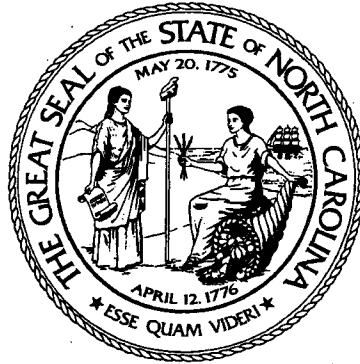


ELECTION LAWS REVISION COMMISSION



REPORT TO THE
2000 SESSION OF THE
1999 GENERAL ASSEMBLY
OF NORTH CAROLINA

A LIMITED NUMBER OF COPIES OF THIS REPORT IS AVAILABLE
FOR DISTRIBUTION THROUGH THE LEGISLATIVE LIBRARY.

ROOMS 2126, 2226
STATE LEGISLATIVE BUILDING
RALEIGH, NORTH CAROLINA 27611
TELEPHONE: (919) 733-7778

OR

ROOM 500
LEGISLATIVE OFFICE BUILDING
RALEIGH, NORTH CAROLINA 27603-5925
TELEPHONE: (919) 733-9390

TABLE OF CONTENTS

LETTER OF TRANSMITTAL..... i

COMMISSION MEMBERSHIP ii

PREFACE 1

COMMITTEE PROCEEDINGS..... 3

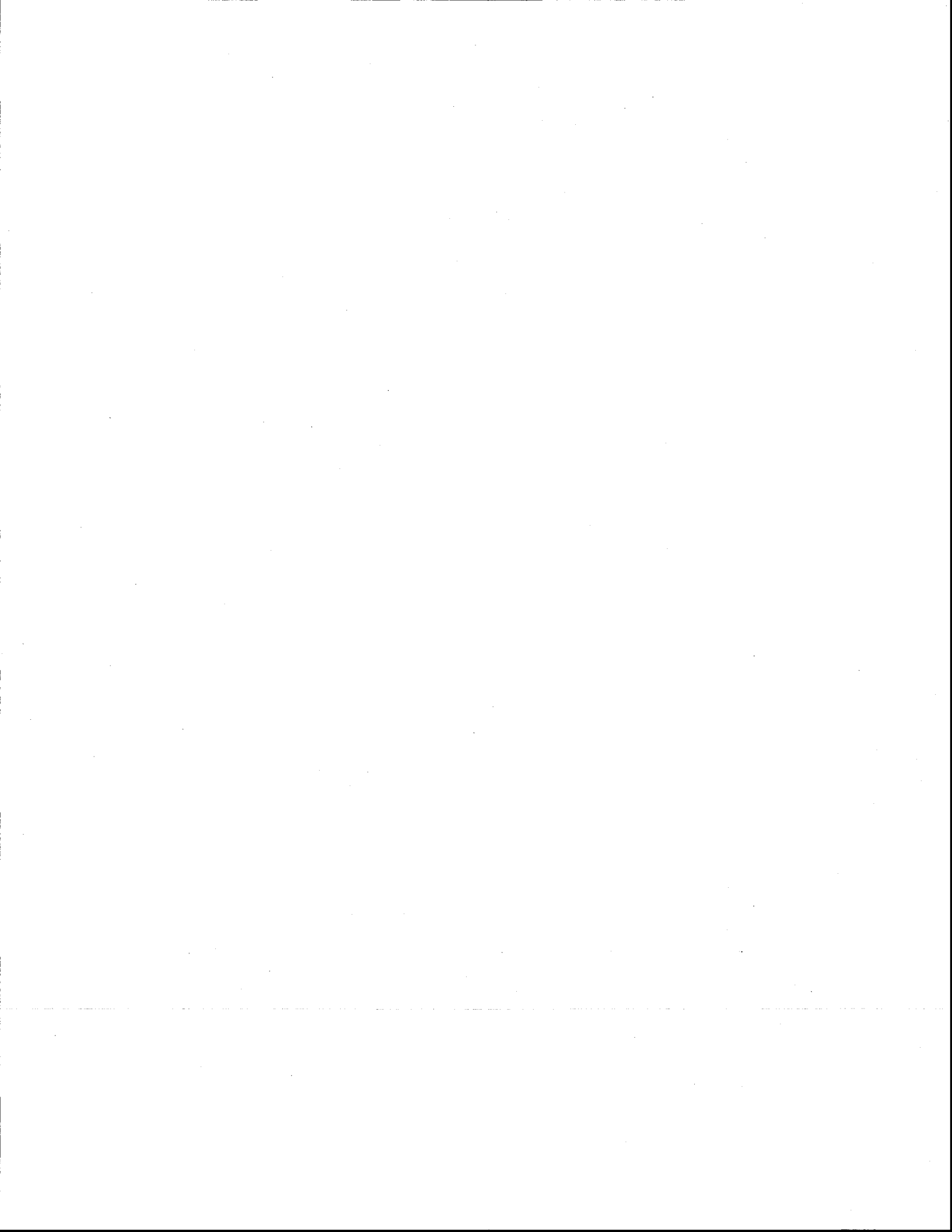
FINDINGS AND RECOMMENDATIONS 5

APPENDICES.....

