

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

**SESSION LAW 2001-353
SENATE BILL 11**

AN ACT TO PROVIDE FOR FILLING VACANCIES IN NOMINATION FOR THE NATIONAL TICKET AND FOR PRESIDENTIAL ELECTOR; TO EXPAND THE NOTICE REQUIREMENT FOR PRECINCT CHANGES; TO CLARIFY THE RIGHT OF MILITARY/OVERSEAS VOTERS TO REGISTER AND VOTE ON ELECTION DAY; TO REQUIRE COUNTY BOARDS OF ELECTIONS TO FOLLOW THE DIRECTION OF THE STATE BOARD OF ELECTIONS IN PRINTING ABSENTEE BALLOTS DURING AND AFTER THE PENDENCY OF APPEALS; TO REPEAL A COURT-DISAPPROVED PROVISION OF THE AD-LABELING LAW; TO TOLL THE VERIFICATION OF MUNICIPAL INCORPORATION PETITIONS DURING A PERIOD AROUND A PRIMARY OR ELECTION AND TO MAKE OTHER CHANGES TO THE INCORPORATION PETITION STATUTE; TO MAKE TECHNICAL CHANGES TO THE MANDATORY RECOUNT STATUTES; TO REQUIRE PRIVACY FOR THE VOTER TO MARK THE BALLOT; TO STOP THE DAILY CAMPAIGN FINANCE PENALTY AFTER THE POSTMARK DATE AND FOR ANY DAY WHEN THE BOARD OF ELECTIONS IS CLOSED; AND TO CHANGE THE MAILING REQUIREMENT FOR NOTICE OF LATE FILING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-114 reads as rewritten:

"§ 163-114. Filling vacancies among party nominees occurring after nomination and before election.

If any person nominated as a candidate of a political party for one of the offices listed below (either in a primary or convention or by virtue of having no opposition in a primary) dies, resigns, or for any reason becomes ineligible or disqualified before the date of the ensuing general election, the vacancy shall be filled by appointment according to the following instructions:

Position

President
Vice President

Vacancy is to be filled by
appointment of national
executive committee of
political party in which
vacancy occurs

Presidential elector or
alternate elector
Any elective State office
United States Senator

Vacancy is to be filled by
appointment of State
executive committee of
political party in which
vacancy occurs

A district office, including:
Member of the United States
House of Representatives

Judge of district court
District Attorney
State Senator in a multi-
county senatorial district
Member of State House of
Representatives in a multi-
county representative
district

Appropriate district executive
committee of political party
in which vacancy occurs

State Senator in a single-
county senatorial district
Member of State House of
Representatives in a
Single-county
representative district
Any elective county office

County executive committee
of political party in which
vacancy occurs, provided, in
the case of the State
Senator or State
Representative in a
single-county district where
not all the county is
located in that district,
then in voting, only those
members of the county
executive committee who
reside within the
district shall vote

The party executive making a nomination in accordance with the provisions of this section shall certify the name of its nominee to the chairman of the board of elections, State or county, charged with the duty of printing the ballots on which the name is to appear. If at the time a nomination is made under this section the general election ballots have already been printed, the provisions of G.S. 163-139 shall apply. ~~If any person nominated as a candidate of a vacancy occurs in a nomination of a political party vacates such nomination and such that vacancy arises from a cause other than death and the vacancy in nomination occurs more than 120 days before the general election, the vacancy in nomination may be filled under this section only if the appropriate executive committee certifies the name of the nominee in accordance with this paragraph at least 75 days before the general election.~~

In a county not all of which is located in one congressional district, in choosing the congressional district executive committee member or members from that area of the county, only the county convention delegates or county executive committee members who reside within the area of the county which is within the congressional district may vote.

In a county which is partly in a multi-county senatorial district or which is partly in a multi-county House of Representatives district, in choosing that county's member or members of the senatorial district executive committee or House of Representatives district executive committee for the multi-county district, only the county convention delegates or county executive committee members who reside within the area of the county which is within that multi-county district may vote."

