specifies a space to be maintained between the entrance to a voting place and the area in which electioneering activities may take place, called the “buffer zone.” S.L. 2007-391 amends the statute to make clear that the same provisions apply with respect to one-stop absentee voting sites.

Political Activities by Election Board Employees

Article 4A of G.S. Chapter 163 provides that members of county boards of elections may not make statements intended for general distribution in support of or opposition to a candidate or referendum proposal nor solicit contributions for a candidate, political committee, or referendum committee. S.L. 2007-391 expands those provisions to employees of county boards as well as to the members. The act provides that violation is a ground for dismissal of an employee.

Eligibility of Voter When Identification Numbers Do Not Match

S.L. 2007-391 adds new G.S. 163-166.12(b2) providing that if an individual has provided with the voter registration form a driver’s license number or the last four digits of a Social Security number and the computer validation conducted under G.S. 163-82.12 does not result in a match, the person may still vote by providing identification of the type otherwise acceptable for voting by individuals who registered by mail, unless the board of elections determines that the person is otherwise ineligible to vote.

Observers and Runners at the Polls

Under G.S. 163-45, parties (and others in certain circumstances) may appoint observers to watch the proceedings at the polls and runners to collect lists of voters during election day. S.L. 2007-391 amends the statute to specify times for naming observers and runners.

Photography at the Polls

S.L. 2007-391 amends G.S. 163-166.3 to provide that no one may take still or moving pictures within the voting enclosure on election day or at a one-stop site, except with the permission of both the voter and the chief judge. The permission of the chief judge is not required if the voter is a candidate. The act provides also that no one may record the image of a voted ballot for any purpose not otherwise permitted by law.

County Maintenance of Voting Equipment

G.S. 163-165.9 specifies that county boards of elections must comply with all State Board of Elections requirements regarding support of their voting equipment. S.L. 2007-391 amends the statute to specify that counties must also comply with all specifications of the vendor for ballot printers and must maintain software license and maintenance agreements necessary to maintain warranties on the equipment. The act provides that counties may contract with noncertified ballot vendors as long as the vendor meets all specifications and all quality assurance requirements set by the State Board.

Voter Registration upon Restoration of Citizenship

Conviction of a felony deprives a person of the rights of citizenship, including the right to vote. After serving the sentence required by law, a felon's citizenship rights are restored. S.L. 2007-391 adds new G.S. 163-82.20A directing the State Board of Elections, the Department of Correction, and the Administrative Office of the Courts to develop and implement procedures by which a felon whose rights are restored may be educated about the right to register to vote and may register.

Absentee Voter Assistance Teams

S.L. 2007-391 amends G.S. 163-226.3(a)(4) to direct each county board of elections to train and authorize bipartisan teams composed of board members, board employees, and volunteers to assist voters with absentee ballots. The act provides that activities by team members are not violations of the statute's criminal provisions.

Voter List Maintenance Schedule

G.S. 163-82.14 requires a uniform program by which county boards of elections undertake steps to remove the names of ineligible voters from their registration lists. S.L. 2007-391 amends the statute to provide that county boards are to complete their list maintenance mailing program by April 15 of every odd-numbered year, unless the State Board of Elections approves a different date for the county.

One-Stop Voting Satellite Sites

G.S. 163-227.2(g) has provided that satellite one-stop absentee voting sites must be in buildings that a county board of elections could demand and use as a regular voting place. S.L. 2007-391 amends the statute to remove the prohibition on use of other sites and authorize the State Board of Elections to approve another site on a finding that alternatives are not available and

that the site will not unfairly advantage or disadvantage geographic, demographic, or partisan interests.

Candidacy

Felony Convictions Disclosures

S.L. 2007-369 (S 1218) adds new G.S. 163-106(a1) requiring all candidates for elective office to answer this question, to be found on a form provided by the State Board of Elections: “Have you ever been convicted of a felony?” A candidate who answers “Yes” must provide information regarding the conviction and information indicating that citizenship rights have been restored so that the candidate is in fact eligible for election. The form is a public record. Failure to answer the question results in cancellation of the candidacy. A false answer is a Class I felony. This requirement does not apply to candidates who are already required to file a statement of economic interest under the State Government Ethics Act in G.S. Chapter 138A.

Presidential Candidates on the Primary Ballot

G.S. 163-213.4 has provided that the State Board of Elections must place on the ballot in each party’s Presidential Preference Primary the names of all individuals associated with that party who have become eligible for matching payments under the federal Presidential campaign financing law. S.L. 2007-391 amends the statute to replace that provision with a completely new one. Under the new provision, the chair of each political party provides to the State Board of Elections, by the first Tuesday in February of presidential election years, a list of its candidates to be placed on the ballot. The list is to include all candidates whose candidacies are generally advocated and recognized in the news media throughout the United States or North Carolina. An individual may file with the chair an affidavit stating without qualification that he or she is not a candidate; that name is to be omitted. The list is to be published by the State Board of Elections, and those names are to go on the ballot.

