



SENATE BILL 683: Combat Absentee Ballot Fraud.

2019-2020 General Assembly

Committee:		Date:	January 7, 2020
Introduced by:		Prepared by:	Jessica Sammons & Erika Churchill, Staff Attorneys
Analysis of:	S.L. 2019-239		

OVERVIEW: *S.L. 2019-239 does all of the following:*

- *Requires that a request for mail-in absentee ballots be completed entirely by the requestor, indicate the date of the election for the request, and be returned to the county board of elections by the requestor. Voters may receive assistance from a multipartisan team or some other person in certain instances. This section became effective January 1, 2020, and applies to elections conducted on or after that date.*
- *Requires a voter voting mail-in absentee to submit photo identification, or an affidavit for the lack thereof, with the returned application and voted ballot. This section became effective January 1, 2020, and applies to elections conducted on or after that date.*
- *Provides that the list of voters requesting a mail-in absentee ballot is confidential until the opening of the polls on election day. This section became effective January 1, 2020, and applies to elections conducted on or after that date.*
- *Enhances the penalties for certain violations of the law regarding absentee ballots, and creates new crimes for selling completed request forms or voted ballots, receiving payment based on a number of returned requests, intentionally failing to deliver requests or ballots, or copying or retaining identifying information from a request or application. This section became effective December 1, 2019, and applies to offenses committed on or after that date.*
- *Restores the last Saturday of early voting, and modifies times for early voting. This section became effective January 1, 2020, and applies to elections conducted on or after that date.*
- *Allows the State Board of Elections to authorize a county to continue to use DRE voting systems in the 2020 elections under certain conditions. This section became effective November 6, 2019 and expires August 1, 2020.*
- *Allows a county board of elections to test proposed voting systems during a simulated election prior to approval by the board of county commissioners. This section became effective November 6, 2019.*
- *Makes appropriations for the budget of the State Board of Elections for the fiscal biennium ending June 30, 2021.*
- *Requires the State Board of Elections to report on post-election audits. This section became effective November 6, 2019.*

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Legislative Analysis
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919-733-2578

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Part I – Mail-In Absentee Ballots

CURRENT LAW: Any qualified voter of the State may vote by absentee ballot in a statewide primary, general, or special election and any qualified voter of a county is authorized to vote by absentee ballot in any primary or election conducted by the county board of elections. Absentee balloting may take one of three forms:

1. Mail-in absentee ballots.
2. Early "one-stop" voting.
3. Uniform and Overseas voting.

For those voters properly requesting an absentee application and ballots for mail-in absentee, applications and ballots are mailed or issued no earlier than 60 days prior to the statewide general election in an even-numbered year, or 50 days in any other election.

Request Form for Absentee Ballot – A request for an absentee application and ballots must be via a form generated by the State Board of Elections, signed by the voter or the voter's near relative or verifiable legal guardian, and delivered to the county board of elections. The State Board must make this form available online, at the State Board offices, and at the county board offices, and the form may be reproduced. The request form requires the following information:

- 1) Voter's name and residential address.
- 2) Near relative or legal guardian's name and address (if requestor).
- 3) Voter's address for mailing of ballot (if different from residential address).
- 4) Acceptable form of readable identification similar to those required for voting in-person, or an alternative affidavit for a religious objection, reasonable impediment, or natural disaster, beginning in 2020. Until then, the NC drivers license number, NC special operators license number, or last four of the social security number.
- 5) Voter's date of birth.
- 6) Signature of the voter, or near relative or legal guardian (if requestor).

The completed request forms must be received by the county board no later than 5:00 P.M. on the Tuesday before the election.

The county board must confirm the voter's registration prior to issuing the voter an absentee application and ballots. If confirmed as a registered voter, the county board mails (or personally delivers for certain sick or disabled voters) an application and absentee ballots to the voter. If not confirmed, the voter will be notified. A completed request form is deemed a request to update the voter's voter registration, subject to confirmation in writing by the county board.

Voting an Absentee Ballot – Upon receiving the completed request form, the county board must mail to the voter a single package that includes the official ballots, a container-return envelope, and an instruction sheet. The application must be completed and signed by the voter personally, the ballots marked and sealed in the container-return envelope, and the certificate completed. The voter must complete the absentee ballot in the presence of two voters who are at least 18 years of age and not a candidate or employee of certain adult care homes, or in front of a notary public. Both individuals must sign the absentee application and certificate as witnesses and indicate their addresses. If a near relative or legal guardian assisted the voter, that individual's name and address must also be listed. In 2020 and thereafter, if the voter did not provide a copy of the appropriate identification, or affidavit for lack thereof with the request form, the voter is to include the copy of the appropriate identification or affidavit with the container-return envelope.

