

Potential Changes to Election Administration in North Carolina

Issue Background Sheet | Last Updated Aug. 27, 2024

Since 1901, North Carolina elections have been overseen by a bipartisan state board of elections whose members are appointed by the Governor.¹

In 2023, the state legislature passed a bill giving themselves the power to appoint members to the state and county boards of elections. These changes are on pause as the law is challenged in court.

These changes could give the state legislature near-total control over election administration in North Carolina. The legislature already has the power to pass election law – giving them the additional power to appoint election officials could lead to hyper-partisanship and abuses of authority.

SUMMARY OF POSSIBLE CHANGES

In October 2023, the NC Legislature passed a bill that significantly changes the state and county boards of elections.² In March 2024, a court declared these changes to be unconstitutional, placing the changes on hold.³ This decision is being appealed, with a final decision likely coming after the 2024 election.

If allowed to go into effect, what would these changes mean? The pending law infers that:

- **All members of the state board of election would be removed.** The state legislature would then appoint 8 new members.
- **All members of every county board of election in the state would be removed.** The state legislature would then appoint new members – 4 board members for each county, for a total of 400 board members.
- **The state board’s Executive Director could be removed.** If the state board cannot agree to a new executive director within 30 days, they would be appointed by the state legislature.⁴

NOTE: While Senate Bill 749 states that legislative leaders from both political parties have the power to recommend state and county board members (see [sections 2.1 and 4.2](#)) the appointments must be approved by the greater General Assembly via legislation⁵ (see [NCGS 120-121](#)). This could lead to recommendations being disregarded by the party in power. This could result in a board composed of members of one political party; a majority of one party; or an even split between parties.

¹ [Legislative analysis of Senate Bill 749](#) prepared by Erika Churchill, December 1 2023.

² [Senate Bill 749](#).

³ [Cooper v. Berger](#), filed October 2023.

⁴ Appointment would be made “upon recommendation” of the President Pro Tempore of the Senate or the Speaker of the House of Representatives, depending on the year.

⁵ There is an alternative procedure if the General Assembly has adjourned - see [SB 749](#) sections 2.1 and 4.2 for details.

KEY POINTS

- As they currently exist, the state and local boards of elections are bipartisan bodies, with members of both major political parties. Potential changes could give total power to one political party – or an even split could result in a deadlocked, ineffective agency.
- It is dangerous for the state legislature – a political body that also has the power to write election law – to be directly involved in election administration. Only four states in the country allow their state legislature to play a role in appointing their chief election official.⁶
- Giving the state legislature the power to appoint over 400 board members is a substantial body of work and may result in seats remaining vacant for extended periods of time.

WHY IT'S IMPORTANT: AN INDEPENDENT AGENCY

- The NC State Board of Elections is an executive agency that is separate from the legislative branch – which North Carolina courts have repeatedly upheld.⁷
- While the state legislature creates election laws, the state and local boards of elections administer elections – two distinct roles that respect the separation of the legislative and executive branches of government.
- State and county boards of elections operate as independent agencies. This reduces the politicization of election administration and allows for appropriate checks and balances between the branches of government.

WHY IT'S IMPORTANT: AN EFFECTIVE AGENCY

- Boards of elections must have a majority vote in order to make most decisions.⁸ The creation of boards with an even number of members from each political party could make securing a majority vote increasingly difficult.
- An evenly-split board could lead to significant delays regarding key election decisions, such as certifying final election results and hearing election challenges. This could result in a deluge of emergency litigation, throwing election administration into disarray.
- Take the Federal Elections Commission as an example. For more than a decade, the agency has been regarded as highly ineffective – due in large part to the agency's even 3-3 party split. Cases taken to the FEC are often dismissed due to a voting deadlock; research shows the FEC routinely fails to enforce the laws it was created to oversee, even when presented with overwhelming evidence of likely legal violations – bringing its work to a standstill.⁹

⁶ National Conference of State Legislatures, "[State Level Election Administration](#)."

⁷ See *Cooper v. Berger and Moore*, No. 16-CVS-15636; *Cooper v. Berger and Moore*, 17-CVS-5084; and *Cooper v. Berger and Moore*, Wake County Case No. 18-CVS-3348.

⁸ See §163-20(d) and [Senate Bill 749](#).

