

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

2017 MAY 25 P 17 CVS \_\_\_\_\_

STATE OF NORTH CAROLINA,

WAKE CO., N.C.  
*[Handwritten signature]*

Upon the relation of,

ROY A. COOPER, III, individually and in  
his official capacity as GOVERNOR OF  
THE STATE OF NORTH CAROLINA,

Plaintiff,

v.

PHILIP E. BERGER, in his official capacity  
as PRESIDENT PRO TEMPORE OF THE  
NORTH CAROLINA SENATE; TIMOTHY  
K. MOORE, in his official capacity as  
SPEAKER OF THE NORTH CAROLINA  
HOUSE OF REPRESENTATIVES;  
CHARLTON L. ALLEN, in his official  
capacity as CHAIR OF THE NORTH  
CAROLINA INDUSTRIAL  
COMMISSION; YOLANDA K. STITH, in  
her official capacity as VICE-CHAIR OF  
THE NORTH CAROLINA INDUSTRIAL  
COMMISSION; and THE STATE OF  
NORTH CAROLINA,

Defendants.

**VERIFIED COMPLAINT**

Plaintiff Roy A. Cooper, III, individually and in his official capacity as Governor of the State of North Carolina, seeking (a) a declaratory judgment under N.C. Gen. Stat. §§ 1-253, *et seq.*, and North Carolina Rule of Civil Procedure 57; (b) a preliminary injunction and permanent injunction under North Carolina Rule of Civil Procedure 65; and (c) relief in the nature of *quo warranto* under N.C. Gen. Stat. §§ 1-514, *et seq.*, hereby alleges and says:

## INTRODUCTION

1. As the Supreme Court of North Carolina reaffirmed in 2016:

Our founders believed that separating the legislative, executive, and judicial powers of state government was necessary for the preservation of liberty. The Constitution of North Carolina therefore vests each of these powers in a different branch of government and declares that “[t]he legislative, executive, and supreme judicial powers of the State government shall be forever separate and distinct from each other.”

*State ex rel. McCrory v. Berger*, 368 N.C. 633, 635, 781 S.E.2d 248, 250 (2016) (quoting N.C. CONST. art. I, § 6).

2. The Supreme Court has also held that “[t]he election of a particular candidate signifies public support for that candidate’s platform, policies, and ideology.” *Young v. Bailey*, 368 N.C. 665, 671, 781 S.E.2d 277, 281 (2016).

3. Disregarding both of these constitutional principles, just weeks after the voters chose Governor Cooper and his “platform, policies, and ideology” to govern North Carolina for the next four years, the leadership of the North Carolina General Assembly moved to curtail, in significant ways, the executive powers that passed to the Governor on January 1, 2017, and to exercise much of that power on their own.

4. In a special session from December 14 to December 16, 2016, the General Assembly passed two bills—Session Law 2016-125 and Session Law 2016-126—that, among other things: (a) radically changed the structure and composition of the executive agencies responsible for administering our State’s election and ethics laws; (b) embedded political loyalists from the previous administration within managerial and policymaking positions in the Cooper administration; (c) required Senate confirmation of principal department heads; and (d) restructured the leadership and membership of the North Carolina Industrial Commission.

5. The Governor challenged the first three provisions in a lawsuit filed on December 30, 2016 (*Cooper v. Berger and Moore*, Wake County Case No. 16-CVS-15636), which is now on appeal, and he challenges the Industrial Commission amendments in this lawsuit because they infringe on the Governor's executive powers in violation of separation of powers, impermissibly grant exclusive privileges, and violate equal protection. N.C. CONST. art. I, §§ 6, 19, 32; *id.* art. II, § 1; *id.* art. III, §§ 1, 5(4).

6. The General Assembly's appetite for reducing the authority exercised by the Governor and interfering with the constitutional duties of the executive did not diminish with the Governor's swearing in on January 1, 2017. Since the beginning of its regular session on January 11, the General Assembly has introduced a long series of bills aimed at diminishing the Governor's and the courts' constitutional authority and taking that authority for itself.

7. On April 25, 2017, the General Assembly enacted Session Law 2017-6, which repeals the acts enjoined in *Cooper v. Berger and Moore*, including the portions of Session Law 2016-125 relating to the State Board of Elections, and enacts new provisions that again destroy the State Board of Elections and State Ethics Commission and replaces them with an unconstitutionally structured and staffed new Bipartisan State Board of Elections and Ethics Enforcement. The General Assembly did not repeal the provisions of Session Law 2016-125 at issue in this lawsuit that strip from Governor Cooper the authority to appoint, remove, and supervise the leadership of the Industrial Commission.

8. On April 26, 2017, the Governor filed a separate challenge to the part of Session Law 2017-6 establishing the new Bipartisan State Board of Elections and Ethics Enforcement (Wake County Case No. 17-CVS-5084). On April 28, 2017, the same three-judge panel that heard

the Governor's challenge to Session Law 2016-125 entered a temporary restraining order enjoining the effectiveness of Sections 3 through 22 of Session Law 2017-6. That lawsuit remains pending.

9. On April 26, the General Assembly also enacted Session Law 2017-7, which, among other things, shrinks the Court of Appeals from 15 to 12 judges by purporting to cut short three terms of office. As detailed below, the General Assembly's attempt to limit the authority of the judiciary directly violates the plain text of the North Carolina Constitution. N.C. CONST. art. IV, §§ 16, 19.

10. What the General Assembly has not attempted to do is to respond appropriately to the Supreme Court's ruling in *McCrorry v. Berger*, which held that the General Assembly had unconstitutionally encroached on the province of the Governor by establishing three commissions with executive authority and then limiting the Governor's ability to control those commissions.

11. As a result of this failure, and in light of the constitutional principles enunciated in *McCrorry v. Berger*, the Governor also brings this challenge to address a number of core executive boards, commissions, and agencies that are unconstitutionally structured because they allow the General Assembly to take from the Governor too much control over the execution of the laws. *McCrorry*, 368 N.C. at 647, 781 S.E.2d at 257. The executive bodies whose statutory structures are challenged in this lawsuit are the Clean Water Management Trust Fund, the Child Care Commission, the State Building Commission, the North Carolina Parks and Recreation Authority, the Rural Infrastructure Authority, and the Private Protective Services Board.

12. The statutes challenged in this lawsuit prevent the Governor from performing his core function under the North Carolina Constitution to "take care that the laws be faithfully executed." N.C. CONST. art. III, § 5(4). They also fail to respect fundamental principles of representative government and the basic guarantees of the North Carolina Constitution, thus

requiring the Governor to again secure his constitutional rights and protect the constitutional powers allocated to the executive and judicial branches of state government by the people.

### **PARTIES AND JURISDICTION**

13. The State of North Carolina is a sovereign state with its capital in Wake County, North Carolina.

14. On November 8, 2016, the voters of the State of North Carolina chose Plaintiff Governor Roy A. Cooper III (“Governor Cooper”) to be their governor for a four-year term that commenced on January 1, 2017. Governor Cooper is a resident of Wake County, North Carolina.

15. Defendant Philip E. Berger is the President Pro Tempore of the North Carolina Senate and, upon information and belief, is a resident of Rockingham County, North Carolina.

16. Defendant Timothy K. Moore is the Speaker of the North Carolina House of Representatives and, upon information and belief, is a resident of Cleveland County, North Carolina.

17. Defendant Charlton L. Allen is the chair of the North Carolina Industrial Commission (“Industrial Commission” or “NCIC”), and, upon information and belief, is a resident of Iredell County, North Carolina.

18. Allen became a Commissioner of the NCIC on or about July 1, 2014. He was first designated as chair of the NCIC by Governor McCrory on or about February 1, 2016, and his designation was renewed by Governor McCrory on or about December 30, 2016.

19. Defendant Yolanda K. Stith is the vice-chair of the NCIC, and, upon information and belief, is a resident of Durham County, North Carolina.

20. As further detailed below, Stith became a Commissioner of the NCIC on or about December 21, 2016, and she was designated as vice-chair of the NCIC by Governor McCrory on or about December 30, 2016.

21. Defendants lack sovereign immunity for the claims alleged herein, all of which arise under the exclusive rights and privileges enjoyed by—and duties assigned to—the Governor of the State of North Carolina by the North Carolina Constitution.

22. Pursuant to N.C. Gen. Stat. §§ 1-253, *et seq.*, and § 7A-245(a), as well as North Carolina Rules of Civil Procedure 57 and 65, the Governor seeks judgment declaring unconstitutional and enjoining the effectiveness of the following statutes and Session Laws (collectively, the “Challenged Statutes”):

- a. Section 1 of Session Law 2017-7, a copy of which is attached as **Exhibit A**, which purports to reduce the number of seats on the Court of Appeals from 15 to 12 by cutting short three eight-year terms;
- b. Part V of Session Law 2016-125, a copy of which is attached as **Exhibit B**, which substantially changes how the chair and vice-chair of the Industrial Commission are selected and grants the current vice-chair of the Industrial Commission the exclusive privilege of a nearly nine-year term;
- c. N.C. Gen. Stat. § 143B-135.240, which establishes as an executive agency the Clean Water Management Trust Fund and then gives control of that agency to the General Assembly;
- d. N.C. Gen. Stat. § 143B-168.4, which establishes as an executive agency the Child Care Commission and then gives control of that commission to the General Assembly;
- e. N.C. Gen. Stat. § 143-135.25, which establishes as an executive agency the State Building Commission and then gives control of that commission to the General Assembly;
- f. N.C. Gen. Stat. § 143B-135.202, which establishes as an executive agency the North Carolina Parks and Recreation Authority and then gives control of that authority to the General Assembly;

- g. N.C. Gen. Stat. § 143B-472.128, which establishes as an executive agency the Rural Infrastructure Authority and then gives control of that authority to the General Assembly; and
- h. N.C. Gen. Stat. § 74C-4, which establishes as an executive agency the Private Protective Services Board and then gives control of that board to the General Assembly.

23. As further alleged below, a present and real controversy exists between the parties as to the constitutionality of the Challenged Statutes.

24. Having received satisfactory security to indemnify the State against all costs and expenses which may accrue in consequence of this action, under N.C. Gen. Stat. §§ 1-515 and 516, the Attorney General has granted the Governor leave to bring this action in the name of the State to remove persons unlawfully holding and exercising state-wide public offices.

25. This Court has jurisdiction over the parties and subject matter of this lawsuit, and venue is proper.

### **THE CHALLENGED STATUTES**

#### **I. SESSION LAW 2017-7**

26. Under the leadership and direction of the General Assembly, House Bill 239 passed the General Assembly on April 11, 2017. On April 21, 2017, the Governor vetoed the bill. Despite that veto, House Bill 239 was enacted by the General Assembly on April 26, 2017, becoming Session Law 2017-7.

27. As detailed below, Section 1 of Session Law 2017-7 violates the plain text of the North Carolina Constitution because it shortens the terms of three North Carolina Court of Appeals seats to fewer than eight years.

28. The Governor has standing to challenge Section 1 of Session Law 2017-7 because, among other things, it purports to eliminate a power granted to him by the North Carolina

Constitution—the power to make vacancy appointments to the Court of Appeals to complete eight-year terms on that court. N.C. CONST. art. IV, §§ 16, 19.

29. The stated purpose of Section 1 of Session Law 2017-7 was to reduce the size of the Court of Appeals from 15 to 12 judges because, legislators claimed, the workload of the Court has been reduced, but that is an obvious pretext without any factual basis.

30. Upon information and belief, the true purpose was to prevent the Governor from having the ability to fill three vacancy appointments in the next three years for seats in which incumbent judges will reach the statutorily mandated retirement age.

31. Section 1 of Session Law 2017-7 makes the following amendment to N.C. Gen. Stat. § 7A-16:

On or after January 1, 2017, whenever the seat of an incumbent judge becomes vacant prior to the expiration of the judge's term due to the death, resignation, retirement, impeachment, or removal pursuant to G.S. 7A-374.2(8) of the incumbent judge, that seat is abolished until the total number of Court of Appeals seats is decreased to 12.

Session Law 2017-7, § 1.

32. At the time House Bill 239 was first introduced, three judges were slated to reach retirement age prior to the end of their term: (a) the Honorable J. Douglas McCullough (term ends 2018; retirement in May 2017); (b) the Honorable Ann Marie Calabria (if re-elected in 2018, term ends 2026; retirement on or about October 31, 2019); and (c) the Honorable Robert N. Hunter, Jr. (term ends 2024; retirement on or about March 30, 2019). However, before Session Law 2017-7 was enacted, Judge McCullough announced his retirement early, and the Governor appointed the Honorable John S. Arrowood to fill the vacancy.

33. Article IV, Section 16 of the North Carolina Constitution mandates, in relevant part, that: "Justices of the Supreme Court, Judges of the Court of Appeals, and regular Judges of the



Superior Court shall be elected by the qualified voters and shall hold office for terms of eight years and until their successors are elected and qualified.” (Emphasis added).

34. On multiple occasions, the North Carolina Supreme Court has interpreted this provision and confirmed that judicial terms may not be shortened from the constitutionally required eight-year term, even if the incumbent retires or resigns.

35. “A term of office is one thing. An office holder is something else. The incumbent may go out, nobody come in, and the term goes on. If a successor is appointed or elected, he fills the unexpired portion of the term.” *State ex rel. Martin v. Preston*, 325 N.C. 438, 452-53, 385 S.E.2d 473, 481 (1989) (quoting *Murray v. Payne*, 137 Kan. 685, 689, 21 P.2d 333, 335 (1933)).

36. “[Article IV, Section 16] simply provides for judges to be elected and sets their terms at eight years.” *Brannon v. N.C. State Bd. of Elections*, 331 N.C. 335, 340, 416 S.E.2d 390, 393 (1992) (emphasis added).

37. These holdings establish under our Constitution that once the voters elect a person to a term of office provided for in the Constitution, that term of office runs until complete, regardless of who fills it or whether it is filled at all.

38. Accordingly, by purporting to shorten three Court of Appeals terms from their constitutionally mandated eight years, Section 1 of Session Law 2017-7 directly violates Article IV, Sections 16 and 19 of the North Carolina Constitution and is therefore invalid.

## **II. PART V OF SESSION LAW 2016-125**

39. Under the leadership and direction of the General Assembly, Senate Bill 4 was introduced late on December 14, 2016, passed both chambers of the General Assembly, and was signed by Governor McCrory on December 16, becoming Session Law 2016-125.

40. Session Law 2016-125 amended N.C. Gen. Stat. § 97-77 in two primary ways.

41. First, it amended N.C. Gen. Stat. § 97-77(a1) to allow Governor McCrory, after confirmation by the General Assembly, to grant an unprecedented, one-time-only, nine-year vacancy appointment to Stith, the wife of Governor McCrory’s chief of staff. As detailed below, by statutory design that exclusive privilege was granted to Stith, and only to Stith, and therefore it violates the Exclusive Privileges and Equal Protection Clauses of the North Carolina Constitution.

42. Second, Part V of Session Law 2016-125 amended N.C. Gen. Stat. § 97-77(b) to allow Governor McCrory, not Governor Cooper, to appoint the chair and vice-chair of the NCIC for all but one day of Governor Cooper’s first term in office. As detailed below, that amendment violates the Separation of Powers and Faithful Execution Clauses of the North Carolina Constitution.

**A. N.C. GEN. STAT. § 97-77(a1), AS AMENDED BY PART V, VIOLATES THE EXCLUSIVE PRIVILEGES AND EQUAL PROTECTION CLAUSES OF THE NORTH CAROLINA CONSTITUTION.**

43. The “Exclusive Privileges Clause” of the North Carolina Constitution provides: “No person or set of persons is entitled to exclusive or separate emoluments or privileges from the community but in consideration of public services.” N.C. CONST. art. I, § 32.

44. The Equal Protection Clause of the North Carolina Constitution provides, in relevant part: “No person shall be denied the equal protection of the laws.” N.C. CONST. art. I, § 19.

45. These two constitutional provisions each expressly prohibit the General Assembly from conferring exclusive benefits or privileges upon a single person or class of people, where doing so has no rational basis or does not advance the general welfare.

46. This principle is further enshrined in Article I, Section 2 of the North Carolina Constitution, which provides: “All political power is vested in and derived from the people; all

government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.” N.C. CONST. art. I, § 2. Among other things, this provision articulates the fundamental right of the people to ensure that governmental power is exercised “for the good of the whole” and consistent with the will of the people. A legislative act that is not “solely for the good of the whole” or that defies the will of the people exceeds the legislature’s constitutional authority and cannot stand.

47. The amendments to N.C. Gen. Stat. § 97-77(a1) in Part V of Session Law 2016-125 (collectively, the “NCIC Privilege”) changed, for one day only, the statute governing the appointment of members of the NCIC. The effect of the amendment was to grant Defendant Stith a special, one-time-only appointment to a nearly nine-year term on the Industrial Commission that pays more than \$125,000 per year.

48. Before the enactment of the NCIC Privilege, the Governor had the authority to fill vacancies on the Industrial Commission only for “the remainder of the unexpired term.” A regular Industrial Commission term is six years.

49. With the NCIC Privilege, Defendants amended Section 97-77(a1) to allow Governor McCrory to fill a vacancy for “a term of six years plus the remainder of the unexpired term.” 2016 N.C. SESS. LAWS 125, § 24.(a).

50. However, this amendment to Section 97-77(a1) was designed to disappear upon its first and only use—namely “upon the filling of a vacancy pursuant to [Section 24.(a).]” As a result, the moment Governor McCrory filled the vacancy on the Industrial Commission for the remainder of an unexpired term plus a term of six years, the vacancy provision of Section 97-77(a1) reverted to its previous form. See 2016 N.C. SESS. LAWS 125, §§ 24.(b) and (c).

51. That is exactly what transpired. On December 16, 2016, the day Session Law 2016-125 was signed into law, Governor McCrory appointed Stith, the spouse of his chief of staff, to fill an already-existing vacancy on the NCIC. The vacant seat on the NCIC had a term scheduled to end on April 30, 2019. *See* N.C. House Joint Resolution 978 (April 27, 2016). Stith's appointment was approved by Defendants on the same day. *See* N.C. House Joint Resolution 24 (December 16, 2016).

52. Accordingly, as soon as the vacancy on the Industrial Commission was filled—for a nine-year term running through April 30, 2025—the language of Section 97-77(a1) reverted to its original form. As with the appointments prior to this one, any future vacancies on the NCIC will be filled by an appointment only for the remainder of the unexpired term.

53. Thus, the net result of the NCIC Privilege is that Section 97-77(a1) was left unchanged, but Stith—and, by statutory design, only Stith—received the exclusive privilege of a nine-year term on the Industrial Commission valued at more than \$1 million.

