



HOUSE BILL 1169: Bipartisan Elections Act of 2020.

2019-2020 General Assembly

Committee:		Date:	October 27, 2020
Introduced by:		Prepared by:	Jessica Sammons*
Analysis of:	S.L. 2020-17		Staff Attorney

OVERVIEW: *Session Law 2020-17 does the following:*

- *For the 2020 general election, allows for one witness for the casting of absentee ballots and provide for voter assistance by individuals working as part of multipartisan teams. For all remaining elections in 2020, provides flexibility in the filling of positions for precinct officials and allow for completed absentee request forms to be e-mailed or faxed to county boards of elections.*
- *Requires the Department of Health and Human Services (DHHS) and the State Board of Elections (State Board) to develop guidelines on how to safely allow multipartisan teams to assist registered voters within a congregate living situation during the 2020 elections.*
- *Requires applications for absentee ballots to have a bar code allowing the county board of elections and the voter to track a voted ballot following its return to the county board.*
- *Provides an additional two weeks for county boards of elections to approve applications for absentee ballots.*
- *Clarifies that voters can call the State Board or a county board of elections and request a blank absentee ballot request form be sent to the voter by mail, e-mail, or fax.*
- *Provides that the State Board or its Executive Director cannot deliver absentee ballots to a voter who did not submit a valid request form or order an election using all mail-in absentee ballots.*
- *Requires the State Board to create an online portal for voters to submit online requests for absentee ballots by September 1, 2020.*
- *Creates a Class I felony for any member serving on or employed by the State Board or a county board of elections to knowingly send or deliver an unrequested absentee ballot.*
- *Allows for special identification cards for nonoperators issued by the Division of Motor Vehicles (DMV) to be renewed online.*
- *Allows for government-issued public assistance cards to be accepted for photo identification for voting identification.*
- *Appropriates funds to the State Board to respond to COVID-19.*

Except as otherwise provided, this act became effective on June 12, 2020.

Jeffrey Hudson
Director



Legislative Analysis
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CURRENT LAW & BILL ANALYSIS:

Section 1(a): G.S. 163-231 requires voters voting by absentee ballot to mark the ballot in the presence of two qualified witnesses. The two witnesses must sign and indicate their address on the absentee application and certificate.

For the 2020 general election only, Section 1(a) allows for mail-in absentee ballots to be marked in the presence of one qualified witness. That witness is required to sign and print his or her name and address on the absentee application and certificate. The State Board can prepare applications for the container-return envelope in accordance with the requirement for only one witness.

Section 1(b): Each county board of elections must appoint one person to act as chief judge and two other persons to act as judges of election for each precinct in that county. In its discretion, each county board is authorized to appoint two or more assistants for each precinct to aid the chief judge and judges. G.S. 163-141(c) requires that, when making appointments for chief judge and judge for each precinct, residents of the precinct must be appointed to at least two of the three positions. G.S. 163-42(b) requires that, in making appointments for precinct assistants, residents of the precinct must be appointed to a majority of the positions.

For all remaining elections in 2020, Section 1(b) requires only one of the three positions of chief judge and judge of a precinct to be a resident of the precinct, and only one of the precinct assistants to be a resident of the precinct. All other positions can be filled by nonresidents of the precinct who meet all other qualifications.

Section 1(c): For the 2020 general election only, Section 1(c) allows any individual working as part of a multipartisan team trained and authorized by a county board of elections team to assist any voter in completing a request form for mail-in absentee ballots or in delivering the completed request form to the county board, and can serve as a witness for the casting of absentee ballots.

Section 2(a): G.S. 163-230.2 requires that a completed written request for mail-in absentee ballots must be returned to the county board of elections by only the voter, the voter's near relative or verifiable legal guardian, or a member of a multipartisan team trained and authorized by the county board, or via the United States Postal Service or other designated delivery service.

For any election held in 2020, including June second primary elections, Section 2(a) allows for completed written request for absentee ballots to be returned to the county board by hand-delivery, mail, e-mail, or fax by the voter, the voter's near relative or verifiable legal guardian, or a member of a multipartisan team.

Section 2(b): Require DHSS and the State Board to develop guidance on how to safely allow multipartisan teams to assist registered voters within a hospital, clinic, nursing home, assisted living, or other congregate living situations in the 2020 elections during the COVID-19 pandemic. DHHS and the State Board must jointly submit a report to the Joint Legislative Oversight Committee on General Government, the Joint Legislative Elections Oversight Committee, and the Governor on the details by August 1, 2020.

