

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 734
HOUSE BILL 1203

AN ACT TO ALLOW THE APPOINTMENT IN CERTAIN CIRCUMSTANCES OF
PRECINCT OFFICIALS, OBSERVERS, AND BALLOT COUNTERS FOR A
PRECINCT WHO ARE NOT REGISTERED TO VOTE IN THAT PRECINCT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-41(a) reads as rewritten:

"(a) Appointment of Chief Judge and Judges. – At the meeting required by G.S. 163-31 to be held on the Tuesday following the third Monday in August of the year in which they are appointed, the county board of elections shall appoint one person to act as chief judge and two other persons to act as judges of election for each precinct in the county. Their terms of office shall continue for two years from the specified date of appointment and until their successors are appointed and ~~qualified~~ qualified, except that if a nonresident of the precinct is appointed as chief judge or judge for a precinct, that person's term of office shall end if the board of elections appoints a qualified resident of the precinct of the same party to replace the nonresident chief judge or judge. It shall be their duty to conduct the primaries and elections within their respective precincts. Persons appointed to these offices must be registered voters and residents of the ~~precinct for which appointed,~~ county in which the precinct is located, of good repute, and able to read and write. Not more than one judge in each precinct shall belong to the same political party as the chief judge.

The term 'precinct official' shall mean chief judges and judges appointed pursuant to this section, and all assistants appointed pursuant to G.S. 163-42, unless the context of a statute clearly indicates a more restrictive meaning.

No person shall be eligible to serve as a precinct official, as that term is defined above, who holds any elective office under the government of the United States, or of the State of North Carolina or any political subdivision thereof.

No person shall be eligible to serve as a precinct official who is a candidate for nomination or election.

No person shall be eligible to serve as a precinct official who holds any office in a state, congressional district, county, or precinct political party or political organization, or who is a manager or treasurer for any candidate or political party, provided however that the position of delegate to a political party convention shall not be considered an office for the purpose of this subsection.

The chairman of each political party in the county where possible shall recommend two registered voters in each precinct who are otherwise qualified, are residents of the precinct, have good moral character, and are able to read and write, for appointment as

chief judge in the precinct, and he shall also recommend where possible the same number of similarly qualified voters for appointment as judges of election in that precinct. If such recommendations are received by the county board of elections no later than the fifth day preceding the date on which appointments are to be made, it must make precinct appointments from the names of those recommended. Provided that if only one name is submitted by the fifth day preceding the date on which appointments are to be made, by a party for judge of election by the chairman of one of the two political parties in the county having the greatest numbers of registered voters in the State, the county board of elections must appoint that person.

If the recommendations of the party chairs for chief judge or judge in a precinct are insufficient, the county board of elections by unanimous vote of all of its members may name to serve as chief judge or judge in that precinct registered voters in that precinct who were not recommended by the party chairs. If, after diligently seeking to fill the positions with registered voters of the precinct, the county board still has an insufficient number of officials for the precinct, the county board by unanimous vote of all of its members may appoint to the positions registered voters in other precincts in the same county who meet the qualifications other than residence to be precinct officials in the precinct, provided that where possible the county board shall seek and adopt the recommendation of the county chairman of the political party affected. In making its appointments, the county board shall assure, wherever possible, that no precinct has a chief judge and judges all of whom are registered with the same party. In no instance shall the county board appoint nonresidents of the precinct to a majority of the three positions of chief judge and judge in a precinct.

If, at any time other than on the day of a primary or election, a chief judge or judge of election shall be removed from office, or shall die or resign, or if for any other cause there be a vacancy in a precinct election office, the chairman of the county board of elections shall appoint another in his place, promptly notifying him of his appointment. If at all possible, the chairman of the county board of elections shall consult with the county chairman of the political party of the vacating official, and if the chairman of the county political party nominates a qualified voter of that precinct to fill the vacancy, the chairman of the county board of elections shall appoint that person. In filling such a vacancy, the chairman shall appoint a person who belongs to the same political party as that to which the vacating member belonged when appointed. If the chairman of the county board of elections did not appoint a person upon recommendation of the chairman of the party to fill such a vacancy, then the term of office of the person appointed to fill the vacancy shall expire upon the conclusion of the next canvass held by the county board of elections under this Chapter, and any successor must be a person nominated by the chairman of the party of the vacating officer.