54. Moreover, the NCIC Privilege harms Governor Cooper by denying him the ability to appoint the commissioner of his choice when the term of the seat occupied by Stith ends on April 30, 2019, a right he would have had but for the NCIC Privilege.

55. There is no explanation or indication in the language of Part V of Session Law 2016-125 of why the General Assembly believed Stith was entitled to a unique nine-year term on the Industrial Commission or how doing so would advance our State's general welfare.

**B. N.C. GEN. STAT. § 97-77(b), AS AMENDED BY PART V, VIOLATES THE SEPARATION OF POWERS AND FAITHFUL EXECUTION CLAUSES OF THE NORTH CAROLINA CONSTITUTION.**

**(1) Separation of powers is a constitutional “cornerstone.”**

56. Our Supreme Court recently reaffirmed that “[o]ur founders believed that separating the legislative, executive, and judicial powers of state government was necessary for the preservation of liberty” and thus guaranteed in the North Carolina Constitution that the three branches “shall be forever separate and distinct from each other.” *McCrorry*, 368 N.C. at 635, 781 S.E.2d at 250 (quoting N.C. CONST. art. I, § 6).

57. “There should be no doubt that the principle of separation of powers is a cornerstone of our state and federal governments.” *State ex rel. Wallace v. Bone*, 304 N.C. 591, 601, 286 S.E.2d 79, 84 (1982).

58. Indeed, our founders embedded separation of powers in our state Constitution. *See, e.g.*, N.C. CONST. art. I, § 6 (“The legislative, executive, and supreme judicial powers of the State government shall be forever separate and distinct from each other.”); art. III, § 1 (“The executive power of the State shall be vested in the Governor.”); art. III, § 5(4) (“The Governor shall take care that the laws be faithfully executed.”); art. II, § 1 (“The legislative power of the State shall be vested in the General Assembly, which shall consist of a Senate and a House of Representatives.”); art. IV, § 1 (“The judicial power of the State shall . . . be vested in a Court for the Trial of Impeachments and in a General Court of Justice.”).

59. These core principles guided our Supreme Court in *McCrorry v. Berger*, when it held that the General Assembly had unconstitutionally encroached on the province of the Governor by establishing three commissions (including the Coal Ash Commission), according them executive authority, and then limiting the Governor’s ability to control those commissions.

60. “The clearest violation of the separation of powers clause occurs when one branch exercises power that the constitution vests exclusively in another branch.” 368 N.C. at 645, 781 S.E.2d at 256. The constitutional guarantee of separation of powers also “requires that, as the three branches of government carry out their duties, one branch will not prevent another branch from performing its core functions.” *See id.* at 636, 781 S.E.2d at 250.

61. The *McCrorry* Court made clear that the Governor’s ability to control executive branch officers, boards, and commissions—and, concomitantly, the exercise of final executive authority by those executive entities—depends on the Governor’s ability to appoint such officials, “to supervise their day-to-day activities, and to remove them from office.” *McCrorry*, 368 N.C. at 646, 781 S.E.2d at 256.

62. As the Court held in *McCrorry*:

When the General Assembly appoints executive officers that the Governor has little power to remove, it can appoint them essentially without the Governor’s influence. That leaves the Governor with little control over the views and priorities of the officers that the General Assembly appoints. When those officers form a majority on a commission that has the final say on how to execute the laws, the General Assembly, not the Governor, can exert most of the control over the executive policy that is implemented in any area of the law that the commission regulates. As a result, the Governor cannot take care that the laws are faithfully executed in that area. The separation of powers clause plainly and clearly does not allow the General Assembly to take this much control over the execution of the laws from the Governor and lodge it with itself.

*McCrorry*, 368 N.C. at 647, 781 S.E.2d at 257 (emphasis added).

63. As detailed herein, Part V of Session Law 2016-125 violates the Supreme Court’s command in *McCrorry* because, among other things, it allows the legislature to strip from the current Governor the authority to appoint, remove, and supervise the leadership of a core executive agency.

**(2) The executive nature of the Industrial Commission.**

64. The Industrial Commission is an executive agency organized within the Department of Commerce, which is one of the Governor's principal administrative departments.

65. As the North Carolina Supreme Court recently affirmed, the Industrial Commission is primarily executive in nature. *See In re Redmond*, 797 S.E.2d 275, 2017 N.C. LEXIS 132, at \*5-6 (N.C. March 17, 2017) (holding that the NCIC "primarily is an administrative agency of the state") (citing *Hogan v. Cone Mills Corp.*, 315 N.C. 127, 137, 337 S.E.2d 477, 483 (1985)).

66. The NCIC is charged with administering (i.e., executing), among other things, the following North Carolina General Statutes:

- a. The North Carolina Workers' Compensation Act (Chapter 97 of the General Statutes);
- b. The Tort Claims Act (Article 31 of Chapter 143 of the General Statutes);
- c. The Law-Enforcement Officers', Firemen's, Rescue Squad Workers' and Civil Air Patrol Members' Death Benefits Act (Article 12A of Chapter 143 of the General Statutes);
- d. The Childhood Vaccine-Related Injury Compensation Program (Article 17 of Chapter 130A of the General Statutes);
- e. Compensation to Persons Erroneously Convicted of Felonies (Article 8 of Chapter 148 of the General Statutes);
- f. The Eugenics Asexualization and Sterilization Compensation Program (Article 9, Part 30 of Chapter 143B of the General Statutes).

67. The Industrial Commission, as part of administering Chapter 97, promulgates rules and regulations pursuant to N.C. Gen. Stat. § 97-80(a) and makes policy determinations relating to the State's workers' compensation program. For example, the Industrial Commission:

- g. Works with businesses operating in North Carolina to ensure compliance with the Workers' Compensation Act's requirement to maintain adequate insurance and enforce the rules and regulations of the NCIC;

- h. Conducts criminal investigations into cases of suspected workers' compensation fraud and violations related to workers' compensation claims involving employees, employers, insurers, health care providers, attorneys, and vocational rehabilitation providers;
- i. Shares information and otherwise collaborates with other state agencies, including the Departments of Revenue, Labor, and Insurance, and the Division of Employment Security, to identify businesses that improperly classify their employees as independent contractors;
- j. Sets the Commission's legislative agenda and advocates for legislative changes regarding issues affecting North Carolina's workforce and businesses;
- k. Proposes agency rules for approval under the North Carolina Administrative Procedure Act;
- l. Establishes by rule the maximum reimbursement rates paid by North Carolina employers for services to injured employees by hospitals, physicians and other medical providers while ensuring that providers are reimbursed reasonable fees and medical costs are adequately contained;
- m. Performs a multitude of important administrative functions, including but not limited to: establishing a Medical Fee Schedule, reviewing and adjusting medical bills, responding to medical bill inquiries, providing claim servicing (through the processing of injury reports and other forms and by providing insurance coverage information), providing courses and training on safety issues and working with safety committees of North Carolina employers, and providing training for rehabilitation professionals;
- n. Develops a proposed budget for the NCIC, including recommendations with respect to operating expenses and revenue sources;
- o. Represents the State of North Carolina in regional and national organizations and forums addressing policies and administrative practices in state workers' compensation systems, and with federal agencies impacting on North Carolina workers' compensation law; and
- p. Communicates Industrial Commission policy to groups with diverse interests in the workers' compensation system, including employee, employer, and insurer representatives, hospital and physician groups, attorney organizations, and rehabilitation and safety professionals.

68. In short, the Industrial Commission is responsible for the day-to-day administration of laws and policies that impact millions of workers and businesses across this State.



**(3) The chair is the CEO of the NCIC.**

69. The chair of the NCIC is designated by statute as the “chief executive officer of the Industrial Commission,” and is given substantial statutory authority to direct the activities of the commission.

70. Under N.C. Gen. Stat. § 97-77(b), the chair of the NCIC “shall have such authority as is necessary to direct and oversee the Commission.” Among the chair’s duties is the power to “hire or fire personnel and transfer personnel within the Industrial Commission.” N.C. Gen. Stat. § 97-77(b).

71. The chair also has the sole authority to appoint deputy commissioners to six-year terms of service and to designate the chief deputy commissioner. Deputy commissioners act as hearing officers, and in many ways serve as the “public face” of the Industrial Commission.

72. The sole authority granted to the chair to appoint deputy commissioners for six-year terms means that the chair has the power to substantially impact the implementation and interpretation of the laws covering, among other things, workers’ compensation and tort claims against the State.

**(4) Part V of Session Law 2016-125 strips from the popularly elected Governor the power of appointment and the ability to remove.**

73. Prior to the enactment of Part V of Session Law 2016-125, N.C. Gen. Stat. § 97-77(b) gave the sitting Governor the right to appoint the chair and vice-chair of the NCIC at any time, and the chair and vice-chair served in those leadership positions at the pleasure of the Governor. *See* N.C. Gen. Stat. § 97-77(b) (2016) (“One member, to be designated by the Governor, shall act as chairman. . . The Governor may designate one vice-chairman from the remaining commissioners.”).

74. As amended by Part V of Session Law 2016-125, however, N.C. Gen. Stat. § 97-

77(b) now reads:

On December 30, 2016, and every four years thereafter, one member shall be designated by the Governor to act as chairman for a term of four years. . . On December 30, 2016, and every four years thereafter, one member shall be designated by the Governor to act as vice-chairman for a term of four years.

75. On or about December 30, 2016, Governor McCrory designated Allen to be chair and Stith to be vice-chair of the NCIC for four-year terms. As a result of Part V of Session Law 2016-125, unless enjoined, Allen and Stith will serve as chair and vice-chair of the NCIC for all but one day of Governor Cooper's first term in office.

76. NCIC commissioners may only be removed by the Governor for "misfeasance, malfeasance, or nonfeasance" (i.e., for "cause"), and there is no provision in the statutes for the Governor to remove the chair or vice-chair before the end of his or her term, unless that person is removed from the NCIC altogether.

77. Accordingly, unless there is "cause," the Governor has no ability to remove the chair or vice-chair of the NCIC under Session Law 2016-125.

78. Because the Governor did not appoint the chair and vice-chair who will serve for his entire first term, and because his ability to remove them is "sharply constrain[ed]," the Governor has no control over the "views and priorities" of the individuals leading one of the most important executive agencies in our State. *See McCrory*, 368 N.C. at 646-47, 781 S.E.2d at 257.

79. Upon information and belief, Defendants' intent in enacting Part V, just weeks after Governor Cooper was elected and days before he took office, was to ensure that the leadership of the Industrial Commission did not share the policy views and priorities of the elected Governor, thus thwarting the will of the majority of the electorate.

80. For example, before being appointed to the NCIC and confirmed by General Assembly, Allen was chairman of the Iredell County Republican Party and had, upon information and belief, publicly stated his opposition to the minimum wage, a policy of great importance to workers and to the Governor.

81. Early in his term as chair of the Industrial Commission, Allen appointed and hired a series of individuals whose primary qualifications appear to be Republican Party activism or service to former Governor McCrory. For example, Allen appointed William Peaslee as chief deputy commissioner of the NCIC. Prior to that appointment, Peaslee worked as special legal counsel and chief of staff for the North Carolina Republican Party. Allen hired Charles K. Duckett as the new Administrator/Chief Operating Officer; Duckett previously served as Governor McCrory's Director of Appointments. Allen appointed Kevin V. Howell as deputy commissioner; Howell previously served as Governor McCrory's General Counsel at the Department of Natural and Cultural Resources.

82. In short, by enacting Part V of Session Law 2016-125 on the eve of Governor Cooper taking office, the General Assembly took for itself the power of deciding who would lead the executive agency charged with executing, among other things, our State's workers' compensation and tort claims statutes, and thereby ensured that the NCIC would act in accordance with Defendants' views and priorities, rather than the Governor's. These actions directly conflict with the electorate's selection of Governor Cooper and the policies he pledged to pursue. *See Young v.*, 368 N.C. at 671, 781 S.E.2d at 281 ("The election of a particular candidate signifies public support for that candidate's platform, policies, and ideology.").

83. Because the Governor has been left with no control over the policy views and priorities of the leadership of the NCIC, he cannot fulfill his constitutional duty to ensure that the laws are faithfully executed.

### **III. CONFORMING THE GENERAL STATUTES TO THE CONSTITUTIONAL PRINCIPLES SET FORTH IN *MCCRORY V. BERGER***

84. In addition to the recent Session Laws challenged by the Governor here and in previous lawsuits, this complaint seeks to bring certain General Statutes into compliance with the Supreme Court's command in *McCrorry v. Berger*.

85. In particular, as detailed above, the *McCrorry* Court held that the constitutional guarantee of separation of powers "requires that, as the three branches of government carry out their duties, one branch will not prevent another branch from performing its core functions." *See* 368 N.C. at 636, 781 S.E.2d at 250.

86. The Court made clear that the Governor's ability to control executive branch agencies, boards, and commissions depends on the Governor's ability to appoint the officials who lead the agencies, boards, and commissions, "to supervise their day-to-day activities, and to remove them from office." *Id.* at 646, 781 S.E.2d at 256.

87. Accordingly, under *McCrorry*, when the statutory structure of an executive branch agency, boards, or commission allows the legislature to take too much control from the Governor, and therefore prevents him from carrying out his core duty of ensuring the faithful execution of the laws, the statute cannot stand.

88. In light of the Supreme Court's clear command in *McCrorry*, a number of preexisting, historically enacted statutes established executive branch agencies, boards, and commissions that violate the separation of powers because the enabling statutes give the General

Assembly the authority to appoint a majority of the board or commission members and prevent the Governor from exercising adequate control.

89. As a result, these statutes prevent the Governor from performing his core function under the North Carolina Constitution to “take care that the laws be faithfully executed.” N.C. CONST. art. III, § 5(4).

**A. THE STRUCTURE OF THE CLEAN WATER MANAGEMENT TRUST FUND VIOLATES SEPARATION OF POWERS.**

90. Under N.C. Gen. Stat. § 143B-135.234, the “Clean Water Management Trust Fund is established as a special revenue fund to be administered by the Department of Environmental Quality.” The Fund receives approximately \$12 million per year from, primarily, annual appropriations, and those are intended to “finance projects to clean up or prevent surface water pollution and for land preservation.”

91. Housed within a principal executive department, the Clean Water Management Trust Fund is primarily an executive agency with authority under Section 143B-135.234(c), among other things:

- a. “To acquire land for riparian buffers for the purposes of providing environmental protection for surface waters and urban drinking water supplies and establishing a network of riparian greenways for environmental, educational, and recreational uses”;
- b. “To acquire conservation easements or other interests in real property for the purpose of protecting and conserving surface waters and enhancing drinking water supplies, including the development of water supply reservoirs”;
- c. “To coordinate with other public programs involved with lands adjoining water bodies to gain the most public benefit while protecting and improving water quality”;
- d. “To restore previously degraded lands to reestablish their ability to protect water quality”;
- e. “To facilitate planning that targets reductions in surface water pollution”;

- f. “To finance innovative efforts, including pilot projects, to improve stormwater management, to reduce pollutants entering the State’s waterways, to improve water quality, and to research alternative solutions to the State’s water quality problems”;
- g. “To acquire land that represents the ecological diversity of North Carolina, including natural features such as riverine, montane, coastal, and geologic systems and other natural areas to ensure their preservation and conservation for recreational, scientific, educational, cultural, and aesthetic purposes”; and
- h. “To acquire land that contributes to the development of a balanced State program of historic properties.”

92. Under Section 143B-135.240(b), the Fund’s board of trustees consists of nine members, three of whom are appointed by the Governor, three of whom are appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, and three of whom are appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives. N.C. Gen. Stat. § 143B-135.240(b).

93. Section 143B-135.240 is silent as to removal authority, meaning that the default provision of N.C. Gen. Stat. § 143B-16 applies. Under that provision, the Governor’s authority to remove members is sharply constrained because they may only be removed by the Governor for “misfeasance, malfeasance, and nonfeasance.”

94. Because the Governor has no ability to appoint a majority of the Clean Water Management Trust Fund board members, and because he can only remove them for cause, Section 143B-135.240 allows the General Assembly to take too much control over the execution of the laws from the Governor. *See McCrory*, 368 N.C. at 647, 781 S.E.2d at 257.

95. As a result, Section 143B-135.240 prevents the Governor from performing his core function under the North Carolina Constitution to “take care that the laws be faithfully executed.” N.C. CONST. art. III, § 5(4).

**B. THE STRUCTURE OF THE CHILD CARE COMMISSION VIOLATES SEPARATION OF POWERS.**

96. Under N.C. Gen. Stat. § 143B-168.3(a), the Child Care Commission is established in the “Department of Health and Human Services with the power and duty to adopt rules to be followed in the licensing and operation of child care facilities.”

97. Housed within a principal executive department, the Child Care Commission is primarily an executive agency with authority under N.C. Gen. Stat. § 110-88 to, among other things, set statewide standards for the licensing and operation of child care facilities. This includes the power:

- a. “To develop policies and procedures for the issuance of a license to any child care facility”;
- b. “To require inspections by and satisfactory written reports from representatives of local or State health agencies, fire and building inspection agencies, and from representatives of the Department prior to the issuance of an initial license to any child care center”;
- c. “To require annually, inspections by and satisfactory written reports from representatives of local or State health agencies and fire inspection agencies after a license is issued”;
- d. “To adopt rules for administrative action against a child care facility”;
- e. “To develop and adopt voluntary enhanced program standards which reflect higher quality child care than the mandatory standards established by this Article”;
- f. “To adopt rules for child care facilities that provide care for medically fragile children.”

98. Under Section 143B-168.4(a), the Child Care Commission consists of 17 members, seven of whom are appointed by the Governor and 10 of whom are appointed by the General Assembly. The chair of the Child Care Commission is elected by the board, a majority of whom are appointed by the General Assembly. N.C. Gen. Stat. § 143B-168.4.

99. Section 143B-168.4 is silent as to removal authority, meaning that the default provision of N.C. Gen. Stat. § 143B-13(d) applies. Under that provision, the Governor’s authority to remove members is sharply constrained because they may only be removed by the Governor for “misfeasance, malfeasance, and nonfeasance.”

100. Because the Governor has no ability to appoint a majority of the Child Care Commission members, and because he can only remove them for cause, Section 143B-168.4 allows the General Assembly to take too much control over the execution of the laws from the Governor. *See McCrory*, 368 N.C. at 647, 781 S.E.2d at 257.

101. As a result, Section 143B-168.4 prevents the Governor from performing his core function under the North Carolina Constitution to “take care that the laws be faithfully executed.” N.C. CONST. art. III, § 5(4).

**C. THE STRUCTURE OF THE STATE BUILDING COMMISSION VIOLATES SEPARATION OF POWERS.**

102. Under N.C. Gen. Stat. § 143-135.25(a), the “State Building Commission is created within the Department of Administration to develop procedures to direct and guide the State’s capital facilities development and management program . . . .”

