



SENATE BILL 683: Combat Absentee Ballot Fraud.

**This Bill Analysis
reflects the contents
of the bill as it was
presented in
committee.**

2019-2020 General Assembly

Committee:	House Rules, Calendar, and Operations of the House	Date:	August 8, 2019
Introduced by:	Sens. Daniel, McKissick, Hise	Prepared by:	Erika Churchill, Jessica Sammons, and Kara McCraw,
Analysis of:	PCS to Fourth Edition S683-CSST-51		Staff Attorneys

OVERVIEW: *The PCS to Senate Bill 683 would:*

- *Enhance the penalties for certain violations of the law regarding absentee ballots, and create new crimes for selling completed request forms or voted ballots or receiving payment based on a number of returned requests.*
- *Require that a request for mail-in absentee ballots be completed entirely by the requestor, contain photo identification of the voter or an affidavit for lack thereof, and be returned to the county board of elections by the requestor.*
- *Restore the last Saturday of early voting.*
- *Provide for pre-paid postage for the return of mail-in absentee ballots for elections held in 2020.*
- *Allow the State Board of Elections to authorize a county to continue to use DRE voting systems in the 2020 elections under certain conditions.*

Mail-In Absentee Ballots

CURRENT LAW: Any qualified voter of the State may vote by absentee ballot in a statewide primary, general, or special election and any qualified voter of a county is authorized to vote by absentee ballot in any primary or election conducted by the county board of elections. Absentee balloting may take one of three forms:

1. Mail-in absentee ballots.
2. Early "one-stop" voting.
3. Uniform and Overseas voting.

For those voters properly requesting an absentee application and ballots for mail-in absentee, applications and ballots are mailed or issued no earlier than 60 days prior to the statewide general election in an even-numbered year, or 50 days in any other election.

Request Form for Absentee Ballot – A request for an absentee application and ballots must be via a form generated by the State Board of Elections, signed by the voter or the voter's near relative or verifiable legal guardian, and delivered to the county board of elections. The State Board must make this form available online, at the State Board offices, and at the county board offices, and the form may be reproduced. The request form requires the following information:

Karen Cochrane-Brown
Director



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- 1) Voter's name and residential address.
- 2) Near relative or legal guardian's name and address (if requestor).
- 3) Voter's address for mailing of ballot (if different from residential address).
- 4) Acceptable form of readable identification similar to those required for voting in-person, or an alternative affidavit for a religious objection, reasonable impediment, or natural disaster, beginning in 2020. Until then, the NC drivers license number, NC special operators license number, or last four of the social security number.
- 5) Voter's date of birth.
- 6) Signature of the voter, or near relative or legal guardian (if requestor).

The completed request forms must be received by the county board no later than 5:00 P.M. on the Tuesday before the election.

The county board must confirm the voter's registration prior to issuing the voter an absentee application and ballots. If confirmed as a registered voter, the county board mails (or personally delivers for certain sick or disabled voters) an application and absentee ballots to the voter. If not confirmed, the voter will be notified. A completed request form is deemed a request to update the voter's voter registration, subject to confirmation in writing by the county board.

Voting an Absentee Ballot – Upon receiving the completed request form, the county board must mail to the voter a single package that includes the official ballots, a container-return envelope, and an instruction sheet. The application must be completed and signed by the voter personally, the ballots marked and sealed in the container-return envelope, and the certificate completed. The voter must complete the absentee ballot in the presence of two voters who are at least 18 years of age and not a candidate or employee of certain adult care homes, or in front of a notary public. Both individuals must sign the absentee application and certificate as witnesses and indicate their addresses. If a near relative or legal guardian assisted the voter, that individual's name and address must also be listed. In 2020 and thereafter, if the voter did not provide a copy of the appropriate identification, or affidavit for lack thereof with the request form, the voter is to include the copy of the appropriate identification or affidavit with the container-return envelope.

County boards must retain all applications made for absentee ballots for one year, and make those applications available to inspection by the State Board or to any person upon the directive of the State Board. After one year, the applications may be destroyed.

