



SENATE BILL 749: No Partisan Advantage in Elections.

2023-2024 General Assembly

Committee:		Date:	September 12, 2023
Introduced by:	Sens. Daniel, P. Newton, Hise	Prepared by:	Erika Churchill
Analysis of:	Fourth Edition		Staff Attorney

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, with respect to the conduct of elections, the emergency powers be exercised by the State Board of Elections rather than the Executive Director of the State Board of Elections.*
- *Clarify that the Executive Director of the State Board of Elections may designate an acting county director of elections if the county board of elections does not nominate an individual to serve as county director of elections.*
- *Clarify the 2024 appointments for chair of the Board of Transportation, the Coastal Resources Commission, and the Environmental Management Commission if Senate Bill 512, 2023 Regular Session, becomes law.*
- *With respect to photo ID for voting, make technical and clarifying changes.*

BOARDS OF ELECTION STRUCTURE

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 members of the State Board begin on May 1, with the current term of office having begun in 2023. Under the North Carolina Constitution, members serve until successors

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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 a chair and secretary.

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

- 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 may 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 from that county who 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. The fifth 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 lists of recommendees.

No person is eligible to serve as a member of a county board who:

- Holds any elective office under the government of the United States, or of the State of North Carolina or any political subdivision thereof.

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- 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.
- 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 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 of the State Board 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 July 1, 2024, increase the size of the State Board from five members to eight members serving four-year terms, with all members being appointed by the General Assembly. Two members each would be appointed upon recommendation of the President Pro Tempore, the Speaker, the minority leader of the Senate, and the minority leader of the House. The State political party chairs would submit lists of nominees no later than April 1 of the year following the election for the Council of State members. Vacancies would be filled by act of the General Assembly. The term of office for the initial appointees in 2024 would be five years, to keep the State Board on an appointment cycle of the year following the election for members of the Council of State. The State Board would select a chair within 30 days of organizing; if a chair is not selected within the timeframe, the General Assembly would make the appointment.
- Effective July 1, 2024, decrease the size of the county boards of election from five to four members serving two-year terms, with all members being appointed by the General Assembly. One member each would be appointed upon recommendation of the President Pro Tempore, the Speaker, the minority leader of the Senate, and the minority leader of the House. The State political party chairs would submit lists of nominees no later than May 1 of the odd-numbered year. Vacancies would be filled by act of the General Assembly. The term of office for the initial appointees in 2024 would be three years, to keep the county boards of elections on an odd-numbered year appointment cycle.
- Effective July 1, 2024, specify that if a vacancy in the position of chair of the State Board or Executive Director of the State Board is not filled within 30 days, the General Assembly would make the appointment.
- Effective July 1, 2024, specify that if a vacancy in the position of county director of elections occurs and the county board of elections cannot agree on a person to nominate to fill that position, the Executive Director of the State Board may designate a person to be the acting county director of elections until such nomination is made.

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- Effective when the bill becomes law, 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 the North Carolina State Ethics Commission to create the North Carolina Bipartisan State Board of Elections and Ethics Enforcement. S.L. 2017-6. As a result of litigation regarding 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. Whether the authority of the State Board to remove a member of a county board of elections, who was appointed by the General Assembly, raises a question regarding delegation of the legislative authority would also be a matter for the courts to determine.

SENATE BILL 512 CLARIFYING PROVISIONS

CURRENT LAW and BILL ANALYSIS: Senate Bill 512, 2023 Regular Session, would amend the compositions of and appointments to various boards and commissions in North Carolina, effective when it becomes law. The Board of Transportation, the Coastal Resources Commission, the Environmental Management Commission, and the Railroad Board of Directors are four of the boards amended by that bill, including how the chair of each is selected. Senate Bill 512 did not include language regarding the selection of the chair upon that bill becoming law.

Sections 6.1 (Environmental Management Commission), 6.2 (Board of Transportation), 6.3 (Coastal Resources Commission), and 6.4 (Railroad Board of Directors) would instruct those boards and commission when to select a chair upon reconstitution of that board or commission.

PHOTO ID TECHNICAL AND CLARIFYING PROVISIONS

CURRENT LAW and BILL ANALYSIS: In implementing photo ID for voting, the State Board was required to adopt rules to provide for the forms of identification that must be included with the written request for an absentee ballot. These rules must do the following:

- Require forms of readable identification similar to acceptable identification for presenting to vote in person.
- Contain a process for a voter without acceptable identification to complete an alternative affidavit in accordance with religious objection, reasonable impediment, or natural disaster affidavits for presenting to vote in person.
- Contain a process for voters to have the option to return required information with the voter's absentee ballot return envelope.

Senate Bill 747, 2023 Regular Session, if it becomes law requires the State Board and each county board, until December 31, 2024, to include a prominent notice regarding the requirement to show photo ID to vote in person on its website and provide the contents of that notice.

Sections 6.5 and 6.6 make technical corrections.

Section 6.7 would provide that the photographs related to the voter photo ID issued by the county boards of elections may be stored by the State Board, and would not be a public record.

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Section 6.8 would specify that \$5,000,000 in nonrecurring funds appropriated in S.L. 2021-180 for the 2021-2022 fiscal year to the State Board for a mobile voting program to assist individuals in need of photo ID is expanded those funds to be used for any photo identification implementation efforts and to implement the notification requirements of Senate Bill 747, 2023 Regular Session, if that bill becomes law. These funds would not revert and would remain available until expended.