

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 32
PROPOSED COMMITTEE SUBSTITUTE H32-PCS70231-ST-5

Short Title: Electoral Freedom Act of 2011.

(Public)

Sponsors:

Referred to:

February 3, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND THE STATUTORY REQUIREMENT FOR A POLITICAL PARTY TO MAINTAIN BALLOT ELIGIBILITY; TO PROVIDE THAT THE RESULTS OF PRIMARIES OF POLITICAL PARTIES WITH LESS THAN TEN PERCENT OF THE REGISTERED VOTERS ARE DETERMINED BY A PLURALITY UNLESS THE PARTY CHOOSES TO NOMINATE BY CONVENTION; TO CHANGE THE DEFINITION OF A "POLITICAL PARTY" BY REDUCING THE NUMBER OF SIGNATURES REQUIRED FOR THE FORMATION OF A NEW POLITICAL PARTY; AND TO REDUCE THE NUMBER OF SIGNATURES REQUIRED FOR UNAFFILIATED CANDIDATES TO OBTAIN BALLOT ACCESS ELIGIBILITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-96(a) reads as rewritten:

"(a) Definition. – A political party within the meaning of the election laws of this State shall be ~~either~~:either of the following:

- (1) Any group of voters which, at the last preceding general State election, polled for its candidate for Governor, for any other member of the Council of State for a full term of office, or for presidential electors, at least ~~two percent (2%)~~ one-fourth of one percent (.25%) of the entire vote cast in the State for Governor-Governor, for any other member of the Council of State, or for presidential electors; or electors, whichever vote count is less.
- (2) Any group of voters ~~which shall~~who have filed with the State Board of Elections ~~petitions~~a petition for the formulation of a new political party which ~~are~~is signed by at least one-fourth of one percent (.25%) of the registered and qualified voters in this State equal in number to two percent (2%) of the total number of voters who voted in the most recent general election for Governor. State as of January 1 of the year of the petition. Also Of the signers, the petition must be signed by at least 200 must be registered voters from each of ~~four~~ three congressional districts in North Carolina. To be effective, the petitioners must file ~~their petitions~~ the petition with the State Board of Elections before 12:00 noon on the first day of June preceding the day on which is to be held the first general State election in which the new political party desires to participate. The State Board of Elections shall forthwith determine the sufficiency of ~~petitions~~ any petition for the formulation of a new political party filed with it and shall immediately



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1 communicate its determination to the State chairman of the proposed new
2 political party."

3 **SECTION 2.** G.S. 163-98 reads as rewritten:

4 "**§ 163-98. ~~General election participation~~ Participation by new political party~~certain~~
5 political parties.**

6 (a) In the first general election following the date on which a new political party
7 qualifies under the provisions of G.S. 163-96, it shall be entitled to have the names of its
8 candidates for national, State, congressional, and local offices printed on the official ballots
9 upon paying a filing fee equal to that provided for candidates for the office in G.S. 163-107 or
10 upon complying with the alternative available to candidates for the office in G.S. 163-107.1.

11 For the first general election following the date on which it qualifies under G.S. 163-96, a
12 new political party shall select its candidates by party convention. Following adjournment of
13 the nominating convention, but not later than the first day of July prior to the general election,
14 the ~~president-presiding officer~~ of the convention shall certify to the State Board of Elections the
15 names of persons chosen in the convention as the new party's candidates in the ensuing general
16 election. Any candidate nominated by a new party shall be affiliated with the party at the time
17 of certification to the State Board of Elections. The requirement of affiliation with the party
18 will be met if the candidate submits at or before the time of certification as a candidate an
19 application to change party affiliation to that party. The State Board of Elections shall print
20 names thus certified on the appropriate ballots as the nominees of the new party. The State
21 Board of Elections shall send to each county board of elections the list of any new party
22 candidates so that the county board can add those names to the appropriate ballot.

23 (b) A political party with less than ten percent (10%) of the registered voters in this
24 State is not subject to the Primary Act, Article 10 of this Chapter (other than as provided by
25 subsection (d) of this section), if, after approval of its State convention or State executive
26 committee, it notifies the State Board of its action before July 1 of an odd-numbered year. The
27 exemption shall remain in effect unless revoked by the State convention or State executive
28 committee, and such revocation shall become effective beginning in the next even-numbered
29 year after July 1 of the year the political party notifies the State Board.