If any person appointed chief judge shall fail to be present at the voting place at the hour of opening the polls on primary or election day, or if a vacancy in that office shall occur on primary or election day for any reason whatever, the precinct judges of election shall appoint another to act as chief judge until such time as the chairman of the county board of elections shall appoint to fill the vacancy. If such appointment by the chairman of the county board of elections is not a person nominated by the county

chairman of the political party of the vacating officer, then the term of office of the person appointed to fill the vacancy shall expire upon the conclusion of the next canvass held by the county board of elections under this Chapter. If a judge of election shall fail to be present at the voting place at the hour of opening the polls on primary or election day, or if a vacancy in that office shall occur on primary or election day for any reason whatever, the chief judge shall appoint another to act as judge until such time as the chairman of the county board of elections shall appoint to fill the vacancy. Persons appointed to fill vacancies shall, whenever possible, be chosen from the same political party as the person whose vacancy is being filled, and all such appointees shall be sworn before acting.

As soon as practicable, following their training as prescribed in G.S. 163-82.24, each chief judge and judge of election shall take and subscribe the following oath of office to be administered by an officer authorized to administer oaths and file it with the county board of elections:

'I,, do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution of said State not inconsistent with the Constitution of the United States; that I will administer the duties of my office as chief judge of (judge of election in) precinct, County, without fear or favor; that I will not in any manner request or seek to persuade or induce any voter to vote for or against any particular candidate or proposition; and that I will not keep or make any memorandum of anything occurring within a voting booth, unless I am called upon to testify in a judicial proceeding for a violation of the election laws of this State; so help me, God.'

Notwithstanding the previous paragraph, a person appointed chief judge by the judges of election under this section, or appointed judge of election by the chief judge under this section may take the oath of office immediately upon appointment.

Before the opening of the polls on the morning of the primary or election, the chief judge shall administer the oath set out in the preceding paragraph to each assistant, and any judge of election not previously sworn, substituting for the words 'chief judge of the words 'assistant in' or 'judge of election in' whichever is appropriate."

Sec. 2. G.S. 163-42 reads as rewritten:

"§ 163-42. Assistants at polls; appointment; term of office; qualifications; oath of office.

Each county and municipal board of elections is authorized, in its discretion, to appoint two or more assistants for each precinct to aid the chief judge and judges. Not more than two assistants shall be appointed in precincts having 500 or less registered voters. Assistants shall be qualified voters of the precinct for which appointed ~~county in which the precinct is located~~. When the board of elections determines that assistants are needed in a precinct an equal number shall be appointed from different political parties, unless the requirement as to party affiliation cannot be met because of an insufficient number of voters of different political parties within ~~a precinct~~ the county.

The chairman of each political party in the county shall have the right to recommend from three to 10 registered voters in each precinct for appointment as precinct assistants in that precinct. If the recommendations are received by it no later than the thirtieth day prior to the primary or election, the board shall make appointments of the precinct assistants for each precinct from the names thus recommended. If the recommendations of the party chairs for precinct assistant in a precinct are insufficient, the county board of elections by unanimous vote of all of its members may name to serve as precinct assistant in that precinct registered voters in that precinct who were not recommended by the party chairs. If, after diligently seeking to fill the positions with registered voters of the precinct, the county board still has an insufficient number of precinct assistants for the precinct, the county board by unanimous vote of all of its members may appoint to the positions registered voters in other precincts in the same county who meet the qualifications other than residence to be precinct officials in the precinct. In making its appointments, the county board shall assure, wherever possible, that no precinct has precinct officials all of whom are registered with the same party. In no instance shall the county board appoint nonresidents of the precinct to a majority of the positions as precinct assistant in a precinct.

