

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 1120\*

Short Title: Voter's Testimony.

(Public)

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Sponsors: Senators Gulley and Winner.

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Referred to: Judiciary II/Election Laws.

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May 14, 1996

A BILL TO BE ENTITLED

1 AN ACT TO PROHIBIT THE USE OF INELIGIBLE VOTER'S TESTIMONY ABOUT  
2 HOW THE VOTE WAS CAST; TO GIVE THE PERSON PROTESTING THE  
3 ELECTION THE RIGHT TO CALL FOR A NEW ELECTION WHEN THE  
4 NUMBER OF INELIGIBLE VOTERS EXCEEDS THE MARGIN OF VICTORY;  
5 AND TO MAKE RELATED CHANGES.  
6

7 The General Assembly of North Carolina enacts:

8 Section 1. G.S. 163-33 reads as rewritten:

9 **"§ 163-33. Powers and duties of county boards of elections.**

10 The county boards of elections within their respective jurisdictions shall exercise all  
11 powers granted to such boards in this Chapter, and they shall perform all the duties  
12 imposed upon them by law, which shall include the following:

13 (1) To make and issue such rules, regulations, and instructions, not  
14 inconsistent with law or the rules established by the State Board of  
15 Elections, as it may deem necessary for the guidance of election officers  
16 and voters.

17 (2) To appoint all chief judges, judges, assistants, and other officers of  
18 elections, and designate the precinct in which each shall serve; and, after  
19 notice and hearing, to remove any chief judge, judge of elections,  
20 assistant, or other officer of election appointed by it for incompetency,

1 failure to discharge the duties of office, failure to qualify within the time  
2 prescribed by law, fraud, or for any other satisfactory cause. In  
3 exercising the powers and duties of this subdivision, the board may act  
4 only when a majority of its members are present at any meeting at  
5 which such powers or duties are exercised.

6 (3) To investigate irregularities, nonperformance of duties, and violations of  
7 laws by election officers and other persons, and to report violations to  
8 the State Board of Elections. In exercising the powers and duties of this  
9 subdivision, the board may act only when a majority of its members are  
10 present at any meeting at which such powers or duties are exercised.  
11 Provided that in any hearing on an irregularity no board of elections  
12 shall consider as evidence the testimony of a voter who cast a ballot that  
13 voter was not eligible to cast as to how that voter voted on that ballot.

14 (4) As provided in G.S. 163-128, to establish, define, provide, rearrange,  
15 discontinue, and combine election precincts as it may deem expedient,  
16 and to fix and provide for places of registration and for holding  
17 primaries and elections.

18 (5) To review, examine, and certify the sufficiency and validity of petitions  
19 and nomination papers.

20 (6) To advertise and contract for the printing of ballots and other supplies  
21 used in registration and elections; and to provide for the delivery of  
22 ballots, pollbooks, and other required papers and materials to the voting  
23 places.

24 (7) To provide for the purchase, preservation, and maintenance of voting  
25 booths, ballot boxes, registration and pollbooks, maps, flags, cards of  
26 instruction, and other forms, papers, and equipment used in registration,  
27 nominations, and elections; and to cause the voting places to be suitably  
28 provided with voting booths and other supplies required by law.

29 (8) To provide for the issuance of all notices, advertisements, and  
30 publications concerning elections required by law. In addition, the  
31 county board of elections shall give notice at least 20 days prior to the  
32 date on which the registration books or records are closed that there will  
33 be a primary, general or special election, the date on which it will be  
34 held, and the hours the voting places will be open for voting in that  
35 election. The notice also shall describe the nature and type of election,  
36 and the issues, if any, to be submitted to the voters at that election.  
37 Notice shall be given by advertisement at least once weekly during the  
38 20-day period in a newspaper having general circulation in the county  
39 and by posting a copy of the notice at the courthouse door. Notice may  
40 additionally be made on a radio or television station or both, but such  
41 notice shall be in addition to the newspaper and other required notice.  
42 This subdivision shall not apply in the case of bond elections called  
43 under the provisions of Chapter 159.

