



HOUSE BILL 770: Access to Voted Ballots.

2023-2024 General Assembly

Committee:	House Election Law and Campaign Finance Reform. If favorable, re-refer to Rules, Calendar, and Operations of the House	Date:	September 12, 2023
Introduced by:	Reps. Davis, Cleveland, Mills, Warren	Prepared by:	Erika Churchill, Jessica Sammons, Hillary Woodard, and William Brewer, Staff Attorneys
Analysis of:	First Edition		

OVERVIEW: *House Bill 770 would do all of the following:*

- *Authorize access to voted ballots and cast vote records when a public records request is filed, and require voting systems to accommodate access.*
- *Expand the definition of voting enclosure to include a vehicle compartment when the voter is engaged in curbside voting.*

CURRENT LAW AND BILL ANALYSIS:

Access to Voted Ballots:

Generally, voted ballots and paper and electronic records associated with the voted ballots are confidential, with only election officials performing their duties having access. Others may have access to voted ballots and paper or electronic records of individual voted ballots pursuant to an order of the court or pursuant to an order of a board of elections as part of the resolution of an election protest or an investigation of an alleged election irregularity or violation. If the voted ballots and paper and electronic records of individual voted ballots are disclosed, the documents must not include any information regarding how a particular voter voted unless a court order provides otherwise. It is a Class 1 misdemeanor for any person who has access to those documents to disclose how an individual voted. G.S. 163-165.1.

Each county board of elections is to maintain voting data by voting precinct. In reporting returns, the county board of elections is not to compromise the secrecy of an individual's ballot. G.S. 163-132.5G.

House Bill 770 would require voted ballots and paper and electronic records associated with those individual voted ballots to be disclosed pursuant to a public records request for all cast vote records or voted ballots captured in a tabulation or voting machine, precinct, ward, district, city, or county. Elections officials would be required to redact any information that would identify a voter before releasing the documents. However, the bill does not address how the secrecy of an individual's ballot would be maintained if the cast vote record showed only one, or a very small number, of voters in a particular election contest for a particular precinct.

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House Bill 770

Page 2

Voting Systems:

G.S. 163-165.7(a) requires that only voting systems that have been certified by the State Board of Elections (State Board) that meet certain standards and have not been subsequently decertified may be used in elections. One of the required standards is that electronic voting systems must generate a paper ballot which provides a backup means of counting the vote that the voter casts. Direct record electronic (DRE) voting systems must also generate a paper ballot that is 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(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."

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.

House Bill 770 would do the following with respect to voting systems, to allow for a cast vote record to be created:

- Require voting systems to support the casting of a ballot that records each vote as marked by the voter. The voting systems would be required to create de-identified "cast vote records" that could be tabulated, audited, and publicly disclosed. A "cast vote record" would be defined as a de-identified electronic record of each voter's ballot selections. The cast vote records would be electronically retained on a ballot tabulation machine, which could be used to count election results for each ballot entry on that machine.
- Require the county boards of elections to notify the State Board of its intent to replace any voting system, or a portion of any voting system. The county boards of elections would be required to ensure that all tabulators and electronic voting systems create and retain cast vote records for the duration specified for election-related records.

Voting Enclosure to Include Vehicle Compartment:

A "voting enclosure" is defined as the room within the voting place, including the building or area of the building containing the voting enclosure, that is used for voting.

If a voter is able to travel to the voting place, but because of age or physical disability and physical barriers encountered at the voting place is unable to enter the voting enclosure to vote in person without physical assistance, that voter is allowed to vote either in the vehicle conveying that voter or in the immediate proximity of the voting place.

During the time allowed for voting in the voting place, access to the "voting enclosure" is limited to election officials; poll observers; runners, but only to the extent necessary to announce that runner's presence and to receive the voter list; a person seeking to vote in that voting place on that day, but only while in the process of voting or seeking to vote; a voter in that precinct while entering or explaining a challenge; a person assisting a voter, but only while assisting that voter; minor children of a voter or in the care of a voter, but only while accompanying the voter and while under the control of the voter; persons conducting or participating in a simulated election within the voting place or voting enclosure if that simulated election is approved by the county board of elections; and persons determined by election

House Bill 770

Page 3

officials to have an urgent need to enter the voting enclosure, but only to the extent necessary to address that need.

While in the voting enclosure, photographs, videotapes and other records of the image of any voter within the voting enclosure are prohibited, except with the permission of both the voter and the chief judge of the precinct.

House Bill 770 would expand the definition of voting enclosure to include a vehicle compartment containing one or more voters when the voters are engaged in curbside voting. It is unclear as to whether election officials, poll observers, and others allowed in the voting enclosure would be authorized to enter the private vehicle containing one or more voters. It is also unclear how the expansion of the definition of voting enclosure would impact the authorization for curbside voting, the requirements for buffer zones outside voting places, or the arrangement of the voting place in compliance with statute.

EFFECTIVE DATE: Effective when it becomes law and applies to voting systems used on or after that date. Early one-stop voting for 2023 municipal elections began August 24, 2023, for those cities with a September municipal election.