SECTION 2. G.S. 163-128 reads as rewritten:

"§ 163-128. Election precincts and voting places established or altered.

(a) Each county shall be divided into a convenient number of precincts for the purpose of voting. Upon a resolution adopted by the county board of elections and approved by the Secretary-Director of the State Board of Elections voters from a given precinct may be temporarily transferred, for the purpose of voting, to an adjacent precinct. Any such transfers shall be for the period of time equal only to the term of office of the county board of elections making such transfer. When such a resolution has been adopted by the county board of elections to assign voters from more than one

precinct to the same precinct, then the county board of elections shall maintain separate registration and voting records, consistent with the procedure prescribed by the State Board of Elections, so as to properly identify the precinct in which such voters reside. The polling place for a precinct shall be located within the precinct or on a lot or tract adjoining the precinct.

Except as provided by Article 12A of this Chapter, the county board of elections shall have power from time to time, by resolution, to establish, alter, discontinue, or create such new election precincts or voting places as it may deem expedient. Upon adoption of a resolution establishing, altering, discontinuing, or creating a precinct or voting place, the board shall give 45 days' notice thereof prior to the next primary or election. Notice shall be given by advertisement in a newspaper having general circulation in the county, by posting a copy of the resolution at the courthouse ~~door,~~ door and at the office of the county board of elections, and by mailing a copy of the resolution to the chairman of every political party in the county. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice. No later than 30 days prior to the primary or election, the county board of elections shall mail a notice of precinct change to each registered voter who as a result of the change will be assigned to a different voting place.

(b) Each county board of elections shall prepare a map of the county on which the precinct boundaries are drawn or described, shall revise the map when boundaries are changed, and shall keep a copy of the current map on file and posted for public inspection at the office of the Board of Elections, and shall file a copy with the State Board of Elections."

SECTION 3. G.S. 163-254 reads as rewritten:

"§ 163-254. Registration and voting on primary or election day.

Notwithstanding any other provisions of Chapter 163 of the General Statutes, ~~any person entitled to vote an absentee ballot pursuant to G.S. 163-245~~ an individual shall be permitted to register in person at any time the office of the board of elections or the voting place is open, including the day of a primary or election, election if that individual was absent on the day the registration records close for an election, but returns to that individual's county of residence in North Carolina thereafter, and if the absence is due to an occupation or status of that individual listed below:

- (1) Individuals serving in the armed forces of the United States, including (but not limited to) the army, the navy, the air force, the marine corps, the coast guard, the Merchant Marine, the National Oceanic and Atmospheric Administration, the commissioned corps of the Public Health Service, and members of the national guard and military reserve.
- (2) Spouses of individuals serving in the armed forces of the United States residing outside the counties of their spouses' voting residence.
- (3) Disabled war veterans in United States government hospitals.
- (4) Civilians attached to and serving outside the United States with the armed forces of the United States.
- (5) Members of the Peace Corps.

~~Should such person's eligibility to register or vote as provided in G.S. 163-245 terminate after the twenty fifth day prior to a primary or election, such person, if he appears in person, shall be entitled to register if otherwise qualified after the twenty-fifth day before the primary or election, or on the primary or election day, and shall be permitted to vote if such person is otherwise qualified. If an individual so absent on the day registration closes shall appear in person at the voting place on election day and is otherwise eligible to vote, that individual shall be entitled to register and vote at the voting place that day, regardless of whether the person's occupation or status as outlined in subdivisions (1) through (5) of this section has changed since the close of registration.~~

SECTION 4. G.S. 163-227.3 reads as rewritten:

"§ 163-227.3. Date by which absentee ballots must be available for voting.

(a) The State Board of Elections shall provide absentee ballots of the kinds to be furnished by the State Board, to the county boards of elections 50 days prior to the date on which the election shall be conducted unless there shall exist an appeal before the State Board or the courts not concluded, in which case the State Board shall provide the ballots as quickly as possible upon the conclusion of such an appeal. In every instance the State Board shall exert every effort to provide absentee ballots, of the kinds to be furnished by the State Board, to each county by the date on which absentee voting is authorized to commence. In any case where absentee ballots are printed by the county board of elections, that county board shall follow the direction of the State Board in delaying absentee ballots while an appeal is pending and in providing them as soon as possible thereafter.