103. Housed within a principal executive department, the State Building Commission is primarily an executive agency with broad authority. Among its duties under N.C. Gen. Stat. § 143-135.26 are:

- a. “To adopt rules establishing standard procedures and criteria to assure that the designer selected for each State capital improvement project, the consultant selected for planning and studies of an architectural and engineering nature associated with a capital improvement project or a future capital improvement project and a construction manager at risk selected for each capital improvement project has the qualifications and experience necessary for that capital improvement project or the proposed planning or study project”;



- b. “To adopt rules for coordinating the plan review, approval, and permit process for State capital improvement and community college buildings”;
- c. “To adopt rules for establishing a post-occupancy evaluation, annual inspection and preventive maintenance program for all State buildings”;
- d. “To develop procedures for evaluating the work performed by designers and contractors on State capital improvement projects and those community college buildings”;
- e. “To authorize a State agency, a local governmental unit, or any other entity subject to the provisions of G.S. 143-129 to use a method of contracting not authorized under G.S. 143-128”; and
- f. “To adopt rules governing the use of open-end design agreements for State capital improvement projects and community college buildings . . . .”

104. Under Section 143-135.25(c), the State Building Commission consists of nine members, three of whom are appointed by the Governor, three of whom are appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, and three of whom are appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives. In short, the Governor only appoints three of the nine members, and the General Assembly appoints the rest. N.C. Gen. Stat. § 143-135.25(c).

105. Section 143-135.25 is silent as to removal authority, meaning that the default provision of N.C. Gen. Stat. § 143B-13(d) applies. Under that provision, the Governor’s authority to remove commission members is sharply constrained because they may only be removed by the Governor for “misfeasance, malfeasance, and nonfeasance.”

106. Because the Governor has no ability to appoint a majority of the State Building Commission members, and because he can only remove them for cause, Section 143-135.25 allows the General Assembly to take too much control over the execution of the laws from the Governor. *McCrorry*, 368 N.C. at 647, 781 S.E.2d at 257.

107. As a result, Section 143-135.25 prevents the Governor from performing his core function under the North Carolina Constitution to “take care that the laws be faithfully executed.” N.C. CONST. art. III, § 5(4).

**D. THE STRUCTURE OF THE NORTH CAROLINA PARKS AND RECREATION AUTHORITY VIOLATES SEPARATION OF POWERS.**

108. Under N.C. Gen. Stat. § 143B-135.200, the North Carolina Parks and Recreation Authority is created within the Department of Natural and Cultural Resources with responsibility for administering more than \$14 million per year in revenue, most of which comes from state budget appropriations.

109. Housed within a principal executive department, the North Carolina Parks and Recreation Authority is primarily an executive agency with authority under Section 143B-135.200, among other things:

- a. “To allocate funds for land acquisition from the Parks and Recreation Trust Fund”;
- b. “To allocate funds for repairs, renovations, improvements, construction, and other capital projects from the Parks and Recreation Trust Fund”; and
- c. “To develop effective public and private support for the programs and operations of the parks and recreation areas.”

110. Under Section 143B-135.202(a), the North Carolina Parks and Recreation Authority consists of nine members, three of whom are appointed by the Governor, three of whom are appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, and three of whom are appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives. N.C. Gen. Stat. § 143B-135.202(a)

111. Under Section 143B-135.202(e), the Governor may only remove the three members he appointed, and they can only be removed for “misfeasance, malfeasance, or nonfeasance.”

112. Because the Governor has no ability to appoint or remove, and therefore supervise, a majority of the Authority members, Section 143B-135.202 allows the General Assembly to take too much control over the execution of the laws from the Governor. *McCrary*, 368 N.C. at 647, 781 S.E.2d at 257.

113. As a result, Section 143B-135.202 prevents the Governor from performing his core function under the North Carolina Constitution to “take care that the laws be faithfully executed.” N.C. CONST. art. III, § 5(4).

**E. THE STRUCTURE OF THE RURAL INFRASTRUCTURE AUTHORITY VIOLATES SEPARATION OF POWERS.**

114. Under N.C. Gen. Stat. § 143B-472.128, the Rural Infrastructure Authority is created within the Department of Commerce with responsibility for administering tens of millions of dollars of grants every year to direct State money to important projects aimed at advancing infrastructure in rural areas.

115. Housed within a principal executive department, the Rural Infrastructure Authority is primarily an executive agency with authority under Section 143B-472.128(j):

- a. “To receive and review applications from local government units for [Rural Economic Development] grants or loans”;
- b. “To award [Rural Economic Development] grants or loans”;
- c. “To formulate policies and priorities for [Rural Economic Development] grant and loan making”;
- d. “To determine ways in which the Rural Economic Development Division can aid local government units in meeting the costs for preliminary project planning”; and
- e. “To determine ways in which the Rural Economic Development Division can effectively disseminate information to local government units about the availability of grants or loans.”

116. Under Section § 143B-472.128(b), the Rural Infrastructure Authority consists of 16 members, five of whom are appointed by the Governor, five of whom are appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, and five of whom are appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives. N.C. Gen. Stat. § 143B-472.128(b).

117. Under Section 143B-472.128(i), the Governor may only remove members pursuant to N.C. Gen. Stat. § 143B-13. Under that provision, the Governor's authority to remove authority members is sharply constrained because they may only be removed for "misfeasance, malfeasance, and nonfeasance."

118. Because the Governor has no ability to appoint a majority of the Rural Infrastructure Authority members, and because he can only remove them for cause, Section 143B-472.128 allows the General Assembly to take too much control over the execution of the laws from the Governor. *McCrorry*, 368 N.C. at 647, 781 S.E.2d at 257.

119. As a result, Section 143B-472.128 prevents the Governor from performing his core function under the North Carolina Constitution to "take care that the laws be faithfully executed." N.C. CONST. art. III, § 5(4).

**F. THE STRUCTURE OF THE PRIVATE PROTECTIVE SERVICES BOARD VIOLATES SEPARATION OF POWERS.**

120. Under N.C. Gen. Stat. § 74C-4, the Private Protective Services Board is "established in the Department of Public Safety to administer the licensing and set educational and training requirements for persons, firms, associations, and corporations engaged in a private protective services profession within this State."

121. Housed within a principal executive department, the Private Protective Services Board is primarily an executive agency with a broad mandate to oversee the private security industry in North Carolina. Among its duties under N.C. Gen. Stat. § 74C-5 are to:

- a. “Adopt rules necessary to carry out and administer the provisions of this Chapter”;
- b. “Determine minimum qualifications, establish and require written or oral examinations, and establish minimum education, experience, and training standards for applicants and licensees under this Chapter”;
- c. “Conduct investigations regarding alleged violations and to make evaluations as may be necessary to determine if licensees and trainees under this Chapter are complying with the provisions of this Chapter”;
- d. “Approve individual applicants to be licensed or registered according to this Chapter”;
- e. “Deny, suspend, or revoke any license or trainee permit issued or to be issued under this Chapter”;
- f. “Adopt rules governing detection of deception schools”; and
- g. “Approve training schools, instructors, and course materials for any person, firm, association, or corporation wishing to provide training described in this Chapter.”

122. Under Section 74C-4(b), the Board consists of 14 members, including the Secretary of Public Safety and “three persons appointed by the Governor, five persons appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, and five persons appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives.” N.C. Gen. Stat. § 74C-4(b).

123. In short, of the 14 members of the Board, the Governor appoints just four (i.e., the Secretary of Public Safety plus three direct appointments).

124. With respect to removal authority, under Section 74C-4(d), “[a] Board member may be removed at the pleasure of the authority making the original appointment or by the Board for misconduct, incompetence, or neglect of duty.”

125. Accordingly, the Governor has no authority to remove 10 of the 14 members of the Board, even for cause.

126. Because the Governor has no ability to appoint, remove, and therefore supervise a majority of the Private Protective Services Board members, Chapter 74C-4 allows the General Assembly to take too much control over the execution of the laws from the Governor. *McCrary*, 368 N.C. at 647, 781 S.E.2d at 257.

127. As a result, Chapter 74C-4 prevents the Governor from performing his core function under the North Carolina Constitution to “take care that the laws be faithfully executed.” N.C. CONST. art. III, § 5(4).

**COUNT 1: DECLARATORY JUDGMENT**  
**SECTION 1 OF SESSION LAW 2017-7 VIOLATES ARTICLE IV, SECTIONS 16 AND 19**  
**OF THE NORTH CAROLINA CONSTITUTION.**

128. The Governor restates and incorporates by reference the preceding paragraphs of this Complaint, as if fully set forth herein.

129. A present and real controversy exists between the parties as to the constitutionality of Section 1 of Session Law 2017-7.

130. Section 1 of Session Law 2017-7 violates Article IV, Sections 16 and 19 of the North Carolina Constitution because it purports to shorten three terms on the North Carolina Court of Appeals to fewer than eight years.

131. Accordingly, Section 1 of Session Law 2017-7 is void and of no effect.

132. Pursuant to N.C. Gen. Stat. §§ 1-253–1-267 and North Carolina Rule of Civil Procedure 57, the Governor entitled to a judgment declaring that Section 1 of Session Law 2017-7 is unconstitutional, and is therefore void and of no effect.

**COUNT 2: DECLARATORY JUDGMENT**  
**PART V OF SESSION LAW 2016-125 VIOLATES THE EXCLUSIVE PRIVILEGES CLAUSE  
OF THE NORTH CAROLINA CONSTITUTION**

133. The Governor restates and incorporates by reference the preceding paragraphs of this Complaint, as if fully set forth herein.

134. A present and real controversy exists between the parties as to the constitutionality of Part V of Session Law 2016-125.

135. The NCIC Privilege (i.e., the amendments to N.C. Gen. Stat. § 97-77(a1) in Part V of Session Law 2016-125) provided Defendant Stith—and no one else—with the exclusive privilege of a nine-year vacancy appointment to the Industrial Commission.

136. The unique benefit given to Stith, extending her term from nearly three years to nearly nine years, does nothing to promote the general welfare of our State. Instead, by its very terms, the General Assembly intended the fleeting amendment to benefit only a single individual with close ties to Governor McCrory.

137. There was no reasonable basis for the General Assembly to conclude that the granting of this exclusive, one-time-only individual benefit served the public interest.

138. On the contrary, the fleeting nature of the NCIC Privilege demonstrates that the General Assembly itself recognizes that the change in law was not in the public interest. If changing the Industrial Commission's vacancy appointment statute to provide for longer terms was in the public interest, the amended statute would not have immediately reverted to its original form upon its first and only use by Governor McCrory.

139. Because the NCIC Privilege was given for a private purpose—to reward a political ally—and because it did nothing to promote the general welfare of our State or to serve the public

interest, it violates the Exclusive Privileges Clause of the North Carolina Constitution. *See* N.C. CONST. art. I, § 32.

140. Pursuant to N.C. Gen. Stat. §§ 1-253, *et seq.*, and North Carolina Rules of Civil Procedure 57 and 65, the Governor is entitled to a judgment and permanent injunction declaring that (a) the amendments to N.C. Gen. Stat. § 97-77(a1) in Part V of Session Law 2016-125 are unconstitutional and are therefore void and of no effect; and (b) Defendant Stith's term on the Industrial Commission is limited to the unexpired term she was appointed to fill, ending no later than April 30, 2019.

**COUNT 3: DECLARATORY JUDGMENT**  
**PART V OF SESSION LAW 2016-125 VIOLATES THE EQUAL PROTECTION CLAUSE  
OF THE NORTH CAROLINA CONSTITUTION**

141. The Governor restates and incorporates by reference the preceding paragraphs of this Complaint, as if fully set forth herein.

142. A present and real controversy exists between the parties as to the constitutionality of Part V of Session Law 2016-125.

143. The NCIC Privilege (i.e., the amendments to N.C. Gen. Stat. § 97-77(a1) in Part V of Session Law 2016-125) provided Defendant Stith—and no one else—with the exclusive privilege of a nine-year vacancy appointment to the Industrial Commission.

144. The General Assembly's creation of a single-member classification—for Stith only—is arbitrary and irrational. The arbitrary and irrational classification scheme bears no rational relationship to any conceivable legitimate governmental interest.

145. Accordingly, the NCIC Privilege violates the Equal Protection Clause of the North Carolina Constitution. *See* N.C. CONST. art. I, § 19.



146. Pursuant to N.C. Gen. Stat. §§ 1-253, *et seq.*, and North Carolina Rules of Civil Procedure 57 and 65, the Governor is entitled to a judgment and permanent injunction declaring that (a) the amendments to N.C. Gen. Stat. § 97-77(a1) in Part V of Session Law 2016-125 are unconstitutional and are therefore void and of no effect; and (b) Defendant Stith's term on the Industrial Commission is limited to the unexpired term she was appointed to fill, ending no later than April 30, 2019.

**COUNT 4: DECLARATORY JUDGMENT (AS-APPLIED CHALLENGE)**  
**PART V OF SESSION LAW 2016-125, AS APPLIED, VIOLATES THE SEPARATION OF POWERS  
AND FAITHFUL EXECUTION CLAUSES OF THE NORTH CAROLINA CONSTITUTION**

147. The Governor restates and incorporates by reference the preceding paragraphs of this Complaint, as if fully set forth herein.

148. A present and real controversy exists between the parties as to the constitutionality of Part V of Session Law 2016-125.

149. The amendments to N.C. Gen. Stat. § 97-77(b) in Part V of Session Law 2016-125 unconstitutionally prevent the Governor from performing his core executive function of ensuring that the laws are faithfully executed. *McCrorry*, 368 N.C. at 635, 781 S.E.2d at 250 (“[T]he separation of powers clause requires that, as the three branches of government carry out their duties, one branch will not prevent another branch from performing its core functions.”).

150. Accordingly, as applied, Part V of Session Law 2016-125 violates the Separation of Powers Clause (Article I, Section 6) and the Faithful Execution Clause (Article III, Section 5(4)) of the North Carolina Constitution.

151. Pursuant to N.C. Gen. Stat. §§ 1-253, *et seq.*, and North Carolina Rules of Civil Procedure 57 and 65, the Governor is entitled to a judgment and permanent injunction declaring

that the amendments to N.C. Gen. Stat. § 97-77(b) in Part V of Session Law 2016-125 are unconstitutional and are therefore void and of no effect.

**COUNT 5: DECLARATORY JUDGMENT (FACIAL CHALLENGE)**  
**PART V OF SESSION LAW 2016-125 FACIALLY VIOLATES THE SEPARATION OF POWERS  
AND FAITHFUL EXECUTION CLAUSES OF THE NORTH CAROLINA CONSTITUTION**

152. The Governor restates and incorporates by reference the preceding paragraphs of this Complaint, as if fully set forth herein.

153. A present and real controversy exists between the parties as to the constitutionality of Part V of Session Law 2016-125.

154. The amendments to N.C. Gen. Stat. § 97-77(b) in Part V of Session Law 2016-125 unconstitutionally prevent the Governor from performing his core executive function of ensuring that the laws are faithfully executed. *McCrorry*, 368 N.C. at 635, 781 S.E.2d at 250 (“[T]he separation of powers clause requires that, as the three branches of government carry out their duties, one branch will not prevent another branch from performing its core functions.”).

155. Accordingly, Part V of Session Law 2016-125 facially violates the Separation of Powers Clause (Article I, Section 6) and the Faithful Execution Clause (Article III, Section 5(4)) of the North Carolina Constitution.

156. Pursuant to N.C. Gen. Stat. §§ 1-253, *et seq.*, and North Carolina Rules of Civil Procedure 57 and 65, the Governor is entitled to a judgment and permanent injunction declaring that the amendments to N.C. Gen. Stat. § 97-77(b) in Part V of Session Law 2016-125 are unconstitutional and are therefore void and of no effect.

**COUNT 6: RELIEF IN THE NATURE OF QUO WARRANTO**

157. The Governor restates and incorporates by reference the preceding paragraphs of this Complaint, as if fully set forth herein.

158. Defendant Allen has been unconstitutionally designated as chair of the Industrial Commission.

159. Defendant Stith has been unconstitutionally designated as vice-chair of the Industrial Commission.

160. Pursuant to N.C. Gen. Stat. §§ 1-514, *et seq.*, the Governor asks this Court to remove Defendants Allen and Stith as chair and vice-chair, respectively, of the Industrial Commission.

**COUNT 7: DECLARATORY JUDGMENT**

**N.C. GEN. STAT. § 143B-135.240 VIOLATES THE SEPARATION OF POWERS AND FAITHFUL EXECUTION CLAUSES OF THE NORTH CAROLINA CONSTITUTION**

161. The Governor restates and incorporates by reference the preceding paragraphs of this Complaint, as if fully set forth herein.

162. A present and real controversy exists between the parties as to the constitutionality of N.C. Gen. Stat. § 143B-135.240, which creates the appointment structure for the Clean Water Management Trust Fund Board of Trustees.

163. N.C. Gen. Stat. § 143B-135.240 unconstitutionally prevents the Governor from performing his core executive function of ensuring that the laws are faithfully executed. *McCrorry*, 368 N.C. at 635, 781 S.E.2d at 250 (“[T]he separation of powers clause requires that, as the three branches of government carry out their duties, one branch will not prevent another branch from performing its core functions.”).

164. Accordingly, N.C. Gen. Stat. § 143B-135.240 violates the Separation of Powers Clause (Article I, Section 6) and the Faithful Execution Clause (Article III, Section 5(4)) of the North Carolina Constitution.

165. Pursuant to N.C. Gen. Stat. §§ 1-253, *et seq.*, and North Carolina Rules of Civil Procedure 57 and 65, the Governor is entitled to a judgment and permanent injunction declaring that N.C. Gen. Stat. § 143B-135.240 is unconstitutional and therefore void and of no effect.

**COUNT 8: DECLARATORY JUDGMENT**

**N.C. GEN. STAT. § 143B-168.4 VIOLATES THE SEPARATION OF POWERS AND FAITHFUL EXECUTION CLAUSES OF THE NORTH CAROLINA CONSTITUTION**

166. The Governor restates and incorporates by reference the preceding paragraphs of this Complaint, as if fully set forth herein.

167. A present and real controversy exists between the parties as to the constitutionality of N.C. Gen. Stat. § 143B-168.4, which creates the appointment structure for the Child Card Commission.

168. N.C. Gen. Stat. § 143B-168.4 unconstitutionally prevents the Governor from performing his core executive function of ensuring that the laws are faithfully executed. *McCrorry*, 368 N.C. at 635, 781 S.E.2d at 250 (“[T]he separation of powers clause requires that, as the three branches of government carry out their duties, one branch will not prevent another branch from performing its core functions.”).

169. Accordingly, N.C. Gen. Stat. § 143B-168.4 violates the Separation of Powers Clause (Article I, Section 6) and the Faithful Execution Clause (Article III, Section 5(4)) of the North Carolina Constitution.

