



HOUSE BILL 913: Bipartisan Ethics and Elections Enforcement.

2017-2018 General Assembly

Committee:		Date:	August 7, 2018
Introduced by:		Prepared by:	Erika Churchill
Analysis of:	S.L. 2018-117		Staff Attorney

OVERVIEW: *S.L. 2018-117 proposes amendments to the North Carolina Constitution to make the following changes:*

- *Establish a bipartisan board of elections and ethics enforcement, consisting of eight members appointed by the General Assembly.*
- *Clarify the legislative powers to control the powers, duties, responsibilities, appointments, and terms of office of any board or commission prescribed by general law, and the powers of the Governor to faithfully execute those laws.*
- *Clarify that members of the General Assembly may not serve on Executive or Judicial Branch boards or commission that exercise non-advisory powers.*

The proposed constitutional amendments are placed on the ballot in the November 2018 general election.

CURRENT LAW:

Separation of Powers: The cases State ex rel. Wallace v. Bone, 304 N.C. 591, 286 S.E.2d 79 (1982), Advisory Opinion in Re Separation of Powers, 305 N.C. 767, 295 S.E.2d 589, (1982), McCrorry v. Berger, 368 N.C. 633, 781 S.E. 2d 248 (2016), and Cooper v. Berger, 370 N.C. 392, 809 S.E.2d 98, (2018), all decided by the North Carolina Supreme Court, stand for several principles:

- The General Assembly may not control the execution of laws by appointing legislators to serve on the executive agency board involved.
- The General Assembly may not delegate legislative functions to legislative committees when the exercise of the functions requires passing a law.
- Legislative appointments of non-legislators to executive agency boards can violate separation of powers by preventing the Governor from performing the Governor's constitutional duty to take care that the laws are faithfully executed.
- The legislature cannot structure an executive branch commission in such a manner that the Governor is unable to "take care that the laws be faithfully executed" where the Governor is required to appoint half the commission from a list of nominees who are probably not supportive of the Governor's policy preferences while having limited supervisory control over the agency and circumscribed removal authority over commission members.
- The General Assembly may continue to appoint persons to serve on executive boards and commissions exercising executive functions, because of the constitutional provision that the Governor's power to appoint applies "except as otherwise provided for."

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Elections and Ethics: In 2016, the General Assembly established the Bipartisan State Board of Elections and Ethics Enforcement (State Board) combining the functions of election laws and ethics under one executive branch board, and following litigation, again re-established the State Board in 2017. After subsequent litigation, the General Assembly again modified the structure of the State Board in 2018, and the board now consists of nine members, all appointed by the Governor, as follows:

- Four individuals registered with the political party with the highest number of registered affiliates in the State, from a list of six nominees submitted by the State party chair of that party.
- Four individuals registered with the political party with the second highest number of registered affiliates in the State, from a list of six nominees submitted by the State party chair of that party.
- One individual not registered with either the political party with the largest number of registered affiliates in the State or of the political party with the second-largest number of registered affiliates in the State, from a list of two nominees selected by the other eight members of the State Board.

BILL ANALYSIS:

Section 1 would amend the North Carolina Constitution to establish an eight member board to administer ethics and elections law, to be appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate and Speaker of the House of Representatives, if approved by the voters in November 2018. The President Pro Tempore and Speaker would each recommend four members from nominees provided to the President Pro Tempore and Speaker by the majority and minority leaders. The President Pro Tempore and Speaker would be limited to recommending no more than two nominees from each political caucus leader. *Effective March 1, 2019, if approved by a majority of the voters in November 2018.*

Sections 2 and 4 would amend Section 6 of Article I and subsections 4 and 8 of Section 5 of Article III of the North Carolina Constitution to make clear that the delegation of authority by the General Assembly, when it enacts a general law regarding a board or commission, does not interfere with the Governor's faithful execution of the law and that the delegation of authority by the General Assembly controls, if approved by the voters in November 2018. *Effective upon certification, if approved by a majority of the voters in November 2018.*

Section 3 would codify the Court's holding in Wallace v. Bone in the North Carolina Constitution to the effect that legislators may not serve on any board or commission that exercises executive or judicial authority, if approved by the voters in November 2018. *Effective upon certification, if approved by a majority of the voters in November 2018.*

Sections 5-7 direct that the proposed constitutional amendments be submitted to the voters of the State at the general election in November 2018. If a majority of the votes cast are in favor of the proposals, the act directs the Bipartisan State Board of Elections and Ethics Enforcement and the Secretary of State to certify and enroll the amendments.

EFFECTIVE DATE: If approved by the voters in the November 2018 election, the amendments to the North Carolina Constitution become effective as noted above.