(b) Second Primary. – The State Board of Elections shall provide absentee ballots, of the kinds to be furnished by the State Board, as quickly as possible after the ballot information has been determined."

SECTION 5. G.S. 163-278.39(a)(3) is repealed.

SECTION 6. G.S. 120-163 reads as rewritten:

"§ 120-163. Petition.

(a) The process of seeking the recommendation of the Commission is commenced by filing with the Commission a petition signed by fifteen percent (15%) of the registered voters of the area proposed to be incorporated, but by not less than 25 registered voters of that area, asking for incorporation. The voter shall sign the petition and also clearly print that voter's name adjacent to the signature. The petition must also contain the voter's residence address and date of birth.

(b) The petition must be verified by the county board of elections of the county where the voter is alleged to be registered. The board of elections shall cause to be examined the signature, shall place a check mark beside the name of each signer who is qualified and registered to vote in that county in the area proposed to be incorporated, and shall attach to the petition a certificate stating the number of voters registered in that county in the area proposed to be incorporated, and the total number of registered voters who have been verified. The county board of elections shall return the petition to the person who presented it within 15 working days of receipt. That period of 15 working days shall be tolled for any period of time that is also either two weeks before or one week after a primary or election being conducted by the county board of elections.

(c) The petition must include a proposed name for the city, a map of the city, a list of proposed services to be provided by the proposed municipality, the names of three persons to serve as interim governing board, a proposed charter, a statement of the estimated population, assessed valuation, degree of development, population density, and recommendations as to the form of government and manner of election. The petition must contain a statement that the proposed municipality will have a budget ordinance with an ad valorem tax levy of at least five cents (5¢) on the one hundred dollar (\$100.00) valuation upon all taxable property within its corporate limits. The petition must contain a statement that the proposed municipality will offer four of the following services no later than the first day of the third fiscal year following the effective date of the incorporation: (i) police protection; (ii) fire protection; (iii) solid waste collection or disposal; (iv) water distribution; (v) street maintenance; (vi) street construction or right-of-way acquisition; (vii) street lighting; and (viii) zoning. In order to qualify for providing police protection, the proposed municipality must propose either to provide police service or to have services provided by contract with a county or another municipality that proposes that the other government be compensated for providing supplemental protection. The proposed municipality may not contain any noncontiguous areas.

(d) The petitioners must present to the Commission the verified petition from the county board of elections.

(e) A petition must be submitted to the Commission at least 60 days prior to convening of the next regular session of the General Assembly in order for the Commission to make a recommendation to that session."

SECTION 7. G.S. 163-192.1 reads as rewritten:

"§ 163-192.1. Mandatory recounts.

(a) Whenever, according to the canvass made under this Article, the difference between the number of votes received by a candidate who:

- (1) Has received the number of votes necessary to be declared nominated for an office in a primary election with a majority; or
- (2) Received the number of votes necessary to be declared nominated for an office in a second primary election

and the number of votes received by any candidate in the race is not more than one percent (1%) of the total votes which were cast for that office, except in multi-seat races one percent (1%) of the total votes cast for those two candidates, the State Board of Elections shall, before declaring the person nominated, order a recount of the primary if a candidate whose votes, according to a tally of the canvasses made under Article 15 of this Chapter, fell within one percent (1%) of a successful candidate shall, by noon on the ~~eight day (Saturdays and Sundays included)~~ second Wednesday following the election, request in writing such a recount. ~~Provided, however, that in~~ If, however, in a statewide contest, no candidate shall be entitled to an automatic recount under this section unless the difference is ~~at least~~ no greater than one-half of one percent (0.5%) of the votes cast, or 10,000 votes, whichever is less. ~~Provided further that~~ Further, if the canvass made under this Article determines that a candidate who was not originally thought to be within the percentage entitling him to a recount based on the tally of canvasses made under Article 15 of this Chapter is in fact within the percentage entitling him to a recount, the Executive Secretary-Director of the State Board of Elections shall immediately notify the candidate and the candidate shall be entitled to a recount if he so requests within 48 hours of notification.

