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

2015-2016 General Assembly

Committee:		**Date:**	December 15, 2016
Introduced by:	Sens. Rucho, Rabon, Tucker	**Prepared by:**	Denise Adams Susan Barham Erika Churchill Brad Krehely Bill Patterson, Legislative Staff
Analysis of:	Second Edition		

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

BILL ANALYSIS: PART ONE

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

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

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

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

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

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

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

Membership of the Board:

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

Membership eligibility:

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

Meetings and voting:

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

Powers of chair:

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

Executive Director:

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

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

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

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

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

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

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

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

BILL ANALYSIS: PART TWO

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

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

BILL ANALYSIS: PART THREE

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

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

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

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

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

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

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

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

BILL ANALYSIS: PART FOUR

Section 22.(a)

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

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

Section 22.(b)

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

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

Section 22.(c)

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

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

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

Section 22.(d)

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

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

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

Section 22.(e)

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

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

Section 22.(f)

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

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

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

Section 23.(a)

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

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

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

BILL ANALYSIS: PART FIVE

Section 24

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

Section 24.(a) of the bill would provide that appointments to fill vacancies on the Industrial Commission would be for a term of six years plus the remainder of the unexpired term. If the chair's seat is vacant, the Governor is to designate a new chair for the remainder of the term, but nNo member serving less than one year on the Commission may be designated as chair.

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

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