



## The Daily Bulletin: 2018-12-11

### PUBLIC/HOUSE BILLS

H 1029 (2017-2018) **BIPARTISAN STATE BOARD CHANGES (NEW)**. Filed May 29 2018, *AN ACT TO RETURN THE ADMINISTRATIVE STRUCTURE OF ELECTIONS, ETHICS, AND LOBBYING TO THE 2016 STRUCTURE AND TO MAKE OTHER CHANGES TO THE ELECTIONS, ETHICS, AND LOBBYING LAWS.*

Conference report makes the following changes to the 4th edition.

Deletes all content of the previous edition and replaces it with the following.

#### Part I

Provides that if Senate Bill 824 (Implementation of Voter ID Constitutional Amendment) becomes law, then Part I, which requires photographic identification to vote, does not apply to any new election ordered under GS 163A-1181 in a 2018 election contest.

#### Part II

Authorizes the Revisor of Statutes to recodify GS Chapter 163A back into GS Chapters 163, 138A, and 120C, reverting the changes made under SL 2017-6 Section 3 which recodified GS Chapters 138A, 120C, and 163 as new Chapter 163A. Allows the Revisor incorporate into the chapters all amendments to those chapters that became effective on or after April 25, 2017 other than those made by SL 2017-6 (which consolidated elections, campaign finance, lobbying, and ethics under the Bipartisan State Board of Elections and Ethics Enforcement) or Part VIII of SL 2018-2 (which amended the membership of the Board).

Repeals SL 2017-6 Sections 3-21 which established GS Chapter 163A, Elections and Ethics Enforcement Act, and made related transfers of powers and duties.

Repeals GS 163A-2 which established the membership of the Bipartisan State Board of Elections and Ethics Enforcement.

Amends GS 163-19, concerning the State Board of Elections (Board), which consists of five registered voters appointed by the Governor from a list of nominees from the State party chairs of the two parties with the highest number of registered affiliates, serving four year terms, with terms beginning May 1, 2019. Prohibits no more than three members from being from the same political party. Includes the process for filling vacancies, administering the oath, and electing chairs and secretary. Prohibits six categories of individuals from serving on the Board, including a person who holds any office in a political party or organization, or is an employee of the State, community college, or a local school administrative unit. Establishes six prohibited activities by Board members, including registering as a lobbyist, or soliciting contributions for a candidate, political committee, or referendum committee.

Sets out additional statutes concerning the compensation of Board members and powers of the Board Chair. GS 163-26 creates the Executive Director of the Board, who is to be appointed by the Board to a two-year term.

Amends GS 163-28, as recodified, by removing the provision making the Board an independent regulatory and quasi-judicial agency.

Recodifies GS 138A-6 which establishes the State Ethics Commission (Commission). Recodified GS 138-7 provides that the Commission consists of eight members with four appointed by the Governor, of whom no more than two can be of the same political party, and two appointed by recommendation of the Speaker of the House, neither of whom can be of the same political party, and two by recommendation of the President Pro Tempore of the Senate, neither of whom can be of the same political party. Members serve four year term beginning January 1, 2019, with terms staggered as specified. Limits removal of members to reasons of misfeasance, malfeasance, or nonfeasance with members appointed by the Governor to be removed by the Governor and members appointed upon the recommendation of the Speaker or President Pro Tempore of the Senate

removed by the Governor upon the recommendation of the Speaker or President Pro Tempore. Provides for filling of vacancies, appointment of a chair by the Governor, and limits service to no more than two consecutive four year terms. Prohibits Commission members from holding or being a candidate for any other office or place of trust or profit under the US, the State, or a political subdivision of the State, holding office in any political party above the precinct level, participating in or contribute to the political campaign of any covered person or any candidate for a public office as a covered person over which the Commission would have jurisdiction or authority, or otherwise being an employee of the State, a community college, or a local school administrative unit, or serve as a member of any other State board. Disqualifies from Commission service an individual who, 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: (1) director, officer, or governing board member; (2) employee; (3) registered lobbyist; (4) independent contractor; or (5) legal counsel of record.

Recodified GS 138A-8 contains meeting and quorum requirements.