 RELEVANT PORTIONS OF THE 1999 STUDIES BILLS, CHAPTER 395
 OF THE 1999 SESSION LAWS (FIRST SESSION, 1999)..... A

 CITIES WITH MUNICIPAL BOARDS OF ELECTIONS
 AND THEIR POPULATIONS..... B

 LEGISLATIVE PROPOSAL – A BILL TO BE ENTITLED
 AN ACT TO PROHIBIT CERTAIN POLITICAL ACTIVITIES BY
 BOARD OF ELECTIONS MEMBERS
 AND AN ANALYSIS OF THE BILL C

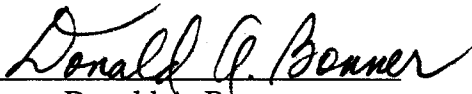


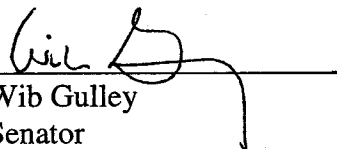
May 4, 2000

TO THE MEMBERS OF THE 1999 GENERAL ASSEMBLY (REGULAR SESSION 2000):

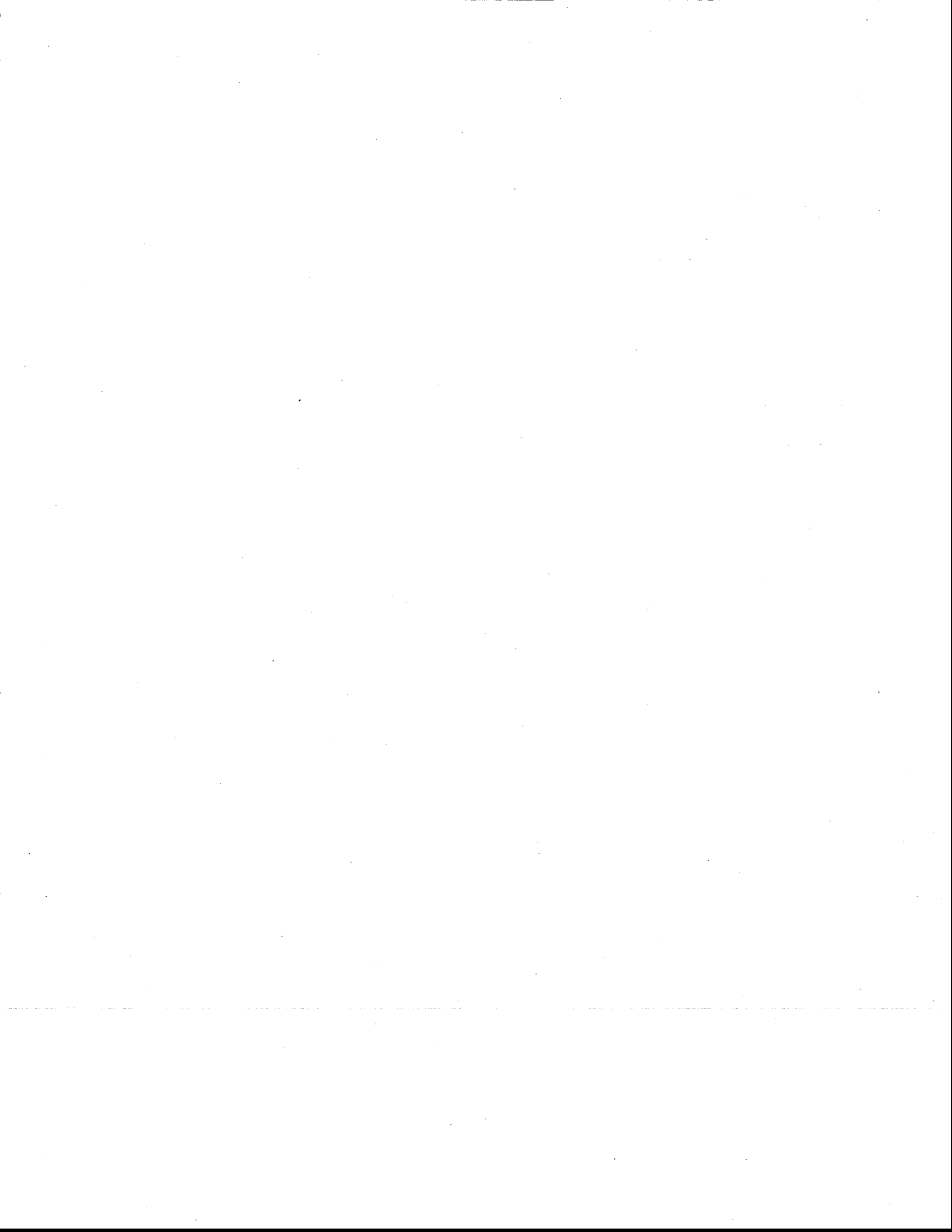
The Election Laws Revision Commission herewith submits to you for your consideration its 2000 interim report. The report was prepared by the Election Laws Revision Commission pursuant to Session Law 1999-395, Section 4.6.