Campaign Finance

Public Financing for Campaigns for Three Statewide Executive Offices

S.L. 2007-540 (H 1517) enacts the Voter-Owned Elections Act (Article 22J of G.S. Chapter 163), which applies to elections for State Auditor, Superintendent of Public Instruction, and Commissioner of Insurance. The act creates the North Carolina Voter-Owned Elections Fund (the “Fund”) and provides for public financing of campaign costs incurred by candidates who choose to participate.

Participation. An individual who wishes to become a candidate for one of these offices may choose whether to participate in public financing through the fund. To participate, the individual must not have raised or spent more than \$20,000 for campaign expenditures between August 1 in the year before the election and the filing of the notice of intent to participate. The individual must file a notice of intent to participate and obtain contributions from at least 750 registered North Carolina voters as a demonstration of support. Each contribution must be in an amount between \$10 and \$200. A candidate who wishes to participate but raised or spent more than \$20,000 before filing the notice of intent may pay the excess into the Fund and participate. A candidate may revoke his or her decision to participate within the time constraints set by the act.

Fundraising before the primary. From the filing of the notice of intent through the primary, a participating candidate may accept only qualifying contributions (that is, those between \$10 and \$200), contributions from North Carolina voters under \$10, in-kind party contributions, and

contributions from the candidate's parents, children, brothers, and sisters, of up to \$1,000 each. Total contributions in this period may not exceed 200 times the filing fee for the office.

Fundraising between the primary and the general election. After the primary, a participating candidate must cease all campaign-related fund-raising activities and may spend only funds provided from the Fund.

Amount to be distributed from the Fund. For the general election, a participating candidate receives an amount from the Fund that is the average amount of campaign-related expenditures made by all winning candidates for the office in the immediately preceding three general elections, with a minimum of \$300,000. No funds are distributed in an uncontested general election. One-third is to be distributed within five days after the candidate is certified to appear on the general election ballot and the remainder is to be distributed on August 1 before the general election.

Possibility of distribution of additional amounts. Nonparticipating candidates who have a participating opponent (and entities making independent expenditures) must report within twenty-four hours when their expenditures reach a certain level—80 percent of what is known as the “trigger for matching funds.” The amount of the “trigger” is different for a contested primary than for a contested general election. For a primary, the trigger equals the maximum qualifying contributions for a candidate—200 times the filing fee for the office. For a general election, the trigger is twice the regular amount to be distributed to a participating candidate. Once the nonparticipating candidate reaches 80 percent of the trigger, he or she must meet an expedited reporting schedule of contributions. When the trigger is reached, additional funds are made available to the participating candidate from the Fund. The matching funds equal the excess reported by the opponent over the trigger amount, up to certain limits.

Limitation on late contributions to nonparticipating candidate. A nonparticipating candidate with a participating opponent may not accept a contribution in the twenty-one days before a general election if that contribution would cause the candidate to exceed the trigger.

Other provisions. Participation is permitted for unaffiliated candidates and for new-party candidates. The State Board of Elections may assess civil penalties for violations of the act. The board is to prepare a voter guide to explain the functions of the offices involved and provide candidate information in races with participating candidates. The act appropriates \$1 million for 2007–08 and \$3,580,000 for 2008–09 from the General Fund to the State Board of Elections to implement the act.

Regulation of Candidate Legal Expense Funds

S.L. 2007-349 (H 1737) adds new Article 22M (Legal Expense Funds) to G.S. Chapter 163, effective January 2008. The new article regulates accounts established to assist a candidate or former candidate in pursuing or defending against a legal claim in a court or other forum. This regulation supplements a comprehensive set of statutory provisions regulating how money can go into and be spent from campaign finance accounts.

Formal establishment of fund. If a candidate receives contributions from anyone other than himself or herself or a spouse, parent, brother, or sister, to cover expenses of an existing legal action or to fund a potential legal action taken by or against the candidate, the candidate must establish a legal expense fund and appoint a treasurer, who must receive training from the State Board of Elections.

Reports regarding the fund. The treasurer must keep detailed accounts, current within seven days after making an expenditure or receiving a contribution, and file reports with the State Board of Elections. It is a Class I felony to make statements on the reports knowing them to be untrue. An organizational report is required, giving specific information on the fund, including account numbers. Quarterly reports are required to show, with respect to each contribution in excess of \$50 to the fund, the contributor's name, mailing address, and principal and the amount of the contribution. Quarterly reports must also show, with respect to expenditures, the name and address of the payee, amount paid, purpose of payment, and date payment was made.

Requirements regarding contributions. All contributions in excess of \$50 must be made by check, draft, money order, credit card charge, or other noncash payment subject to written verification. Each payment must contain a specific designation indicating to whom it is contributed. Contributions from a corporation, labor union, insurance company, professional association, or business entity are capped at \$4,000 per calendar year.