(b) Whenever, according to the canvass made under this Article, the difference between the number of votes received by a candidate who has been declared elected to an office in a general election and the number of votes received by any other candidate in the race shall be not more than one percent (1%) of the total votes which were cast for that office, except in multi-seat races one percent (1%) of the total votes cast for those two candidates, or where there is a tie vote between those candidates, the State Board of Elections shall, before certifying the result to the Secretary of State under G.S. 163-193, order a recount of the election if a candidate whose votes, according to a tally of the canvasses made under Article 15 of this Chapter, fell within one percent (1%) of a successful candidate (or in the case of a tie, either candidate) shall, by noon on the ~~eight day (Saturdays and Sundays included)~~ second Wednesday following the election, request in writing such a recount. ~~Provided, however, that~~ If, however, in a statewide contest, no candidate shall be entitled to an automatic recount under this section unless the difference is ~~at least~~ no greater than one-half of one percent (0.5%) of the votes cast, or 10,000 votes, whichever is less. ~~Provided further that~~ Further, if the canvass made under this Article determines that a candidate who was not originally thought to be within the percentage entitling him to a recount based on the tally of canvasses made under Article 15 of this Chapter is in fact within the percentage entitling him to a recount, the Executive Secretary-Director of the State Board of Elections shall immediately notify the candidate and the candidate shall be entitled to a recount if he so requests within 48 hours of notification.

(c) The recount shall be conducted under the supervision of the State Board of Elections.

(d) This section applies to the offices listed in G.S. 163-192."

SECTION 8. G.S. 163-145 reads as rewritten:

"§ 163-145. Voting booths; description; provision.

The county board of elections shall furnish each voting place with at least one voting booth for each 100 persons qualified to vote in the precinct. Each voting booth shall be at least three feet square and six feet high; it shall have three sides and a door or curtain in front. The bottom of the door or curtain shall hang two feet above the floor. Each voting booth shall be equipped with a table or shelf on which voters may conveniently mark their ballots.

The provisions of this section shall not apply to voting places at which voting machines are ~~used~~—used, except that at all voting places there shall be a curtained or otherwise private area where a voter may mark the ballot unobserved."

SECTION 9. G.S. 163-227.2 is amended by adding a new subsection to read:

"(i) At any site where one-stop absentee voting is conducted, there shall be a curtained or otherwise private area where the voter may mark the ballot unobserved."

SECTION 10. G.S. 163-278.34(a) reads as rewritten:

"(a) Except as provided in G.S. 163-278.9, all reports, statements or other documents required by this Article to be filed with the Board shall be filed either by manual delivery to or by mail addressed to the Board. Timely filing shall be complete if postmarked on the day the reports, statements or other documents are to be delivered to the Board. If a report, statement or other document is not filed within the time required by this Article, then the individual, person, media, candidate, political committee, referendum committee or treasurer responsible for filing shall pay to the State Board of Elections election enforcement costs and a civil late penalty as follows:

- (1) Two hundred fifty dollars (\$250.00) per day for each day the filing is late for a report that affects statewide elections, not to exceed a total of ten thousand dollars (\$10,000); and
- (2) Fifty dollars (\$50.00) per day for each day the filing is late for a report that affects only nonstatewide elections, not to exceed a total of five hundred dollars (\$500.00).

If the form is filed by mail, no civil late penalty shall be assessed for any day after the date of postmark. No civil late penalty shall be assessed for any day when the Board office at which the report is due is closed. The State Board shall immediately notify, or cause to be notified, late filers, from which reports are apparently due, ~~by registered or certified mail, return receipt requested, by mail,~~ of the penalties under this section."

SECTION 11. Section 6 of this act becomes effective with respect to any petitions submitted on or after December 1, 2001. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 31st day of July, 2001.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 11:41 a.m. this 10th day of August, 2001