

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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HOUSE BILL 772

Short Title: Poll Observer Appointments, Access & Activity. (Public)

Sponsors: Representatives Davis, Cleveland, Mills, and Warren (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Election Law and Campaign Finance Reform, if favorable, Judiciary 1, if favorable, Rules, Calendar, and Operations of the House

April 19, 2023

A BILL TO BE ENTITLED

AN ACT TO CLARIFY POLL OBSERVER APPOINTMENTS, ACCESS, AND PERMITTED ACTIVITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-45 reads as rewritten:

"§ 163-45. **Observers; ~~appointment~~ appointment, access, and permitted activity.**

(a) The chair of each political party in the county shall have the right to designate two observers to attend each voting place ~~at each primary and during one-stop early voting and during each election day~~ and such observers may, at the option of the designating party chair, be relieved during the day of the primary or election after serving no less than four hours and provided the list required by this section to be filed by each chair contains the names of all persons authorized to represent such chair's political party. The chair of each political party in the county shall have the right to designate 10 additional at-large observers who are residents of that county who may attend any voting place in that county. The chair of each political party in the State shall have the right to designate up to 100 additional at-large observers who are residents of the State who may attend any voting place in the State. The list submitted by the chair of the political party may be amended between the one-stop period under G.S. 163-227.2, 163-227.5, and 163-227.6 and general election day to substitute one or all at-large observers for election day. Not more than two site-specific observers from the same political party shall be permitted in the voting enclosure at any time, ~~except that in addition one of the time, and up to two~~ at-large observers from each party may also be in the voting enclosure. However, no more than a total of three observers from the same political party shall be physically present in the voting enclosure at any time. This right shall not extend to the chair of a political party during a primary unless that party is participating in the primary. In any election in which an unaffiliated candidate is named on the ballot, the candidate or the candidate's campaign manager shall have the right to appoint two observers for each voting place consistent with the provisions specified herein. Persons appointed as observers by the chair of a county political party must be registered voters of the county for which they are appointed and must have good moral character. Persons appointed as at-large observers by the chair of a State political party must be registered voters of the State and must have good moral character. No person who is a candidate on the ballot in a primary or election may serve as an observer or runner in that primary or election. Observers shall take no oath of office.

(b) ~~Individuals authorized to appoint observers must~~ County or State political party chairs may submit a list of names of observers appointed by the chairs electronically or in writing to the director of the county board of elections. The director shall supply the lists of site-specific



1 observers for each voting location and the at-large observers to the chief judge of each precinct
2 a signed list of the observers appointed for that precinct, except that the list of at-large observers
3 authorized in subsection (a) of this section shall be submitted to the county director of elections,
4 and site supervisor for each voting location. Individuals authorized to appoint observers must,
5 must provide their lists of appointed observers prior to 10:00 A.M. on the fifth day prior to any
6 primary or general election, submit in writing to the chair of the county board of elections two
7 signed copies of a list of observers appointed by them, designating the precinct or at-large status
8 for which each observer is appointed, before the observer is to serve. Before the opening of the
9 voting place on the day of a primary or general election, the chair director shall deliver one copy
10 copies of the precinct-specific observer list and the list of at-large observers to the chief judge or
11 site supervisor for each affected precinct, except that the list of at-large observers shall be
12 provided by the county director of elections to the chief judge. The chair shall retain the other
13 copy. The chair, or the chief judge and judges for each affected precinct, may for good cause
14 reject any appointee and require that another be appointed. The names of any persons appointed
15 in place of those persons rejected shall be furnished in writing to the chief judge of each affected
16 precinct no later than the time for opening the voting place on the day of any primary or general
17 election, either by the chair of the county board of elections or the person making the substitute
18 appointment. voting location.

19 If party chairs appoint observers at one-stop sites under G.S. 163-227.2, 163-227.5, and
20 163-227.6, those party chairs shall provide a list of the observers appointed before 10:00 A.M.
21 on the fifth day before the observer is to observe. At-large observers may serve at any one-stop
22 site.

23 (c) An observer shall do no electioneering at the voting place, enclosure and shall in no
24 manner impede the voting process or interfere or communicate with or observe of any voter in
25 easting a ballot, or observe the ballot markings of any voter but, subject to these restrictions, the
26 site administrators or chief judge and judges of elections shall permit the observer-observers to
27 make such observation and take such notes as the observer may desire. The State Board of
28 Elections may require observers to wear identification tags for ease of recognition by voters and
29 election officials.

