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Short Title: Election Administration Amendments.

(Public)

Sponsors:

Referred to:

April 1, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR EQUAL TREATMENT OF POLITICAL AND COMMERCIAL EXPRESSION AROUND A VOTING PLACE; TO CLARIFY THAT SEVENTEEN-YEAR-OLDS MAY REGISTER AT EARLY VOTING SITES UNDER THE SAME CONDITIONS THEY MAY REGISTER ELSEWHERE AND TO MAKE RELATED TECHNICAL CHANGES; TO PROHIBIT THE AWARDED OF ATTORNEYS' FEES AGAINST THE STATE BOARD OF ELECTIONS IN ELECTION PROTEST CASES; AND TO COMPLETE THE BURDEN OF PROOF PROVISIONS IN THE CANDIDATE-CHALLENGE STATUTE.

The General Assembly of North Carolina enacts:

**SECTION 1.(a)** G.S. 163-166.4 reads as rewritten:

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

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

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

**SECTION 1.(b)** This section becomes effective January 1, 2010, and applies to primaries and elections held on and after that date.

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

"(f) Voting in Primary. – Any person who will become qualified by age to register and vote in the general election for which a partisan or nonpartisan primary is held, even though not



1 so qualified by the date of the primary, may register for the primary and general election prior  
2 to the primary and then vote in the primary and general election after being registered in  
3 accordance with the provisions of this section."

4 **SECTION 2.(b)** G.S. 163-283 reads as rewritten:

5 **"§ 163-283. Right to participate or vote in party primary.**

6 No person shall be entitled to vote or otherwise participate in the primary election of any  
7 political party unless he

8 (1) Is a registered voter, and

9 (2) Has declared and has had recorded on the registration book or record the fact  
10 that he affiliates with the political party in whose primary he proposes to  
11 vote or participate, and

12 (3) Is in good faith a member of that party.

13 Notwithstanding the previous paragraph, any unaffiliated voter who is authorized under  
14 G.S. 163-119 may also vote in the primary if the voter is otherwise eligible to vote in that  
15 primary except for subdivisions (2) and (3) of the previous paragraph.

16 Any person who will become qualified by age to register and vote in the general election  
17 for which the primary is held, even though not so qualified by the date of the primary election,  
18 shall be entitled to register while the registration books are open during the regular registration  
19 period prior to the primary and then to vote in the primary after being registered, provided  
20 however, under full-time and permanent registration, such an individual may register not earlier  
21 than 60 days nor later than the last day for making application to register under  
22 G.S. 163-82.6(c) prior to the primary. In addition, persons who will become qualified by age to  
23 register and vote in the general election for which the primary is held, who do not register  
24 during the special period may register to vote after such period as if they were qualified on the  
25 basis of age, but until they are qualified by age to vote, they may vote only in primary  
26 elections. Such a person may also register and vote in the primary and general election pursuant  
27 to G.S. 163-82.6A(f)."

28 **SECTION 2.(c)** Article 23 of Chapter 163 of the General Statutes is amended by  
29 adding a new section to read:

30 **"§ 163-283.1. Voting in nonpartisan primary.**

31 Any person who will become qualified by age to register and vote in the general election  
32 for which a nonpartisan primary is held, even though not so qualified by the date of the  
33 primary, shall be entitled to register for the primary and general election prior to the primary  
34 and then to vote in the primary after being registered. Such a person may register not earlier  
35 than 60 days nor later than the last day for making application to register under  
36 G.S. 163-82.6(c) prior to the primary. Such a person may also register and vote in the primary  
37 and general election pursuant to G.S. 163-82.6A(f)."

38 **SECTION 2.(d)** G.S. 163-330 reads as rewritten:

39 **"§ 163-330. Voting in primary.**

40 Any person who will become qualified by age ~~or residence~~ to register and vote in the  
41 general election for which the primary is held, even though not so qualified by the date of the  
42 primary, shall be entitled to register for the primary and general election prior to the primary  
43 and then to vote in the primary after being registered. Such person may register not earlier than  
44 60 days nor later than the last day for making application to register under G.S. 163-82.6(c)  
45 prior to the primary. Such a person may also register and vote in the primary and general  
46 election pursuant to G.S. 163-82.6A(f)."