Respectfully submitted,


Donald A. Bonner
Representative


Wib Gulley
Senator

Co-Chairs
Election Laws Revision Commission



1999-2000

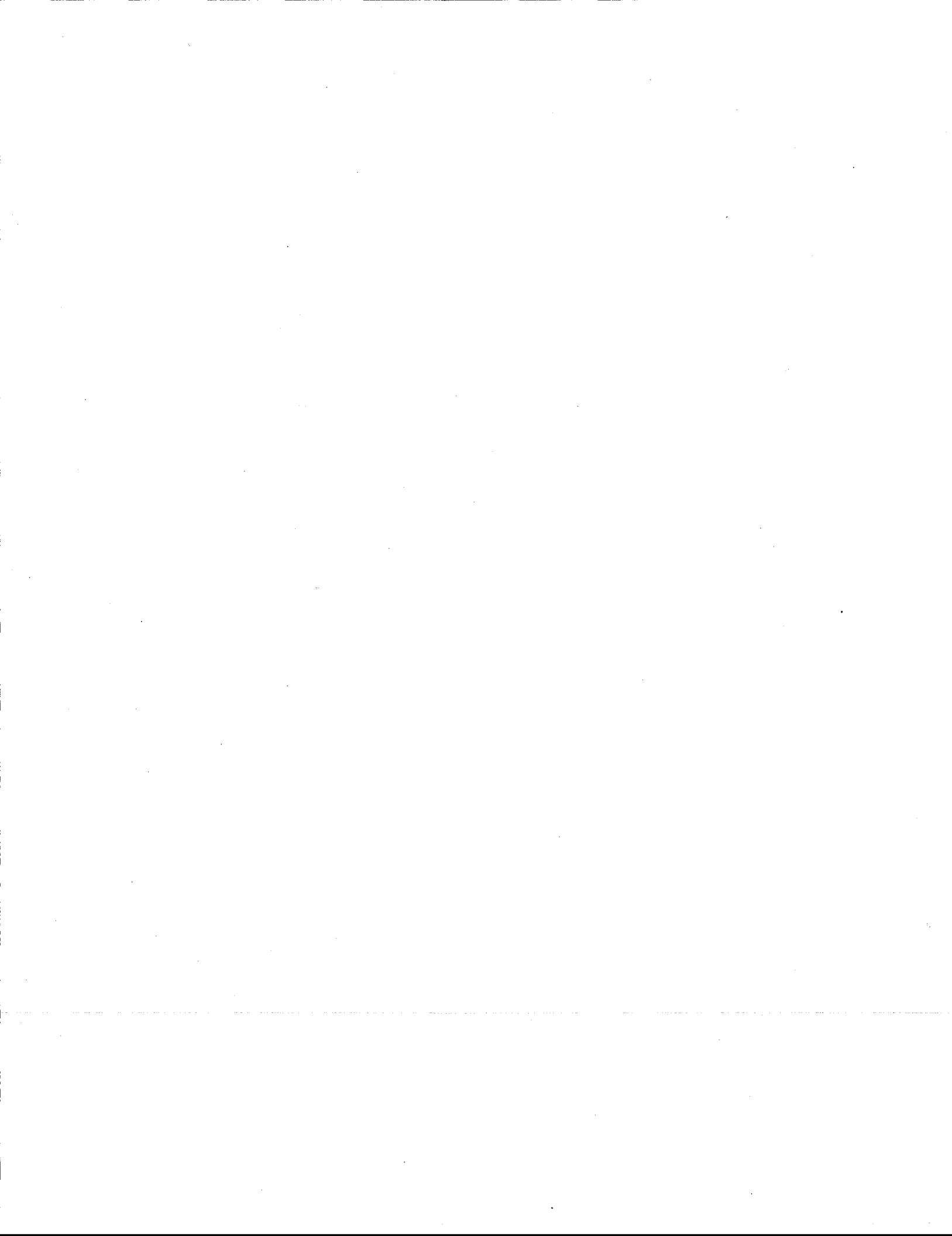
MEMBERSHIP

ELECTION LAWS REVISION COMMISSION

Appointees of the President Pro Tempore of the Senate	Appointees of the Speaker of the House	Appointees of the Governor	Ex Officio Members
Senator Wib Gulley, Co-Chair	Representative Donald A. Bonner, Co-Chair		
Senator Fletcher L. Hartsell	Representative Martha B. Alexander	Michael Crowell, Attorney at Law.	Larry Leake, Chair, State Board of Elections
Douglas R. Holbrook Jr., Secretary, Wake County Board of Elections	Representative Art Pope	Ronald A. Gregory, Member, Durham County Board of Elections	Gary O. Bartlett, Executive Secretary- Director, State Board of Elections
Deborah K. Ross, Legal Director, North Carolina Civil Liberties Union	Judy Caudill, Election Director of Lincoln County	Atlas Price Jr., Chair, Wayne County Board of Commissioners	Barbara Allen, Chair, State Democratic Party
		June K. Youngblood, Member, State Board of Elections	William Cobey, Chair, State Republican Party
			Sean Haugh, Chair, State Libertarian Party

Staff: William R. Gilkeson, Gerry F. Cohen, Marilyn Chism, Erika Churchill

Clerks: Phyllis Cameron, Lucy Johnson



PREFACE

The Election Laws Revision Commission was established by Part III of Session Law 1999-395. Relevant excerpts of the authorizing legislation are included at *Appendix A*.