In addition, a county board of elections by unanimous vote of all of its members may appoint any registered voter in the county as emergency election-day assistant, as long as that voter is otherwise qualified to be a precinct official. The State Board of Elections shall determine for each election the number of emergency election-day assistants each county may have, based on population, expected turnout, and complexity of election duties. The county board by unanimous vote of all of its members may assign emergency election-day assistants on the day of the election to any precinct in the county where the number of precinct officials is insufficient because of an emergency occurring within 48 hours of the opening of the polls that prevents an appointed precinct official from serving. A person appointed to serve as emergency election-day assistant shall be trained and paid like other precinct assistants in accordance with G.S. 163-46. A county board of elections shall apportion the appointments as emergency election-day assistant among registrants of each political party so as to make possible the staffing of each precinct with officials of more than one party, and the county board shall make assignments so that no precinct has precinct officials all of whom are registered with the same party.

Before entering upon the duties of the office, each assistant shall take the oath prescribed in G.S. 163-41(a) to be administered by the chief judge of the precinct for which the assistant is appointed. Assistants serve for the particular primary or election for which they are appointed, unless the county board of elections appoints them for a term to expire on the date appointments are to be made pursuant to G.S. 163-41."

Sec. 3. G.S. 163-43 reads as rewritten:

"§ 163-43. Ballot counters; appointment; qualifications; oath of office.

The county board of elections of any county may authorize the use of precinct ballot counters to aid the chief judges and judges of election in the counting of ballots in any precinct or precincts within the county. The county board of elections shall appoint the ballot counters it authorizes for each precinct or, in its discretion, the board may

delegate authority to make such appointments to the precinct chief judge, specifying the number of ballot counters to be appointed for each precinct. A ballot counter must be a resident of ~~that precinct.~~ the county in which the precinct is located.

No person shall be eligible to serve as a ballot counter, who holds any elective office under the government of the United States, or of the State of North Carolina or any political subdivision thereof.

No person shall be eligible to serve as a ballot counter, who serves as chairman of a state, congressional district, county, or precinct political party or political organization.

No person who is the wife, husband, mother, father, son, daughter, brother or sister of any candidate for nomination or election may serve as ballot counter during any primary or election in which such candidate qualifies.

No person shall be eligible to serve as a ballot counter who is a candidate for nomination or election.

Upon acceptance of appointment, each ballot counter shall appear before the precinct chief judge at the voting place immediately at the close of the polls on the day of the primary or election and take the following oath to be administered by the chief judge:

'I,, do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution of said State not inconsistent with the Constitution of the United States; that I will honestly discharge the duties of ballot counter in precinct, County for primary (or election) held this day, and that I will fairly and honestly tabulate the votes cast in said primary (or election); so help me, God.'

The names and addresses of all ballot counters serving in any precinct, whether appointed by the county board of elections or by the chief judge, shall be reported by the chief judge to the county board of elections at the county canvass following the primary or election."

Sec. 4. G.S. 163-87 reads as rewritten:

"§ 163-87. Challenges allowed on day of primary or election.

On the day of a primary or election, at the time a registered voter offers to vote, any other registered voter of the precinct may exercise the right of challenge, and when he does so may enter the voting enclosure to make the challenge, but he shall retire therefrom as soon as the challenge is heard.

On the day of a primary or election, any other registered voter of the precinct may challenge a person for one or more of the following reasons:

- (1) One or more of the reasons listed in G.S. 163-85(c), or
- (2) That the person has already voted in that primary or election, or
- (3) That the person presenting himself to vote is not who he represents himself to be.

On the day of a party primary, any voter of the precinct who is registered as a member of the political party conducting the primary may, at the time any registrant proposes to vote, challenge his right to vote upon the ground that he does not affiliate

with the party conducting the primary or does not in good faith intend to support the candidates nominated in that party's primary, and it shall be the duty of the chief judge and judges of election to determine whether or not the challenged registrant has a right to vote in that primary according to the procedures prescribed in G.S. 163-88; provided that no challenge may be made on the grounds specified in the paragraph against an unaffiliated voter voting in the primary under G.S. 163-74(a1).

The chief judge, judge, or assistant appointed under G.S. 163-41 or 163-42 may enter challenges under this section against voters in the precinct for which appointed regardless of the place of residence of the chief judge, judge, or assistant.

If a person is challenged under this subsection, and the challenge is sustained under G.S. 163-85(c)(3), the voter may still transfer his registration under G.S. 163-82.15(e) if eligible under that section, and the registration shall not be cancelled under G.S. 163-90.2(a) if the transfer is made. A person who has transferred his registration under G.S. 163-82.15(e) may be challenged at the precinct to which the registration is being transferred."