47 **SECTION 2.(e)** G.S. 163-59 reads as rewritten:

48 **"§ 163-59. Right to participate or vote in party primary.**

49 No person shall be entitled to vote or otherwise participate in the primary election of any  
50 political party unless he:

51 (1) Is a registered voter, and

1 (2) Has declared and has had recorded on the registration book or record the fact  
2 that he affiliates with the political party in whose primary he proposes to  
3 vote or participate, and

4 (3) Is in good faith a member of that party.

5 Notwithstanding the previous paragraph, any unaffiliated voter who is authorized under  
6 G.S. 163-119 may also vote in the primary if the voter is otherwise eligible to vote in that  
7 primary except for subdivisions (2) and (3) of the previous paragraph.

8 Any person who will become qualified by age to register and vote in the general election ~~or~~  
9 ~~regular municipal election~~ for which the primary is held, even though not so qualified by the  
10 date of the primary, shall be entitled to register for the primary and general ~~or regular municipal~~  
11 election prior to the primary and then to vote in the primary after being registered. Such person  
12 may register not earlier than 60 days nor later than the last day for making application to  
13 register under G.S. 163-82.6(c) prior to the primary. In addition, persons who will become  
14 qualified by age to register and vote in the general election ~~or regular municipal election~~ for  
15 which the primary is held, who do not register during the special period may register to vote  
16 after such period as if they were qualified on the basis of age, but until they are qualified by age  
17 to vote, they may vote only in primary elections. Such a person may also register and vote in  
18 the primary and general election pursuant to G.S. 163-82.6A(f)."

19 **SECTION 2.(f)** G.S. 163-55(a) reads as rewritten:

20 "(a) Residence Period for State Elections. – Every person born in the United States, and  
21 every person who has been naturalized, and who shall have resided in the State of North  
22 Carolina and in the precinct, ward, or other election district in which the person offers to vote  
23 for 30 days next preceding an election, shall, if otherwise qualified as prescribed in this  
24 Chapter, be qualified to vote in any election held in this State. Removal from one precinct,  
25 ward, or other election district to another in this State shall not operate to deprive any person of  
26 the right to vote in the precinct, ward, or other election district from which he has removed  
27 until 30 days after the person's removal.

28 Except as otherwise provided in ~~G.S. 163-59~~, this Chapter, the following classes of persons  
29 shall not be allowed to vote in this State:

30 (1) Persons under 18 years of age.

31 (2) Any person adjudged guilty of a felony against this State or the United  
32 States, or adjudged guilty of a felony in another state that also would be a  
33 felony if it had been committed in this State, unless that person shall be first  
34 restored to the rights of citizenship in the manner prescribed by law."

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

36 **"§ 6-19.1. Attorney's fees to parties appealing or defending against agency decision.**

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

44 (1) The court finds that the agency acted without substantial justification in  
45 pressing its claim against the party; and

46 (2) The court finds that there are no special circumstances that would make the  
47 award of attorney's fees unjust. The party shall petition for the attorney's fees  
48 within 30 days following final disposition of the case. The petition shall be  
49 supported by an affidavit setting forth the basis for the request.

1 Nothing in this section shall be deemed to authorize the assessment of attorney's fees for the  
2 administrative review portion of the case in contested cases arising under Article 9 of Chapter  
3 131E of the General Statutes.

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

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

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

11 **SECTION 4.(a)** G.S. 163-127.5 reads as rewritten:

12 **"§ 163-127.5. Burden of proof.**

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

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

20 (1) An actual abandonment of the first domicile, coupled with an intent not to  
21 return to the first domicile.

22 (2) The acquisition of a new domicile by actual residence at another place.

23 (3) The intent of making the newer domicile a permanent domicile.

24 (c) Notwithstanding subsection (a) of this section, if the challenge to qualification is  
25 based upon an allegation that the candidate is not qualified for the office based on abandonment  
26 of residency required as a qualification of the office, the burden of proof shall be upon the  
27 challenger to show by a preponderance of the evidence that the candidate is not qualified to be  
28 a candidate for the office for this reason."

29 **SECTION 4.(b)** This section becomes effective January 1, 2010, and applies to  
30 primaries and elections held on and after that date.

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