30 (c1) Notwithstanding any provision of law and except as otherwise provided in federal
31 law, election observers observing pursuant to this section are permitted to do the following:

- 32 (1) Move freely around the voting enclosure. Observers shall be permitted to
33 position themselves a distance of 5 feet or greater from the registration and
34 ballot tables and may position themselves a distance of 5 feet from
35 tabulation machines during voting. Observers may position themselves a
36 distance of 5 feet or greater from vehicle passenger compartments during
37 curbside voting. Observers are authorized to hear conversations between
38 poll workers and voters so long as observers do not violate the provisions
39 of this section.
- 40 (2) Observe and record start-up and shut down procedures, including viewing
41 and making a digital image or video record of zero poll tapes on tabulation
42 machines before opening and the post-election poll tapes after the polls
43 close.
- 44 (3) Begin observation duties from the time the judge or site supervisor enters
45 the polling location until all ballot containers are officially sealed and the
46 voting enclosure is secured for the day.
- 47 (4) Hear the voter and election worker recite the name and address of the voter
48 at the registration table and to hear any conversation between the voter and
49 election workers at the registration table.
- 50 (5) Hear the voter and election worker recite the name and address at curbside
51 voting.

- 1 (6) Inspect, count, and make an image or a record of completed authorizations
2 to vote (ATVs) at any time when the polls are open.
- 3 (7) Observe voting activity in the ballot marking area at a distance sufficient
4 to prohibit the observation of the voter's ballot markings.
- 5 (8) Traverse freely between the curbside voting area and the voting enclosure
6 without requiring permission from a judge or site supervisor.
- 7 (9) Observe curbside voting in such a manner as to hear verbal
8 communications between the election assistant and the curbside voter.
- 9 (10) Maintain observation of ballot boxes retrieved from the tabulation machine
10 until ballot boxes are sealed and secured by election officials.
- 11 (11) Observe the insertion of ballots being placed into the emergency bin of a
12 tabulation machine by the voter and observe the subsequent scanning of
13 those ballots by a bipartisan team of judges.
- 14 (12) Observe emergency actions, fault isolation, repairs, and replacement of
15 tabulation or other election machines when they malfunction in the voting
16 enclosure.
- 17 (13) Photograph or video record any signage set up within the voting enclosure,
18 as long as no voters or poll workers are in the image or video recording.
- 19 (14) Use electronic devices to take notes and communicate. However, the
20 observer shall not make or receive phone calls while inside the voting
21 enclosure during voting hours.
- 22 (15) Speak with election officials other than the chief judge or site supervisor
23 to resolve questions when the chief judge or site supervisor is not
24 immediately accessible.
- 25 (16) Make audio recordings of discussions between the observer and chief
26 judges, judges, and poll workers at the voting location.
- 27 (17) Inspect, make an image of, or video record the exterior of a tabulation
28 machine at any time during the voting hours when no voter is using or
29 waiting to use the tabulation machine.
- 30 (18) Enter and exit the voting enclosure using any entry door available to poll
31 workers, site supervisors, chief judges, or judges.
- 32 (19) Observe the possession and transport of ballot boxes, poll tapes, and
33 memory devices to ensure chain of custody from the voting location to their
34 final destination upon closure of the polls without impeding or interfering
35 with the transport of those materials.
- 36 (c2) Election Observers shall not interfere with the voting process by engaging in any
37 of the following:
 - 38 (1) Wearing or distributing campaign materials or electioneering.
 - 39 (2) Speaking with voters.
 - 40 (3) Positioning themselves to view confidential voter information on poll
41 books or poll worker computers.
 - 42 (4) Positioning themselves close enough to a voter to view that voter's ballot
43 markings at any time during the voting process.
 - 44 (5) Taking photographs or videos of a voter without the consent of the voter
45 and a chief judge or site supervisor while inside the voting enclosure.
 - 46 (6) Entering the voting booth area or attempting to view a ballot being marked
47 by a voter in the voting booth area.
 - 48 (7) Positioning themselves less than 5 feet from a vehicle compartment
49 containing curbside voters.
 - 50 (8) Providing voting assistance to, impeding, or communicating with any
51 voter inside the voting enclosure.