170. Pursuant to N.C. Gen. Stat. §§ 1-253, *et seq.*, and North Carolina Rules of Civil Procedure 57 and 65, the Governor is entitled to a judgment and permanent injunction declaring that N.C. Gen. Stat. § 143B-168.4 is unconstitutional and therefore void and of no effect.

**COUNT 9: DECLARATORY JUDGMENT**

**N.C. GEN. STAT. § 143-135.25 VIOLATES THE SEPARATION OF POWERS AND FAITHFUL EXECUTION CLAUSES OF THE NORTH CAROLINA CONSTITUTION**

171. The Governor restates and incorporates by reference the preceding paragraphs of this Complaint, as if fully set forth herein.

172. A present and real controversy exists between the parties as to the constitutionality of N.C. Gen. Stat. § 143-135.25, which creates the appointment structure for the State Building Commission.

173. N.C. Gen. Stat. § 143-135.25 unconstitutionally prevents the Governor from performing his core executive function of ensuring that the laws are faithfully executed. *McCrory*, 368 N.C. at 635, 781 S.E.2d at 250 (“[T]he separation of powers clause requires that, as the three branches of government carry out their duties, one branch will not prevent another branch from performing its core functions.”).

174. Accordingly, N.C. Gen. Stat. § 143-135.25 violates the Separation of Powers Clause (Article I, Section 6) and the Faithful Execution Clause (Article III, Section 5(4)) of the North Carolina Constitution.

175. Pursuant to N.C. Gen. Stat. §§ 1-253, *et seq.*, and North Carolina Rules of Civil Procedure 57 and 65, the Governor is entitled to a judgment and permanent injunction declaring that N.C. Gen. Stat. § 143-135.25 is unconstitutional and therefore void and of no effect.

**COUNT 10: DECLARATORY JUDGMENT**

**N.C. GEN. STAT. § 143B-135.202 VIOLATES THE SEPARATION OF POWERS AND FAITHFUL EXECUTION CLAUSES OF THE NORTH CAROLINA CONSTITUTION**

176. The Governor restates and incorporates by reference the preceding paragraphs of this Complaint, as if fully set forth herein.

177. A present and real controversy exists between the parties as to the constitutionality of N.C. Gen. Stat. § 143B-135.202, which creates the appointment structure for the North Carolina Parks and Recreation Authority.

178. N.C. Gen. Stat. § 143B-135.202 unconstitutionally prevents the Governor from performing his core executive function of ensuring that the laws are faithfully executed. *McCrory*, 368 N.C. at 635, 781 S.E.2d at 250 (“[T]he separation of powers clause requires that, as the three branches of government carry out their duties, one branch will not prevent another branch from performing its core functions.”).

179. Accordingly, N.C. Gen. Stat. § 143B-135.202 violates the Separation of Powers Clause (Article I, Section 6) and the Faithful Execution Clause (Article III, Section 5(4)) of the North Carolina Constitution.

180. Pursuant to N.C. Gen. Stat. §§ 1-253, *et seq.*, and North Carolina Rules of Civil Procedure 57 and 65, the Governor is entitled to a judgment and permanent injunction declaring that N.C. Gen. Stat. § 143B-135.202 is unconstitutional and therefore void and of no effect.

**COUNT 11: DECLARATORY JUDGMENT**

**N.C. GEN. STAT. § 143B-472.128 VIOLATES THE SEPARATION OF POWERS AND FAITHFUL EXECUTION CLAUSES OF THE NORTH CAROLINA CONSTITUTION**

181. The Governor restates and incorporates by reference the preceding paragraphs of this Complaint, as if fully set forth herein.

182. A present and real controversy exists between the parties as to the constitutionality of N.C. Gen. Stat. § 143B-472.128, which creates the appointment structure for the Rural Infrastructure Authority.

183. N.C. Gen. Stat. § 143B-472.128 unconstitutionally prevents the Governor from performing his core executive function of ensuring that the laws are faithfully executed. *McCrory*,

368 N.C. at 635, 781 S.E.2d at 250 (“[T]he separation of powers clause requires that, as the three branches of government carry out their duties, one branch will not prevent another branch from performing its core functions.”).

184. Accordingly, N.C. Gen. Stat. § 143B-472.128 violates the Separation of Powers Clause (Article I, Section 6) and the Faithful Execution Clause (Article III, Section 5(4)) of the North Carolina Constitution.

185. Pursuant to N.C. Gen. Stat. §§ 1-253, *et seq.*, and North Carolina Rules of Civil Procedure 57 and 65, the Governor is entitled to a judgment and permanent injunction declaring that N.C. Gen. Stat. § 143B-472.128 is unconstitutional and therefore void and of no effect.

#### **COUNT 12: DECLARATORY JUDGMENT**

#### **N.C. GEN. STAT. § 74C-4 VIOLATES THE SEPARATION OF POWERS AND FAITHFUL EXECUTION CLAUSES OF THE NORTH CAROLINA CONSTITUTION**

186. The Governor restates and incorporates by reference the preceding paragraphs of this Complaint, as if fully set forth herein.

187. A present and real controversy exists between the parties as to the constitutionality of N.C. Gen. Stat. § 74C-4, which creates the appointment structure for the Private Protective Services Board.

188. N.C. Gen. Stat. § 74C-4 unconstitutionally prevents the Governor from performing his core executive function of ensuring that the laws are faithfully executed. *McCrory*, 368 N.C. at 635, 781 S.E.2d at 250 (“[T]he separation of powers clause requires that, as the three branches of government carry out their duties, one branch will not prevent another branch from performing its core functions.”).

189. Accordingly, N.C. Gen. Stat. § 74C-4 violates the Separation of Powers Clause (Article I, Section 6) and the Faithful Execution Clause (Article III, Section 5(4)) of the North Carolina Constitution.

190. Pursuant to N.C. Gen. Stat. §§ 1-253, *et seq.*, and North Carolina Rules of Civil Procedure 57 and 65, the Governor is entitled to a judgment and permanent injunction declaring that N.C. Gen. Stat. § 74C-4 is unconstitutional and therefore void and of no effect.

**COUNT 13: INJUNCTIVE RELIEF**

**THE GOVERNOR IS ENTITLED TO PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF**

191. The Governor restates and incorporates by reference the preceding paragraphs of this Complaint, as if fully set forth herein.

192. The Governor is entitled to a preliminary and permanent injunction pursuant to North Carolina Rule of Civil Procedure 65 barring Section 1 of Session Law 2017-7 and Part V of Session Law 2016-125 from taking effect.

193. Without such relief, the unconstitutional statute will remain in effect during the pendency of this litigation, preventing the Governor from performing his core executive function of ensuring that the laws are faithfully executed.

194. Section 1 of Session Law 2017-7 and Part V of Session Law 2016-125 threaten immediate and irreparable harm to Governor Cooper, the office of the Governor, and the people of North Carolina whom he was elected to serve.

195. As set forth above, the Governor is likely to succeed on the merits of his claims.

196. Providing the Governor the injunctive relief he seeks is necessary to protect his rights during the course of this litigation.

197. The balance of the equities and the public interest strongly favor granting the injunctive relief sought by the Governor.

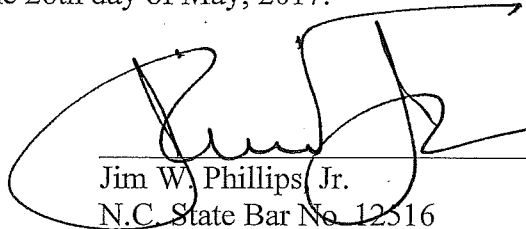


## PRAYER FOR JUDGMENT

WHEREFORE, Plaintiff Governor Cooper prays as follows:

1. That the Court issue a preliminary injunction pursuant to North Carolina Rule of Civil Procedure 65 enjoining the effectiveness of Section 1 of Session Law 2017-7 and Part V of Session Law 2016-125 during the pendency of this litigation;
2. That the Court enter a declaratory judgment and injunction, pursuant to N.C. Gen. Stat. § 1-253, *et seq.*, and North Carolina Rules of Civil Procedure 57 and 65, declaring that:
  - a. Section 1 of Session Law 2017-7 is unconstitutional and therefore is void and of no effect;
  - b. Part V of Session Law 2016-125 is unconstitutional and therefore is void and of no effect;
  - c. N.C. Gen. Stat. § 143B-135.240 is unconstitutional and therefore is void and of no effect;
  - d. N.C. Gen. Stat. § 143B-168.4 is unconstitutional and therefore is void and of no effect;
  - e. N.C. Gen. Stat. § 143-135.25, is unconstitutional and therefore is void and of no effect;
  - f. N.C. Gen. Stat. § 143B-135.202 is unconstitutional and therefore is void and of no effect;
  - g. N.C. Gen. Stat. § 143B-472.128 is unconstitutional and therefore is void and of no effect;
  - h. N.C. Gen. Stat. § 74C-4 is unconstitutional and therefore is void and of no effect.
3. That the Court enter an order removing Defendants Allen and Stith as chair and vice-chair, respectively, of the Industrial Commission;
4. That the Court award to Plaintiff his costs and expenses, pursuant to applicable statutory and common law, including N.C. Gen. Stat. §§ 6-20, and 1-263; and
5. That the Court grant such other and further relief as the Court deems just and proper.

Respectfully submitted this the 26th day of May, 2017.



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STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
17 CVS \_\_\_\_\_

STATE OF NORTH CAROLINA,

Upon the relation of,

ROY A. COOPER, III, individually and in  
his official capacity as GOVERNOR OF  
THE STATE OF NORTH CAROLINA,

Plaintiff,

v.

PHILIP E. BERGER, in his official capacity  
as PRESIDENT PRO TEMPORE OF THE  
NORTH CAROLINA SENATE; TIMOTHY  
K. MOORE, in his official capacity as  
SPEAKER OF THE NORTH CAROLINA  
HOUSE OF REPRESENTATIVES;  
CHARLTON L. ALLEN, in his official  
capacity as CHAIR OF THE NORTH  
CAROLINA INDUSTRIAL  
COMMISSION; YOLANDA K. STITH, in  
her official capacity as VICE-CHAIR OF  
THE NORTH CAROLINA INDUSTRIAL  
COMMISSION; and THE STATE OF  
NORTH CAROLINA,

Defendants.

**VERIFICATION**

I, Kristi Jones, being first duly sworn, depose and say:

I am chief of staff to the Governor of the State of North Carolina, Roy A. Cooper, III, and I have the authority to execute this verification on behalf of the Governor, acting in his official capacity.

I have read the COMPLAINT filed in this matter on behalf of Governor Cooper, acting in his official capacity, and can verify based on personal knowledge to the factual contents thereof, and that the same is true to the best of my knowledge or are believed by me to be true based upon reasonable inquiry.

[SIGNATURE ON FOLLOWING PAGE]

*Kristi Jones*

KRISTI JONES  
Chief of Staff  
Office of the Governor  
of the State of North Carolina

Wake County, North Carolina

I certify that the following person personally appeared before me this day, acknowledging to me that she signed the foregoing document: **Kristi Jones**

Date: 5/25/17

*Patricia G. Douglas*  
[Official Signature of Notary]

[Official Seal]

Patricia G. Douglas, Notary Public  
[Notary's printed or typed name]

**PATRICIA G DOUGLAS**  
Notary Public  
Wake County, NC  
My Commission Expires May 2, 2019

My Commission Expires: 5/2/19

## GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2017

### SESSION LAW 2017-7 HOUSE BILL 239

AN ACT TO REDUCE THE NUMBER OF JUDGES ON THE COURT OF APPEALS TO TWELVE; TO PROVIDE AN APPEAL OF RIGHT FOR TRIAL COURT DECISIONS REGARDING CLASS ACTION CERTIFICATION AND TERMINATION OF PARENTAL RIGHTS; AND TO PROVIDE FOR DISCRETIONARY REVIEW BY THE SUPREME COURT IN CASES WHERE THE SUBJECT MATTER INVOLVES THE JURISDICTION AND INTEGRITY OF THE COURT SYSTEM.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 7A-16, as amended by Section 22(a) of S.L. 2016-125, reads as rewritten:

**"§ 7A-16. Creation and organization.**

The Court of Appeals is created effective January 1, 1967. It shall consist initially of six judges, elected by the qualified voters of the State for terms of eight years. The Chief Justice of the Supreme Court shall designate one of the judges as Chief Judge, to serve in such capacity at the pleasure of the Chief Justice. Before entering upon the duties of his office, a judge of the Court of Appeals shall take the oath of office prescribed for a judge of the General Court of Justice.

The Governor on or after July 1, 1967, shall make temporary appointments to the six initial judgeships. The appointees shall serve until January 1, 1969. Their successors shall be elected at the general election for members of the General Assembly in November, 1968, and shall take office on January 1, 1969, to serve for the remainder of the unexpired term which began on January 1, 1967.

Upon the appointment of at least five judges, and the designation of a Chief Judge, the court is authorized to convene, organize, and promulgate, subject to the approval of the Supreme Court, such supplementary rules as it deems necessary and appropriate for the discharge of the judicial business lawfully assigned to it.

Effective January 1, 1969, the number of judges is increased to nine, and the Governor, on or after March 1, 1969, shall make temporary appointments to the additional judgeships thus created. The appointees shall serve until January 1, 1971. Their successors shall be elected at the general election for members of the General Assembly in November, 1970, and shall take office on January 1, 1971, to serve for the remainder of the unexpired term which began on January 1, 1969.

Effective January 1, 1977, the number of judges is increased to 12; and the Governor, on or after July 1, 1977, shall make temporary appointments to the additional judgeships thus created. The appointees shall serve until January 1, 1979. Their successors shall be elected at the general election for members of the General Assembly in November, 1978, and shall take office on January 1, 1979, to serve the remainder of the unexpired term which began on January 1, 1977.

On or after December 15, 2000, the Governor shall appoint three additional judges to increase the number of judges to 15.



On or after January 1, 2017, whenever the seat of an incumbent judge becomes vacant prior to the expiration of the judge's term due to the death, resignation, retirement, impeachment, or removal pursuant to G.S. 7A-374.2(8) of the incumbent judge, that seat is abolished until the total number of Court of Appeals seats is decreased to 12.

The Court of Appeals shall sit in panels of three judges each and may also sit en banc to hear or rehear any cause upon a vote of the majority of the judges of the court. The Chief Judge insofar as practicable shall assign the members to panels in such fashion that each member sits a substantially equal number of times with each other member, shall preside when a member of a panel, and shall designate the presiding judge of the other panel or panels.

Except as may be provided in G.S. 7A-32, three judges shall constitute a quorum for the transaction of the business of the court when sitting in panels of three judges, and a majority of the then sitting judges on the Court of Appeals shall constitute a quorum for the transaction of the business of the court when sitting en banc.

In the event the Chief Judge is unable, on account of absence or temporary incapacity, to perform the duties placed upon him as Chief Judge, the Chief Justice shall appoint an acting Chief Judge from the other judges of the Court, to temporarily discharge the duties of Chief Judge."

**SECTION 2.** G.S. 7A-27, as amended by Section 22(b) of S.L. 2016-125, reads as rewritten:

**"§ 7A-27. Appeals of right from the courts of the trial divisions.**

- (a) Appeal lies of right directly to the Supreme Court in any of the following cases:
- (1) All cases in which the defendant is convicted of murder in the first degree and the judgment of the superior court includes a sentence of death.
  - (2) From any final judgment in a case designated as a mandatory complex business case pursuant to G.S. 7A-45.4 or designated as a discretionary complex business case pursuant to Rule 2.1 of the General Rules of Practice for the Superior and District Courts.
  - (3) From any interlocutory order of a Business Court Judge that does any of the following:
    - a. Affects a substantial right.
    - b. In effect determines the action and prevents a judgment from which an appeal might be taken.
    - c. Discontinues the action.
    - d. Grants or refuses a new trial.
  - (4) Any trial court's decision regarding class action certification under G.S. 1A-1, Rule 23.
  - (5) Any order that terminates parental rights or denies a petition or motion to terminate parental rights.

(b) Except as provided in subsection (a) of this section, appeal lies of right directly to the Court of Appeals in any of the following cases:

- (1) From any final judgment of a superior court, other than one based on a plea of guilty or nolo contendere, including any final judgment entered upon review of a decision of an administrative agency, except for a final judgment entered upon review of a court martial under G.S. 127A-62.
- (2) From any final judgment of a district court in a civil action.
- (3) From any interlocutory order or judgment of a superior court or district court in a civil action or proceeding that does any of the following:
  - a. Affects a substantial right.
  - b. In effect determines the action and prevents a judgment from which an appeal might be taken.
  - c. Discontinues the action.

- d. Grants or refuses a new trial.
- e. Determines a claim prosecuted under G.S. 50-19.1.
- f. Grants temporary injunctive relief restraining the State or a political subdivision of the State from enforcing the operation or execution of an act of the General Assembly. This sub-subdivision only applies where the State or a political subdivision of the State is a party in the civil action.

(4) From any other order or judgment of the superior court from which an appeal is authorized by statute.

(c) through (e) Repealed by Session Laws 2013-411, s. 1, effective August 23, 2013."

**SECTION 3.** G.S. 7A-31, as amended by Section 22(d) of S.L. 2016-125, reads as

rewritten:

**"§ 7A-31. Discretionary review by the Supreme Court.**

...

(b) In causes subject to certification under subsection (a) of this section, certification may be made by the Supreme Court before determination of the cause by the Court of Appeals when in the opinion of the Supreme ~~Court~~:Court any of the following apply:

- (1) The subject matter of the appeal has significant public ~~interest, or interest.~~
- (2) The cause involves legal principles of major significance to the jurisprudence of the ~~State, or State.~~
- (3) Delay in final adjudication is likely to result from failure to certify and thereby cause substantial ~~harm, or harm.~~
- (4) The work load of the courts of the appellate division is such that the expeditious administration of justice requires certification.
- (5) The subject matter of the appeal is important in overseeing the jurisdiction and integrity of the court system.

(c) In causes subject to certification under subsection (a) of this section, certification may be made by the Supreme Court after determination of the cause by the Court of Appeals when in the opinion of the Supreme ~~Court~~:Court any of the following apply:

- (1) The subject matter of the appeal has significant public ~~interest, or interest.~~
- (2) The cause involves legal principles of major significance to the jurisprudence of the ~~State, or State.~~
- (3) The decision of the Court of Appeals appears likely to be in conflict with a decision of the Supreme Court.

Interlocutory determinations by the Court of Appeals, including orders remanding the cause for a new trial or for other proceedings, shall be certified for review by the Supreme Court only upon a determination by the Supreme Court that failure to certify would cause a delay in final adjudication which would probably result in substantial harm.

...."