- 1 (9) To receive the returns of primaries and elections, canvass the returns,  
2 make abstracts thereof, transmit such abstracts to the proper authorities,  
3 and to issue certificates of election to county officers and members of  
4 the General Assembly except those elected in districts composed of  
5 more than one county.
- 6 (10) To appoint and remove the board's clerk, assistant clerks, and other  
7 employees; and to appoint and remove precinct transfer assistants as  
8 provided in G.S. 163-72.3.
- 9 (11) To prepare and submit to the proper appropriating officers a budget  
10 estimating the cost of elections for the ensuing fiscal year.
- 11 (12) To perform such other duties as may be prescribed by this Chapter or  
12 the rules of the State Board of Elections.
- 13 (13) Notwithstanding the provisions of any other section of this Chapter, to  
14 have access to any ballot boxes and their contents, any voting machines  
15 and their contents, any registration records, pollbooks, voter  
16 authorization cards or voter lists, any lists of absentee voters, any lists of  
17 presidential registrants under the Voting Rights Act of 1965 as  
18 amended, and any other voting equipment or similar records, books or  
19 lists in any precinct or municipality over whose elections it has  
20 jurisdiction or for whose elections it has responsibility."

21 Sec. 2. G.S. 163-22.1 reads as rewritten:

22 **"§ 163-22.1. Power of State Board to order new elections.**

23 (a) State Board's Authority. – If the State Board of Elections, acting upon the  
24 agreement of at least four of its members, and after holding public hearings on election  
25 contests, alleged election irregularities or fraud, or violations of elections laws,  
26 determines that a new primary, general or special election should be held, the Board may  
27 order that a new primary, general or special election be held, either statewide, or in any  
28 counties, electoral districts, special districts, or municipalities over whose elections it has  
29 jurisdiction. The State Board shall be authorized to order a new election without  
30 conducting a public hearing provided a public hearing on the allegations was held by the  
31 county or municipal board of elections and the State Board is satisfied that such hearing  
32 gave sufficient opportunity for presentation of evidence and provided further that the  
33 State Board adopts the findings of the county or municipal board of elections.

34 Any new primary, general or special election so ordered shall be conducted under  
35 applicable constitutional and statutory authority and shall be supervised by the State  
36 Board of Elections and conducted by the appropriate elections officials.

37 The State Board of Elections has authority to adopt rules and regulations and to issue  
38 orders to carry out its authority under this section.

39 (b) Special Circumstances in Which New Election Shall be Called. –  
40 Notwithstanding the provisions of subsection (a) of this section, if

- 41 (1) The number of ineligible voters who voted in the election was sufficient  
42 to change the result of the election; and

- 1           (2)   The way those votes were cast cannot be determined by examining the  
2               ballots,  
3   then the person protesting the election shall have the right to a new election, unless the  
4   State Board determines by means other than the testimony of the ineligible voters as to  
5   how they voted, that the subtraction of their votes would not change the outcome of the  
6   election.
- 7       (c)   Special Circumstances in Which Tie Shall Be Declared. – Notwithstanding the  
8   provisions of subsection (a) of this section, if the circumstances described in subsection  
9   (b) of this section obtain except that the number of ineligible voters was sufficient to  
10   change the result to a tie but not result in a different winner, then the person protesting  
11   the election shall have the right to have a tie declared by the State Board unless the State  
12   Board determines by means other than the testimony of the ineligible voters as to how  
13   they voted that the subtraction of their votes would not result in a tie. If a tie is declared,  
14   the provisions of law governing tied elections shall apply.
- 15       (d)   New Election in Entire Jurisdiction. – Unless all parties in interest agree  
16   otherwise, a new election ordered under this section shall be held in the entire jurisdiction  
17   where the original election was held, rather than in a part thereof."
- 18           Sec. 3. This act is effective upon ratification and applies to all votes cast on or  
19   after that date.