⁹ Michael M. Franz, *Federal Election Commission Divided: Measuring Conflict in Commission Votes Since 1990*, Election Law Journal: Rules, Politics, and Policy, Vol 20 No. 2, June 2021.

STATE BOARD OF ELECTIONS¹⁰

The North Carolina State Board of Elections (NCSBE) is a bipartisan, independent agency housed under the state's executive branch. This agency oversees all elections, performing essential and time-sensitive work such as certifying election results and hearing voter challenges.

Board Members

Current law requires 5 board members, with no more than 3 members from the same political party. The Governor has the power to appoint and remove board members. Members must be chosen from a list of nominees submitted by the two political parties with the largest number of registered voters. **Pending new legislation** requires 8 board members appointed by the state legislature, with no restrictions regarding how many members may be from the same party.¹¹

Executive Director

NCSBE staff are led by an NCSBE Executive Director, who serves as the state's chief election official. **Current law** gives NCSBE board members the power to appoint and remove the Executive Director. **Pending new legislation** gives the board the power to appoint the Executive Director — if a decision cannot be reached within 30 days, this power falls to the state legislature.¹²

COUNTY BOARD OF ELECTIONS¹³

Every county in North Carolina has a County Board of Elections (CBOE). The CBOE conducts elections with the county, including choosing voting sites and maintaining voter registration lists.

Board Members

Current law requires 5 board members, with no more than three members from the same political party. The state board appoints four board members, with the Governor appointing the fifth (who serves as the chair). Board members are chosen from a list of nominees submitted by the two political parties with the most registered voters. **Pending new legislation** requires 4 board members appointed by the state legislature, with no restrictions regarding how many members may be from the same political party.¹⁴

Director

Each county has a County Director of Elections, who serves as the chief election official for the country. **Current law** gives the state board of elections the power to choose the County Director of Elections (in consultation with the county's board of elections). **Pending new legislation** would give the state board of election director the power to choose an acting county director, if the county board of elections is unable to make a decision.

¹⁰ See NCGS 163-19 through 163-28.

¹¹ For details about the appointment process, see note at bottom of page 1.

¹² Appointment would be made "upon recommendation" of the President Pro Tempore of the Senate or the Speaker of the House of Representatives, depending on the year.

¹³ North Carolina General Statutes 163-30 through 163-37.

¹⁴ For details about the appointment process, see note at bottom of page 1.

HISTORY + CONTEXT

For over a decade, the North Carolina Legislature has attempted to gain more control over the state board of elections. This is part of a larger strategy to prevent the Governor from controlling executive agencies, shifting this power to the legislature.

2016: Immediately following the election of Democratic Governor Roy Cooper, the state legislature passes a bill abolishing the NC Board of Elections and creating a Bipartisan State Board of Elections and Ethics Enforcement — giving the state legislature the power to appoint board members (previously held by the Governor).¹⁵ The legislation is challenged in court and is struck down. Similar legislation is passed in 2017 and 2018 but is invalidated by NC courts.¹⁶

2018: The state legislature passes a bill to amend the state constitution, which first must be approved by voters during the 2018 general election. The proposed amendment would shift power from the Governor to the state legislature to make appointments to the state elections board. The measure fails, with 62% of voters voting against the measure.¹⁷

2021: The state legislature passes a law eroding the power of the NC Board of Elections to independently settle some election-related lawsuits, giving the Speaker of the House of Representatives and the President Pro Tempore of the Senate more power.¹⁸

2021: The state legislature introduces (but does not pass) [House Bill 487](#), which would have allowed unspecified individuals to fire election officials for undefined reasons.

2021: Members of the NC House Freedom Caucus threaten to force their way into the Durham County Board of Elections office to “inspect” voting equipment, in violation of state election law.¹⁹

¹⁵ North Carolina Session Laws 2016-125 and 2016-126.

¹⁶ North Carolina Session Laws 2017-6 and 2018-2.

¹⁷ Ballotpedia, “[North Carolina Legislative Appointments to Elections Board Amendment \(2018\)](#).”

¹⁸ After Governor Cooper vetoed the original bill ([Senate Bill 360](#)), the bill’s text was inserted in the 628-page budget bill and was passed into law ([NC Session Law 2021-180](#)).

¹⁹ Laura Leslie, “[GOP lawmaker backs down from threat to force way into Durham elections office](#),” WRAL News, October 7, 2021.