**SECTION 4.** G.S. 7B-1001(a) reads as rewritten:

**"§ 7B-1001. Right to appeal.**

(a) In a juvenile matter under this Subchapter, appeal of a final order of the court in a juvenile matter shall be made directly to the Court of ~~Appeals~~:Appeals unless otherwise specified. Only the following juvenile matters may be appealed:

...

- (5) An order entered under G.S. 7B-906.2(b) with rights to appeal properly preserved, as follows:
  - a. The Court of Appeals shall review the order eliminating reunification as a permanent plan ~~together with an appeal of the termination of parental rights order~~ if all of the following apply:

1. A motion or petition to terminate the parent's rights is heard and granted.
  2. The order terminating parental rights is appealed in a proper and timely manner.
  3. The order eliminating reunification as a permanent plan is identified as an issue in the record on appeal of the termination of parental rights.
- b. A party who is a parent shall have the right to appeal the order if no termination of parental rights petition or motion is filed within 180 days of the order.
  - c. A party who is a custodian or guardian shall have the right to immediately appeal the order.
- (6) Any order that terminates parental rights or denies a petition or motion to terminate parental ~~rights~~ rights shall be made directly to the Supreme Court."

**SECTION 5.** G.S. 7A-27(a)(5), as enacted by Section 2 of this act, and Section 4 of this act become effective January 1, 2019, and apply to appeals filed on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11<sup>th</sup> day of April, 2017.

s/ Philip E. Berger  
President Pro Tempore of the Senate

s/ Tim Moore  
Speaker of the House of Representatives

VETO Roy Cooper  
Governor

Became law notwithstanding the objections of the Governor at 9:37 p.m. this 26<sup>th</sup> day of April, 2017.

s/ Sarah Lang  
Senate Principal Clerk



**GENERAL ASSEMBLY OF NORTH CAROLINA  
FOURTH EXTRA SESSION 2016**

**SESSION LAW 2016-125  
SENATE BILL 4**

AN ACT TO CONSOLIDATE THE FUNCTIONS OF ELECTIONS, CAMPAIGN FINANCE, LOBBYING, AND ETHICS UNDER ONE STATE AGENCY BY CREATING THE NORTH CAROLINA BIPARTISAN STATE BOARD OF ELECTIONS AND ETHICS ENFORCEMENT; TO CLARIFY THE GENERAL ASSEMBLY'S AUTHORITY TO CORRECT DEFECTS IDENTIFIED BY A COURT IN APPORTIONMENT OR DISTRICTING PLANS; TO RESTORE PARTISAN ELECTIONS FOR THE NORTH CAROLINA SUPREME COURT AND COURT OF APPEALS; TO MODIFY APPELLATE REVIEW OF CERTAIN CASES; AND TO MODIFY THE TERM FOR INDUSTRIAL COMMISSIONERS.

The General Assembly of North Carolina enacts:

**PART I. CREATION OF BIPARTISAN STATE BOARD OF ELECTIONS AND ETHICS ENFORCEMENT**

**SECTION 1.** Recodification; Technical and Conforming Changes. – The Revisor of Statutes shall recodify Chapter 138A of the General Statutes, Chapter 120C of the General Statutes, as well as Chapter 163 of the General Statutes, as amended by this act, into a new Chapter 138B of the General Statutes to be entitled "Elections and Ethics Enforcement Act," as enacted by Section 2 of this act. The Revisor may also recodify into the new Chapter 138B of the General Statutes other existing statutory laws relating to elections and ethics enforcement that are located elsewhere in the General Statutes as the Revisor deems appropriate. The new Chapter 138B of the General Statutes shall have the following structure:

**SUBCHAPTER I. GENERAL PROVISIONS**

Article 1. Bipartisan State Board of Elections and Ethics Enforcement.

**SUBCHAPTER II. ETHICS AND LOBBYING**

Article 5. General Provisions.

Article 6. Public Disclosure of Economic Interests.

Article 7. Ethical Standards for Covered Persons.

Article 8. Lobbying.

Part 1. Registration

Part 2. Prohibitions and Restrictions

Part 3. Reporting

Part 4. Liaison Personnel

Part 5. Exemptions

Part 6. Miscellaneous

Article 9. Violation Consequences.

**SUBCHAPTER III. ELECTION AND ELECTION LAWS**

Article 15. Time of Primaries and Elections.

Part 1. Time of Primaries and Elections

Part 2. Time of Elections to Fill Vacancies

Article 16. Election Officers.

Part 1. State Board Powers and Duties



- Part 2. County Boards of Elections
- Part 3. Political Activities by Board of Elections Members and Employees
- Part 4. Precinct Election Officials
- Article 17. Qualifying to Vote.
  - Part 1. Qualifications of Voters
  - Part 2. Registration of Voters
  - Part 3. Challenges
  - Part 4. HAVA Administrative Complaint Procedure
- Article 18. Political Parties.
- Article 19. Nomination of Candidates.
  - Part 1. Primary Elections
  - Part 2. Nomination by Petition
  - Part 3. Challenge to Candidacy
- Article 20. Conduct of Primaries and Elections.
  - Part 1. Precincts and Voting Places
  - Part 2. Precinct Boundaries
  - Part 3. Voting
  - Part 4. Counting Official Ballots, Canvassing Votes, Hearing Protests, and Certifying Results
  - Part 5. Members of United States House of Representatives
  - Part 6. Presidential Electors
  - Part 7. Presidential Preference Primary Act
  - Part 8. Petitions for Elections and Referenda
- Article 21. Absentee Voting.
  - Part 1. Absentee Ballot
  - Part 2. Uniform Military and Overseas Voters Act
- Article 22. Regulation of Election Campaigns.
  - Part 1. Corrupt Practices and Other Offenses Against the Elective Franchise
- Article 23. Regulating Contributions and Expenditures in Political Campaigns.
  - Part 1. In General
  - Part 2. Disclosure Requirements for Media Advertisements
  - Part 3. Municipal Campaign Reporting
- Article 24. The North Carolina Public Campaign Fund.
- Article 25. The Voter-Owned Elections Act.
- Article 26. Legal Expense Funds.
- Article 27. Municipal Elections.
  - Part 1. Municipal Election Procedure
  - Part 2. Conduct of Municipal Elections
- Article 28. Nomination and Election of Appellate, Superior, and District Court Judges.

When recodifying, the Revisor is authorized to change all references to the State Ethics Commission, to the State Board of Elections, or to the Secretary of State, to instead be references to the Bipartisan State Board of Elections and Ethics Enforcement. The Revisor may separate subsections of existing statutory sections into new sections and, when necessary to organize relevant law into its proper place in the above structure, may rearrange sentences that currently appear within subsections. The Revisor may modify statutory citations throughout the General Statutes, as appropriate, and may modify any references to statutory divisions, such as "Chapter," "Subchapter," "Article," "Part," "section," and "subsection," adjust the order of lists of multiple statutes to maintain statutory order, correct terms and conform names and titles changed by this act, eliminate duplicative references to the Bipartisan State Board of Elections and Ethics Enforcement that result from the changes authorized by this section, and make

conforming changes to catch lines and references to catch lines. The Revisor may also adjust subject and verb agreement and the placement of conjunctions. The Revisor shall consult with the State Ethics Commission, the State Board of Elections, the Secretary of State, and the new Bipartisan State Board of Elections and Ethics Enforcement on this recodification.

**SECTION 2.(a)** The General Statutes are amended by adding a new Chapter to read:

**"Chapter 138B.**

**"Elections and Ethics Enforcement Act."**

**SECTION 2.(b)** Chapter 138B of the General Statutes, as enacted by this act, is amended by adding a new Subchapter to read:

**"SUBCHAPTER I. GENERAL PROVISIONS."**

**SECTION 2.(c)** Subchapter I of Chapter 138B of the General Statutes, as enacted by this act, is amended by adding a new Article to read:

**"Article 1.**

**"Bipartisan State Board of Elections and Ethics Enforcement.**

**"§ 138B-1. Bipartisan State Board of Elections and Ethics Enforcement established.**

There is established the Bipartisan State Board of Elections and Ethics Enforcement, referred to as the State Board in this Chapter.

**"§ 138B-2. Membership.**

(a) The State Board shall consist of eight individuals registered to vote in North Carolina, as follows:

- (1) Four members shall be appointed by the Governor, two of whom shall be of the political party with the highest number of registered affiliates and two of whom shall be of the political party with the second highest number of registered affiliates, as reflected by the latest registration statistics published by the State Board. The Governor shall appoint two members each from a list of three nominees submitted by the State party chairs of the two political parties with the highest number of registered affiliates, as reflected by the latest registration statistics published by the State Board.
- (2) Two members shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, as provided in G.S. 120-121. One member shall be of the political party with the highest number of registered affiliates and one member shall be of the political party with the second highest number of registered affiliates, as reflected by the latest registration statistics published by the State Board. All appointments shall be from a list of three nominees submitted to the Speaker of the House of Representatives by the majority leader of the House of Representatives and a list of three nominees submitted to the Speaker of the House of Representatives by the minority leader of the House of Representatives.
- (3) Two members shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, as provided in G.S. 120-121. One member shall be of the political party with the highest number of registered affiliates and one member shall be of the political party with the second highest number of registered affiliates, as reflected by the latest registration statistics published by the State Board. All appointments shall be from a list of three nominees submitted to the President Pro Tempore by the majority leader of the Senate and a list of three nominees submitted to the President Pro Tempore by the minority leader of the Senate.

(b) Members shall serve for four-year terms, beginning May 1 immediately following the election of the Governor.

(c) Members shall be removed by the member's appointing authority from the State Board only for misfeasance, malfeasance, or nonfeasance.

(d) Any vacancy occurring on the State Board shall be filled by an individual affiliated with the same political party of the vacating member. Any vacancy occurring in the State Board in an appointment made by the Governor shall be filled by the Governor, and the person so appointed shall fill the unexpired term. The Governor shall fill the vacancy from a list of two names submitted by the State party chair of the political party with which the vacating member was affiliated if that list is submitted within 30 days of the occurrence of the vacancy. Any vacancy occurring on the State Board in an appointment made by the General Assembly upon the recommendation of the Speaker of the House of Representatives shall be filled in accordance with G.S. 120-122 for the remainder of the unfulfilled term. Any vacancy occurring on the State Board in an appointment made by the General Assembly upon the recommendation of the President Pro Tempore of the Senate shall be filled in accordance with G.S. 120-122 for the remainder of the unfulfilled term.

(e) At the first meeting held after new appointments are made, the members of the State Board shall take the following oath:

"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; and that I will well and truly execute the duties of the office of member of the Bipartisan State Board of Elections and Ethics Enforcement according to the best of my knowledge and ability, according to law, so help me God."

(f) At the first meeting in May, the State Board shall organize by electing one of its members chair and one of its members vice-chair, each to serve a one-year term as such. In the odd-numbered year, the chair shall be a member of the political party with the highest number of registered affiliates, as reflected by the latest registration statistics published by the State Board, and the vice-chair a member of the political party with the second highest number of registered affiliates. In the even-numbered year, the chair shall be a member of the political party with the second highest number of registered affiliates, as reflected by the latest registration statistics published by the State Board, and the vice-chair a member of the political party with the highest number of registered affiliates.

(g) At the first meeting held after new appointments are made after taking the oath, the State Board shall elect one of its members secretary, to serve a four-year term as such.

(h) No person shall be eligible to serve as a member of the State Board who holds any elective or appointive office under the government of the United States, the State of North Carolina, or any political subdivision thereof. No person who holds any office in a political party or organization, or who is a candidate for nomination or election to any office, or who is a campaign manager or treasurer of any candidate in a primary or election shall be eligible to serve as a member of the State Board. In addition, no person while serving on the State Board shall:

- (1) Make a reportable contribution to a candidate for a public office over which the State Board would have jurisdiction or authority.
- (2) Register as a lobbyist under Article 8 of this Chapter.
- (3) Make written or oral statements intended for general distribution or dissemination to the public at large supporting or opposing the nomination or election of one or more clearly identified candidates for public office.
- (4) Make written or oral statements intended for general distribution or dissemination to the public at large supporting or opposing the passage of one or more clearly identified referendum or ballot issue proposals.

(5) Solicit contributions for a candidate, political committee, or referendum committee.

(i) Members of the State Board shall receive per diem, subsistence, and travel, as provided in G.S. 138-5 and G.S. 138-6.

**"§ 138B-3. Meetings; quorum; majority.**

The State Board shall meet at least monthly and at other times as called by its chair or by six of its members. In the case of a vacancy in the chair, meetings may be called by the vice-chair. Six members of the State Board constitute a quorum for the transaction of business. Except where required by law to act unanimously, a majority vote for action of the State Board shall require six of the eight members.

**"§ 138B-4. Powers of the State Board in the execution of State Board duties.**

(a) In the performance of the duties enumerated in this Chapter, the State Board, upon a vote of six or more of its members, shall have power to administer oaths, issue subpoenas, summon witnesses, and compel the production of papers, books, records, and other evidence. Such subpoenas for designated witnesses or identified papers, books, records, and other evidence shall be signed and issued by the chair.

(b) In the absence of the chair or upon the chair's refusal to act, the vice-chair may sign and issue subpoenas, summon witnesses, and compel the production of papers, books, records, and other evidence approved in accordance with subsection (a) of this section. In the absence of the chair or upon the chair's refusal to act, any member of the State Board may administer oaths.

(c) The State Board, upon a vote of six or more of its members, may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Chapter. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Chapter. Subpoenas issued under this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any nonresident person, or that person's agent, who makes a reportable expenditure under this Chapter, and personal jurisdiction may be asserted under G.S. 1-75.4.

**"§ 138B-5. Independent agency, staff, and offices.**

(a) The State Board shall be and remain an independent regulatory and quasi-judicial agency and shall not be placed within any principal administrative department. The State Board shall exercise its statutory powers, duties, functions, and authority and shall have all powers and duties conferred upon the heads of principal departments under G.S. 143B-10.

(b) The State Board may employ professional and clerical staff, including an Executive Director.

**"§ 138B-6. Executive Director of the State Board.**

(a) There is hereby created the position of Executive Director of the State Board, who shall perform all duties imposed by statute and such duties as may be assigned by the State Board.

(b) The State Board shall appoint an Executive Director for a term of four years with compensation to be determined by the Office of State Human Resources. The Executive Director shall serve beginning May 15 after the first meeting held after new appointments to the State Board are made, unless removed for cause, until a successor is appointed. In the event of a vacancy, the vacancy shall be filled for the remainder of the term.

(c) The Executive Director shall be responsible for staffing, administration, execution of the State Board's decisions and orders, and shall perform such other responsibilities as may be assigned by the State Board.

(d) The Executive Director shall be the chief State elections official."

**SECTION 3.(a)** G.S. 138A-6 is repealed.

**SECTION 3.(b)** G.S. 138A-7 is repealed.

**SECTION 3.(c)** G.S. 138A-8 is repealed.

**SECTION 3.(d)** G.S. 138A-9 is repealed.

**SECTION 3.(e)** G.S. 138A-13 reads as rewritten:

**"§ 138A-13. Request for advice.**

...  
(a2) A request for a formal advisory opinion under subsection (a) of this section shall be in writing, electronic or otherwise. The ~~Commission~~ State Board shall issue formal advisory opinions having prospective application only. A public servant or legislative employee who relies upon the advice provided to that public servant or legislative employee on a specific matter addressed by the requested formal advisory opinion shall be immune from all of the following:

- (1) Investigation by the ~~Commission~~ State Board, except for an inquiry under G.S. 138A-12(b)(3).
- (2) Any adverse action by the employing entity.
- (3) ~~Investigation by the Secretary of State.~~

...  
(b1) A request by a legislator for a recommended formal advisory opinion shall be in writing, electronic or otherwise. The ~~Commission~~ State Board shall issue recommended formal advisory opinions having prospective application only. Until action is taken by the Committee under G.S. 120-104, a legislator who relies upon the advice provided to that legislator on a specific matter addressed by the requested recommended formal advisory opinion shall be immune from all of the following:

- (1) Investigation by the Committee or ~~Commission~~ State Board, except for an inquiry under G.S. 138A-12(b)(3).
- (2) Any adverse action by the house of which the legislator is a member.
- (3) ~~Investigation by the Secretary of State.~~

...."

**SECTION 4.** Chapter 120C of the General Statutes reads as rewritten:

" ...

**"§ 120C-101. Rules and forms.**

(a) The ~~Commission~~ State Board shall adopt any rules or definitions necessary to interpret the provisions of this Chapter and adopt any rules necessary to administer the provisions of this Chapter, ~~except for Articles 2, 4 and 8 of this Chapter. The Secretary of State shall adopt any rules, orders, and forms as are necessary to administer the provisions of Articles 2, 4 and 8 of this Chapter. The Secretary of State may appoint a council to advise the Secretary in adopting rules under this section.~~ Chapter.

(b) With respect to the forms adopted under subsection (a) of this section, the ~~Secretary of State~~ State Board shall adopt rules to protect from disclosure all confidential information under Chapter 132 of the General Statutes related to economic development initiatives or to industrial or business recruitment activities. The information shall remain confidential until the State, a unit of local government, or the business has announced a commitment by the business to expand or locate a specific project in this State or a final decision not to do so, and the business has communicated that commitment or decision to the State or local government agency involved with the project.

(c) In adopting rules under this Chapter, the ~~Commission~~ State Board is exempt from the requirements of Article 2A of Chapter 150B of the General Statutes, except that the ~~Commission~~ State Board shall comply with G.S. 150B-21.2(d). At least 30 business days prior to adopting a rule, the ~~Commission~~ State Board shall:

- (1) Publish the proposed rules in the North Carolina Register.

- (2) Submit the rule and a notice of public hearing to the Codifier of Rules, and the Codifier of Rules shall publish the proposed rule and the notice of public hearing on the Internet to be posted within five business days.
- (3) Notify those on the mailing list maintained in accordance with G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a rule and of the public hearing.
- (4) Accept written comments on the proposed rule for at least 15 business days prior to adoption of the rule.
- (5) Hold at least one public hearing on the proposed rule no less than five days after the rule and notice have been published.

A rule adopted under this subsection becomes effective the first day of the month following the month the final rule is submitted to the Codifier of Rules for entry into the North Carolina Administrative Code, and applies prospectively. A rule adopted by the Commission that does not comply with the procedural requirements of this subsection shall be null, void, and without effect. For purposes of this subsection, a rule is any ~~Commission~~State Board regulation, standard, or statement of general applicability that interprets an enactment by the General Assembly or Congress, or a regulation adopted by a federal agency, or that describes the procedure or practice requirements of the ~~Commission~~State Board.

