



# SENATE BILL 486: The Elections Security and Transparency Act.

2017-2018 General Assembly

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<b>Committee:</b>		<b>Date:</b>	August 7, 2018
<b>Introduced by:</b>		<b>Prepared by:</b>	Erika Churchill
<b>Analysis of:</b>	S.L. 2018-13		Staff Attorney

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**OVERVIEW:** *S.L. 2018-13 makes the various changes to elections laws, including:*

- *Authorizes criminal record checks for certain employees and contractors of the State Board of Elections and Ethics Enforcement (State Board) and certain employees of county boards of elections.*
- *Requires additional information for voters related to judicial elections be included on the 2018 general election ballot.*
- *Authorizes the State Board to seek judicial review of temporary restraining orders and preliminary injunctions issued by the Office of Administrative Hearings.*
- *Requires county boards of elections to provide any requested information in the board's possession to the State Board.*
- *Authorizes the chair and vice-chair of the State Board to designate a staff member to act when the Executive Director has a conflict related to hiring or dismissal of a county director of elections.*
- *Prohibits a new party from selecting a candidate on a primary ballot in that year as their candidate for the general election ballot at the party convention.*
- *Clarifies the ballot order for judicial offices.*
- *Authorizes the State Board to establish a limit for bonds or letters of credit for defects in voting systems.*
- *Requires electronic poll books and ballot duplication systems to be either certified by or developed and maintained by the State Board, and requires vendors to meet certain statutory elements for certification by the State Board.*
- *Clarifies that certification of electronic poll books and voting systems by the State Board does not constitute a license under the Administrative Procedures Act.*
- *Authorizes the State Board to decertify and halt the use of electronic poll books.*
- *Forbids the connection of any voting system used in an election to a network.*
- *Creates a Class 2 misdemeanor for any person not an elections official or otherwise authorized by law to retain information from a voter registration form.*
- *Clarifies when a candidate must appoint a treasurer.*
- *Delays the decertification of direct record electronic voting systems until December 1, 2019.*
- *Authorizes a policeman, chief of police, or auxiliary policeman as offices that may be held concurrently with other elective offices.*
- *Reenacts all of the previously enjoined G.S. 163A-2, to provide effective language on the terms of office, eligibility requirements, prohibitions during service, and per diem, subsistence and travel expenses for the State Board.*

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*Except as otherwise noted, the act became effective June 20, 2018, and applies to elections held on or after that date.*

## **CURRENT LAW AND BILL ANALYSIS:**

### **PART I: CRIMINAL RECORD CHECKS FOR STATE BOARD OF ELECTIONS AND ETHICS ENFORCEMENT**

**Current Law:** The State Board of Elections and Ethics Enforcement (State Board) and county boards of elections (county boards) do not have authority to conduct fingerprint criminal background checks through the Department of Public Safety.

**Bill Analysis:** Requires fingerprint criminal history record checks as follows:

- All current and prospective employees by the State Board.
- All county directors of elections, employees of contractors, and anyone else engaged by the State Board with the capability to update, modify, or change elections systems, confidential elections, or ethics data.
- All current and prospective employees of the county boards with access to the statewide computerized voter registration system and any additional positions or functions designated by the State Board.

A criminal history record check is not required for a precinct official or assistant or employee assigned to one-stop early voting locations unless that individual is performing a function designated by the State Board as requiring a criminal history record check.

A fee may be charged for the checks. Information from the verified criminal history record checks may be just cause for not selecting a person for employment or for terminating employment. For county directors of elections, the Executive Director of the State Board may determine, based on the criminal history records check, that a letter of appointment for that county director should not be issued. This decision may be deferred by the State Board with 10 days of the Executive Director's decision, and the State Board may make a final decision and direct issuance of the letter of appointment. If an Executive Director is recused due a conflict in the county director appointment process, the chair and vice-chair of the State Board must designate a staff member to fulfill the duties.

**Effective Date:** This section becomes effective August 1, 2018.

### **PART II: JUDICIAL ELECTIONS BALLOT INFORMATION**

**Current Law:** For the 2018 election only, the General Assembly eliminated party primaries for candidates for Justice of the Supreme Court, and Judges of the Court of Appeals, superior courts, and districts courts. S.L. 2017 214.