Limitations on use of funds. Money from the legal expense fund may be used only for reasonable expenses actually incurred by the candidate or former candidate in a legal action or prospective legal action brought by or against the candidate in relation to the candidate's campaign for public office or holding of public office. Money from the legal expense fund may not be used for campaign expenditures.

Matching (Formerly “Rescue”) Funds for Publicly Funded Judicial Campaigns

The North Carolina Public Campaign Financing Fund provides public funds to participating candidates for seats on the North Carolina Supreme Court and the Court of Appeals, in exchange for the agreement by those participating candidates to limit their fundraising and campaign spending in ways set out in the applicable statutes. The statutes specify the amount of funds that are to be available to participating candidates, and they provide for additional funds to be made available when funds are raised by a nonparticipating opponent through traditional fundraising, or when independent expenditures made in support of the opponent reach certain levels. These additional funds have been termed “rescue” funds.

S.L. 2007-510 (H 1828) amends G.S. 163-278.62, 163-278.66, 163-287.67, and 163-278.110 and several other sections of the campaign finance statutes to make two changes. First, it deletes the term “rescue” funds from the statutes and substitutes the term “matching” funds. Second, it provides that the trigger for matching funds includes not only expenditures beyond a certain level by the opposing candidate and independent expenditures made in support of the opponent, but also electioneering communications made in opposition to the participating candidate or in support of the opposing candidate. The term *electioneering communications* has the same meaning as in the campaign finance laws generally: a broadcast, cable, or satellite communication that refers to an identified candidate, is targeted at the relevant electorate, and is made within a certain number of days before the election. In this case, the time frame begins thirty days before absentee ballots become available for a primary and sixty days before absentee ballots become available for a general election.

The act provides that, in the case of electioneering communications, the State Board of Elections is to determine which candidate, if any, is entitled to matching funds, and matching funds are to be made available only if the communication is susceptible to no reasonable interpretation other than as an appeal to vote for or against a specific candidate. In making that determination, the State Board of Elections is to consider no evidence external to the communication itself.

Penalty for Intentionally Late Filings

G.S. 163-278.34(a) provides penalties for delinquency in filing required campaign finance reports. S.L. 2007-391 authorizes additional penalties if the State Board of Elections finds by clear and convincing evidence that the delinquency constitutes a willful attempt to conceal contributions or expenditures. The civil penalty may not exceed three times the amount of the concealed contributions or expenditures plus costs of investigation, assessment, and collection.

Identifying Purpose in Expenditure

The provisions of the campaign finance regulatory statutes apply differently to certain expenditures depending on whether or not the expenditures have as a major purpose “to support or oppose the nomination or election of one or more clearly defined candidates.” G.S. 163-278.6(14)

has provided that an entity is presumed to have such a purpose in its expenditures during an election cycle if it contributes or expends more than \$3,000 and that this presumption can be rebutted by a showing that the contributions and expenditures were not a major part of the activities of the organization. S.L. 2007-391 removes the presumption from the statute altogether.

Miscellaneous

Jury Lists

Under G.S. 163-82.11, the State Board of Elections periodically sends to the county jury commission of each county a list of all registered voters in the county, for use in preparing the lists of potential jurors. S.L. 2007-512 (H 943) amends the statute to provide that the list sent by the State Board of Elections is not to include any registered voter who has been inactive for eight years or more.

Felony to Help a Non-Citizen Register

S.L. 2007-391 amends G.S. 163-275 to make it a felony to instruct or coerce a person known not to be a citizen of the United States to register to vote or to vote.

New Misdemeanors in Connection with Voter Registration

G.S. 163-82.6 makes it a Class 2 misdemeanor for an individual (such as one on a voter registration drive) to fail to turn in a voter registration application after communicating to the person who fills it out that it will be turned in, or to sell a completed voter registration form or to condition its delivery on payment. S.L. 2007-391 amends the statute to add the following as Class 2 misdemeanors: (1) changing the information on another person's form before turning it in, (2) coercing a person into marking a party affiliation other than the one the person desires, and (3) offering to a person a form with the party registration premarked, unless the person requests so requests. The act makes a parallel change in G.S. 163-274.

Public Financing of Campaigns in Chapel Hill

S.L. 2007-222 (H 483), a local act applicable to the Town of Chapel Hill only, authorizes Chapel Hill to adopt a program that offers support for campaigns of candidates for elective office within the town, if the following conditions are met: (1) the candidates participating in the program must demonstrate public support and voluntarily accept fund-raising spending limitations as set out in the program; (2) the requirements of the program must meet the public purpose of free and fair elections and must not discriminate on the basis of race, creed, position on issues, incumbency, or party affiliation; (3) public funds are restricted to uses permitted by the State Board of Elections; and (4) unspent funds are returned to the town. The town may appropriate funds for candidate use consistent with the program. The act expires July 1, 2012.

Robert P. Joyce