~~(d) For purposes of G.S. 150B-21.3(b2), a written objection filed by the Commission to a rule adopted by the Secretary of State pursuant to this Chapter shall be deemed written objections from 10 or more persons under that statute. Notwithstanding G.S. 150B-21.3(b2), a rule adopted by the Secretary of State pursuant to this Chapter objected to by the Commission under this subsection shall not become effective until an act of the General Assembly approving the rule has become law. If the General Assembly does not approve a rule under this subsection by the day of adjournment of the next regular session of the General Assembly that begins at least 25 days after the date the Rules Review Commission approves the rule, the permanent rule shall not become effective and any temporary rule associated with the permanent rule expires. If the General Assembly fails to approve a rule by the day of adjournment, the Secretary of State may initiate rulemaking for a new permanent rule, including by the adoption of a temporary rule.~~

**"§ 120C-102. Request for advice.**

(a) At the request of any person, State agency, or governmental unit affected by this Chapter, the ~~Commission~~State Board shall render advice on specific questions involving the meaning and application of this Chapter and that person's, State agency's, or any governmental unit's compliance therewith. Requests for advice and advice rendered in response to those requests shall relate to real or reasonably anticipated fact settings or circumstances.

(a1) A request for a formal opinion under subsection (a) of this section shall be in writing, electronic or otherwise. The ~~Commission~~State Board shall issue formal advisory opinions having prospective application only. An individual, State agency, or governmental unit who relies upon the advice provided to that individual, State agency, or governmental unit on a specific matter addressed by a requested formal advisory opinion shall be immune from all of the following:

- (1) Investigation by the ~~Commission~~State Board.
- (2) Any adverse action by the employing entity.
- ~~(3) Investigation by the Secretary of State.~~

(b) Staff to the ~~Commission~~State Board may issue advice, but not formal advisory opinions, under procedures adopted by the ~~Commission~~State Board.

(c) The ~~Commission~~State Board shall publish its formal advisory opinions within 30 days of issuance, edited as necessary to protect the identities of the individuals requesting opinions.

(d) Except as provided under subsections (c) and (d1) of this section, a request for advice, any advice provided by ~~Commission~~State Board staff, any formal advisory opinions, any supporting documents submitted or caused to be submitted to the ~~Commission~~State Board or ~~Commission~~State Board staff, and any documents prepared or collected by the ~~Commission~~State Board or the ~~Commission~~State Board staff in connection with a request for advice are confidential. The identity of the individual, State agency, or governmental unit making the request for advice, the existence of the request, and any information related to the request may not be revealed without the consent of the requestor. An individual, State agency, or governmental unit who requests advice or receives advice, including a formal advisory opinion, may authorize the release to any other person, the State, or any governmental unit of the request, the advice, or any supporting documents.

For purposes of this section, "document" is as defined in G.S. 120-129. Requests for advice, any advice, and any documents related to requests for advice are not "public records" as defined in G.S. 132-1.

~~(d1) Staff to the Commission may share all information and documents related to requests under subsection (a) and (a1) of this section with staff of the Office of the Secretary of State. The information and documents in the possession of the staff of the Office of the Secretary of State shall remain confidential and not public records. The Commission shall forward an unedited copy of each formal advisory opinion under this section to the Secretary of State at the time the formal advisory opinion is issued to the requestor, and the Secretary of State shall treat that unedited advisory opinion as confidential and not a public record.~~

(e) Requests for advisory opinions may be withdrawn by the requestor at any time prior to the issuance of a formal advisory opinion.

...

**"§ 120C-601. Powers and duties of the ~~Commission~~State Board.**

(a) The ~~Commission~~State Board may investigate complaints of violations of this Chapter and shall refer complaints related solely to Articles 2, 4, or 8 of this Chapter to the ~~Secretary of State~~Chapter.

(b) The ~~Commission~~State Board may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Chapter. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Chapter. Subpoenas issued under this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any nonresident person, or that person's agent, who makes a reportable expenditure under this Chapter, and personal jurisdiction may be asserted under G.S. 1-75.4.

(c) Complaints of violations of this Chapter and all other records accumulated in conjunction with the investigation of these complaints shall be considered confidential records and may be released only by order of a court of competent jurisdiction. Any information obtained by the ~~Commission~~State Board from any law enforcement agency, administrative agency, or regulatory organization on a confidential or otherwise restricted basis in the course of an investigation shall be confidential and exempt from G.S. 132-6 to the same extent that it is confidential in the possession of the providing agency or organization.

(d) The ~~Commission~~State Board shall publish annual statistics on complaints, including the number of complaints, the number of apparent violations of this Chapter referred to a district attorney, the number of dismissals, and the number and age of complaints pending.

**"§ 120C-602. Punishment for violation.**

(a) Whoever willfully violates any provision of Article 2 or Article 3 of this Chapter shall be guilty of a Class 1 misdemeanor, except as provided in those Articles. In addition, no lobbyist who is convicted of a violation of the provisions of this Chapter shall in any way act as a lobbyist for a period of two years from the date of conviction.



(b) ~~In addition to the criminal penalties set forth in this section, the Secretary of State may levy civil fines for a violation of any provision of Articles 2, 4, or 8 of this Chapter up to five thousand dollars (\$5,000) per violation.~~ In addition to the criminal penalties set forth in this section, the ~~Commission~~State Board may levy civil fines for a violation of any provision of this Chapter except Article 2, 4, or 8 of this Chapter up to five thousand dollars (\$5,000) per violation.

**"§ 120C-603. Enforcement by district attorney and Attorney General.**

(a) ~~The Commission or the Secretary of State, as appropriate,~~State Board may investigate complaints of violations of this Chapter and shall report apparent violations of this Chapter to the district attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person or governmental unit who violates any provisions of this Chapter.

(b) Complaints of violations of this Chapter involving the ~~Commission~~State Board or any member employee of the ~~Commission~~State Board shall be referred to the Attorney General for investigation. The Attorney General shall, upon receipt of a complaint, make an appropriate investigation thereof, and the Attorney General shall forward a copy of the investigation to the district attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person or governmental unit who violates any provisions of this Chapter.

...."

**SECTION 5.(a)** G.S. 163-19 is repealed.

**SECTION 5.(b)** G.S. 163-20 reads as rewritten:

**"§ 163-20. Meetings of Board; quorum; minutes.**

(a) ~~Call of Meeting. — The State Board of Elections shall meet at the call of the chairman whenever necessary to discharge the duties and functions imposed upon it by this Chapter. The chairman shall call a meeting of the Board upon the written application or applications of any two members thereof. If there is no chairman, or if the chairman does not call a meeting within three days after receiving a written request or requests from two members, any three members of the Board shall have power to call a meeting of the Board, and any duties imposed or powers conferred on the Board by this Chapter may be performed or exercised at that meeting, although the time for performing or exercising the same prescribed by this Chapter may have expired.~~

(b) ~~Place of Meeting. — Except as provided in subsection (c), below, the State Board of Elections shall meet in its offices in the City of Raleigh, or at another place in Raleigh to be designated by the chairman. However, subject to the limitation imposed by subsection (c), below, upon the prior written request of any four-six members, the State Board of Elections shall meet at any other place in the State designated by the four-six members.~~

(c) ~~Meetings to Investigate Alleged Violations of This Chapter. — When called upon to investigate or hear sworn alleged violations of this Chapter, the State Board of Elections shall meet and hear the matter in the county in which the violations are alleged to have occurred.~~

(d) ~~Quorum. — A majority of the members constitutes a quorum for the transaction of business by the State Board of Elections. If any member of the Board fails to attend a meeting, and by reason thereof there is no quorum, the members present shall adjourn from day to day for not more than three days, by the end of which time, if there is no quorum, the Governor may summarily remove any member failing to attend and appoint his successor.~~

(e) ~~Minutes. — The State Board of Elections shall keep minutes recording all proceedings and findings at each of its meetings. The minutes shall be recorded in a book which shall be kept in the office of the Board in Raleigh.~~"

**SECTION 5.(c)** G.S. 163-21 is repealed.

**SECTION 5.(d)** G.S. 163-23 is repealed.

**SECTION 5.(e)** G.S. 163-26 is repealed.

**SECTION 5.(f)** G.S. 163-27 is repealed.

**SECTION 5.(g)** G.S. 163-28 is repealed.

**SECTION 5.(h)** G.S. 163-30 reads as rewritten:

**"§ 163-30. County boards of elections; appointments; terms of office; qualifications; vacancies; oath of office; instructional meetings.**

In every county of the State there shall be a county board of elections, to consist of ~~three~~ four persons of good moral character who are registered voters in the county in which they are to act. Two of the members of the county board of elections shall be of the political party with the highest number of registered affiliates and two shall be of the political party with the second highest number of registered affiliates, as reflected by the latest registration statistics published by the State Board. In 2017, members of county boards of elections shall be appointed by the State Board on the second Tuesday in July. Members ~~In 2019, members of county boards of elections shall be appointed by the State Board of Elections on the last Tuesday in June 1985,~~ and every two years thereafter, and their terms of office shall continue for two years from the specified date of appointment and until their successors are appointed and qualified. ~~Not more than two members of the county board of elections shall belong to the same political party.~~

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

No person shall be eligible to serve as a member of a county board of elections who is a candidate for nomination or election.

No person shall be eligible to serve as a member of a county board of elections who is the wife, husband, son, son-in-law, daughter, daughter-in-law, mother, mother-in-law, father, father-in-law, sister, sister-in-law, brother, brother-in-law, aunt, uncle, niece, or nephew of any candidate for nomination or election. Upon any member of the board of elections becoming ineligible, that member's seat shall be declared vacant. This paragraph only applies if the county board of elections is conducting the election for which the relative is a candidate.

The State ~~chairman~~ chair of each political party shall have the right to recommend to the State Board ~~of Elections~~ three registered voters in each county for appointment to the board of elections for that county. If such recommendations are received by the Board 15 or more days before the last Tuesday in June ~~1985,~~ 2017, and each two years thereafter, it shall be the duty of the State Board ~~of Elections~~ to appoint the county boards from the names thus recommended.

Whenever a vacancy occurs in the membership of a county board of elections for any cause the State ~~chairman~~ chair of the political party of the vacating member shall have the right to recommend two registered voters of the affected county for such office, and it shall be the duty of the State Board ~~of Elections~~ to fill the vacancy from the names thus recommended.

At the meeting of the county board of elections required by G.S. 163-31 to be held on Tuesday following the third Monday in July in the year of their appointment the members shall take the following oath of office:

"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; and that I will well and truly execute

the duties of the office of member of the \_\_\_\_\_ County Board of Elections to the best of my knowledge and ability, according to law; so help me God."

At the first meeting in July annually, the county boards shall organize by electing one of its members chair and one of its members vice-chair, each to serve a one-year term as such. In the odd-numbered year, the chair shall be a member of the political party with the highest number of registered affiliates, as reflected by the latest registration statistics published by the State Board, and the vice-chair a member of the political party with the second highest number of registered affiliates. In the even-numbered year, the chair shall be a member of the political party with the second highest number of registered affiliates, as reflected by the latest registration statistics published by the State Board, and the vice-chair a member of the political party with the highest number of registered affiliates.

Each member of the county board of elections shall attend each instructional meeting held pursuant to G.S. 163-46, unless excused for good cause by the ~~chairman~~ chair of the board, and shall be paid the sum of twenty-five dollars (\$25.00) per day for attending each of those meetings."

**SECTION 5.(i)** G.S. 163-31 reads as rewritten:

**"§ 163-31. Meetings of county boards of elections; quorum; majority; minutes.**

In each county of the State the members of the county board of elections shall meet at the courthouse or board office at noon on the Tuesday following the third Monday in July in the year of their appointment by the State Board of Elections and, after taking the oath of office provided in G.S. 163-30, they shall organize by electing one member ~~chairman~~ chair and another member secretary of the county board of elections. On the Tuesday following the third Monday in August of the year in which they are appointed the county board of elections shall meet and appoint precinct chief judges and judges of elections. The board may hold other meetings at such times as the ~~chairman~~ chair of the board, or any ~~two~~ three members thereof, may direct, for the performance of duties prescribed by law. ~~A majority of the~~ Three members shall constitute a quorum for the transaction of board business. Except where required by law to act unanimously, a majority vote for action of the board shall require three of the four members. The ~~chairman~~ chair shall notify, or cause to be notified, all members regarding every meeting to be held by the board.

The county board of elections shall keep minutes recording all proceedings and findings at each of its meetings. The minutes shall be recorded in a book which shall be kept in the board office and it shall be the responsibility of the secretary, elected by the board, to keep the required minute book current and accurate. The secretary of the board may designate the director of elections to record and maintain the minutes under his or her supervision."

**SECTION 5.(j)** G.S. 163-182.13 reads as rewritten:

**"§ 163-182.13. New elections.**

(a) When State Board May Order New Election. – The State Board ~~of Elections~~ may order a new election, upon agreement of at least ~~four~~ six of its members, in the case of any one or more of the following:

- (1) Ineligible voters sufficient in number to change the outcome of the election were allowed to vote in the election, and it is not possible from examination of the official ballots to determine how those ineligible voters voted and to correct the totals.
- (2) Eligible voters sufficient in number to change the outcome of the election were improperly prevented from voting.
- (3) Other irregularities affected a sufficient number of votes to change the outcome of the election.
- (4) Irregularities or improprieties occurred to such an extent that they taint the results of the entire election and cast doubt on its fairness.

(b) State Board to Set Procedures. – The State Board of Elections shall determine when a new election shall be held and shall set the schedule for publication of the notice, preparation of absentee official ballots, and the other actions necessary to conduct the election.

(c) Eligibility to Vote in New Election. – Eligibility to vote in the new election shall be determined by the voter's eligibility at the time of the new election, except that in a primary, no person who voted in the initial primary of one party shall vote in the new election in the primary of another party. The State Board of Elections shall ~~promulgate~~ adopt rules to effect the provisions of this subsection.

(d) Jurisdiction in Which New Election Held. – The new election shall be held in the entire jurisdiction in which the original election was held.

(e) Which Candidates to Be on Official Ballot. – All the candidates who were listed on the official ballot in the original election shall be listed in the same order on the official ballot for the new election, except in either of the following:

- (1) If a candidate dies or otherwise becomes ineligible between the time of the original election and the new election, that candidate may be replaced in the same manner as if the vacancy occurred before the original election.
- (2) If the election is for a multiseat office, and the irregularities could not have affected the election of one or more of the candidates, the new election, upon agreement of at least ~~four~~ six members of the State Board, may be held among only those candidates whose election could have been affected by the irregularities.

(f) Tie Votes. – If ineligible voters voted in an election and it is possible to determine from the official ballots the way in which those votes were cast and to correct the results, and consequently the election ends in a tie, the provisions of G.S. 163-182.8 concerning tie votes shall apply."

**SECTION 5.(k)** G.S. 163-278.22(7) reads as rewritten:

"(7) To make investigations to the extent the State Board deems necessary with respect to statements filed under the provisions of this Article and with respect to alleged failures to file any statement required under the provisions of this Article or Article 22M of the General Statutes and, upon complaint under oath by any registered voter, with respect to alleged violations of any part of this Article or Article 22M of the General Statutes. The State Board shall conclude all investigations no later than one year from the date of the start of the investigation, unless the State Board has reported an apparent violation to the proper district attorney and additional investigation of the apparent violation is deemed necessary by the State Board."

**SECTION 6.** G.S. 120-70.141 reads as rewritten:

**"§ 120-70.141. Purpose and powers of Committee.**

(a) The Joint Legislative Elections Oversight Committee shall examine, on a continuing basis, election administration and campaign finance regulation in North Carolina, in order to make ongoing recommendations to the General Assembly on ways to improve elections administration and campaign finance regulation. In this examination, the Committee shall do the following:

- (1) Study the budgets, programs, and policies of the Bipartisan State Board of Elections and Ethics Enforcement and the county boards of elections to determine ways in which the General Assembly may improve election ~~administration and campaign finance regulation.~~ administration.
- (1a) Study the budgets, programs, and policies of the Bipartisan State Board of Elections and Ethics Enforcement and the county boards of elections to determine ways in which the General Assembly may improve campaign finance regulation.

- (2) Examine election statutes and court decisions to determine any legislative changes that are needed to improve election administration and campaign finance regulation.
- (3) Study other states' initiatives in election administration and campaign finance regulation to provide an ongoing commentary to the General Assembly on these initiatives and to make recommendations for implementing similar initiatives in North Carolina; and
- (4) Study any other election matters that the Committee considers necessary to fulfill its mandate.

(b) The Committee may make interim reports to the General Assembly on matters for which it may report to a regular session of the General Assembly. A report to the General Assembly may contain any legislation needed to implement a recommendation of the Committee."

**SECTION 7.** Any previous assignment of duties of a quasi-legislative or quasi-judicial nature by the Governor or General Assembly to the agencies or functions transferred by this act shall have continued validity with the transfer under this act. Except as otherwise specifically provided in this act, each enumerated commission, board, or other function of State government transferred to the Bipartisan State Board of Elections and Ethics Enforcement, as created in this act, is a continuation of the former entity for purposes of succession to all the rights, powers, duties, and obligations of the former. Where the former entities are referred to by law, contract, or other document in their former name, the Bipartisan State Board of Elections and Ethics Enforcement, as created in this act, is charged with exercising the functions of the former named entity.

**SECTION 8.** No action or proceeding pending on January 1, 2017, brought by or against the State Board of Elections, the State Ethics Commission, or the Secretary of State regarding the lobbyist registration and lobbying enforcement of the Secretary of State shall be affected by any provision of this act, but the same may be prosecuted or defended in the name of the Bipartisan State Board of Elections and Ethics Enforcement, as created in this act. In these actions and proceedings, the Bipartisan State Board of Elections and Ethics Enforcement or its Executive Director, as appropriate, shall be substituted as a party upon proper application to the courts or other administrative or quasi-judicial bodies.

Any business or other matter undertaken or commanded by any State program or office or contract transferred by this act to the Bipartisan State Board of Elections and Ethics Enforcement pertaining to or connected with the functions, powers, obligations, and duties set forth herein, which is pending on January 1, 2017, may be conducted and completed by the Bipartisan State Board of Elections and Ethics Enforcement in the same manner and under the same terms and conditions and with the same effect as if conducted and completed by the original program, office, or commissioners or directors thereof.

**SECTION 9.** The consolidation provided for under this act shall not affect any ongoing investigation or audit. Any ongoing hearing or other proceeding before the State Ethics Commission or State Board of Elections on January 1, 2017, shall be transferred to the Bipartisan State Board of Elections and Ethics Enforcement, as created by this act, on January 1, 2017. Prosecutions for offenses or violations committed before January 1, 2017, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

**SECTION 10.** Rules adopted by the State Ethics Commission, Secretary of State related to lobbying, and the State Board of Elections shall remain in effect as provided in G.S. 150B-21.7. Policies, procedures, and guidance shall remain in effect until amended or repealed by the Bipartisan State Board of Elections and Ethics Enforcement. The list of covered boards adopted by the State Ethics Commission under G.S. 138A-11 as of December 31, 2016,

shall continue in effect until amended or repealed by the Bipartisan State Board of Elections and Ethics Enforcement.