Recodified GS 138A-9 allows for the hiring of Commission staff and locates the Commission within the Department of Administration for administrative purposes only.

Recodified GS 138A-12(r) sets out the Commission's subpoena authority.

Transfers the authority, powers, duties and functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, including the functions of budgeting and purchasing, of the ethics compliance and enforcement functions of the Bipartisan State Board of Elections and Ethics Enforcement as a Type II transfer to the State Ethics Commission as re-recodified in this act. Specifies positions that are to be transferred.

Transfers the authority, powers, duties and functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, including the functions of budgeting and purchasing, of the lobbying registration and lobbying enforcement functions of the Bipartisan State Board of Elections and Ethics Enforcement as a Type I transfer to the Secretary of State as re-recodified in this act. Specifies positions that are to be transferred.

Transfers the authority, powers, duties and functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, including the functions of budgeting and purchasing, of the elections and campaign finance functions of the Bipartisan State Board of Elections and Ethics Enforcement as a Type II transfer to the State Board of Elections as re-recodified in this act. Specifies positions that are to be transferred.

Gives continued validity to any previous assignment of duties of a quasi-legislative or quasi-judicial nature by the Governor or General Assembly to the agencies or functions transferred by this act. Provides that, unless specifically provided, each enumerated commission, board, or other function of State government transferred from the Bipartisan State Board of Elections and Ethics Enforcement is a continuation of the former entity for purposes of succession to all the rights, powers, duties, and obligations of the former.

Provides that no action or proceeding pending on January 31, 2019, brought by or against the Bipartisan State Board of Elections and Ethics Enforcement is affected by this act, but the same may be prosecuted or defended in the name of the Secretary of State regarding the lobbyist registration and lobbying enforcement of the Secretary of State, the State Board of Elections, or the State Ethics Commission, as re-recodified in this act. Allows any business or other matter undertaken or commanded by any State program or office or contract transferred by this act to the former entity, pertaining to or connected with the functions, powers, obligations, and duties set forth herein, which is pending on January 31, 2019, may be conducted and completed by the former entity, as re-recodified by this act, in the same manner and under the same terms and conditions and with the same effect as if conducted and completed by the Bipartisan State Board of Elections and Ethics Enforcement.

Specifies that the reorganization does not affect any ongoing investigation or audit and any proceeding before the Bipartisan State Board of Elections and Ethics Enforcement on January 31, 2019, is transferred to the former entity, as re-recodified by this act, on January 31, 2019. Prosecutions for offenses or violations committed before January 31, 2019, are not abated or affected by this act.

Rules adopted by the Bipartisan State Board of Elections and Ethics Enforcement remain in effect as provided in GS 150B-21.7. Policies, procedures, and guidance remain in effect until amended or repealed, as does the list of covered boards adopted by the State Ethics Commission, and any evaluation of a statement of economic interest issued by the Bipartisan State Board of Elections and Ethics Enforcement.

Part II becomes effective January 31, 2019.

### Part III

Repeals GS 120C-100(a)(13), removing legislator as a defined term in the Chapter. Repeals GS 120C-215.

Amends GS 120C-401, as recodified by the act, removing solicitors from the provisions regarding void registrations due to failure to file required reporting. Makes conforming changes.

Repeals GS 120C-402(b)(2), GS 120C-403(b)(2) and GS 120C-404.

Amends GS 138A-12(b), as recodified by the act, regarding the institution of proceedings by the State Board of Ethics for specified ethics violations, to require the State Board to initiate proceedings in response to a signed and sworn, under oath or affirmation, complaint of any registered voter (previously, in response to a signed and sworn complaint of any individual) filed with the State Board, upon its own motion, or upon written request of any public servant as or those responsible for hiring, supervising or appointing a public servant.

Amends GS 163-278.22, concerning the investigatory duties of the State Board regarding campaign contributions and expenditures. Requires that all investigations be confidential and prohibits an investigation from being initiated more than four years from the earliest of: (1) when the facts of the violation are known to the State or county board with jurisdiction, (2) when the facts of the violation can be determined from the public record, or (3) when the complainant knew or should have known of the conduct upon which the complaint is based. Makes changes to adopt similar language to that of GS 138A-12(b), as amended above, to require the State Board to initiate an investigation upon a complaint, signed and sworn under oath or affirmation (was, upon complaint under oath), by any registered voter.