**Bill Analysis:** Makes findings that additional time was needed to consider changes to judicial redistricting, resulting in changes to the 2018 process for election of judges. Further, the General Assembly found that additional ballot language was needed for the 2018 general election to clarify that the self-identification with a party by a candidate for judicial office was not an endorsement of that party.

Requires that the four judicial offices be grouped together at the end of the partisan races on the 2018 general election ballot, and that immediately prior to those races, language be added to the ballot explaining that no primary was held for those offices, and that the party affiliation or unaffiliated status next to each candidate's name only reflects the candidate's affiliation at the time of filing.

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**Effective Date:** This section became effective June 20, 2018, and applies to the 2018 general election. See [S.L. 2018-130](#) for further changes to this section.

## PART III: OTHER ELECTION CHANGES

- Section 3.1.
  - **Current Law:** The Administrative Procedures Act provides for judicial review of final agency decisions, but does not provide for judicial review of interlocutory orders, including temporary restraining orders and preliminary injunctions, entered before the final agency decision.
  - **Bill Analysis:** Authorizes the State Board to obtain judicial review of a temporary restraining order or preliminary injunction in the superior court of the county where the person aggrieved by the administration resides or, if the person resides outside the State, in the county where the contested case was filed.
- Section 3.2.
  - **Current Law:** The State Board is authorized to investigate the administration of election laws, frauds and irregularities in all elections and report violations to the appropriate judicial officer for further investigation and prosecution. County personnel records are confidential, except for certain information authorized as public record by statute.
  - **Bill Analysis:** Require county boards of elections to give to the State Board, upon request, any requested information, including internal investigations and personnel documentation. Disclosure of county employee personnel records otherwise held confidential is authorized when requested by the State Board. The county board is also required to make available any county board employee for interview and to produce any equipment, hardware, or software for inspection pursuant to the State Board's investigation of an election.
- Section 3.3.
  - **Current Law:** The Executive Director, following a petition from the county board of elections, is responsible for rendering a decision on the termination or retention of a county director of elections, subject to deferral by the State Board.
  - **Bill Analysis:** Requires the chair and vice chair of the State Board to designate a staff member to fulfill the Executive Director's duties if the Executive Director is recused due a conflict in the termination process for the county director of elections.
- Section 3.4.
  - **Current Law:** Individuals whose names have previously appeared on the ballot in a primary election preliminary to the general election are not permitted to be listed as an unaffiliated candidate or to submit a petition for recognition as a write-in candidate.
  - **Bill Analysis:** Prohibits new parties who select candidates by party convention for the general election from selecting as a candidates an individual whose name had appeared on the ballot in the primary election preliminary to the general election.
- Section 3.6.
  - **Current Law:** Ballot order of offices requires that offices in the same class be listed in alphabetical order by office name, or numerical or alphabetical order by district name, and specifies certain offices to be listed first, such as Governor and Lt. Governor before other Council of State races.

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- **Bill Analysis:** Requires that the Supreme Court be listed before the Court of Appeals, and that judicial offices and district attorney be listed, in that order, after other offices in the same class.
- Section 3.6A
  - **Current Law:** A requirement for certification of voting systems is that a vendor must post a bond or letter of credit to cover damages resulting from a defect in the voting system.
  - **Bill Analysis:** Requires the bond or letter of credit be maintained in the amount determined by the State Board as sufficient for the cost of a new statewide election or \$10 million dollars, whichever is greater.
- Section 3.7
  - **Current Law:** Only electronic poll books certified by the State Board are permitted for use in elections in the State.
  - **Bill Analysis:** Requires electronic poll books or ballot duplication systems be either certified by or developed or maintained by the State Board to be used in elections, and requires the State Board to include certain statutory elements in certification requirements for vendors, including a bonding requirement, access to certain information in escrow, uniform statewide pricing, and separate agreements with purchasing counties to turn over source code under certain conditions.
- Section 3.8
  - **Current Law:** For purposes of the Administrative Procedures Act, a license is defined as any certificate, permit or other evidence, by whatever name called, of a right or privilege to engage in any activity.
  - **Bill Analysis:**
    - Clarifies that certification of poll books or voting systems by the State Board does not constitute a license for purposes of the Administrative Procedures Act.
    - Authorizes the State Board to decertify or halt use of electronic poll books in North Carolina.
    - Prohibits connection of voting systems in elections to networks, including the Internet, fax, telephone line, modem, or other wired or wireless connections.
- Section 3.9
  - **Bill Analysis:** Creates a new Class 2 misdemeanor for anyone who is not an election official or otherwise authorized by law to retain a voter's signature, social security number, birth date, public agency where the registration was conducted, email address, or drivers license number after submitting a voter registration form to the county board of elections or elections official.
  - **Effective Date:** This section becomes December 1, 2018.
- Section 3.10
  - **Current Law:** G.S. 163A-1412(a) requires candidates, political committees, and referendum committees to appoint a treasurer.
  - **Bill Analysis:** Clarifies that a candidate must appoint a treasurer if that candidate has received funds, made payments, or consented to anyone else receiving funds or transferring anything of value for the purpose of bringing about that individual's nomination or election for office.