**SECTION 11.** Any evaluation of a statement of economic interest issued by the State Ethics Commission pursuant to Article 3 of Chapter 138A of the General Statutes in 2016 shall remain in effect until amended or repealed by the Bipartisan State Board of Elections and Ethics Enforcement.

**SECTION 12.** The authority, powers, duties and functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, including the functions of budgeting and purchasing, of the State Ethics Commission are transferred to the Bipartisan State Board of Elections and Ethics Enforcement, as created in Part I of this act. The authority, powers, duties and functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, including the functions of budgeting and purchasing, of the State Board of Elections are transferred to the Bipartisan State Board of Elections and Ethics Enforcement, as created in Part I of this act. The authority, powers, duties and functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, including the functions of budgeting and purchasing, of the lobbying registration and lobbying enforcement functions of the Secretary of State are transferred to the Bipartisan State Board of Elections and Ethics Enforcement, as created in Part I of this act. The Director of the Budget shall resolve any disputes arising out of this transfer.

**SECTION 13.** The members of the State Ethics Commission serving on December 31, 2016, shall constitute and serve as the Bipartisan State Board of Elections and Ethics Enforcement, as constituted and authorized by this act until June 30, 2017. The chair and vice-chair of the State Ethics Commission serving on December 31, 2016, shall continue to serve as the chair and vice-chair of Bipartisan State Board of Elections and Ethics Enforcement, as constituted and authorized by this act until June 30, 2017. Notwithstanding G.S. 138B-2, members of the Bipartisan State Board of Elections and Ethics Enforcement appointed by the Governor and General Assembly in 2017 shall take office July 1, 2017.

**SECTION 14.** Until such time as the Bipartisan State Board of Elections and Ethics Enforcement appointed in 2017 appoints an Executive Director, the Executive Director of the State Board of Elections under G.S. 163-26, as of December 31, 2016, shall be acting Executive Director.

**SECTION 15.** The appropriations and resources of the State Ethics Commission is transferred to the Bipartisan State Board of Elections and Ethics Enforcement, and the transfer shall have all the elements of a Type I transfer under G.S. 143A-6.

**SECTION 16.** The appropriations and resources of the State Board of Elections, including any office space of the State Board of Elections, is transferred to the Bipartisan State Board of Elections and Ethics Enforcement, and the transfer shall have all the elements of a Type I transfer under G.S. 143A-6, with the Budget Code for the newly established State Board being the previous State Board of Elections budget code of 18025.

**SECTION 17.** The appropriations and resources of the lobbying registration and lobbying enforcement functions of the Secretary of State are transferred to the Bipartisan State Board of Elections and Ethics Enforcement, and the transfers shall have all the elements of a Type I transfer under G.S. 143A-6. Specifically, the following positions shall be transferred: Lobbying Compliance Director (Position 60008800), Law Enforcement Agent (Position 60008806), Administrative Assistant II (Position 60008801), Administrative Assistant II (Position 60008802), and Administrative Assistant II (Position 60008803).

**SECTION 18.** The Bipartisan State Board of Elections and Ethics Enforcement shall report to the Joint Legislative Commission on Governmental Operations, Joint Legislative Elections Oversight Committee, and the Legislative Ethics Committee on or before April 1,

2018, and again on or before March 1, 2019, as to recommendations for statutory changes necessary to further implement this consolidation.

**SECTION 19.** Notwithstanding the recodification in Section 1 of this Part, the Bipartisan State Board of Elections and Ethics Enforcement shall not administer or enforce Part 1, Part 3, or Part 6 of Article 8 of Chapter 138B of the General Statutes, and the Secretary of State shall maintain the authority to administer and enforce Articles 2, 4, and 8 of Chapter 120C of the General Statutes, as those Articles existed on January 1, 2017, until October 1, 2017. Section 17 of this Part becomes effective October 1, 2017. G.S. 163-30, as amended by Section 5(h) of this Part and G.S. 163-31, as amended by Section 5(i) of this Part, becomes effective July 1, 2017. G.S. 163-278.22(7), as amended by Section 5(k) of this Part, becomes effective January 1, 2017, and applies to investigations initiated on or after that date. Except as otherwise provided, this Part becomes effective January 1, 2017.

## **PART II. CLARIFY LEGISLATIVE AUTHORITY TO APPORTION DISTRICTS**

**SECTION 20.(a)** G.S. 120-2.4 reads as rewritten:

### **"§ 120-2.4. Opportunity for General Assembly to remedy defects.**

(a) If the General Assembly enacts a plan apportioning or redistricting State legislative or congressional districts, in no event may a court impose its own substitute plan unless the court first gives the General Assembly a period of time to remedy any defects identified by the court in its findings of fact and conclusions of law. That period of time shall not be less than two weeks. In the event the General Assembly does not act to remedy any identified defects to its plan within that period of time, the court may impose an interim districting plan for use in the next general election only, but that interim districting plan may differ from the districting plan enacted by the General Assembly only to the extent necessary to remedy any defects identified by the court.

(b) Notwithstanding any other provision of law or authority of the State Board of Elections under Chapter 163 of the General Statutes, the State Board of Elections shall have no authority to alter, amend, correct, impose, or substitute any plan apportioning or redistricting State legislative or congressional districts other than a plan imposed by a court under this section or a plan enacted by the General Assembly."

**SECTION 20.(b)** G.S. 163-22 is amended by adding two new subsections to read:

(r) Nothing in this Chapter shall grant authority to the State Board of Elections to alter, amend, correct, impose, or substitute any plan apportioning or redistricting State legislative or congressional districts other than a plan imposed by a court under G.S. 120-2.4 or a plan enacted by the General Assembly.

(s) Nothing in this Chapter shall grant authority to the State Board of Elections to alter, amend, correct, impose, or substitute any plan apportioning or redistricting districts for a unit of local government other than a plan imposed by a court, a plan enacted by the General Assembly, or a plan adopted by the appropriate unit of local government under statutory or local act authority."

**SECTION 20.(c)** G.S. 163-33 is amended by adding two new subdivisions to read:

(15) Nothing in this Chapter shall grant authority to county boards of elections to alter, amend, correct, impose, or substitute any plan apportioning or redistricting State legislative or congressional districts other than a plan imposed by a court under G.S. 120-2.4 or a plan enacted by the General Assembly.

(16) Nothing in this Chapter shall grant authority to county boards of elections to alter, amend, correct, impose, or substitute any plan apportioning or redistricting districts for a unit of local government other than a plan imposed by a court, a plan enacted by the General Assembly, or a plan

adopted by the appropriate unit of local government under statutory or local act authority."

**SECTION 20.(d)** G.S. 163-27.1 reads as rewritten:

**"§ 163-27.1. Emergency powers.**

(a) The Executive Director, as chief State elections official, may exercise emergency powers to conduct an election in a district where the normal schedule for the election is disrupted by any of the following:

- (1) A natural disaster.
- (2) Extremely inclement weather.
- (3) An armed conflict involving Armed Forces of the United States, or mobilization of those forces, including North Carolina National Guard and reserve components of the Armed Forces of the United States.

In exercising those emergency powers, the Executive Director shall avoid unnecessary conflict with the provisions of this Chapter. The Executive Director shall adopt rules describing the emergency powers and the situations in which the emergency powers will be exercised.

(b) Nothing in this Chapter shall grant authority to the State Board of Elections to alter, amend, correct, impose, or substitute any plan apportioning or redistricting State legislative or congressional districts other than a plan imposed by a court under G.S. 120-2.4 or a plan enacted by the General Assembly.

(c) Nothing in this Chapter shall grant authority to the State Board of Elections to alter, amend, correct, impose, or substitute any plan apportioning or redistricting districts for a unit of local government other than a plan imposed by a court, a plan enacted by the General Assembly, or a plan adopted by the appropriate unit of local government under statutory or local act authority."

**PART III. PARTISAN APPELLATE COURT ELECTIONS**

**SECTION 21.(a)** G.S. 163-106 reads as rewritten:

**"§ 163-106. Notices of candidacy; pledge; with whom filed; date for filing; withdrawal.**

...  
(c) Time for Filing Notice of Candidacy. – Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the second Monday in February and no later than 12:00 noon on the last business day in February preceding the primary:

- Governor
- Lieutenant Governor
- All State executive officers
- Justices of the Supreme Court
- Judges of the Court of Appeals
- United States Senators
- Members of the House of Representatives of the United States
- District attorneys

Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the county board of elections no earlier than 12:00 noon on the second Monday in February and no later than 12:00 noon on the last business day in February preceding the primary:

- State Senators
- Members of the State House of Representatives
- All county offices.

(d) Notice of Candidacy for Certain Offices to Indicate Vacancy. – In any primary in which there are two or more vacancies for associate justices for the Supreme Court, two or more vacancies for the Court of Appeals, or two vacancies for United States Senator from



North Carolina, each candidate shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the vacancy to which ~~he~~the candidate seeks nomination. Votes cast for a candidate shall be effective only for ~~his~~ nomination to the vacancy for which ~~he~~the candidate has given notice of candidacy as provided in this subsection.

...."

**SECTION 21.(b)** G.S. 163-107(a) reads as rewritten:

"(a) Fee Schedule. – At the time of filing a notice of candidacy, each candidate shall pay to the board of elections with which ~~he~~the candidate files under the provisions of G.S. 163-106 a filing fee for the office ~~he seeks sought~~ in the amount specified in the following tabulation:

<b>Office Sought</b>	<b>Amount of Filing Fee</b>
Governor	One percent (1%) of the annual salary of the office sought
Lieutenant Governor	One percent (1%) of the annual salary of the office sought
All State executive offices	One percent (1%) of the annual salary of the office sought
All <u>Justices of the Supreme Court, Judges of the Court of Appeals, and District Attorneys of the General Court of Justice</u>	One percent (1%) of the annual salary of the office sought
United States Senator	One percent (1%) of the annual salary of the office sought
Members of the United States House of Representatives	One percent (1%) of the annual salary of the office sought
State Senator	One percent (1%) of the annual salary of the office sought
Member of the State House of Representatives	One percent (1%) of the annual salary of the office sought
All county offices not compensated by fees	One percent (1%) of the annual salary of the office sought
All county offices compensated partly by salary and partly by fees	One percent (1%) of the first annual salary to be received (exclusive of fees)

The salary of any office that is the basis for calculating the filing fee is the starting salary for the office, rather than the salary received by the incumbent, if different. If no starting salary can be determined for the office, then the salary used for calculation is the salary of the incumbent, as of January 1 of the election year."

**SECTION 21.(c)** G.S. 163-107.1(b) reads as rewritten:

"(b) If the candidate is seeking the office of United States Senator, Governor, Lieutenant Governor, ~~or~~any State executive officer, Justice of the Supreme Court, or Judge of the Court of Appeals, the petition must be signed by 10,000 registered voters who are members of the political party in whose primary the candidate desires to run, except that in the case of a political party as defined by G.S. 163-96(a)(2) which will be making nominations by primary election, the petition must be signed by five percent (5%) of the registered voters of the State who are affiliated with the same political party in whose primary the candidate desires to run, or in the alternative, the petition shall be signed by no less than 8,000 registered voters regardless of the voter's political party affiliation, whichever requirement is greater. The petition must be filed with the State Board of Elections not later than 12:00 noon on Monday preceding the filing deadline before the primary in which he seeks to run. The names on the petition shall be verified by the board of elections of the county where the signer is registered, and the petition must be presented to the county board of elections at least 15 days before the

petition is due to be filed with the State Board of Elections. When a proper petition has been filed, the candidate's name shall be printed on the primary ballot."

**SECTION 21.(d)** G.S. 163-111(c)(1) reads as rewritten:

"(1) A candidate who is apparently entitled to demand a second primary, according to the unofficial results, for one of the offices listed below, and desiring to do so, shall file a request for a second primary in writing with the Executive Director of the State Board of Elections no later than 12:00 noon on the ninth day (including Saturdays and Sundays) following the date on which the primary was conducted, and such request shall be subject to the certification of the official results by the State Board of Elections. If the vote certification by the State Board of Elections determines that a candidate who was not originally thought to be eligible to call for a second primary is in fact eligible to call for a second primary, the Executive Director of the State Board of Elections shall immediately notify such candidate and permit ~~him~~ the candidate to exercise any options available to ~~him~~ the candidate within a 48-hour period following the notification:

Governor,  
Lieutenant Governor,  
All State executive officers,  
Justices of the Supreme Court, Judges of the Court of Appeals, or  
District Attorneys of the General Court of Justice,  
United States Senators,  
Members of the United States House of Representatives,  
State Senators in multi-county senatorial districts, and  
Members of the State House of Representatives in multi-county representative districts."

**SECTION 21.(e)** Subchapter X of Chapter 163 of the General Statutes reads as rewritten:

**"SUBCHAPTER X. ELECTION OF APPELLATE, SUPERIOR, SUPERIOR AND DISTRICT COURT JUDGES.**

"Article 25.

"Nomination and Election of ~~Appellate, Superior, Superior~~ and District Court Judges.

**"§ 163-321. Applicability.**

The nomination and election of ~~justices of the Supreme Court, judges of the Court of Appeals, and superior and district court judges of the General Court of Justice~~ shall be as provided by this Article.

...

**"§ 163-323. Notice of candidacy.**

...

(b) Time for Filing Notice of Candidacy. – Candidates seeking election to the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the second Monday in February and no later than 12:00 noon on the last business day in February preceding the election:

~~Justices of the Supreme Court.~~  
~~Judges of the Court of Appeals.~~  
Judges of the superior courts.  
Judges of the district courts.

...

(f) Notice of Candidacy for Certain Offices to Indicate Vacancy. – In any election in which there are two or more vacancies for the office of ~~justice of the Supreme Court, judge of the Court of Appeals, or~~ district court judge to be filled by nominations, each candidate shall, at

the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the vacancy to which the candidate seeks election. Votes cast for a candidate shall be effective only for election to the vacancy for which the candidate has given notice of candidacy as provided in this subsection.

A person seeking election for a specialized district judgeship established under G.S. 7A-147 shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the specialized judgeship to which the person seeks nomination.

...  
**"§ 163-325. Petition in lieu of payment of filing fee.**

...  
(b) Requirements of Petition; Deadline for Filing. – If the candidate is seeking the office of ~~justice of the Supreme Court, judge of the Court of Appeals, or~~ superior or district court judge, that individual shall file a written petition with the State Board of Elections no later than 12:00 noon on Monday preceding the filing deadline before the primary. ~~If the office is justice of the Supreme Court or judge of the Court of Appeals, the petition shall be signed by 8,000 registered voters in the State. If the office is superior court or district court judge, the~~ The petition shall be signed by five percent (5%) of the registered voters of the election area in which ~~the office will be voted for. the registered voters will vote for the office.~~ The board of elections shall verify the names on the petition, and if the petition and notice of candidacy are found to be sufficient, the candidate's name shall be printed on the appropriate ballot. Petitions must be presented to the county board of elections for verification at least 15 days before the petition is due to be filed with the State Board of Elections. The State Board of Elections may adopt rules to implement this section and to provide standard petition forms.

**"§ 163-326. Certification of notices of candidacy.**

...  
(b) Notification of Local Boards. – No later than 10 days after the time for filing notices of candidacy under the provisions of G.S. 163-323(b) has expired, the chairman of the State Board of Elections shall certify to the chairman of the county board of elections in each county in the appropriate district the names of candidates for nomination to the offices of ~~justice of the Supreme Court, judge of the Court of Appeals, and~~ superior and district court judge who have filed the required notice and paid the required filing fee or presented the required petition to the State Board of Elections, so that their names may be printed on the official judicial ballot for ~~justice of the Supreme Court, judge of the Court of Appeals, and~~ superior and district court.

...  
**"§ 163-329. Elections to fill vacancy in office created after primary filing period opens.**

(a) General. – If a vacancy is created in the office of ~~justice of the Supreme Court, judge of the Court of Appeals, or~~ judge of superior court after the filing period for the primary opens but more than 60 days before the general election, and under the Constitution of North Carolina an election is to be held for that position, such that the office shall be filled in the general election as provided in G.S. 163-9, the election to fill the office for the remainder of the term shall be conducted without a primary using the method provided in subsection (b1) of this section. If a vacancy is created in the office of ~~justice of the Supreme Court, judge of the Court of Appeals, or~~ judge of superior court before the filing period for the primary opens, and under the Constitution of North Carolina an election is to be held for that position, such that the office shall be filled in the general election as provided in G.S. 163-9, the election to fill the office for the remainder of the term shall be conducted in accordance with G.S. 163-322.

(b) Repealed by Session Laws 2006-192, s. 8(a), effective August 3, 2006, and applicable to vacancies occurring on or after that date.

(b1) Method for Vacancy Election. – If a vacancy for the office of ~~justice of the Supreme Court, judge of the Court of Appeals, or~~ judge of the superior court occurs more than 60 days before the general election and after the opening of the filing period for the primary, then the

State Board of Elections shall designate a special filing period of one week for candidates for the office. If more than two candidates file and qualify for the office in accordance with G.S. 163-323, then the Board shall conduct the election for the office as follows:

- (1) When the vacancy described in this section occurs more than 63 days before the date of the second primary for members of the General Assembly, a special primary shall be held on the same day as the second primary. The two candidates with the most votes in the special primary shall have their names placed on the ballot for the general election held on the same day as the general election for members of the General Assembly.
- (2) When the vacancy described in this section occurs less than 64 days before the date of the second primary, a general election for all the candidates shall be held on the same day as the general election for members of the General Assembly and the results shall be determined on a plurality basis as provided by G.S. 163-292.
- (3) Repealed by Session Laws 2013-381, s. 51.1, effective January 1, 2014.

(c) Applicable Provisions. – Except as provided in this section, the provisions of this Article apply to elections conducted under this section.

(d) Rules. – The State Board of Elections shall adopt rules for the implementation of this section. The rules are not subject to Article 2A of Chapter 150B of the General Statutes. The rules shall include the following:

- (1) If after the first-choice candidate is eliminated, a ballot does not indicate one of the uneliminated candidates as an alternative choice, the ballot is exhausted and shall not be counted after the initial round.
- (2) The fact that the voter does not designate a second or third choice does not invalidate the voter's higher choice or choices.
- (3) The fact that the voter gives more than one ranking to the same candidate shall not invalidate the vote. The highest ranking given a particular candidate shall count as long as the candidate is not eliminated.
- (4) In case of a tie between candidates such that two or more candidates have an equal number of first choices and more than two candidates qualify for the second round, instant runoff voting shall be used to determine which two candidates shall advance to the second round.