Amends GS 120C-103.1, concerning the institution of proceedings by the Legislative Ethics Committee, to adopt similar language to that of GS 138A-12(b) and GS 163-278.22, both as amended above, to require the Committee to conduct an investigation into the specified ethics violations upon receipt of a signed and sworn, under oath or affirmation, allegation of unethical conduct by a legislator from a registered voter (was, upon receipt of a signed and sworn allegation of unethical conduct by a legislator), upon its own motion, or upon receipt of a referral complaint from the State Board.

Amends GS 163-30, expanding county boards of elections from three to five members, with four appointed by the State Board of Elections and one appointed by the Governor (previously, all appointed by the State Board). Prohibits more than two State Board appointed members from belonging to the same political party. Provides for appointment and staggered terms. Makes conforming, organizational, clarifying and technical changes. Makes conforming changes to GS 163-31, concerning county board of elections meetings. Makes language gender neutral in both statutes.

Amends GS 163-278.34(f), as recodified by the act, which requires the State Board to notify and consult with the appropriate district attorney concerning violations before assessing a civil penalty or imposing a civil remedy under the statute. Instead, makes changes to eliminate the notification and consultation requirement. Now permits an appeal of a State Board decision under the statute in accordance with Article 3 of GS 150B (Administrative Hearings under the APA), after assessment of a civil penalty or imposition of a civil remedy under the statute.

Repeals GS 150B-38(a)(6), GS 150B-1(c)(6) and (d)(16), which provide exemptions for certain Bipartisan State Board of Elections and Ethics Enforcement administrative rulemaking, procedures and decisions. Amends GS 150B-2(8a), removing the exception of budgets and budget policies and procedures issued by the Bipartisan State Board of Elections and Ethics Enforcement.

Amends GS 163-82.12, as recodified by the act, regarding the State Board of Elections's promulgation of guidelines relating to computerized voter registration. Removes the language providing that the guidelines are not to be considered rules and requiring the State Board to publish the guidelines and any changes in the NC Register, with copies available to the public upon request.

Amends GS 163-91, which requires the State Board of Elections to adopt a complaint procedure as required by the Help America Vote Act (HAVA). Removes the exemption from the rulemaking and hearing requirements of Article 2A, 3 and 4 of GS Chapter 150B. Eliminates the specified administrative process requirements for adopting the required complaint procedure.

Repeals GS 163-132.5B, exempting the Bipartisan State Board of Elections and Ethics Enforcement from the Administrative Procedure Act.

Makes changes to GS 163-165.7(d), regarding the adoption of rules by the State Board concerning the handling, operation, and use of certified voting systems, eliminating their exemption from the provisions of GS Chapter 150B.

Amends GS 163-258.30(a), removing the GS Chapter 150B exemption of rules and regulations adopted by the State Board of Elections regarding same day voter registration and absentee voting.

Repeals GS 120C-101, as recodified by the act.

Amends the definition of electioneering communication in GS 163-278.6(8j) to include a communication that is aired or transmitted within 30 days of election for the respective office in November general elections of even-numbered years (previously, set date for November general elections and 60 days before absentee voting in other elections).

Amends GS 120-2.4, which requires a court order finding defects in the General Assembly's apportionment or redistricting State legislative or congressional districts to give the General Assembly no less than two weeks to remedy the defects. Adds that if the General Assembly is scheduled to convene a legislative session within 45 days of the date of the court order, the two week period cannot be less than two weeks from the convening of that legislative session.

Amends GS 163-231(a), regarding the procedure for absentee voting, requiring absentee voters to have the application notarized or certified by two witnesses.

Amends GS 163-228, requiring the State Board of Elections to adopt rules for the official register from county boards of elections and the certified list of excused absentee ballots to be transmitted to the State Board. Makes organizational changes.

