



# SENATE BILL 749: No Partisan Advantage in Elections.

2023-2024 General Assembly

<b>Committee:</b>	Senate Rules and Operations of the Senate	<b>Date:</b>	June 20, 2023
<b>Introduced by:</b>	Sens. Daniel, P. Newton, Hise	<b>Prepared by:</b>	Erika Churchill Staff Attorney
<b>Analysis of:</b>	Second Edition		

**OVERVIEW:** *Senate Bill 749 would do the following:*

- *Increase the number of members of the State Board of Elections from 5 to 8, with all 8 members being appointed by the General Assembly.*
- *Decrease the number of members of each of the 100 county boards of elections from 5 to 4, with all 4 members being appointed by the General Assembly.*
- *Administratively transfer the State Board of Elections to the Secretary of State's Office; however, the Secretary of State would not direct or supervise management functions of the State Board of Elections.*
- *Require that the emergency powers with respect to the conduct of elections be exercised by the State Board of Elections.*
- *Provide that each county director of elections is appointed by the board of county commissioners in that county.*

**CURRENT LAW:** The State Board of Elections (State Board) is an independent agency of the Executive Branch that administers elections, oversees campaign finance laws, and provides guidance, advice, and training to the county boards of elections.

The manner of appointment to the State Board, the terms of office, and the filling of vacancies is set by statute. Since 1901 the State Board has consisted of five members appointed by the Governor, with no more than three of the five members being from the same political party. Since 1985, the Governor has appointed State Board members from a list of nominees submitted by the State party chair of each of the two political parties having the highest number of registered affiliates as reflected by the latest registration statistics published by the State Board. Each party chair submits a list of four nominees who are affiliated with that political party.

The four-year terms of office for the State Board begin on May 1. The current term began in 2023, and members will serve until their successors are appointed and qualified. No person may serve more than two consecutive four-year terms. Vacancies are filled by the Governor for the unexpired term, from a list of three nominees submitted by the State party chair of the political party that nominated the vacating member. From its membership, the State Board elects one of its members chair and another secretary.

No person shall be eligible to serve as a member of the State Board who:

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Division  
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# Senate Bill 749

Page 2

- Holds any elective or appointive office under the government of the United States, the State of North Carolina, or any political subdivision thereof.
- Is a candidate for nomination or election to any office.
- Holds any office in a political party or organization.
- Is a campaign manager or treasurer of any candidate in a primary or election.
- Is currently an employee of the State, a community college, or a local school administrative unit.
- Within the 48 months prior to appointment, has held any of the following positions with an organization that has engaged in electioneering in those 48 months:
  - Director, officer, or governing board member.
  - Employee.
  - Lobbyist registered under Chapter 120C of the General Statutes.
  - Independent contractor.
  - Legal counsel of record.

While serving on the State Board, no member can do any of the following:

- Make a reportable contribution to a candidate for a public office over which the State Board would have jurisdiction or authority.
- Register as a lobbyist in this State.
- Make written or oral statements intended for general distribution or dissemination to the public at large supporting or opposing the nomination or election of one or more clearly identified candidates for public office.
- Make written or oral statements intended for general distribution or dissemination to the public at large supporting or opposing the passage of one or more clearly identified referendum or ballot issue proposals.
- Solicit contributions for a candidate, political committee, or referendum committee.
- Serve as a member of any other non-advisory State board.

County boards of elections (county boards) conduct local elections, operate voting sites, maintain voter registration lists, receive and audit local campaign finance reports, and complete other election administration duties. County boards consist of five registered voters of each county and are appointed for two-year terms. Four members of the county boards are appointed by the State Board; two of the four members appointed by the State Board must belong to each of the two political parties having the highest number of registered affiliates. One member of the county board is appointed by the Governor. The State chair of the two political parties having the highest number of registered affiliates as reflected by the latest registration statistics published by the State Board has the right to recommend to the State Board three registered voters in each county for appointment to the board of elections for that county. If the recommendations are received by the State Board 15 or more days before the last Tuesday in June of the odd numbered year, the State Board must appoint the county boards from the recommended names.

No one is eligible to serve as a member of a county board who meets any of the following criteria:

- Holds any elective office under the government of the United States, or of the State of North Carolina or any political subdivision thereof.
- Holds any office in a state, congressional district, county or precinct political party or organization. The position of delegate to a political party convention shall not be considered an office for this purpose.
- Is a campaign manager or treasurer of any candidate or political party in a primary or election.
- Is a candidate for nomination or election.

# Senate Bill 749

Page 3

- Is the wife, husband, son, son-in-law, daughter, daughter-in-law, mother, mother-in-law, father, father-in-law, sister, sister-in-law, brother, brother-in-law, aunt, uncle, niece, or nephew of any candidate for nomination or election. This provision applies only if the county board of elections is conducting the election for which the relative is a candidate.

The Executive Director of the State Board of Elections is appointed by the State Board for a two-year term. The county directors of election are appointed by the county boards of elections; however the Executive Director, and potentially the State Board, plays a role in terminating a county director.

The Executive Director is charged with exercising emergency powers to conduct an election in a district when the normal schedule for the election is disrupted by natural disaster, extremely inclement weather, or armed conflict.

## **BILL ANALYSIS and EFFECTIVE DATE:** The bill would:

- Effective July 1, 2024, administratively transfer the State Board to the Secretary of State, with all management functions remaining with the State Board. For this purpose, management functions are planning, organizing, staffing, directing, coordinating, reporting, and budgeting.
- Effective immediately, increase the size of the State Board to eight members, with all members being appointed by the General Assembly. Two members each would be appointed upon recommendation of the President Pro Tem, the Speaker, the minority leader of the Senate, and the minority leader of the House. Vacancies would be filled by act of the General Assembly. The State Board would select a chair within 30 days of organizing, and if a chair is not selected, the General Assembly would make the appointment.
- Effective June 1, 2024, decrease the size of the county boards of election from five to four members, with all members being appointed by the General Assembly. One member each would be appointed upon recommendation of the President Pro Tem, the Speaker, the minority leader of the Senate, and the minority leader of the House. Vacancies would be filled by act of the General Assembly. However, the State Board could continue to remove a member for incompetency, neglect, failure to perform duties, fraud, or other satisfactory cause; this might raise a question regarding delegation of the legislative authority. The term of office for the initial appointees in 2024 would be three years, to keep the county boards of elections on an odd-year appointment cycle.
- Effective July 1, 2024, specify that if a vacancy in the position of Executive Director is not filled within 30 days, the General Assembly would make the appointment.
- Effective immediately, specify that the emergency powers must be exercised by the State Board in an open meeting and that the State Board may not delegate this authority to any individual.

**BACKGROUND:** In 2017, the General Assembly restructured the State Board and combined the State Board with North Carolina Ethics Commission to create the North Carolina Bipartisan State Board of Elections and Ethics Enforcement. S.L. 2017-6. As a result of litigation over S.L. 2017-6 over separation of powers concerns under the North Carolina Constitution, the General Assembly returned the State Board to its current form in 2018. Whether the proposed restructure in the bill would present similar constitutional concerns would be a matter for the courts to determine.