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County boards must retain all applications made for absentee ballots for one year, and make those applications available to inspection by the State Board or to any person upon the directive of the State Board. After one year, the applications may be destroyed.

Register of Absentee Requests, Applications, and Ballots – The State Board must approve an official register for recording absentee requests, applications, and ballots issued. This register may be kept by electronic data processing equipment, provided a copy is printed out each day. This register is a public record and must be opened to the inspection of any registered voter. In the register, the county boards must record the following information:

- 1) Voter's name, and the near relative or legal guardian's name and address (if requestor).
- 2) Number of assigned voter's application.
- 3) Voter's precinct.
- 4) Voter's address for mailing of ballot.
- 5) Date request for application for absentee ballot is received by the county board.
- 6) Voter's party affiliation.
- 7) Date ballots were mailed or delivered to voter.
- 8) Any additional information and official action that is required.

Violations of Absentee Ballot Law – The following violations of absentee ballot law are Class 2 misdemeanors:

- Willfully making a false affidavit or statement under oath.
- Willfully signing any printed or written false statement, if the statement was not under oath or duly sworn, for the purpose of obtaining and voting any official ballot.
- Acting as a witness for an absentee ballot in any primary or election in which the person is a candidate for nomination or election, unless the voter is the candidate's near relative.
- Attempting to aid and abet fraud in connection with any absentee vote cast or to be cast.

In addition, attempting to vote by fraudulently signing the name of a qualified voter is a Class I felony.

BILL ANALYSIS:

Request for Absentee Ballot – This act requires the following for requests for applications and absentee ballots:

- The request form must be made using a form created by the State Board, and include all required information, including either the number of the applicant's driver license or special identification card for nonoperators or the last four digits of the applicant's social security number.
- The request form must be fully completed and signed by the voter, or the voter's near relative or verifiable legal guardian, and returned to the county board by only the voter, or the voter's near relative or verifiable legal guardian, or through the United States Postal Service or a designated delivery service.
- A member of a bipartisan team trained and authorized by the county board may assist in completing the form and returning the form to the county board. A voter may also receive

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assistance completing the form from some other person, provided there is no near relative or legal guardian available to assist the voter, and the person giving assistance discloses his or her name and address on the request form.

- The request form must contain a clear indicator of the date the election generating the request is to be held, unless the voter is completing an annual calendar year request due to sickness or physical disability that is expected to last the remainder of the calendar year.

This act also provides that the State Board must issue absentee applications and ballots to any voter who submits a valid request for absentee ballots prior to January 1, 2020 for elections held in 2019 and 2020.

Voting an Absentee Ballot – This act requires a voter to include one of the following with the returned application and voted ballot:

- 1) An acceptable form of photo identification. Acceptable forms of photo identification are those accepted for voting a ballot in person on election day as provided in G.S. 163-166.16(a).
- 2) An alternative affidavit. This affidavit must include inability to attach a physical copy of the voter's photo identification as a reasonable impediment to compliance with the photo identification requirement. Any reasonable impediment affidavit must include either the number of the applicant's driver license or special identification card for nonoperators or the last four digits of the applicant's social security number.

This act also prohibits the State Board from displaying the voter's party affiliation on the outside of the container-return envelope.

Register of Absentee Requests, Applications, and Ballots – This act requires the county boards to continue to maintain a log of all mail-in and early "one-stop" voter requests. For the mail-in requests, the log remains confidential until the opening of the polls on election day, except that the State Board or a county board must inform any voter of the status of his or her request upon inquiry of the voter, or the voter's near relative or verifiable legal guardian. Any copies of photo identification associated with requests for absentee ballots are not a public record.

This act also provides that a list of applications received, updated daily from the date the county board begins to mail applications and ballots through the date of canvass, by the county board is a public record.

Violations of Absentee Ballot Law – This act makes the following changes to criminal offenses regarding absentee ballot law, effective December 1, 2019:

- Increases all current Class 2 misdemeanors to Class 1 misdemeanors.
- Increase attempting to vote by fraudulently signing the name of a qualified voter to a Class G felony.
- Creates new Class I felonies for the following:
 - 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.
 - Compensating another, or accepting compensation, based on the number of returned written requests for absentee ballots.
- Creates new Class G felonies for the following:
 - Intentionally failing to deliver or intentionally destroying a completed written request, completed application for absentee ballots, or voted absentee ballots.