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- Section 3.11
  - **Current Law:** Direct record electronic voting systems (DREs) that do not use paper ballots must be decertified and cannot be used in elections after September 1, 2019 for counties that used DREs on Election Day as of January 1, 2015, and January 1, 2018, for all other counties.
  - **Bill Analysis:** Changes the date after which DREs cannot be used in elections in all counties to December 1, 2019.

## PART IV. DUAL OFFICE HOLDING CHANGES

**Current Law:** An individual cannot hold concurrently any two offices in this State that are filled by election of the people. An individual cannot hold concurrently any two or more appointive offices or places of trust or profit, or any combination of elective and appointive offices or places of trust or profit, except as provides by general law. Sec. 9 of Article VI of the NC Constitution. By statute, the General Assembly provided the offices of policeman, policeman and chief of police, and auxiliary policeman police are offices that may be held concurrently with any other appointive office. G.S. 160A-284.

**Bill Analysis:** Allows the office of policeman, chief of police, or auxiliary policeman to also be held concurrently with any other elective office, provided the elective office is not in the municipality employing the law enforcement officer.

**Effective Date:** This section became effective June 20, 2018, and any policeman or chief of police taking the oath of office to any elective office prior to that date is be deemed to have not resigned the position as a law enforcement officer due to taking the oath for the elective office.

## PART V. TECHNICAL CHANGES TO G.S. 163A-2

**Current Law:** G.S. 163A-2 was enjoined as part of the legal challenge to S.L. 2017-6 (Cooper v. Berger, 370 N.C. 392 (2018)). That statute specifies the membership of the State Board of Elections and Ethics Enforcement (State Board). The General Assembly modified portions of that statute related to the composition and appointing authority, vacancies, removal, and initial meetings in S.L. 2018-2. These changes are current law but have not yet been engrossed in the General Statutes in the printed volumes or online.

**Bill Analysis:** Makes minor technical changes to the following subsections previously enjoined to provide current effective law on those topics:

- Subsection (c) – Previously the statute read:  
"Members shall serve for two year terms, beginning May 1 of the odd numbered year."  
The statute would now read:  
"Beginning on May 1 of the odd-numbered year, members shall serve for two year terms."
- Subsection (i) – Previously, the introductory language of the subsection read:  
"No person shall be eligible to serve as a member of the State Board who:"  
The statute would now read:  
"No person shall be eligible to serve as a member of the State Board who meets any of the following criteria:"
- Subsection (j) – Previously, the introductory language of the subsection read:  
"No person while serving on the State Board shall:"

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The statute would now read:

"No person while serving on the State Board shall do any of the following:"

- Subsection (k) – Previously the statute read:

"Members of the State Board shall"

The statute would now read:

"State Board members shall"

## **PART VI: SEVERABILITY CAUSE**

Makes all sections and provisions of the act severable if any portion of the act is declared unconstitutional or invalid by the courts.

**EFFECTIVE DATE:** Except as otherwise noted, the act became effective June 20, 2018, and applies to elections held on or after that date.

*Jessica Sammons and Kara McCraw substantially contributed to this summary.*