

Election attacks in the North Carolina House Budget

Updated as of August 10, 2021

The latest [proposed House Budget](#) includes a number of attacks on North Carolina's system of election administration, in particular the role of the North Carolina State Board of Elections ("NCSBE"). These attacks were also included in the [Senate budget](#) passed on June 24, 2021.¹

National context

These kinds of partisan attacks on bi-partisan election administrators are part of a national trend that has been happening in states across the country. Republican state legislatures in states like [Arizona](#), [Florida](#), & [Georgia](#) have limited or stripped election administrators' authority to settle election lawsuits and/or respond in the event of emergency to ensure voters have access to the ballot.

Over 400 restrictive anti-voter bills have been introduced across the country.² A [recent analysis](#) found that at least 216 of these bills allow state legislatures to politicize, criminalize, or interfere with the administration of elections. These bills have been introduced in at least 40 states, including nearly every southern state and all of North Carolina's neighboring states of Virginia, Tennessee, Georgia, and South Carolina.

These partisan bills are one part of a coordinated effort to [attack election administrators](#) in response to the Big Lie, accompanied by threats of violence and the spread of disinformation. These attacks have already led to an exodus of experienced election administrators across the country, dedicated civil servants who are vitally important to our democracy.³

Election attacks in the House Budget bill

The budget bills contain provisions from bills introduced earlier this session, as well as a few new provisions:

- **Stripping the authority of the NCSBE and the Attorney General to expeditiously settle lawsuits.** These attacks on the NCSBE are borne out of partisan ire over the settlement agreement the NCSBE entered into prior to the 2020 presidential election, and are part of the national trend seeking to undermine the ability of election administrators to settle election lawsuits. The 2020 settlement agreement was approved by a unanimous, bipartisan vote of the NCSBE and resulted in a smooth and successful election. These provisions will inevitably lead to protracted and costly litigation in the run-up to every election, all at taxpayers' expense.

¹ **Note:** On August 5, the House Appropriations Committee on General Government released its list of [Proposed Special Provisions](#), which represents the House's first public consideration of SB 105. The House proposals include a number of election-related provisions including continued appropriations of federal funding to pay for election staffing and enhanced reporting requirements for the NCSBE. These provisions were also included in the proposed House Budget. While it is not yet clear whether these proposals represent *new* threats to North Carolina's election administration, they do not fully roll back the attacks included in SB 105 as originally passed by the Senate. A number of these attacks remain a threat and are summarized below.

² See the bill trackers of the [Voting Rights Lab](#) and the [Brennan Center for Justice](#).

³ [High-profile elections officials leave posts after a tumultuous 2020](#), CNN, February 19, 2021.

- Sections 18.7.(a) & (b) **would give the Speaker of the House and Senate President Pro Tempore the authority to approve or disapprove of any consent judgment, settlement, or other agreement *in any lawsuit challenging North Carolina statutes or the North Carolina constitution***, including the state election code. This language is substantially similar to provisions found in S.B. 360 and H.B. 606 introduced earlier this year, and could give partisan politicians the ability to override the judgment of bipartisan boards of elections. This provision also follows a concerning national trend of legislatures attempting to give themselves the ability to intervene in election litigation or override bipartisan election officials. Similar proposals have been enacted this year in states like [Kansas](#), [Florida](#), and [Georgia](#).
- Similarly, Section 18.7.(b) of the bill limits the Attorney General’s authority to intervene in certain types of federal or out-of-state litigation without the approval of the majority of the Council of State.
- Section 18.7(c) of the bill repeals language authorizing the NCSBE and Attorney General to “enter into agreement with the courts in lieu of protracted litigation” when election challenges are brought under the Voting Rights Act.
- **Appropriating \$5 million to implement a challenged voter ID law.** On page F62 of the Senate committee report (which is incorporated into the House budget by reference), the budget includes a \$5 million appropriation to establish a mobile program to assist individuals who need photo ID in order to vote in person. This provision is clearly intended to bolster the challenged photo ID laws enacted in SB 824 (2018), and is substantially similar to provisions introduced in SB 326 and SB 724 earlier this session.
 - The photo ID provisions in SB 824 were preliminarily enjoined in 2020 by the North Carolina Court of Appeals in *Holmes v. Moore*, with a final judgement expected some time in the next few weeks.⁴ In the appellate court’s order to preliminarily enjoin the law, it said the choices made in SB 824 show “an intention to target African American voters.” There is also a lawsuit challenging this photo ID law still ongoing in federal court.
 - Rather than wasting taxpayer money in an attempt to bolster a challenged law that may never go into effect, North Carolina’s immediate funding priorities should meet our state’s existing electoral needs.

Talking Points and Questions for attacks in the proposed House budget bill

Budgets should be for the people, not partisan politics. When we are creating a budget, we are laying out the key priorities for our state and the people of North Carolina. The budget should not be used to inject more partisanship in our elections because it is not a priority for the

⁴ [Holmes v. Moore](#), 840 S.E. 2d 244 (N.C. Ct. App. 2020).

people of North Carolina. Our budget can and should fund strong public schools, create good paying jobs, and strengthen healthcare services for our constituents across the state. We should also invest in our elections system, by appropriating more dollars to support our local election administrator and instill trust in our democratic system.

- *[Note: feel free to mention other budget priorities here].*

Our bipartisan election officials must stay in charge of our elections. Instead of undermining the authority of the NC State Elections Board, we should be thanking our election officials and workers for their tireless work in the 2020 election and ensuring they have the resources they need to continue administering our elections. This budget includes partisan power-grabs against the NCSBE that are unacceptable.

