

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

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**HOUSE BILL 1281
Committee Substitute Favorable 5/7/09**

Short Title: Election Director Oversight.

(Public)

Sponsors:

Referred to:

April 9, 2009

A BILL TO BE ENTITLED
AN ACT TO GRANT ADDITIONAL OVERSIGHT OF COUNTY BOARD OF ELECTION
EMPLOYEES TO THE STATE BOARD OF ELECTIONS IN ORDER TO PROVIDE
GREATER CONSISTENCY IN THE ADMINISTRATION OF ELECTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-33(1) and (12) read as rewritten:

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

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

(1) To make and issue such rules, regulations, and instructions, not inconsistent with ~~law~~ law, with directives promulgated under the provisions of G.S. 163-132.4, or the rules with the rules, orders, and directives established by the State Board of Elections, as it may deem necessary for the guidance of election officers and voters.

...

(12) To perform such other duties as may be prescribed by this ~~Chapter or Chapter, by directives promulgated pursuant to G.S. 163-132.4, or by the rules rules, orders, and directives of the State Board of Elections.~~ Elections.

...."

SECTION 2. G.S. 163-35(b) reads as rewritten:

"(b) Appointment, Duties; Termination. – Upon receipt of a nomination from the county board of elections stating that the nominee for director of elections is submitted for appointment upon majority selection by the county board of elections the Executive Director shall issue a letter of appointment of such nominee to the chairman of the county board of elections within 10 days after receipt of the nomination. Thereafter, the county board of elections shall enter in its official minutes the specified duties, responsibilities and designated authority assigned to the director by the county board of elections. The specified duties and responsibilities shall include adherence to the duties delegated to the county board of elections pursuant to G.S. 163-33. A copy of the specified duties, responsibilities and designated authority assigned to the director shall be filed with the State Board of Elections.

The county board of elections may, by petition signed by a majority of the board, recommend to the Executive Director of the State Board of Elections the termination of the employment of the county board's director of elections. The petition shall clearly state the reasons for termination. Upon receipt of the petition, the Executive Director shall forward a copy of the petition by certified mail, return receipt requested, to the county director of elections involved. The county director of elections may reply to the petition within 15 days of



1 receipt thereof. Within 20 days of receipt of the county director of elections' reply or the
2 expiration of the time period allowed for the filing of the reply, the State Executive Director
3 shall render a decision as to the termination or retention of the county director of elections. The
4 decision of the Executive Director of the State Board of Elections shall be final unless the
5 decision is, within 20 days from the official date on which it was made, deferred by the State
6 Board of Elections. If the State Board defers the decision, then the State Board shall make a
7 final decision on the termination after giving the county director of elections an opportunity to
8 be heard and to present witnesses and information to the State Board, and then notify the
9 Executive Director of its decision in writing. Any one or more members of the State Board
10 designated by the remaining members of the State Board may conduct the hearing and make a
11 final determination on the termination. For the purposes of this subsection, the member(s)
12 designated by the remaining members of the State Board shall possess the same authority
13 conferred upon the chairman pursuant to G.S. 163-23. If the decision, rendered after the
14 hearing, results in concurrence with the decision entered by the Executive Director, the
15 decision becomes final. If the decision rendered after the hearing is contrary to that entered by
16 the Executive Director, then the Executive Director shall, within 15 days from the written
17 notification, enter an amended decision consistent with the results of the decision by the State
18 Board of Elections or its designated member(s).

19 Upon majority vote on the recommendation of the Executive Director, the State Board of
20 Elections may initiate proceedings for the termination of a county director of elections for just
21 cause. If the State Board votes to initiate proceedings for termination, the State Board shall
22 state the reasons for the termination in writing and send a copy by certified mail, return receipt
23 requested, to the county director of elections. The director has 15 days to reply in writing to the
24 notice. The State Board of Elections shall also notify the chair of the county board of elections
25 and the chair of the county board of commissioners that the State Board has initiated
26 termination proceedings. The State Board shall make a final decision on the termination after
27 giving the county director of elections an opportunity to be heard, present witnesses, and
28 provide information to the State Board. Any one or more members of the State Board
29 designated by the remaining members of the State Board may conduct the hearing and make a
30 final decision. For the purposes of this subsection, the member(s) designated by the remaining
31 members of the State Board shall possess the same authority conferred upon the chairman
32 pursuant to G.S. 163-23.

33 A county director of elections may be suspended, with pay, without warning for causes
34 relating to personal conduct detrimental to service to the county or to the State Board of
35 Elections, pending the giving of written reasons, in order to avoid the undue disruption of work
36 or to protect the safety of persons or property or for other serious reasons. Any suspension may
37 be initiated by the Executive Director but may not be for more than five days. Upon placing a
38 county director of elections on suspension, the Executive Director shall, as soon as possible,
39 reduce to writing the reasons for the suspension and forward copies to the county director of
40 elections, the members of the county board of elections, the chair of the county board of
41 commissioners, and the State Board of Elections. If no action for termination has been taken
42 within five days, the county director of elections shall be fully reinstated.

43 Termination of any county director of elections shall comply with this subsection."

44 **SECTION 3.** G.S. 163-35(d) reads as rewritten:

45 "(d) Duties. – The director of elections may be empowered by the county board of
46 elections to perform such administrative duties as might be assigned by the board and the
47 chairman. In addition, the director of elections may be authorized by the chairman to execute
48 the responsibilities devolving upon the chairman provided such authorization by any chairman
49 shall in no way transfer the responsibility for compliance with the law. The chairman shall
50 remain liable for proper execution of all matters specifically assigned to him by law.

1 The county board of elections shall have authority, by resolution adopted by majority vote,
2 to delegate to its director of elections so much of the administrative detail of the election
3 functions, duties, and work of the board, its officers and members, as is now, or may hereafter
4 be vested in the board or its members as the county board of elections may see fit: Provided,
5 that the board shall not delegate to a director of elections any of its quasi-judicial or
6 policy-making duties and authority. Such a resolution shall require adherence to the duties
7 delegated to the county board of elections pursuant to G.S. 163-33. Within the limitations
8 imposed upon ~~him~~ the director of elections by the resolution of the county board of elections
9 the acts of a properly appointed director of elections shall be deemed to be the acts of the
10 county board of elections, its officers and members."

11 **SECTION 4.** This act becomes effective July 1, 2009, and every county board of
12 elections shall amend or adopt the resolution of duties and responsibilities required by this act
13 on or before January 1, 2010.