Among the Commission's duties are studying certain specified topics and preparing and recommending a comprehensive revision of the election laws of North Carolina. The Commission is directed to submit a final written report on or before the convening of the 2001 General Assembly. It is also given the choice of submitting a report to the 2000 Regular Session of the 1999 General Assembly. This report is submitted pursuant to the Commission's discretionary authority to submit an interim report to the 2000 Session.

A committee notebook containing the committee minutes and all information presented to the committee will be filed in the Legislative Library by the end of the 1999-2000 biennium.

COMMITTEE PROCEEDINGS

The Election Laws Revision Commission held three meetings before the 2000 Session of the 1999 General Assembly.

On March 1, 2000, the Commission held an organizational meeting. The members heard two background presentations. William R. Gilkeson, Staff Co-Counsel, described the legislation concerning election laws that was enacted by the 1999 General Assembly. Susan Nichols, Deputy Attorney General, reported on election-law litigation the State faces. The Co-Chairs, noting the Commission's charge to consider recodification of the election laws, appointed a Subcommittee to begin the task. The Subcommittee was to be chaired by Michael Crowell. Five others were appointed as members: Senator Fletcher L. Hartsell, Representative Martha B. Alexander, Gary O. Bartlett, Ronald A. Gregory, and Judy Caudill.

At its second meeting, held March 21, 2000, the Commission studied the topics of enforcement of campaign laws, no-excuse absentee voting, and municipal boards of elections. The enforcement topic was addressed by three District Attorneys, Belinda Foster, Colon Willoughby, and Thomas Keith; by Mr. Bartlett; and by Bob Hall, research director for Democracy South. All described problems with the current law that make enforcement difficult. The absentee voting topic was addressed by Representative Larry Justus, who spoke against removing the current excuse requirement. Representative Martin Nesbitt, who has advocated removing the excuses, was on the agenda but was unable to attend. The topic of municipal boards of elections was addressed by Mr. Leake; by Ellis Hankins, director of the League of Municipalities; and by Steve Settlemeire, City Attorney of Morganton. Mr. Leake presented the case for the abolition of municipal boards of elections, and Mr. Settlemeire spoke opposing the abolition of the Morganton Board of Elections. Included as *Appendix B* is a listing of the names

and populations of the 52 cities in North Carolina that conduct their own city elections using municipal boards of elections and their populations.

At its third meeting, held April 13, 2000, the Commission studied the topics of conduct by board of elections members, public financing of campaigns, and the relationship of the State Board of Elections to the Administrative Procedure Act (APA). Senator Daniel Clodfelter related an incident in his home county of Mecklenburg that led him to believe there is a need for legislation to limit the political activities of board of elections members. After discussion, the Commission voted to recommend to the 2000 Session the bill that is included at *Appendix C*. The topic of public financing of campaigns was addressed by the Co-Chairs, Sen. Gulley and Rep. Bonner, who described bills they introduced in the 1999 Session which are eligible for consideration in 2000. Those bills would create a system of comprehensive public financing for statewide and legislative candidates. A discussion followed concerning the mechanics of the bills. In addition, Mayor Glen Lang of Cary discussed his proposal for a city ordinance allowing public financing to candidates in Cary city elections. On the topic of the APA, Mr. Leake presented the case that the General Assembly should grant the State Board of Elections an exemption from the APA, and Rep. Pope presented the case that the State Board should at least be subject to the APA's rulemaking provisions.

FINDINGS AND RECOMMENDATION

FINDING I: The Commission finds that county boards of elections and the State Board of Elections are entrusted with enormous responsibility to conduct fair elections. Some of this responsibility takes on a quasi-judicial character. County boards of elections sit to determine the eligibility of voters whose registration has been challenged. The State Board of Elections determines whether irregularities warrant the calling of a new election.