Protecting all North Carolinians' freedom to vote is paramount, and we cannot pass a budget that will create new barriers to voting. Budgets are supposed to be about funding things like education, public safety, infrastructure, and services we all need and depend on - not about restricting our freedom to vote. This budget includes funding to help put a law that is currently being challenged in court and could disenfranchise thousands of North Carolinians into effect. Rather than wasting taxpayer money in an attempt to bolster a challenged law that may never go into effect, North Carolina's immediate funding priorities should meet our state's existing needs.

We should be working to make North Carolina a leader in voting. The efforts to undermine election officials and restrict the freedom to vote in this budget are just the latest attacks on voting we are seeing across the country. We've seen the negative attention our neighbors in Georgia and other states received when their legislature restricted the sacred right to vote. Businesses spokeout, boycotts were threatened, demonstrations took place, and the national media had a frenzy. We've had that in North Carolina before with House Bill 2 (the bathroom bill), but we don't need it again. Instead of being the latest state to restrict voting rights, let's make North Carolina a leader. Let's focus on passing a budget that works for the people and improves our elections to both increase integrity and access to the ballot box.

Questions for House committee and/or floor debate:

- **On the attacks to the NC State Board of Elections**
 - Rather than attacking state and local election administrators who have deep institutional knowledge and expertise, shouldn't we be providing more tools and resources to the civil servants who have acted in good faith in times of crisis to uphold our free and fair elections?
 - The budget includes several provisions that would limit the authority of the Attorney General and the State Board of Elections to settle election lawsuits without the approval of the Speaker or Senate Pro Tem. Won't this inevitably lead to protracted and costly litigation in the run-up to every election, all at taxpayers' expense?

- This budget would give just two members of the state legislature (the Speaker of the House and the Senate Pro Tem) the authority to prevent *any* state agency from entering into consent judgments concerning elections or any other lawsuit where a state statute is challenged. Isn't this legislative overreach that violates principles of separation of powers?
 - Isn't it the responsibility of our executive agencies to implement the laws we pass?
 - Isn't it the responsibility of the Attorney General to represent our state in court?
 - Isn't it the job of our judicial branch to interpret the laws we enact?
 - Even if we assume the General Assembly has the constitutional authority to prevent the Attorney General from representing our state in court and prevent the courts from interpreting our laws, why does this bill give only two members of our legislature the authority to represent the interests of the entire legislative branch? Shouldn't the General Assembly speak through legislation, such as the passage of a joint resolution?
- **On the mobile voter ID unit**
 - The voter ID laws passed by this legislature in 2018 have been challenged in state and federal court, and have been enjoined for over a year and a half. With a trial court ruling expected in the near future, shouldn't we wait to see how this litigation plays out before implementing a new \$5 million program? Wouldn't it be more fiscally responsible to wait until these cases are resolved?
 - If the program is really about helping people obtain ID they will need in order to vote, shouldn't we wait to see whether or what kinds of ID will be required to vote?
 - Wouldn't this \$5 million be better spent to create a reserve fund to support our local election administrators during cases of emergency, who struggled last year to find funding for PPE and poll worker recruitment?

Other election provisions in the House budget

The House Appropriations Committee on General Government released the [Proposed Special Provisions](#) to amend the state budget passed by the Senate, SB 105. These provisions were also included in the [proposed House Budget](#), but do not appear to constitute attacks on election administration.

Appropriates HAVA and other federal funding to the State Board of Elections for the biennium. The NCSBE would be authorized to continue using HAVA funding to employ 30 temporary positions for the duration of the 2021-23 fiscal biennium, using any remaining funds from the \$3 million appropriated in the previous biennium. It also prohibits the NCSBE from phasing out the position of Chief Information Security Officer without authorization by the General Assembly.

- Note: This provision is in contrast to language included in a prior version of SB 105 that would have phased out these 30 positions, but both the old provision and the new provision include the prohibition on phasing out the Chief Information Security Officer position.

Adds new prescriptive reporting requirements to the NCSBE's post-election integrity report following general elections. Following any post-election audit for a general election the NCSBE would be required to produce a report to the legislative elections oversight committees including:

- summaries of required audits and results,
- detailed descriptions of each post-election audit, including any issues that could have affected the outcome of the election and the manner in which those issues were resolved,
- a description of systematic issues that were identified during the audits and any recommendations on the manner in which those issues should be addressed to ensure election security and integrity
- The ways in which the public were allowed to observe and comment on the conduct of the post-election audits, as authorized by law, and
- Any other matters deemed appropriate by the State Board

Current law requires the NCSBE to issue a report to the legislative elections oversight committees following any post-election audit, including rationale for and findings of the audit, but does not require the report to include the detailed requirements proposed above.

Removes cap on the NCSBE's ability to charge more than \$100 for the use of computer software for the electronic filing of campaign finance reports. Current law allows the NCSBE to sell computer software to political committees and candidate committees to enable the electronic filing of campaign finance reports, but caps the fee at \$100 unless the NCSBE

first notifies the Joint Legislative Commission on Governmental Operations. This proposed provision would remove this cap and the notice requirement.

Adds new reporting requirements and deadlines to the NCSBE's implementation of voting systems. The proposed provision would require the NCSBE to issue an annual report by January 15 of each year on the implementation of the statutes governing the state's voting systems to the Joint Legislative Oversight Committee on General Government. Current law already requires the NCSBE to issue this report annually (without a date-certain) to the House and Senate Appropriations committee, to the Fiscal Research Division, and to the Joint Legislative Commission on Governmental Operations.