



# HOUSE BILL 913: Bipartisan Ethics and Elections Enforcement.

2017-2018 General Assembly

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<b>Committee:</b>	Senate Select Committee on Elections. If favorable, re-refer to Rules and Operations of the Senate	<b>Date:</b>	June 26, 2018
<b>Introduced by:</b>	Rep. Lewis	<b>Prepared by:</b>	Erika Churchill
<b>Analysis of:</b>	Second Edition		Staff Attorney

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**OVERVIEW:** *House Bill 913 would set forth amendments to the North Carolina Constitution, to be voted on by the people on November 8, 2018, to make the following changes:*

- *Establish a bipartisan board of elections and ethics enforcement, consisting of eight members appointed by the General Assembly.*
- *Clarify the legislative powers to control the powers, duties, responsibilities, appointments, and terms of office of any board or commission prescribed by general law, and the powers of the Governor to faithfully execute those laws.*
- *Clarify that members of the General Assembly shall not serve on Executive or Judicial Branch boards or commission that exercise non-advisory powers.*

## CURRENT LAW:

Separation of Powers: The cases of State ex rel. Wallace v. Bone, 304 N.C. 591, 286 S.E.2d 79 (1982), Advisory Opinion in Re Separation of Powers, 305 N.C. 767, 295 S.E.2d 589, (1982), McCrorry v. Berger, 368 N.C. 633, 781 S.E. 2d 248 (2016), and Cooper v. Berger, 370 N.C. 392, 809 S.E.2d 98, (2018), decided by the North Carolina Supreme Court, stand for several principles:

- The General Assembly may not control the execution of laws by appointing legislators to serve on the executive agency board involved.
- The General Assembly may not delegate legislative functions to legislative committees when the exercise of the functions requires passing a law.
- Legislative appointments of non-legislators to executive agency boards can violate separation of powers by preventing the Governor from performing the Governor's constitutional duty to take care that the laws are faithfully executed.
- The legislature cannot structure an executive branch commission in such a manner that the Governor is unable to "take care that the laws be faithfully executed" where the Governor is required to appoint half the commission from a list of nominees who are probably not supportive of the Governor's policy preferences while having limited supervisory control over the agency and circumscribed removal authority over commission members.
- The General Assembly may continue to appoint persons to serve on executive boards and commissions exercising executive functions, because of the constitutional

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# House Bill 913

Page 2

provision that the Governor's power to appoint applies "except as otherwise provided for."

Elections and Ethics: In 2016, the General Assembly established the Bipartisan State Board of Elections and Ethics Enforcement (State Board) combining the functions of election laws and ethics under one executive branch board, and following litigation, again re-established the State Board in 2017. After subsequent litigation, the General Assembly again modified the structure of the State Board in 2018, and the board now consists of nine members, all appointed by the Governor, as follows:

- Four individuals registered with the political party with the highest number of registered affiliates in the State, from a list of six nominees submitted by the State party chair of that party.
- Four individuals registered with the political party with the second highest number of registered affiliates in the State, from a list of six nominees submitted by the State party chair of that party.
- One individual not registered with either the political party with the largest number of registered affiliates in the State or of the political party with the second-largest number of registered affiliates in the State, from a list of two nominees selected by the other eight members of the State Board.

## **BILL ANALYSIS:**

**SECTION 1** would amend the Constitution of North Carolina to provide for an eight member board to administer ethics and elections law, to be appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate and Speaker of the House of Representatives. The President Pro Tempore and Speaker would each recommend four members from nominees provided to the President Pro Tempore and Speaker by the majority and minority leaders. The President Pro Tempore and Speaker would be limited to recommending no more than two nominees from each political caucus leader. *Effective March 1, 2019, if approved by a majority of the voters in November 2018.*

**SECTIONS 2 and 4** amend Section 6 of Article I and subsections 4 and 8 of Section 5 of Article III of the Constitution to make clear that the delegation of authority by the General Assembly, when it enacts a general law regarding a board or commission, does not interfere with the Governor's faithful execution of the law and that the delegation of authority by the General Assembly controls. *Effective upon certification, if approved by a majority of the voters in November 2018.*

**SECTION 3** codifies in the Constitution the Court's holding in Wallace v. Bone to the effect that legislators may not serve on any board or commission that exercises executive or judicial authority. *Effective upon certification, if approved by a majority of the voters in November 2018.*

**EFFECTIVE DATE:** Except as otherwise provided, effective when it becomes law.