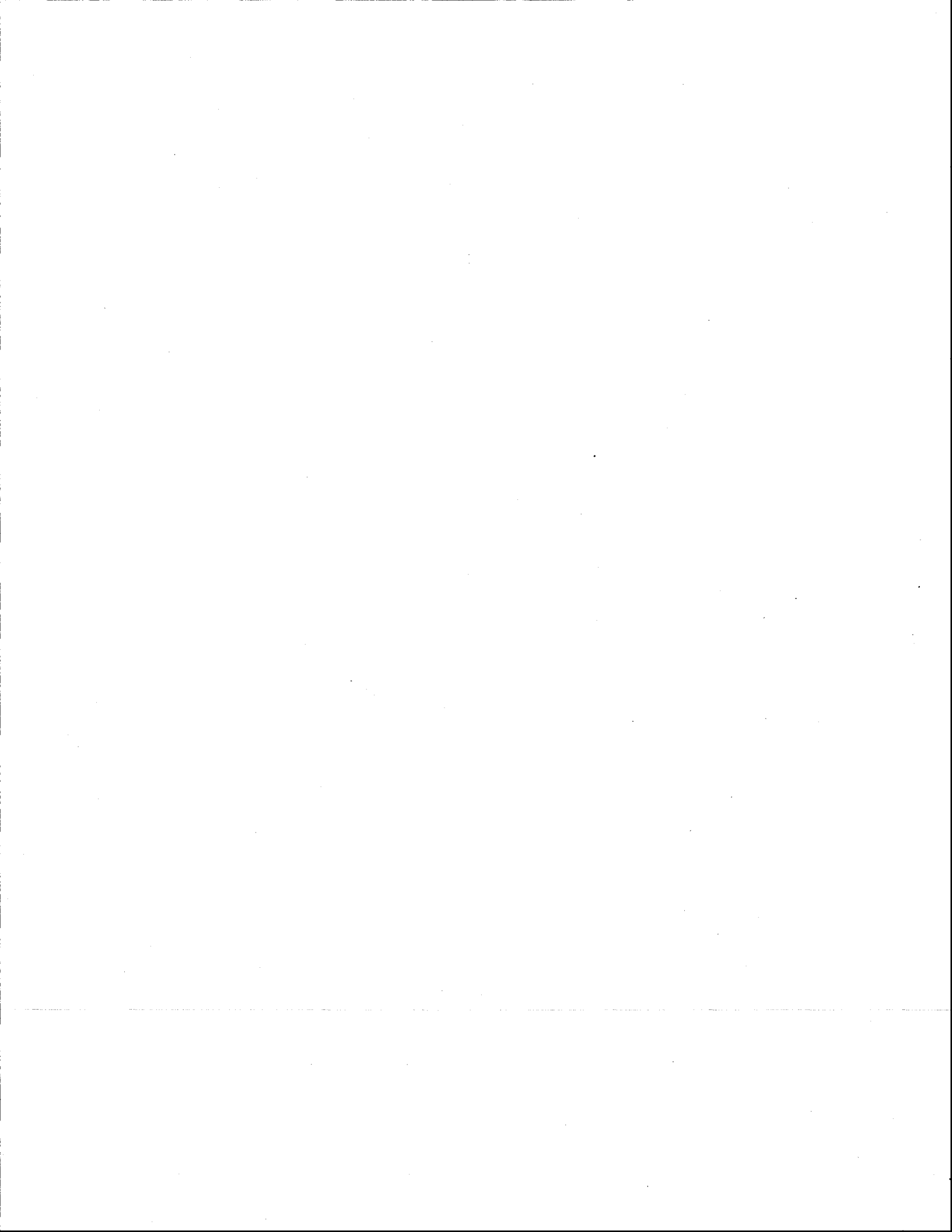
FINDING II: The Commission finds that public confidence in election board members underpins confidence in the election system itself. If the public loses confidence in the ability of election board members to discharge their quasi-judicial responsibilities impartially, then a vital reserve of democracy is diminished.

FINDING III: The Commission finds that when election board members openly promote candidates or proposals that are on the ballot in their jurisdiction, confidence in their impartial conduct of the election is shaken. Participants on the other side of the issue are the first to become concerned, but their doubts may spread to the general public. Although it is true that most board of elections members receive their appointments through a partisan political process, the participants and the public have a reasonable expectation that those board members will assume an impartial demeanor once in office. Already, board members are ineligible to serve as such if they also serve as campaign managers or as political party officers.

FINDING IV: The Commission finds that the North Carolina Code of Judicial Conduct prohibits judges from making speeches in support of a candidate, publicly endorsing a candidate, or soliciting funds for a candidate. The Code describes this as "political activity inappropriate to . . . judicial office." The rationale for limiting the political activity of judges is even stronger for election board members. Ordinarily, judges of the General Court of Justice spend only a small portion of their time hearing cases concerned with elections. Virtually all the quasi-judicial

activities of board of elections members, however, concern the elections that they are administering.

RECOMMENDATION: Therefore, the Commission recommends that the law be amended to prohibit county, municipal, or State board of elections members from making public statements supporting or opposing the nomination or election of candidates on the ballot in elections within the territory covered by their board. The Commission recommends that the same apply for proposals on referendum ballots. The Commission also recommends that board members be prohibiting from soliciting contributions for those candidates or those proposals. Violations of the prohibitions would be grounds for removal of a board member under the current removal statutes. A draft of the **LEGISLATIVE PROPOSAL** the Commission recommends, and a summary of the draft, are included at *Appendix C*.



APPENDIX A

CHAPTER 395

1999 Session Laws (1999 Session)

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE VARIOUS STUDY COMMISSIONS, TO DIRECT STATE AGENCIES AND LEGISLATIVE OVERSIGHT COMMITTEES AND COMMISSIONS TO STUDY SPECIFIED ISSUES, AND TO AMEND OTHER LAWS.

The General Assembly of North Carolina enacts:

PART I.-----TITLE

Section 1. This act shall be known as "The Studies Act of 1999".

. . .

PART IV.-----ELECTION LAWS STUDY COMMISSION (S.B. 882 - Gulley; H.B. 1402, H.B. 1073 - Alexander)

Section 4.1. There is created an Election Laws Revision Commission. The Commission shall be composed of 17 members. Twelve members shall be appointed as follows:

- (1) The President Pro Tempore of the Senate shall appoint four members, including at least one county board of elections member, with no more than three of the four affiliated with the same political party.
- (2) The Speaker of the House of Representatives shall appoint four members, including at least one county elections director, with no more than three of the four affiliated with the same political party.
- (3) The Governor shall appoint four members, including at least one county commissioner and at least one minority-party member of the State Board of Elections.