...

**"§ 163-332. Ballots.**

(b) Ballots to Be Furnished by County Board of Elections. – It shall be the duty of the county board of elections to print official ballots for the following offices to be voted for in the primary:

~~Justice of the Supreme Court.~~  
~~Judge of the Court of Appeals.~~  
Superior court judge.  
District court judge.

In printing ballots, the county board of elections shall be governed by instructions of the State Board of Elections with regard to width, color, kind of paper, form, and size of type.

Three days before the election, the chairman of the county board of elections shall distribute official ballots to the chief judge of each precinct in his county, and the chief judge shall give a receipt for the ballots received. On the day of the primary, it shall be the chief judge's duty to have all the ballots so delivered available for use at the precinct voting place.

...."

**SECTION 21.(f)** G.S. 163-323(h) is repealed.

**SECTION 21.(g)** G.S. 163-165.5(a)(4) reads as rewritten:

"(4) Party designations in partisan ballot items and in nonpartisan ballot items as required by G.S. 163-323(h) items."

**SECTION 21.(h)** This Part becomes effective January 1, 2018, and applies to primaries and elections held on or after that date.

#### **PART IV. MODIFY APPELLATE REVIEW OF CERTAIN CASES**

**SECTION 22.(a)** G.S. 7A-16 reads as rewritten:

##### **"§ 7A-16. Creation and organization.**

The Court of Appeals is created effective January 1, 1967. It shall consist initially of six judges, elected by the qualified voters of the State for terms of eight years. The Chief Justice of the Supreme Court shall designate one of the judges as Chief Judge, to serve in such capacity at the pleasure of the Chief Justice. Before entering upon the duties of his office, a judge of the Court of Appeals shall take the oath of office prescribed for a judge of the General Court of Justice.

The Governor on or after July 1, 1967, shall make temporary appointments to the six initial judgeships. The appointees shall serve until January 1, 1969. Their successors shall be elected at the general election for members of the General Assembly in November, 1968, and shall take office on January 1, 1969, to serve for the remainder of the unexpired term which began on January 1, 1967.

Upon the appointment of at least five judges, and the designation of a Chief Judge, the court is authorized to convene, organize, and promulgate, subject to the approval of the Supreme Court, such supplementary rules as it deems necessary and appropriate for the discharge of the judicial business lawfully assigned to it.

Effective January 1, 1969, the number of judges is increased to nine, and the Governor, on or after March 1, 1969, shall make temporary appointments to the additional judgeships thus created. The appointees shall serve until January 1, 1971. Their successors shall be elected at the general election for members of the General Assembly in November, 1970, and shall take office on January 1, 1971, to serve for the remainder of the unexpired term which began on January 1, 1969.

Effective January 1, 1977, the number of judges is increased to 12; and the Governor, on or after July 1, 1977, shall make temporary appointments to the additional judgeships thus created. The appointees shall serve until January 1, 1979. Their successors shall be elected at the general election for members of the General Assembly in November, 1978, and shall take office on January 1, 1979, to serve the remainder of the unexpired term which began on January 1, 1977.

On or after December 15, 2000, the Governor shall appoint three additional judges to increase the number of judges to 15.

The Court of Appeals shall sit in panels of three judges ~~each~~ and may also sit en banc to hear or rehear any cause upon a vote of the majority of the judges of the court. The Chief Judge insofar as practicable shall assign the members to panels in such fashion that each member sits a substantially equal number of times with each other member. ~~He~~ shall preside over the panel of which he is a member, when a member of a panel, and shall designate the presiding judge of the other panel or panels.

~~Three judges shall constitute a quorum for the transaction of the business of the court, except as may be provided in G.S. 7A-32.~~ Except as may be provided in G.S. 7A-32, three judges shall constitute a quorum for the transaction of the business of the court when sitting in panels of three judges, and a majority of the then sitting judges on the Court of Appeals shall constitute a quorum for the transaction of the business of the court when sitting en banc.

In the event the Chief Judge is unable, on account of absence or temporary incapacity, to perform the duties placed upon him as Chief Judge, the Chief Justice shall appoint an acting

Chief Judge from the other judges of the Court, to temporarily discharge the duties of Chief Judge."

**SECTION 22.(b)** G.S. 7A-27 reads as rewritten:

**"§ 7A-27. Appeals of right from the courts of the trial divisions.**

(a) Appeal lies of right directly to the Supreme Court in any of the following cases:

- (1) All cases in which the defendant is convicted of murder in the first degree and the judgment of the superior court includes a sentence of death.
- (2) From any final judgment in a case designated as a mandatory complex business case pursuant to G.S. 7A-45.4 or designated as a discretionary complex business case pursuant to Rule 2.1 of the General Rules of Practice for the Superior and District Courts.
- (3) From any interlocutory order of a Business Court Judge that does any of the following:
  - a. Affects a substantial right.
  - b. In effect determines the action and prevents a judgment from which an appeal might be taken.
  - c. Discontinues the action.
  - d. Grants or refuses a new trial.

~~(a1) Appeal lies of right directly to the Supreme Court from any order or judgment of a court, either final or interlocutory, that holds that an act of the General Assembly is facially invalid on the basis that the act violates the North Carolina Constitution or federal law. Nothing in this subsection shall be deemed to apply to appeals from orders of the trial courts pertaining to criminal proceedings, to proceedings under Chapter 15A of the General Statutes, to proceedings making a collateral attack on any judgment entered in a criminal proceeding, or to appeals from orders of the trial courts pertaining to civil proceedings filed by a taxpayer pursuant to G.S. 105-241.17.~~

(b) Except as provided in subsection (a) ~~or (a1)~~ of this section, appeal lies of right directly to the Court of Appeals in any of the following cases:

- (1) From any final judgment of a superior court, other than one based on a plea of guilty or nolo contendere, including any final judgment entered upon review of a decision of an administrative agency, except for a final judgment entered upon review of a court martial under G.S. 127A-62.
- (2) From any final judgment of a district court in a civil action.
- (3) From any interlocutory order or judgment of a superior court or district court in a civil action or proceeding that does any of the following:
  - a. Affects a substantial right.
  - b. In effect determines the action and prevents a judgment from which an appeal might be taken.
  - c. Discontinues the action.
  - d. Grants or refuses a new trial.
  - e. Determines a claim prosecuted under G.S. 50-19.1.
  - f. Grants temporary injunctive relief restraining the State or a political subdivision of the State from enforcing the operation or execution of an act of the General Assembly as applied against a party in a civil action. Assembly. This sub-subdivision only applies where the State or a political subdivision of the State is a party in the civil action. ~~This sub-subdivision does not apply to facial challenges to an act's validity heard by a three-judge panel pursuant to G.S. 1-267.1.~~
- (4) From any other order or judgment of the superior court from which an appeal is authorized by statute.

(c) through (e) Repealed by Session Laws 2013-411, s. 1, effective August 23, 2013."

**SECTION 22.(c)** G.S. 7A-30 reads as rewritten:

**"§ 7A-30. Appeals of right from certain decisions of the Court of Appeals.**

Except as provided in G.S. 7A-28, an appeal lies of right to the Supreme Court from any decision of the Court of Appeals rendered in a case:

- (1) Which directly involves a substantial question arising under the Constitution of the United States or of this State, or
- (2) In which there is a ~~dissent~~ dissent when the Court of Appeals is sitting in a panel of three judges. An appeal of right pursuant to this subdivision is not effective until after the Court of Appeals sitting en banc has rendered a decision in the case, if the Court of Appeals hears the case en banc, or until after the time for filing a motion for rehearing of the cause by the Court of Appeals has expired or the Court of Appeals has denied the motion for rehearing."

**SECTION 22.(d)** G.S. 7A-31(a) reads as rewritten:

"(a) In any cause in which appeal is taken to the Court of ~~Appeals~~, Appeals, including any cause heard while the Court of Appeals was sitting en banc, except a cause appealed from the North Carolina Industrial Commission, the North Carolina State Bar pursuant to G.S. 84-28, the Property Tax Commission pursuant to G.S. 105-345, the Board of State Contract Appeals pursuant to G.S. 143-135.9, the Commissioner of Insurance pursuant to ~~G.S. 58-2-80~~, G.S. 58-2-80 or G.S. 58-65-131(c), a court-martial pursuant to G.S. 127A-62, a motion for appropriate relief, or valuation of exempt property pursuant to G.S. 7A-28, the Supreme Court may, in its discretion, on motion of any party to the cause or on its own motion, certify the cause for review by the Supreme Court, either before or after it has been determined by the Court of Appeals. A cause appealed to the Court of Appeals from any of the administrative bodies listed in the preceding sentence may be certified in similar fashion, but only after determination of the cause in the Court of Appeals. The effect of such certification is to transfer the cause from the Court of Appeals to the Supreme Court for review by the Supreme Court. If the cause is certified for transfer to the Supreme Court before its determination in the Court of Appeals, review is not had in the Court of Appeals but the cause is forthwith transferred for review in the first instance by the Supreme Court. If the cause is certified for transfer to the Supreme Court after its determination by the Court of Appeals, the Supreme Court reviews the decision of the Court of Appeals.

Except in courts-martial and motions within the purview of G.S. 7A-28, the State may move for certification for review of any criminal cause, but only after determination of the cause by the Court of Appeals."

**SECTION 22.(e)** G.S. 58-65-131(c) reads as rewritten:

"(c) Compliance Required in Certain Events. – A corporation governed by this Article shall comply with the provisions of this section, G.S. 58-65-132, and G.S. 58-65-133 before it may do any of the following:

...

In determining whether the corporation must comply with the provisions of this section, G.S. 58-65-132, and G.S. 58-65-133, the Commissioner may review and consolidate actions of the corporation, its subsidiaries, and other legal entities in which the corporation directly or indirectly owns an interest, and treat the consolidated actions as requiring a conversion. An appeal of the Commissioner's order that consolidated actions require a conversion shall lie directly to the North Carolina Court of ~~Appeals~~, provided that any party may petition the North Carolina Supreme Court, pursuant to G.S. 7A-31(b), to certify the case for discretionary review by the Supreme Court prior to determination by the Court of Appeals. Appeals under this subsection must be filed within 30 days of the Commissioner's order and shall be considered in the most expeditious manner practical. The corporation must file a plan of conversion within 12 months of the later of the issuance of the Commissioner's order or a final decision on appeal."

**SECTION 22.(f)** G.S. 120-2.5 is repealed.

**SECTION 23.(a)** G.S. 1A-1, Rule 42(b)(4) of the Rules of Civil Procedure, reads as rewritten:

**"Rule 42. Consolidation; separate trials.**

...

(b) Separate trials. –

...

(4) Pursuant to G.S. 1-267.1, any facial challenge to the validity of an act of the General Assembly, other than a challenge to plans apportioning or redistricting State legislative or congressional districts, shall be heard by a three-judge panel in the Superior Court of Wake County if a claimant raises such a challenge in the claimant's complaint or amended complaint in any court in this State, or if such a challenge is raised by the defendant in the defendant's answer, responsive pleading, or within 30 days of filing the defendant's answer or responsive pleading. In that event, the court shall, on its own motion, transfer that portion of the action challenging the validity of the act of the General Assembly to the Superior Court of Wake County for resolution by a three-judge panel if, after all other matters in the action have been resolved, a determination as to the facial validity of an act of the General Assembly must be made in order to completely resolve any matters in the case. The court in which the action originated shall maintain jurisdiction over all matters other than the challenge to the act's facial ~~validity and validity~~. For a motion filed under Rule 11 or Rule 12(b)(1) through (7), the original court shall rule on the motion, however, it may decline to rule on a motion that is based solely upon Rule 12(b)(6). If the original court declines to rule on a Rule 12(b)(6) motion, the motion shall be decided by the three-judge panel. The original court shall stay all matters that are contingent upon the outcome of the challenge to the act's facial validity pending a ruling on that challenge and until all appeal rights are exhausted. Once the three-judge panel has ruled and all appeal rights have been exhausted, the matter shall be transferred or remanded to the three-judge panel or the trial court in which the action originated for resolution of any outstanding matters, as appropriate."

**SECTION 23.(b)** This section becomes effective February 1, 2017, and applies to motions filed on or after that date.

## **PART V. MODIFY THE TERM FOR INDUSTRIAL COMMISSIONERS**

**SECTION 24.(a)** G.S. 97-77 reads as rewritten:

**"§ 97-77. North Carolina Industrial Commission created; members appointed by Governor; terms of office; chairman.**

(a) There is hereby created a commission to be known as the North Carolina Industrial Commission, consisting of six commissioners who shall devote their entire time to the duties of the Commission. The Governor shall appoint the members of the Commission for terms of six years. Three commissioners shall be persons who, on account of their previous vocations, employment or affiliations, can be classed as representatives of employers. Three commissioners shall be persons who, on account of their previous vocations, employment or affiliations, can be classed as representatives of employees. No person may serve more than two terms on the Commission, including any term served prior to the effective date of this section. In calculating the number of terms served, a partial term that is less than three years in length shall not be included.



(a1) Appointments of commissioners are subject to confirmation by the General Assembly by joint resolution. The names of commissioners to be appointed by the Governor shall be submitted by the Governor to the General Assembly for confirmation by the General Assembly on or before March 1 of the year of expiration of the term. If the Governor fails to timely submit nominations, the General Assembly shall appoint to fill the succeeding term upon the joint recommendation of the President Pro Tempore of the Senate and the Speaker of the House of Representatives in accordance with G.S. 120-121 not inconsistent with this section.

In case of death, incapacity, resignation, or any other vacancy in the office of any commissioner prior to the expiration of the term of office, a nomination to fill the vacancy ~~for the remainder of the unexpired term~~ shall be submitted by the Governor within four weeks after the vacancy arises to the General Assembly for confirmation by the General Assembly. Appointments to fill a vacancy shall have a term of six years plus the remainder of the unexpired term. If the Governor fails to timely nominate a person to fill the vacancy, the General Assembly shall appoint a person to fill the remainder of the unexpired term upon the joint recommendation of the President Pro Tempore of the Senate and the Speaker of the House of Representatives in accordance with G.S. 120-121 not inconsistent with this section. If a vacancy arises or exists pursuant to this subsection when the General Assembly is not in session, and the appointment is deemed urgent by the Governor, the commissioner may be appointed and serve on an interim basis pending confirmation by the General Assembly. For the purpose of this subsection, the General Assembly is not in session only (i) prior to convening of the Regular Session, (ii) during any adjournment of the Regular Session for more than 10 days, and (iii) after sine die adjournment of the Regular Session.

No person while in office as a commissioner may be nominated or appointed on an interim basis to fill the remainder of an unexpired term, or to a full term that commences prior to the expiration of the term that the commissioner is serving.

~~(b) One member, to be designated by the Governor, shall act as chairman. On December 30, 2016, and every four years thereafter, one member shall be designated by the Governor to act as chairman for a term of four years. In case of death, incapacity, resignation, or any other vacancy of the chairman, the Governor shall designate a new chairman from the remaining commissioners for the remainder of the four-year term. No member who has served less than one year on the Commission may be designated to act as chairman.~~

The chairman shall be the chief judicial officer and the chief executive officer of the Industrial Commission; such authority shall be exercised pursuant to the provisions of Chapter 126 of the General Statutes and the rules and policies of the State Human Resources Commission. Notwithstanding the provisions of this Chapter, the chairman shall have such authority as is necessary to direct and oversee the Commission. The chairman may delegate any duties and responsibilities as may be necessary to ensure the proper management of the Industrial Commission. Notwithstanding the provisions of this Chapter, Chapter 143A, and Chapter 143B of the General Statutes, the chairman may hire or fire personnel and transfer personnel within the Industrial Commission.

~~The Governor may designate one vice-chairman from the remaining commissioners. On December 30, 2016, and every four years thereafter, one member shall be designated by the Governor to act as vice-chairman for a term of four years. In case of death, incapacity, resignation, or any other vacancy of the vice-chairman, the Governor shall designate a new vice-chairman from the remaining commissioners for the remainder of the four-year term. The vice-chairman shall assume the powers of the chairman upon request of the chairman or when the chairman is absent for 24 hours or more. The authority delegated to the vice-chairman shall be relinquished immediately upon the return of the chairman or at the request of the chairman."~~

**SECTION 24.(b)** G.S. 97-77(a1), as amended by subsection (a) of this section, reads as rewritten:

"(a1) Appointments of commissioners are subject to confirmation by the General Assembly by joint resolution. The names of commissioners to be appointed by the Governor shall be submitted by the Governor to the General Assembly for confirmation by the General Assembly on or before March 1 of the year of expiration of the term. If the Governor fails to timely submit nominations, the General Assembly shall appoint to fill the succeeding term upon the joint recommendation of the President Pro Tempore of the Senate and the Speaker of the House of Representatives in accordance with G.S. 120-121 not inconsistent with this section.

In case of death, incapacity, resignation, or any other vacancy in the office of any commissioner prior to the expiration of the term of office, a nomination to fill the vacancy for the remainder of the unexpired term shall be submitted by the Governor within four weeks after the vacancy arises to the General Assembly for confirmation by the General Assembly. ~~Appointments to fill a vacancy shall have a term of six years plus the remainder of the unexpired term.~~ If the Governor fails to timely nominate a person to fill the vacancy, the General Assembly shall appoint a person to fill the remainder of the unexpired term upon the joint recommendation of the President Pro Tempore of the Senate and the Speaker of the House of Representatives in accordance with G.S. 120-121 not inconsistent with this section. If a vacancy arises or exists pursuant to this subsection when the General Assembly is not in session, and the appointment is deemed urgent by the Governor, the commissioner may be appointed and serve on an interim basis pending confirmation by the General Assembly. For the purpose of this subsection, the General Assembly is not in session only (i) prior to convening of the Regular Session, (ii) during any adjournment of the Regular Session for more than 10 days, and (iii) after sine die adjournment of the Regular Session.

No person while in office as a commissioner may be nominated or appointed on an interim basis to fill the remainder of an unexpired term, or to a full term that commences prior to the expiration of the term that the commissioner is serving."

**SECTION 24.(c)** Subsection (a) of this section is effective when it becomes law and applies to the first appointment made to fill a vacancy existing as of that date. Subsection (b) of this section becomes effective on the earlier of December 31, 2016, or upon the filling of a vacancy pursuant to subsection (a) of this section.

## **PART VI. EFFECTIVE DATE**

**SECTION 25.** If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end, the provisions of this act are severable.

**SECTION 26.** Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16<sup>th</sup> day of December, 2016.

s/ Daniel J. Forest  
President of the Senate

s/ Tim Moore  
Speaker of the House of Representatives

s/ Pat McCrory  
Governor

Approved 1:19 p.m. this 16<sup>th</sup> day of December, 2016