Register of Absentee Requests, Applications, and Ballots – The State Board must approve an official register for recording absentee requests, applications, and ballots issued. This register may be kept by electronic data processing equipment, provided a copy is printed out each day. This register is a public record and must be opened to the inspection of any registered voter. In the register, the county boards must record the following information:

- 1) Voter's name, and the near relative or legal guardian's name and address (if requestor).
- 2) Number of assigned voter's application.
- 3) Voter's precinct.
- 4) Voter's address for mailing of ballot.
- 5) Date request for application for absentee ballot is received by the county board.
- 6) Voter's party affiliation.
- 7) Date ballots were mailed or delivered to voter.

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8) Any additional information and official action that is required.

Violations of Absentee Ballot Law – The following violations of absentee ballot law are Class 2 misdemeanors:

- Willfully making a false affidavit or statement under oath.
- Willfully signing any printed or written false statement, if the statement was not under oath or duly sworn, for the purpose of obtaining and voting any official ballot.
- Acting as a witness for an absentee ballot in any primary or election in which the person is a candidate for nomination or election, unless the voter is the candidate's near relative.
- Attempting to aid and abet fraud in connection with any absentee vote cast or to be cast.

In addition, attempting to vote by fraudulently signing the name of a qualified voter is a Class I felony.

BILL ANALYSIS:

Request for Absentee Ballot – The PCS would require the following for requests for applications and absentee ballots:

- The request form to be fully completed and signed by the voter, or the voter's near relative or verifiable legal guardian, and returned to the county board by only the voter, or the voter's near relative or verifiable legal guardian.
- The request form must contain a clear indicator of the date the election generating the request is to be held, unless the voter is completing an annual calendar year request due to sickness or physical disability that is expected to last the remainder of the calendar year.
- The request must include a readable photocopy of an acceptable photo identification for voting in person.

If a photocopy of photo identification is not provided with the request, the request must include an alternative affidavit for the lack thereof. If the reasonable impediment affidavit states inability to attach a physical copy of the voter's identification with the request, the reasonable impediment must include either the number of the voter's NC driver's license or special identification card for nonoperators, or the last four digits of the voter's social security number.

- Requests would not be valid if: (i) made using something other than a form created by the State Board, (ii) completed or signed by someone other than the voter or voter's near relative or verifiable legal guardian, (iii) failed to include certain information, or (iv) was returned by someone other than the voter or voter's near relative or verifiable legal guardian, or by mail or designated delivery service.

Voting an Absentee Ballot – The PCS would eliminate the option for the voter to provide the required photo identification, or affidavit for lack thereof, with the voted ballots in the container-return envelope. The photo identification, or affidavit for lack thereof, would need to be provided with the request for absentee ballots.

The bill would also prohibit the State Board from displaying the voter's party affiliation on the outside of the container-return envelope.

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Register of Absentee Requests, Applications, and Ballots – The PCS would require the county boards to continue to maintain a log of all mail-in and early "one-stop" voter requests. For the mail-in requests, a list of applications received, updated daily from the date the county board begins to mail applications and ballots through the date of canvass, by the county board would be public record. Any copies of photo identification associated with requests for absentee ballots would not be a public record.

Violations of Absentee Ballot Law – The PCS would make the following changes to criminal offenses regarding absentee ballot law, effective December 1, 2019:

- Increase all current Class 2 misdemeanors to Class 1 misdemeanors.
- Create new Class 2 misdemeanors for the following:
 - Selling or attempting to sell, or purchasing or agreeing to purchase, a completed written request, a completed application for absentee ballots, or voted absentee ballots.
 - Compensating another, or accepting compensation, based on the number of returned written requests for absentee ballots.
- Increase attempting to vote by fraudulently signing the name of a qualified voter to a Class G felony.
- Create a new Class G felony for the following:
 - Intentionally failing to deliver or intentionally destroying a completed written request, completed application for absentee ballots, or voted absentee ballots.
 - Copying or otherwise retaining a request for absentee ballots, a completed application for absentee ballots, or any identifying information disclosed in a request or application, by any person other than the voter or near relative or verifiable legal guardian of that voter.
- Create a new Class F felony for any person to commit, attempt to commit, or conspire to commit, with the intent to unlawfully influence or interfere with a primary or election, or to otherwise unlawfully gain, any of the following crimes:
 - G.S. 163A-865(b) – crimes related to mishandling of voter registration forms
 - G.S. 163A-1298(a) – felonies related to absentee voting
 - G.S. 163A-1388 – certain misdemeanors related to voting in any election
 - G.S. 163A-1389 – certain felonies related to voting in any election
 - G.S. 163A-1317 – any of the crimes related to absentee ballots