The Chair and the Executive Secretary-Director of the State Board of Elections shall be ex officio members. The State chairs of the three political parties whose nominees for Governor received the largest number of votes in the most recent general election for Governor shall be ex officio members. All members of the Commission, whether appointed or ex officio, shall be voting members.

Section 4.2. The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Commission from their appointees.

Section 4.3. The Election Laws Revision Commission shall study the following:

- (1) The election laws, policies, and procedures of the State.
- (2) The administration of those laws, policies, and procedures at the State and local levels and the responsibilities of those administering these laws.
- (3) The election laws, policies, and procedures of other States and jurisdictions.
- (4) Federal and State case rulings impinging on these laws, policies, and practices.
- (5) Public funding of election campaigns, including the advisability and proper design of a system to allow public funds to be used to support the campaigns of candidates for Governor, Lieutenant Governor, other Council of State officers, and the General Assembly who agree to abide by fund-raising and spending limits.
- (6) APA exemption for the State Board of Elections.
- (7) Preference voting and instant second primaries.

Section 4.4. The Commission shall prepare and recommend to the General Assembly a comprehensive revision of the election laws of North Carolina that will accomplish the following:

- (1) Remove inconsistencies, inaccuracies, ambiguities, and outdated provisions in the law.
- (2) Incorporate in the law any desirable uncodified procedures, practices, and rulings of a general nature that have been implemented by the State Board of Elections or its Executive Secretary-Director.

- (3) Conform the statutory law to State and federal case law and to any requirements of federal statutory law and regulation.
- (4) Ensure the efficient and effective administration of elections in this State.
- (5) Continue the impartial, professional administration of elections, which the citizens of the State expect and demand.
- (6) Recodify the election laws, as necessary, to produce a comprehensive, clearly understandable structure of current North Carolina election law, susceptible to orderly expansion as necessary.

Section 4.5. With the prior approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to assist in the work of the Election Laws Revision Commission and may provide for additional staffing by the State Board of Elections, Office of the Attorney General, and the Institute of Government. With prior approval of the State Board of Elections, the Election Laws Revision Commission may hold its meetings in the offices of the State Board. With the prior approval of the Legislative Services Commission, the Election Laws Revision Commission may hold its meetings in the State Legislative Building or the Legislative Office Building.

Section 4.6. The Commission shall submit a final written report of its findings and recommendations on or before the convening of the 2001 Session of the General Assembly and may submit a report to the 2000 Regular Session of the 1999 General Assembly. All reports shall be filed with the President Pro Tempore of the Senate and the Speaker of the House of Representatives, the Principal Clerks of the Senate and the House of Representatives, and the Legislative Librarian. Upon filing its final report, the Commission shall terminate.

Section 4.7. Members of the Commission shall be paid per diem, subsistence, and travel allowances as follows:

- (1) Commission members who are also members of the General Assembly, at the rate established in G.S. 120-3.1;
- (2) Commission members who are officials or employees of the State or local government agencies, at the rate established in G.S. 138-6;
- (3) All other Commission members, at the rate established in G.S. 138-5.

Section 4.8. All State departments and agencies, local boards of elections, and local governments and their subdivisions shall cooperate with the Commission and, upon request, shall furnish to the Commission and its staff any information in their possession or available to them.

Section 4.9. From funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the expenses of the Election Laws Revision Commission.

. . .

PART XXIII.-----EFFECTIVE DATE AND APPLICABILITY

Section 23.1. Except as otherwise specifically provided, this act becomes effective July 1, 1999. If a study is authorized both in this act and the Current Operations Appropriations Act of 1999, the study shall be implemented in accordance with the Current Operations Appropriations Act of 1999 as ratified.

In the General Assembly read three times and ratified this the 21st day of July, 1999.

s/ Dennis A. Wicker
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 9:03 p.m. this 5th day of August, 1999

APPENDIX B

Cities With Municipal Boards of Elections.

William R. Gilkeson, Research Division, N.C. General Assembly.
 List of municipal boards of elections supplied by State Board of Elections.
 Population estimates from State Data Center.

County	City	Population (1998 Estimated)
Alexander	Taylorsville	2,325
Allegheny	Sparta	1,968
Anson	Wadesboro	3,591 *
	Peachland	493 *
	Polkton	646 *
	Ansonville	611 *
	Lilesville	439 *
Bertie	Askewville	201
Burke	Morganton	16,080
Caldwell	Granite Falls	3,691
	Rhodhiss (part in Burke)	759
Columbus	Cerro Gordo	218 *
	Brunswick	305
Craven	Vanceboro	1,024
	Dover	449 *
Cumberland	Falcon	338 *
	Stedman	651
	Godwin	71 *
	Wade	450
Haywood	Canton	3,672 *
Hertford	Winton	786 *
	Murfreesboro	2,100 *
	Harrellsville	92 *
	Como	102
	Cofield	377 *

(continued)

Iredell	Love Valley	78
	Mooreville	15,913
	Harmony	586
Madison	Mars Hill	1,635
	Marshall	871
	Hot Springs	554
McDowell	Old Fort	1,009
Mitchell	Bakersville	331 *
Pamlico	Mesic	306 *
	Minnesott Beach	301
	Stonewall	277 *
	Vandemere	320
	Arapahoe	463
Pender	Watha	174
	Atkinson	319
Polk	Saluda (part in Henderson)	658
	Tryon	1,752
Richmond	Norman	94 *
	Hoffman	466
Sampson	Garland	796
Swain	Bryson City	1,102 *
Warren	Warrenton	955
	Norlina	1,061
	Macon	156
Washington	Creswell	329 *
	Roper	617 *
Yancey	Burnsville	1,585

* indicates a drop in population since the 1990 Census.