Section 2.5: Adds a definition of "multipartisan team" to G.S. 163-226.3, effective when the act became law and applying to appointments made on or after that date. The new statutory definition requires at least two registered voters in the county of different political parties as members of the multipartisan team, and that to be a representative of one of those parties, the team member must be a recommendee of a member of the county board of elections also representing that party.

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Section 3: Requires the State Board to include on each container-return envelope for mail-in absentee ballots a bar code or other unique identifier allowing the voted ballot to be tracked upon return by the voter by both the county board of elections and the voter, effective for all elections held on or after September 1, 2020.

Section 4: G.S. 163-230.1(f) requires a county board of elections to hold one or more public meetings each Tuesday at 5:00 p.m. for the purpose of acting on applications for absentee ballots, beginning on the third Tuesday before the election. At these meetings, the county board must determine whether the container-return envelope has been properly executed. If so, the county board must approve the application and allow for the envelope to be opened and the ballot to be counted at the designated time.

The section changes the time period for these public meetings to be held to begin on the fifth Tuesday before the election, giving an additional two weeks for the county board to approve or disapprove the applications for absentee ballots.

Section 4.5: Requires precinct officials, on election night, to include the number of provisional ballots cast in that precinct in the totals provided to the county board of elections and requires the county board of elections to provide a county wide total number of provisional ballots for that county by 5:00 PM on the day after the election.

Section 5: G.S. 163-230.2 requires the written request forms for mail-in absentee ballots to be available to voters at the State Board, each county board of elections, and online.

Section 5 clarifies that the request form available online and in offices is a blank request form, and allows for a voter to call either the State Board or a county board and request that the blank request form be sent to the voter by mail, e-mail, or fax.

Section 6: Provides that the State Board, or its Executive Director, has no authority to deliver mail-in absentee ballots to any eligible voter who did not submit a valid request form or to order an all mail-in absentee ballot election.

Section 7: Requires the State Board to establish, by September 1, 2020, a secure online portal for qualified voters to submit the request for mail-in absentee ballots. This online portal is required to comply with the following:

- Require the voter or the voter's near relative or verifiable legal guardian to provide all information that is required for a valid written request for absentee ballots.
- Require the voter or the voter's near relative or verifiable legal guardian to submit an electronic signature.
- Be able to track the IP address of anyone who access the online portal.

The State Board is not required to comply with initial purchase and contract requirements for establishing this online portal. This exemption expires December 31, 2020.

The State Board is required to report to the Joint Legislative Elections Oversight Committee no later than February 1, 2021, regarding the usage of the new on-line portal for absentee requests during the 2020 general election.

Section 8: G.S. 163-237 contains various felony criminal offenses regarding absentee ballot law.

- The following violations are Class I felonies:
 - Selling or attempting to sell, or purchasing or agreeing to purchase, a completed written request, a completed application for absentee ballots, or voted absentee ballots.

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- Compensating another, or accepting compensation, based on the number of returned written requests for absentee ballots.
- The following violations are Class G felonies:
 - Attempting to vote by fraudulently signing the name of a qualified voter.
 - Intentionally failing to deliver or intentionally destroying a completed written request, completed application for absentee ballots, or voted absentee ballots.
 - Copying or otherwise retaining a request for absentee ballots, a completed application for absentee ballots, or any identifying information disclosed in a request or application, by any person other than the voter or near relative or verifiable legal guardian of that voter.
 - Stealing, releasing, or possessing the official register of mail-in requests for absentee ballots prior to the opening of the polls on election day, for any purpose other than the conduct of business at the county board.

Section 8 creates a new Class I felony for any member serving on the State Board or on any county board of elections, or an employee of the State Board or any county board, to knowingly send or deliver an absentee ballot to any person who has not validly requested an absentee ballot, effective July 1, 2020.

Section 9: Individuals can obtain a special identification card for nonoperators from the DMV which requires the same documentation of identity and residence as a NC drivers license. A special identification card expires at the same time a drivers license issued to the individual expires, and can be renewed by the card holder at the DMV. The fee for a special identification card is waived for applicants who are at least 17 years old.

A special identification card issued by the DMV that contains a photograph of the voter and that is valid and unexpired is an acceptable form of photo identification for voting identification. (*See Background.*)

Section 9 requires the DMV to offer online renewal for special identification cards on the DMV's Web site.

