

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001

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SENATE BILL 11  
Judiciary I Committee Substitute Adopted 4/9/01  
House Committee Substitute Favorable 6/12/01  
House Committee Substitute #2 Favorable 7/16/01

Short Title: Election Changes-Misc.

(Public)

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Sponsors:

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Referred to:

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January 25, 2001

1 A BILL TO BE ENTITLED

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

19 The General Assembly of North Carolina enacts:

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

21 **"§ 163-114. Filling vacancies among party nominees occurring after nomination**  
22 **and before election.**

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

1		
2	Position	
3		
4	<u>President</u>	<u>Vacancy is to be filled by</u>
5	<u>Vice President</u>	<u>appointment of national</u>
6		<u>executive committee of</u>
7		<u>political party in which</u>
8		<u>vacancy occurs</u>
9		
10	<u>Presidential elector or</u>	
11	<u>alternate elector</u>	Vacancy is to be filled by
12	Any elective State office	appointment of State
13	United States Senator	executive committee of
14		political party in which
15		vacancy occurs
16	A district office, including:	
17	Member of the United States	
18	House of Representatives	
19	Judge of district court	Appropriate district executive
20	District Attorney	committee of political party
21	State Senator in a multi-	in which vacancy occurs
22	county senatorial district	
23	Member of State House of	
24	Representatives in a multi-	
25	county representative	
26	district	
27		
28	State Senator in a single-	County executive committee
29	county senatorial district	of political party in which
30	Member of State House of	vacancy occurs, provided, in
31	Representatives in a	the case of the State
32	Single-county	Senator or State
33	representative district	Representative in a
34	Any elective county office	single-county district where
35		not all the county is
36		located in that district,
37		then in voting, only those
38		members of the county
39		executive committee who
40		reside within the
41		district shall vote
42		

1 The party executive making a nomination in accordance with the provisions of this  
2 section shall certify the name of its nominee to the chairman of the board of elections,  
3 State or county, charged with the duty of printing the ballots on which the name is to  
4 appear. If at the time a nomination is made under this section the general election ballots  
5 have already been printed, the provisions of G.S. 163-139 shall apply. If ~~any person~~  
6 ~~nominated as a candidate of a vacancy occurs in a nomination of a political party~~  
7 ~~vacates such nomination and such that~~ vacancy arises from a cause other than death and  
8 the vacancy in nomination occurs more than 120 days before the general election, the  
9 vacancy in nomination may be filled under this section only if the appropriate executive  
10 committee certifies the name of the nominee in accordance with this paragraph at least  
11 75 days before the general election.

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

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

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

24 "**§ 163-128. Election precincts and voting places established or altered.**

25 (a) Each county shall be divided into a convenient number of precincts for the  
26 purpose of voting. Upon a resolution adopted by the county board of elections and  
27 approved by the Secretary-Director of the State Board of Elections voters from a given  
28 precinct may be temporarily transferred, for the purpose of voting, to an adjacent  
29 precinct. Any such transfers shall be for the period of time equal only to the term of  
30 office of the county board of elections making such transfer. When such a resolution has  
31 been adopted by the county board of elections to assign voters from more than one  
32 precinct to the same precinct, then the county board of elections shall maintain separate  
33 registration and voting records, consistent with the procedure prescribed by the State  
34 Board of Elections, so as to properly identify the precinct in which such voters reside.  
35 The polling place for a precinct shall be located within the precinct or on a lot or tract  
36 adjoining the precinct.

37 Except as provided by Article 12A of this Chapter, the county board of elections  
38 shall have power from time to time, by resolution, to establish, alter, discontinue, or  
39 create such new election precincts or voting places as it may deem expedient. Upon  
40 adoption of a resolution establishing, altering, discontinuing, or creating a precinct or  
41 voting place, the board shall give 45 days' notice thereof prior to the next primary or  
42 election. Notice shall be given by advertisement in a newspaper having general  
43 circulation in the county, by posting a copy of the resolution at the courthouse ~~door,~~

1 door and at the office of the county board of elections, and by mailing a copy of the  
2 resolution to the chairman of every political party in the county. Notice may  
3 additionally be made on a radio or television station or both, but such notice shall be in  
4 addition to the newspaper and other required notice. No later than 30 days prior to the  
5 primary or election, the county board of elections shall mail a notice of precinct change  
6 to each registered voter who as a result of the change will be assigned to a different  
7 voting place.

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

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

14 **"§ 163-254. Registration and voting on primary or election day.**

15 Notwithstanding any other provisions of Chapter 163 of the General Statutes, any  
16 ~~person entitled to vote an absentee ballot pursuant to~~ in an occupation or status  
17 described in G.S. 163-245 who is absent in any of the capacities specified in that section  
18 on the day the registration records close for an election but who returns to that person's  
19 county of residence in North Carolina thereafter shall be permitted to register in person  
20 at any time including the day of a primary or election. Should such person's eligibility to  
21 register or vote as provided in G.S. 163-245 terminate after the twenty-fifth day prior to  
22 a primary or election, such person, if he appears in person, shall be entitled to register if  
23 otherwise qualified after the twenty-fifth day before the primary or election, or on the  
24 primary or election day, and shall be permitted to vote if such person is otherwise  
25 qualified."

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

27 **"§ 163-227.3. Date by which absentee ballots must be available for voting.**

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

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

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

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

1 **"§ 120-163. Petition.**

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

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

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

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

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

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

42 **"§ 163-192.1. Mandatory recounts.**

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

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

5 (2) Received the number of votes necessary to be declared nominated for  
6 an office in a second primary election

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

24 (b) Whenever, according to the canvass made under this Article, the difference  
25 between the number of votes received by a candidate who has been declared elected to  
26 an office in a general election and the number of votes received by any other candidate  
27 in the race shall be not more than one percent (1%) of the total votes which were cast  
28 for that office, except in multi-seat races one percent (1%) of the total votes cast for  
29 those two candidates, or where there is a tie vote between those candidates, the State  
30 Board of Elections shall, before certifying the result to the Secretary of State under G.S.  
31 163-193, order a recount of the election if a candidate whose votes, according to a tally  
32 of the canvasses made under Article 15 of this Chapter, fell within one percent (1%) of  
33 a successful candidate (or in the case of a tie, either candidate) shall, by noon on the  
34 ~~eighth day (Saturdays and Sundays included)~~ second Wednesday following the election,  
35 request in writing such a recount. ~~Provided, however, that~~ If, however, in a statewide  
36 contest, no candidate shall be entitled to an automatic recount under this section unless  
37 the difference is ~~at least~~ no greater than one-half of one percent (0.5%) of the votes  
38 cast, or 10,000 votes, whichever is less. ~~Provided further that~~ Further, if the canvass  
39 made under this Article determines that a candidate who was not originally thought to  
40 be within the percentage entitling him to a recount based on the tally of canvasses made  
41 under Article 15 of this Chapter is in fact within the percentage entitling him to a  
42 recount, the Executive Secretary-Director of the State Board of Elections shall

1 immediately notify the candidate and the candidate shall be entitled to a recount if he so  
2 requests within 48 hours of notification.

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

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

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

7 "**§ 163-145. Voting booths; description; provision.**

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

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

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

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

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

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

30 (1) Two hundred fifty dollars (\$250.00) per day for each day the filing is  
31 late for a report that affects statewide elections, not to exceed a total of  
32 ten thousand dollars (\$10,000); and

33 (2) Fifty dollars (\$50.00) per day for each day the filing is late for a report  
34 that affects only nonstatewide elections, not to exceed a total of five  
35 hundred dollars (\$500.00).

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

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