APPENDIX C

LEGISLATIVE PROPOSAL

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

D

2000-RRY-006.1

THIS IS A DRAFT <date=system> <time=system>

Short Title: Election Bd. Conduct.

(Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT CERTAIN POLITICAL ACTIVITIES BY BOARD OF ELECTIONS MEMBERS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 163 of the General Statutes is amended by adding a new Article to read:

"Article 4A.

Political Activities by Board of Elections Members.

§ 163-38. Applicability of Article.

This Article applies to members of the State Board of Elections and of each county and municipal board of elections. With regard to prohibitions in this Article concerning candidates, referenda, and committees, the prohibitions do not apply if the candidate or referendum will not be on the ballot in an area within the jurisdiction of the board, or if the political committee or referendum committee is not involved with an election or referendum that will be on the ballot in an area within the jurisdiction of the board.

§ 163-39. Limitation on political activities.

No person subject to this Article shall:

- (1) Make public statements supporting or opposing the nomination or election of one or more clearly identified candidates for public office.
- (2) Make public statements supporting or opposing the passage of one or more clearly identified referendum proposals.
- (3) Solicit contributions for a candidate, political committee, or referendum committee.

Nothing in this Article shall be deemed to prohibit participation in a political party convention as a delegate. Nothing in this Article shall be deemed to prohibit a board member from making a contribution.

§ 163-40. No person to engage in prohibited act as alter ego.

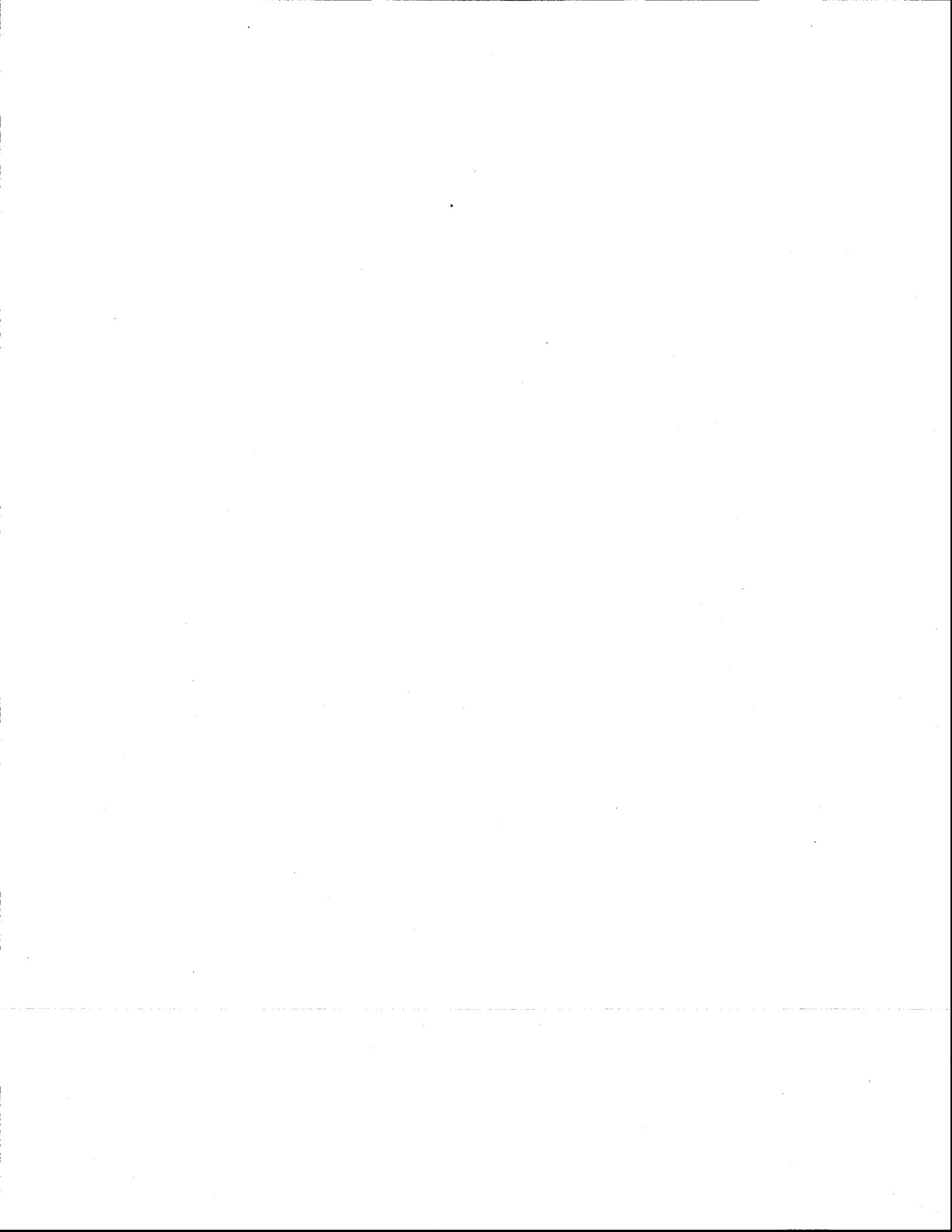
No person acting as the alter ego of a board member subject to this Article shall engage in any act prohibited by this Article. § 163-40.1. Violation is ground for removal.