Restore Last Saturday of Early One-Stop Voting

CURRENT LAW: Senate Bill 325, 2018 Regular Session, made the following changes with respect to early one-stop sites and hours:

- Early voting begins no earlier than the third Wednesday before an election, and ends no later than 7:00 p.m. on the last Friday before the election.
- Each one-stop voting site across the county must be open at that same location throughout the early voting period.
- Each day that the voting sites are open, the sites must be open uniformly throughout the county.

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- Establish hours for one-stop voting sites to be open as follows:
 - Monday through Friday – 7:00 a.m. until 7:00 p.m.
 - Saturday and Sunday – County board of elections are able to set hours for early voting on these days. If a county board of elections opens a one-stop voting site on Saturdays or Sundays during the early voting period, then all sites would be required to open for the same hours uniformly throughout the county on Saturdays or Sundays, respectively.

BILL ANALYSIS: The PCS would make the following changes to the hours for early one-stop voting:

- Require early one-stop voting sites to be open no earlier than the third Thursday before an election through 2:00 P.M. on the last Saturday before the election.
- Require counties to open early one-stop voting sites from 8:00 A.M. until 2:00 P.M. on the last Saturday before the election.
- For elections held between January 1, 2020 and August 1, 2020 only, require all early one-stop voting sites to be open from 8:30 A.M. to 6:30 P.M. each weekday.

Additionally, in adopting a Plan for Implementation for a county for one or more early one-stop voting sites in that county, the State Board would be required to take into consideration whether the Plan disproportionately favors any party, racial or ethnic group, or candidate.

Pre-Paid Postage for Mail-In Absentee Ballots in 2020

CURRENT LAW: All executed absentee ballots must be placed in the container-return envelope, sealed, and transmitted to the county board by mail or by commercial courier service, at the voter's expense, or delivered in person, by the voter or the voter's rear relative or verifiable legal guardian.

BILL ANALYSIS: The PCS would appropriate from the unappropriated General Fund to the State board of Elections \$250,000 for the 2019-2020 fiscal year to provide for pre-paid postage for the return of executed absentee ballots for elections held in 2020.

Use of DRE Voting Systems in 2020

CURRENT LAW: Effective December 1, 2019, G.S. 163A-1115(a) requires that only voting systems that have been certified by the State Board that meet certain standards and have not been subsequently decertified may be used in elections. One of the required standards is that the voting system, including direct record electronic voting systems, must generate a paper ballot which provides a backup means of counting the vote that the voter casts. G.S. 163A-1095(1) defines a ballot as "an instrument on which a voter indicates that voter's choice for a ballot item so that it may be recorded as a vote for or against a certain candidate or referendum proposal, and is evidenced by an individual paper document that bears marks made by the voter by hand or through electronic means, whether preprinted or printed in the voting enclosure." DRE voting systems must generate a paper ballot viewable by the voter before the vote is cast electronically, and permit the voter to correct any discrepancy between the electronic vote and the paper ballot before the vote is cast to be certified.

G.S. 163A-1111 prohibits the use of a voting system that does not use or produce a ballot in any referendum, primary, or other election as a means of voting or counting an official ballot.

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S.L. 2013-381, Sec. 30.8 and 30.9, as amended by Section 6 of S.L. 2015-103 and Section 3.11 of S.L. 2018-13, provides that any DRE voting systems certified by the State Board of Elections which do not use paper ballots be decertified and not used in any election held on or after December 1, 2019.

BILL ANALYSIS: Effective when it becomes law, the PCS would authorize the State Board of Elections to allow a county board of elections to use a DRE voting system in any election prior to December 1, 2020, provided the State Board determines both of the following conditions are satisfied:

- 1) The county board of elections submits a request to use a DRE voting system in an election or elections prior to December 1, 2020.
- 2) The county board of elections provides sufficient information for the State Board to conclude that the use of the DRE voting system will not jeopardize the security of the election or elections.

EFFECTIVE DATE: Except as otherwise noted, January 1, 2020, and applies to elections conducted on or after that date.