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- 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.
- Creates a new Class F felony for any person committing, attempting to commit, or conspiring to commit, with the intent to unlawfully influence or interfere with a primary or election, or to otherwise unlawfully gain, any of the following crimes:
 - G.S. 163-82.6(b) – crimes related to mishandling of voter registration forms
 - G.S. 163-226.3(a) – felonies related to absentee voting
 - G.S. 163-274 – certain misdemeanors related to voting in any election
 - G.S. 163-275 – certain felonies related to voting in any election
 - G.S. 163-237 – any of the crimes related to absentee ballots

Part II – Restore Last Saturday of Early One-Stop Voting

CURRENT LAW: Senate Bill 325, 2018 Regular Session, made the following changes with respect to early one-stop sites and hours:

- Early voting begins no earlier than the third Wednesday before an election, and ends no later than 7:00 p.m. on the last Friday before the election.
- Each one-stop voting site across the county must be open at that same location throughout the early voting period.
- Each day that the voting sites are open, the sites must be open uniformly throughout the county.
- Establish hours for one-stop voting sites to be open as follows:
 - Monday through Friday – 7:00 a.m. until 7:00 p.m.
 - Saturday and Sunday – County board of elections are able to set hours for early voting on these days. If a county board of elections opens a one-stop voting site on Saturdays or Sundays during the early voting period, then all sites would be required to open for the same hours uniformly throughout the county on Saturdays or Sundays, respectively.

BILL ANALYSIS: This act makes the following changes with respect to the hours for early one-stop voting:

- Requires early one-stop voting sites to be open no earlier than the third Thursday before an election through 3:00 P.M. on the last Saturday before the election.
- Requires counties to open early one-stop voting sites from 8:00 A.M. until 3:00 P.M. on the last Saturday before the election.
- Requires all early one-stop voting sites to be open from 8:00 A.M. until 7:30 P.M. each weekday.

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Additionally, in adopting a Plan for Implementation for a county for one or more early one-stop voting sites in that county, the State Board is required to take into consideration whether the Plan disproportionately favors any party, racial or ethnic group, or candidate.

Part III – Use of DRE Voting Systems in 2020

CURRENT LAW: Effective December 1, 2019, G.S. 163-165.7(a) requires that only voting systems that have been certified by the State Board that meet certain standards and have not been subsequently decertified may be used in elections. One of the required standards is that the voting system, including direct record electronic voting systems, must generate a paper ballot which provides a backup means of counting the vote that the voter casts. G.S. 163-165(1) defines a ballot as "an instrument on which a voter indicates that voter's choice for a ballot item so that it may be recorded as a vote for or against a certain candidate or referendum proposal, and is evidenced by an individual paper document that bears marks made by the voter by hand or through electronic means, whether preprinted or printed in the voting enclosure." DRE voting systems must generate a paper ballot viewable by the voter before the vote is cast electronically, and permit the voter to correct any discrepancy between the electronic vote and the paper ballot before the vote is cast to be certified.

G.S. 163-165.4C prohibits the use of a voting system that does not use or produce a ballot in any referendum, primary, or other election as a means of voting or counting an official ballot.

S.L. 2013-381, Sec. 30.8 and 30.9, as amended by Section 6 of S.L. 2015-103 and Section 3.11 of S.L. 2018-13, provides that any DRE voting systems certified by the State Board which do not use paper ballots be decertified and not used in any election held on or after December 1, 2019.

BILL ANALYSIS: Effective November 6, 2019 through August 1, 2020, this act authorizes the State Board to allow a county board of elections to use a DRE voting system in any election prior to July 1, 2020, provided the State Board determines all of the following conditions are satisfied:

- 1) The county board submits a request to use a DRE voting system in an election or elections prior to July 1, 2020, providing documentation that replacement of the voting system prior to July 1, 2020 would create an undue hardship for the county.
- 2) The county board provides sufficient information for the State Board to conclude that the use of the DRE voting system will not jeopardize the security of the election or elections.
- 3) The county board has begun the process for replacing the DRE voting system and provides documentation to the State Board regarding the time line for that process.

Part IV – Testing of New Voting Equipment

CURRENT LAW: Before a board of county commissioners can approve the adoption and acquisition of any voting system, the county board of elections must first test the proposed voting system during an election in at least one precinct in the county where the voting system would be used if adopted.

BILL ANALYSIS: Effective November 6, 2019, this act allows a county board of elections to either test the proposed voting system during an election or during a simulated election, provided that simulated election meets standards established by the State Board of Elections.

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Part V – Appropriations for the State Board of Elections

BILL ANALYSIS: Effective July 1, 2019, this act makes appropriations for the budget of the State Board of Elections for the fiscal biennium ending June 30, 2021.

Part VI – Report on Post-Election Audits

BILL ANALYSIS: Effective November 6, 2019, this act requires the State Board of Elections to prepare a report after conducting a post-election audit, and submit the report to the Joint Legislative Elections Oversight Committee and the Joint Legislative Oversight Committee on General Government within 10 business days of the completion date.

EFFECTIVE DATE: Except as otherwise noted, this act became effective January 1, 2020, and applies to elections conducted on or after that date.