

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 908

Short Title: Election Administration Amendments. (Public)

Sponsors: Representatives Goodwin; Fisher, Glazier, Harrison, and Insko.

Referred to: Election Law and Campaign Finance Reform, if favorable, Judiciary I.

April 1, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR EQUAL TREATMENT OF POLITICAL AND COMMERCIAL
3 EXPRESSION AROUND A VOTING PLACE; TO CLARIFY THAT SEVENTEEN-
4 YEAR-OLDS MAY REGISTER AT EARLY VOTING SITES UNDER THE SAME
5 CONDITIONS THEY MAY REGISTER ELSEWHERE; TO PROHIBIT THE
6 AWARDING OF ATTORNEYS' FEES AGAINST THE STATE BOARD OF
7 ELECTIONS IN ELECTION PROTEST CASES; AND TO COMPLETE THE BURDEN
8 OF PROOF PROVISIONS IN THE CANDIDATE-CHALLENGE STATUTE.

9 The General Assembly of North Carolina enacts:

10 SECTION 1. G.S. 163-166.4 reads as rewritten:

11 "(b) Special Agreements About Election-Related Activity. – The Executive Director of
12 the State Board of Elections may grant special permission for a county board of elections to
13 enter into an agreement with the owners or managers of a nonpublic building to use the
14 building as a voting place on the condition that election-related activity as described in
15 subsection (a) of this section not be permitted on their property adjacent to the buffer zone, if
16 the Executive Director finds all of the following:

- 17 (1) That no other suitable voting place can be secured for the precinct.
18 (2) That the county board will require the chief judge of the precinct to monitor
19 the grounds around the voting place to ensure compliance with subdivision
20 (4) of this subsection and to ensure that the restriction on election-related
21 activity shall apply to all candidates and parties equally.
22 (3) That the pattern of voting places subject to agreements under this subsection
23 does not disproportionately favor any party, racial or ethnic group, or
24 candidate.
25 (4) That any restriction of political expression is also extended to commercial
26 expression.

27 An agreement under this subsection shall be valid for as long as the nonpublic building is used
28 as a voting place."

29 SECTION 2.(a) G.S. 163-82.6A is amended by adding the following new
30 subsection to read:

31 "(f) Voting in Party Primary. – Any person who will become qualified by age to register
32 and vote in the general election or regular municipal election for which a party primary is held,
33 even though not so qualified by the date of the primary, may register for the primary and
34 general or regular municipal election prior to the primary and then vote in the primary after
35 being registered in accordance with the provisions of this section."

36 SECTION 2.(b) Article 23 of Chapter 163 of the General Statutes is amended by
37 adding a new section to read:



1 **"§ 163-283.1. Voting in nonpartisan primary.**

2 Any person who will become qualified by age or residence to register and vote in the
3 general election for which a nonpartisan primary is held, even though not so qualified by the
4 date of the primary, shall be entitled to register for the primary and general election prior to the
5 primary and then to vote in the primary after being registered. Such person may register not
6 earlier than 60 days nor later than the last day for making application to register under
7 G.S. 163-82.6(c) prior to the primary."

8 **SECTION 3.** G.S. 6-19.1 reads as rewritten:

9 **"§ 6-19.1. Attorney's fees to parties appealing or defending against agency decision.**

10 In any civil action, other than an adjudication for the purpose of establishing or fixing a
11 rate, or a disciplinary action by a licensing board, brought by the State or brought by a party
12 who is contesting State action pursuant to G.S. 150B-43 or any other appropriate provisions of
13 law, unless the prevailing party is the State, the court may, in its discretion, allow the prevailing
14 party to recover reasonable attorney's fees, including attorney's fees applicable to the
15 administrative review portion of the case, in contested cases arising under Article 3 of Chapter
16 150B, to be taxed as court costs against the appropriate agency if:

- 17 (1) The court finds that the agency acted without substantial justification in
18 pressing its claim against the party; and
19 (2) The court finds that there are no special circumstances that would make the
20 award of attorney's fees unjust. The party shall petition for the attorney's fees
21 within 30 days following final disposition of the case. The petition shall be
22 supported by an affidavit setting forth the basis for the request.

23 Nothing in this section shall be deemed to authorize the assessment of attorney's fees for the
24 administrative review portion of the case in contested cases arising under Article 9 of Chapter
25 131E of the General Statutes.

26 Nothing in this section grants permission to bring an action against an agency otherwise
27 immune from suit or gives a right to bring an action to a party who otherwise lacks standing to
28 bring the action.

29 Attorney's fees shall not be awarded against the State Board of Elections in any election
30 protest brought under Article 15A of Chapter 163 of the General Statutes.

31 Any attorney's fees assessed against an agency under this section shall be charged against
32 the operating expenses of the agency and shall not be reimbursed from any other source."

33 **SECTION 4.** G.S. 163-127.5 reads as rewritten:

34 **"§ 163-127.5. Burden of proof.**

35 (a) The burden of proof shall be upon the candidate, who must show by a
36 preponderance of the evidence of the record as a whole that he or she is qualified to be a
37 candidate for the office.

38 (b) If the challenge is based upon ~~a question of residency, an allegation that the~~
39 candidate is not qualified for the office based on failure to establish residency required as a
40 qualification of the office through a change of permanent domicile, the candidate must show all
41 of the following:

- 42 (1) An actual abandonment of the first domicile, coupled with an intent not to
43 return to the first domicile.
44 (2) The acquisition of a new domicile by actual residence at another place.
45 (3) The intent of making the newer domicile a permanent domicile.

46 (c) Notwithstanding subsection (a) of this section, if the challenge is based upon an
47 allegation that the candidate is not qualified for the office based on abandonment of residency
48 required as a qualification of the office, the burden of proof shall be upon the challenger."

49 **SECTION 5.** This act is effective when it becomes law.