Amends GS 1-267.1, modifying the districts from which the Chief Justice is to appoint superior court judges to a three judge panel to hear any challenge to apportionment or redistricting acts of the General Assembly, or challenges of facial validity of acts of the General Assembly. Effective January 1, 2019.

Enacts new GS 138A-13.5 allowing the Commission, upon request by the Board, to offer confidential recommendations on the appropriateness of a criminal referral for campaign finance violation, with Commission using staff to conduct an investigation. Sets out time requirements for the investigation and vote. Makes a conforming change by amending GS 138A-10, as recodified, to add to the Commission's powers, issuing confidential recommendations to the State Board of Elections on the appropriateness of a criminal referral of campaign finance violations. Makes a conforming change by amending recodified GS 163-278.22 by adding to the Board's powers requesting and receiving confidential recommendations from the Commission on the appropriateness of a criminal referral of campaign finance violations. Makes additional conforming changes. Amends GS 163-278.27, as recodified, to require the Board to refer apparent violations under the statute (concerning violations of various provisions of GS Chapter 163 by any individual, candidate, political committee, referendum committee, treasurer, person, or media) to the Commission with must investigate and make confidential recommendations to the Board on the appropriateness of a criminal referral for those alleged violations; sets out timing requirements for the action. Requires that a copy of the Commission's recommendations be given to the specified prosecuting authorities when the Board, after considering the Commission's recommendation, believes that there has been a violation. Makes additional conforming changes. Effective January 31, 2019, and applies to referrals of violation make on or after that date by the Board to prosecuting authorities under GS 163-278.27.

#### Part IV

Requires the State Board of Elections to report and make recommendations on absentee ballot fraud by April 1, 2019, to the Joint Legislative Elections and Ethics Oversight Committee. Specifies items to be addressed in the report.

#### Part V

Authorizes the Revisor to change all references to the Bipartisan State Board of Elections and Ethics Enforcement to the State Board of Elections, State Ethics Commission, or Secretary of State, as appropriate, to modify statutory citations and make other appropriate organizational and corrective changes. Requires the Revisor to consult with the Bipartisan State Board of Elections and Ethics Enforcement, the State Board of Elections, the State Ethics Commission, and the Secretary of State, as appropriate, on this recodification.

Requires appointments to the State Board of Elections, county boards of elections, and State Ethics Commission to be made as soon as possible upon enactment of this act, and provides that no further appointments are required in 2019, other than to fill vacancies. Specifies that requirements of GS 163-19(f)(5) do not apply to any member of the Bipartisan State Board of

Elections and Ethics Enforcement serving on the effective date of this act who is appointed to the State Board of Elections in 2019. Requires that for appointments to the State Board of Elections and State Ethics Commission, any service on the Bipartisan State Board of Elections and Ethics Enforcement is considered service for purposes of consecutive terms.

Requires that the term of office of the Executive Director of the State Board of Elections begin upon appointment, which must be made as soon as possible after the State Board of Elections' initial meeting, and expire in May 2021.

**Intro. by Torbett, Iler.**

[GS 1, GS 120, GS 120C, GS 138A, GS 150B, GS 163, GS 163A](#)

[View summary](#)

[Government, APA/Rule Making, Elections, Ethics and Lobbying](#)

## ACTIONS ON BILLS

### PUBLIC BILLS

#### **H 1029: BIPARTISAN STATE BOARD CHANGES (NEW).**

*House: Conferees Changed*

*Senate: Conf Com Reported*

*Senate: Ref To Com On Rules and Operations of the Senate*

*House: Conf Com Reported*

*House: Re-ref Com On Rules, Calendar, and Operations of the House*

*House: Reptd Fav For Adoption*

*House: Cal Pursuant Rule 36(b)*

*House: Placed On Cal For 12/12/2018*

#### **S 469: TECHNICAL CORRECTIONS. (NEW)**

*Senate: Failed Concur In H Com Sub*

*Senate: Conf Com Appointed*

*House: Conf Com Appointed*

### LOCAL BILLS

#### **H 1105: CLEVELAND CO. BD. OF ED./EVEN-YEAR ELECTIONS.**

*Senate: Reptd Fav*

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