A violation of this Article is a ground to remove a State Board member under G.S. 143B-16, a county board member under G.S. 163-22(c), or a municipal board member under G.S. 163-280(i).

§ 163-40.2. Definitions.

The provisions of Article 22A of this Chapter shall apply to the definition and proof of terms used in this Article."

Section 2. This act becomes effective January 1, 2001.





LEGISLATIVE PROPOSAL OF ELECTION LAWS REVISION COMMISSION: Election Board Conduct.

Committee: Election Laws Revision
Commission

Introduced by:

Date: April 13, 2000

Summary by: William R. Gilkeson
Committee Co-Counsel

Version: 2000-RRY-006.1

SUMMARY: *The bill would prohibit members of county, municipal, and State boards of elections from making public statements supporting or opposing the nomination or election of candidates on the ballot within the territory covered by the board. The same would apply for statements by board members supporting or opposing the passage of referendum proposals.*

CURRENT LAW: Current law takes party affiliation into account in the process by which members of State, county, and municipal boards of elections are appointed. The law places campaign-related limitations on board members in terms of their qualifications. But current law does not prohibit board members from endorsing candidates or soliciting contributions.

Appointment. Currently, State and county board of elections members are appointed from lists of nominees put forth by the State Chairs of the political parties. State Board members are appointed by the Governor. County board members are appointed by the State Board. Municipal board members are appointed by the city council. No more than a simple majority of any of the three kinds of boards may be of the same party. Municipal boards, however, may only exist in cities that have nonpartisan city elections, and the appointment process of municipal boards does not have a formal role for the party Chairs. In all three kinds of boards, the members are appointed for a set term.

Qualifications. Current law says State and county board members may not be elected officials, candidates for elective office, an officer in a political party organization, or a campaign manager or political treasurer. County board of elections members have the additional requirement of not being related to a candidate for office in the county as spouse, son, son-in-law, daughter, daughter-in-law, parent-in-law, sister-in-law, brother-in-law, aunt, uncle, niece, or nephew. The county board statute has a proviso that serving as a party convention delegate is permitted. Municipal board of elections members may not hold or be candidates for elective office or be campaign manager for a candidate, but nothing is said about being a treasurer and nothing is said about party activity. All those limitations are stated as qualifications for the office rather than as limitations on activity. The county board statute actually says that if a member fails to meet one of those qualifications, the office becomes vacant.

Removal. There are roughly parallel provisions in the statutes for all three kinds of boards giving the appointing authority the right to remove a board member for good cause.

BILL ANALYSIS: The Commission's Legislative Proposal would create a new Article in Chapter 163, the Election Law, setting out uniform limitations on the political activity of members of State, county, and municipal boards of elections. None would be able to make public statements supporting or opposing

LEGISLATIVE PROPOSAL OF ELECTION LAWS REVISION COMMISSION

the nomination or election of candidates or the passage of referendum proposals. This would apply only to candidates or referenda on the ballot in the territory covered by the board. Board members would also be prohibited from soliciting contributions for those candidates or referendum proposals, or for committees supporting them. The prohibitions would not apply to serving as a delegate to a political convention, or to *making* contributions, as opposing to *soliciting* them. A violation of the Article would be grounds for removal under the current statutes that allow removal for cause.

The bill provides that no person may do what the board member is prohibited from doing if that person is acting as the board member's alter ego.

The bill says terms in the new Article, such as "candidate," "support or oppose the nomination or election of a candidate," and "contribution" have the same meaning as in Article 22A, the Campaign Finance Act.

The bill would become effective January 1, 2001.

BACKGROUND: The Commission voted to endorse this Legislative Proposal at its April 13, 2000, meeting after hearing from Sen. Daniel Clodfelter of Mecklenburg County. Sen. Clodfelter recounted an incident in which a member of the Mecklenburg County Board of Elections wrote and signed letters and articles published in *The Charlotte Observer* advocating the defeat of members of the Charlotte-Mecklenburg School Board. When a citizen complained about this to the State Board of Elections, she was told that nothing prohibited the board member's statements. Sen. Clodfelter noted that the N.C. Code of Judicial Conduct prohibits such conduct by judges as being inappropriate to their office, and he noted that boards of elections sit in a quasi-judicial capacity. The initial draft of a bill Sen. Clodfelter presented to the Commission was patterned closely after the Code of Judicial Conduct, but members of the Commission suggested changes before they endorsed the proposal. Notably, the Commission removed from the draft a prohibition against board members making contributions.