Sec. 4.1. G.S. 163-45 reads as rewritten:

"§ 163-45. Observers; appointment.

The chairman of each political party in the county shall have the right to designate two observers to attend each voting place at each primary and election and such observers may, at the option of the designating party chairman, be relieved during the day of the primary or election after serving no less than four hours and provided the list required by this section to be filed by each chairman contains the names of all persons authorized to represent such chairman's political party. Not more than two observers from the same political party shall be permitted in the voting enclosure at any time. This right shall not extend to the chairman of a political party during a primary unless that party is participating in the primary. In any election in which an unaffiliated candidate is named on the ballot, ~~he or his~~ the candidate or the candidate's campaign manager shall have the right to appoint two observers for each voting place consistent with the provisions specified herein. Persons appointed as observers must be registered voters of the ~~precinct~~ county for which appointed and must have good moral character. Observers shall take no oath of office.

Individuals authorized to appoint observers must submit in writing to the chief judge of each precinct a signed list of the observers appointed for that precinct. Individuals authorized to appoint observers must, prior to 10:00 A.M. on the fifth day prior to any primary or general election, submit in writing to the chairman of the county board of elections two signed copies of a list of observers appointed by them, designating the precinct for which each observer is appointed. Before the opening of the voting place on the day of a primary or general election, the chairman shall deliver one copy of the list to the chief judge for each affected precinct. He shall retain the other copy. The chairman, or the chief judge and judges for each affected precinct, may for good cause reject any appointee and require that another be appointed. The names of any persons appointed in place of those persons rejected shall be furnished in writing to the chief judge of each affected precinct no later than the time for opening the voting place on the

day of any primary or general election, either by the chairman of the county board of elections or the person making the substitute appointment.

An observer shall do no electioneering at the voting place, and he shall in no manner impede the voting process or interfere or communicate with or observe any voter in casting his ballot, but, subject to these restrictions, the chief judge and judges of elections shall permit him to make such observation and take such notes as he may desire.

Whether or not the observer attends to the polls for the requisite time provided by this section, each observer shall be entitled to obtain at times specified by the State Board of Elections, but not less than three times during election day with the spacing not less than one hour apart, a list of the persons who have voted in the precinct so far in that election day. Counties that use an 'authorization to vote document' instead of poll books may comply with the requirement in the previous sentence by permitting each observer to inspect election records so that the observer may create a list of persons who have voted in the precinct so far that election day; each observer shall be entitled to make the inspection at times specified by the State Board of Elections, but not less than three times during election day with the spacing not less than one hour apart."

Sec. 5. G.S. 163-226(a) reads as rewritten:

"(a) Who May Vote Absentee Ballot; Generally. – Any qualified voter of the State may vote by absentee ballot in a statewide primary, general, or special election on constitutional amendments, referenda or bond proposals, and any qualified voter of a county is authorized to vote by absentee ballot in any primary or election conducted by the county board of elections, in the manner provided in this Article if:

- (1) ~~He~~The voter expects to be absent from the county in which he is registered during the entire period that the polls are open on the day of the specified election in which he desires to vote; or
- (2) ~~He~~The voter is unable to be present at the voting place to vote in person on the day of the specified election in which he desires to vote because of his sickness or other physical disability; or
- (3) ~~He~~The voter is incarcerated, whether in his county of residence or elsewhere, shall be entitled to vote by absentee ballot in the county of his residence in any election, specified herein, in which he otherwise would be entitled to vote. Absentee voting shall be in the same manner as provided in this Article. The chief custodian or superintendent of the institution or other place of confinement shall certify that the applicant is not a felon, and the certification shall be as prescribed by the State Board of Elections. The State Board of Elections is authorized to prescribe procedures to carry out the intent and purpose of this subsection;
- (4) ~~He~~The voter is an employee of the county board of elections or a precinct official, observer, or ballot counter, in another precinct and ~~his~~ the voter's assigned duties on the day of the election will cause ~~him~~the voter to be unable to be present at the voting place to vote in person

and provided such employee has ~~his~~the application witnessed by the chairman of the county board of elections."

Sec. 6. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives