



# SENATE BILL 749: No Partisan Advantage in Elections.

2023-2024 General Assembly

---

<b>Committee:</b>		<b>Date:</b>	December 1, 2023
<b>Introduced by:</b>		<b>Prepared by:</b>	Erika Churchill Staff Attorney
<b>Analysis of:</b>	S.L. 2023-139		

---

**OVERVIEW:** *S.L. 2023-139 does all of the following:*

- **Effective January 1, 2024:**
  - *Increases the number of members of the State Board of Elections (State Board) from five to eight, with all eight members being appointed by the General Assembly.*
  - *Decreases the number of members of each of the 100 county boards of elections from five to four, with all four members being appointed by the General Assembly.*
  - *Administratively transfers the State Board to the Secretary of State's Office; however, the Secretary of State will not direct or supervise management functions of the State Board.*
- **Effective October 10, 2023:**
  - *Requires that, with respect to the conduct of elections, the emergency powers be exercised by the State Board rather than the Executive Director of the State Board of Elections (Executive Director).*
  - *Clarifies that the Executive Director can 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.*
  - *Makes technical and clarifying changes to photo ID for voting,.*
  - *Changes the filing date for filings of the statement of economic interest associated with a notice of candidacy.*
- *Clarifies the 2024 appointments to certain boards and commissions modified by S.L. 2023-136 of the 2023 Regular Session.*

*This bill was vetoed by the Governor on September 28, 2023, and that veto was overridden by the General Assembly on October 10, 2023. Except as otherwise provided, this act became effective October 10, 2023.*

## **BOARDS OF ELECTIONS STRUCTURE**

**CURRENT LAW:** The 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.

Jeffrey Hudson  
Director



Legislative Analysis  
Division  
919-733-2578

# Senate Bill 749

Page 2

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 are appointed and qualified. No person can 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 an 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 from that county who are appointed to serve 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

# Senate Bill 749

Page 3

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.
- Holds any office in a state, congressional district, county or precinct political party or organization. The position of delegate to a political party convention cannot 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 is appointed by the State Board to serve 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:** Parts I through V of the act:

- Effective January 1, 2024, administratively transfers 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 January 1, 2024, increases 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 will 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 can submit lists of nominees no later than April 1 of the year following the election for the Council of State members. Vacancies must be filled by act of the General Assembly. The term of office for the initial appointees in 2024 is 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 must select a chair from amongst its membership within 30 days of organizing; if a chair is not selected within the timeframe, the General Assembly must appoint a chair.
- Effective January 1, 2024, decreases 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 will 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 can submit lists of nominees no later than May 1 of the odd-numbered year. Vacancies must be filled by act of the General Assembly. The term of office for the initial appointees in 2024 is three years, to keep the county boards of elections on an odd-numbered year appointment cycle.

# Senate Bill 749

Page 4

- Effective January 1, 2024, specifies that if a vacancy in the position of chair of the State Board or Executive Director is not filled within 30 days, the General Assembly must appoint the chair.
- Effective January 1, 2024, specifies 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 can designate a person to be the acting county director of elections until such nomination is made.
- Effective October 10, 2023, specifies that the emergency powers must be exercised by the State Board in an open meeting and that the State Board cannot 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 presents 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. As of November 30, 2023, litigation has been initiated to review this act.

## S.L. 2023-136 CLARIFYING PROVISIONS

**CURRENT LAW and BILL ANALYSIS:** S.L. 2023-136 amended the compositions of and appointments to various boards and commissions in North Carolina, effective October 10, 2023. Sections 6.1 through 6.4 of the act modifies various provisions in S.L. 2023-136 to:

- Clarify that the two positions on the Environmental Management Commission (EMC) for which the appointing authority was switched from the Governor to the Commissioner of Agriculture, are effective when S.L. 2023-136 became law. In addition, the EMC is required to elect a new chair and vice-chair after the Commissioner of Agriculture's appointments have been made.
- Provide that, in addition to the EMC, elections for chairs and vice-chairs (as applicable) must occur after appointment changes made pursuant to S.L. 2023-136 become effective for the following boards and commissions:
  - Board of Transportation.
  - Coastal Resources Commission.
  - North Carolina Railroad Board of Directors.
- Clarify that notwithstanding changes made by S.L. 2023-136 to the membership of the North Carolina State University Board of Trustees and the University of North Carolina at Chapel Hill Board of Trustees, the members currently serving on those boards will serve the remainder of their terms.

## 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 when presenting to vote in person.

# Senate Bill 749

Page 5

- 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 when 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.

Sections 6.5 through 6.8 of the act 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; makes technical corrections; provides that the photographs related to the voter photo ID issued by the county boards of elections can be stored by the State Board, and are not be a public record; and specifies 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 be expanded to allow those funds to be used for any photo identification implementation efforts and to implement the notification requirements of S.L. 2023-140. These funds will not revert and will remain available until expended.

## **STATEMENTS OF ECONOMIC INTEREST**

**CURRENT LAW and BILL ANALYSIS:** Annually on April 15th, legislators, judicial officials, and public servants are to file a statement of economic interest (SEI) with the State Ethics Commission, providing certain information including employment, holdings, contracts, and service on non-profits. The information requested is generally as of December 31st of the year prior to filing the SEI. For those SEI filers who file to run for elected office, there is also a requirement that the SEI be filed within 10 days of the close of the filing period. In the odd-numbered years, this results in a legislator, judicial official or public servant who is running for office filing the SEI twice in the odd-numbered years with the same information.

Section 6.9 of the act changes the filing date for the SEI's associated with a notice of candidacy for elected office to be no earlier than the first business day in January and no later than 45 days before the primary in the even-numbered year. This will result in a legislator, judicial official, or public servant who is running for office filing one SEI annually.

**EFFECTIVE DATE:** This bill was vetoed by the Governor on September 28, 2023, and that veto was overridden by the General Assembly on October 10, 2023. Except as otherwise provided, this act became effective October 10, 2023.