1 (c3) An election observer may be removed if the observer's behavior violates the rules
2 for behavior in the voting enclosure. The chief judge or site supervisor may remove the
3 observer, subject to the following procedure:

- 4 (1) The observer shall only be removed for specified violations of this section.
5 (2) The chief judge or site supervisor shall first issue a verbal or written
6 warning to the observer, stating the time and nature of the disruptive
7 behavior, and then allow the observer reasonable opportunity to conform
8 to the rules.
9 (3) Any removal shall be under the authority of the chief judge or site
10 supervisor.
11 (4) The chief judge or site supervisor shall issue a written report stating the
12 time and nature of the rules violation.
13 (5) The chief judge or site supervisor shall, within 30 minutes after the
14 removal, notify the director of the county board of elections, who then
15 shall notify the observer's appointing political party or campaign
16 committee chair.
17 (6) The appointing political party or campaign committee chair shall be given
18 the opportunity to replace the removed observer immediately with another
19 observer at the voting location upon written or electronic notification from
20 the director.
21 (7) Citizens shall not be prohibited from serving as poll observers without a
22 hearing and due process.

23 (d) Whether or not the observer attends to the polls for the requisite time provided by this
24 section, each observer shall be entitled to obtain ~~at times specified by the State Board of~~
25 ~~Elections, but not less than three times during election day each day of the election,~~ with the
26 spacing not less than ~~one hour three hours~~ apart, a list of the persons who have voted ~~in the~~
27 ~~precinct so far in that election day.~~ during that day of the election. Counties that use an
28 "authorization to vote document" (ATV) instead of poll books may comply with the requirement
29 ~~in the previous sentence~~ by permitting each observer to inspect ~~election records the ATVs~~ so that
30 the observer may create a list of persons who have voted ~~in the precinct so far that election day;~~
31 ~~each observer shall be entitled to make the inspection at times specified by the State Board of~~
32 ~~Elections, but during that day of the election.~~ The inspection shall occur not less than three times
33 during ~~election each~~ day with the spacing not less than ~~one hour three hours~~ apart.

34 (e) Instead of having an observer receive the voting list, the county party chair may send
35 a runner to do so, even if an observer has not been appointed for that precinct. The runner may
36 be the precinct party chair or any person named by the county party chair. Each county party
37 chair using runners in an election shall provide to the county board of elections before 10:00
38 A.M. on the fifth day before election day a list of the runners to be used. That party chair must
39 notify the chair of the county board of elections or the board chair's designee of the names of all
40 runners to be used in each precinct before the runner goes to the precinct. The runner may receive
41 a voter list from the precinct on the same schedule as an observer. Whether obtained by observer
42 or runner, each party is entitled to only one voter list at each of the scheduled times. No runner
43 may enter the voting enclosure except when necessary to announce that runner's presence and to
44 receive the list. The runner must leave immediately after being provided with the list.

45 (f) Any election official who restricts or denies observer access greater than what is
46 allowed under this section or 18 U.S.C. § 245 is guilty of a Class 1 misdemeanor."

47 **SECTION 2.** G.S. 163-165(9) reads as rewritten:

- 48 (9) "Voting enclosure" means the ~~room~~ area within the voting ~~place~~ location that
49 is used ~~for voting to complete the voting process.~~ The term includes any
50 vehicle compartment containing one or more voters parked in the designated
51 curbside voting area."

1 **SECTION 3.** G.S. 163-166.2 reads as rewritten:

2 "**§ 163-166.2. Arrangement of the voting enclosure.**

3 Each voting enclosure shall contain at a minimum:

- 4 (1) A sufficient number of private spaces for all voters to mark their official
5 ballots in secrecy.
- 6 (2) Adequate space and furniture for the separate functions of:
7 a. The checking of voter registration records.
8 b. The distribution of official ballots.
9 c. Private discussion with voters concerning irregular situations.
- 10 (3) A telephone or some facility for communication with the county board of
11 elections.
- 12 (4) Three chairs for each political party's observers to use.

13 The equipment and furniture in the voting enclosure shall be arranged so that it can be
14 generally seen from the public space of the enclosure."

15 **SECTION 4.** This act is effective when it becomes law and applies to observers for
16 elections held on or after that date.