Section 10: G.S. 163-166.16 contains a list of acceptable forms of photo identification for voting identification. (*See Background.*)

- Any of the following that contains a photograph of the voter and is valid and unexpired, or has been expired for one year or less:
 - NC drivers license.
 - NC special identification card or other form of non-temporary ID issued by the DMV.
 - U.S. passport.
 - NC voter photo identification card.
 - Tribal enrollment card issued by a state or federal recognized tribe.
 - Student identification card issued by a constituent institution of The University of North Carolina, a community college, or eligible private postsecondary institutions, if approved by the State Board.
 - Employee identification card issued by a state or local government entity, including a charter school, if approved by the State Board.

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- Drivers license or special identification card issued by another state, D.C., or a territory or commonwealth of the US, only if the voter's voter registration was within 90 days of the election.
- Any of the following that contain a photograph of the voter, regardless of whether the card contains an expiration or issuance date:
 - U.S. military identification card.
 - Veterans Identification Card issued by the U.S. Department of Veterans Affairs for use at Veterans Administration medical facilities.
- For voters over the age of 65, any of the identification cards above that bear a date of expiration that was not expired on the day that the voter reached the age of 65.

Generally, if a voter fails to present appropriate photographic identification prior to voting, that voter is permitted to vote a provisional ballot, and provide the photographic identification prior to canvass for that ballot to be counted. Three exceptions were established, each allowing the voter to vote a provisional ballot after completing the appropriate affidavit under penalty of perjury: (i) religious objection; (ii) reasonable impediment; and (iii) natural disaster.

Voters voting mail-in absentee ballots are required to submit photo identification, or an affidavit for the lack thereof, with the returned application and voted ballot.

Section 10 adds to the list of acceptable photo identifications for voting an identification card issued by a department, agency, or entity of the federal government or NC for a government program of public assistance, whether or not the identification contains a printed expiration or issuance date.

Section 10.5: Requires each county board of elections to include the number of undervotes and overvotes for each item on the ballot when reporting election returns to the precinct of the voter within 30 days after the election, as required by G.S. 163-132.5G. Additionally, the county board chair of a county who fails to provide such returns within 30 days after the election is required to appear before the State Board and explain the delay.

Section 11.1: Transfers \$2.1 million from the Department of Commerce to the State Board and appropriates federal Coronavirus Aid, Relief, and Economic Security (CARES) Act funds and the required State match to the State Board for the 2020-2021 fiscal year. Of the funds appropriated, \$424,000 must be used by the State Board for establishing an online portal for absentee ballot requests, and the rest must be allocated to counties according to the counties' designation as established by the NC Department of Commerce's 2020 County Tier Designations. Funds are required to be used to address the coronavirus pandemic, including the following:

- Providing for increased postage costs for mail-in absentee ballots sent out by the county boards.
- Ensuring an adequate number of poll workers through advertising or public awareness campaigns or offering incentive compensation or other pay increases.
- Recruiting members and promoting the use of bipartisan assistance teams.

Section 11.2: Transfers \$2.3 million from the Department of Commerce to the State Board and appropriates federal Help America Vote Act (HAVA) funds and the required State match to the State Board for the 2020-2021 fiscal year. The State Board is required to reimburse counties for eligible HAVA expenses, up to \$250,000 and no less than \$10,000 in reimbursements. The State Board is also able to use a portion of these funds for various updates and improvements. The State Board must report on expenditures to the chairs of the Joint Legislative Elections Oversight Committee and the Joint Legislative

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Oversight Committee on General Government by August 15, 2020, and provide a follow up of additional expenditures by December 1, 2020.

Section 11.3: Requires the following:

- Counties must coordinate with local political parties to enhance or maintain the partisan balance of election day workers.
- The State Board must purchase and distribute personal protective equipment to counties.
- The State Board must provide counties with lists of example eligible expenses under HAVA and the CARES Act.
- The State Board must submit a report to the Joint Legislative Elections Oversight Committee, the Joint Legislative Oversight Committee on General Government, and the Fiscal Research Division no later than February 1, 2021, on the use of the funds appropriated in Sections 11.1 through 11.3.

Sections 11A.1 and 11A.2: Clarify that the State Budget Act is incorporated by reference, and that any 2019 Regular Session appropriation remains in effect unless expressly altered by the bill.

EFFECTIVE DATE: Except as otherwise provided, this act became effective on June 12, 2020.

BACKGROUND: On December 31, 2019, in *NAACP v. Cooper*, the federal district court issued a preliminary injunction, restraining the State Board from implementing any voter identification requirements for the March 3 primary election. On February 18, 2020, in *Holmes v. Moore*, a three-judge panel of the North Carolina Court of Appeals issued a preliminary injunction, temporarily blocking North Carolina's voter identification law from taking effect.

**Erika Churchill, Staff Attorney, substantially contributed to this summary.*