30 (c) A political party electing under subsection (b) of this section to be exempt from
31 Article 10 of this Chapter shall select its candidates by party convention. Following
32 adjournment of the nominating convention, but not later than the first day of July prior to the
33 general election, the presiding officer of the convention shall certify to the State Board the
34 names of persons chosen in the convention as the party's candidates in the ensuing general
35 election. Any candidate nominated shall be affiliated with the party at the time of certification
36 to the State Board. The requirement of affiliation with the party will be met if the candidate
37 submits at or before the time of certification as a candidate an application to change party
38 affiliation to that party. The State Board shall print names thus certified on the appropriate
39 ballots as the nominees of the party. The State Board shall send to each county board of
40 elections the list of any party candidates so that the county board can add those names to the
41 appropriate ballot.

42 (d) Political parties exempt from Article 10 of this Chapter shall nonetheless be subject
43 to G.S. 163-113 (withdrawal of nominee), 163-114 (filling vacancy in nomination after
44 convention), and 163-115 (nominations when vacancies in office occur)."

45 **SECTION 3.** G.S. 163-111 is amended by adding a new subsection to read:

46 "(g) No Second Primaries for Political Parties With Less Than Ten Percent of Registered
47 Voters. – This section does not apply to political parties with less than ten percent (10%) of the
48 registered voters in the State."

49 **SECTION 4.** Article 10 of Chapter 163 of the General Statutes is amended by
50 adding a new section to read:

51 "**§ 163-111.1. Determination of primary results for political parties.**

1 (a) This section applies only to political parties that, as of January 1 of the year that the
2 primary election is to be held, have less than ten percent (10%) of the registered voters in the
3 State.

4 (b) Nominations in primary elections shall be determined as follows:

5 (1) When more than one person is seeking election to a single office, the
6 candidate who receives the highest number of votes shall be declared the
7 nominee.

8 (2) When more persons are seeking nomination to two or more offices
9 (constituting a group) than there are offices to be filled, those candidates
10 receiving the highest numbers of votes, equal in number to the number of
11 offices to be filled, shall be declared the nominees.

12 (c) When more than one person is seeking election to a single office, and two or more
13 candidates receiving the highest number of votes each receive the same number of votes, the
14 proper party executive committee shall, from among those candidates receiving the same
15 number of votes, select the party nominee in accordance with G.S. 163-114.

16 (d) When more persons are seeking nomination to two or more offices (constituting a
17 group) than there are offices to be filled, and two or more candidates receiving the lowest
18 number of votes necessary for nomination each receive the same number of votes, the proper
19 party executive committee shall, from among those candidates receiving the same number of
20 votes, select the party nominee in accordance with G.S. 163-114.

21 (e) This section prevails over any local act."

22 **SECTION 5.** G.S. 163-122 reads as rewritten:

23 "**§ 163-122. Unaffiliated candidates nominated by petition.**

24 (a) ~~Procedure for Having Name Printed on Ballot as Unaffiliated Candidate.— Any~~
25 ~~qualified voter who seeks to have his name printed on the general election ballot as an~~
26 ~~unaffiliated candidate shall:~~

27 (1) ~~If the office is a statewide office, file written petitions with the State Board~~
28 ~~of Elections supporting his candidacy for a specified office. These petitions~~
29 ~~must be filed with the State Board of Elections on or before 12:00 noon on~~
30 ~~the last Friday in June preceding the general election and must be signed by~~
31 ~~qualified voters of the State equal in number to two percent (2%) of the total~~
32 ~~number of voters who voted in the most recent general election for~~
33 ~~Governor. Also, the petition must be signed by at least 200 registered voters~~
34 ~~from each of four congressional districts in North Carolina. No later than~~
35 ~~5:00 p.m. on the fifteenth day preceding the date the petitions are due to be~~
36 ~~filed with the State Board of Elections, each petition shall be presented to the~~
37 ~~chairman of the board of elections of the county in which the signatures~~
38 ~~were obtained. Provided the petitions are timely submitted, the chairman~~
39 ~~shall examine the names on the petition and place a check mark on the~~
40 ~~petition by the name of each signer who is qualified and registered to vote in~~
41 ~~his county and shall attach to the petition his signed certificate. Said~~
42 ~~certificates shall state that the signatures on the petition have been checked~~
43 ~~against the registration records and shall indicate the number of signers to be~~
44 ~~qualified and registered to vote in his county. The chairman shall return each~~
45 ~~petition, together with the certificate required in this section, to the person~~
46 ~~who presented it to him for checking. Verification by the chairman of the~~
47 ~~county board of elections shall be completed within two weeks from the date~~
48 ~~such petitions are presented.~~

49 (2) ~~If the office is a district office under the jurisdiction of the State Board of~~
50 ~~Elections under G.S. 163-182.4(b), file written petitions with the State Board~~
51 ~~of Elections supporting that voter's candidacy for a specified office. These~~

1 petitions must be filed with the State Board of Elections on or before 12:00
2 noon on the last Friday in June preceding the general election and must be
3 signed by qualified voters of the district equal in number to four percent
4 (4%) of the total number of registered voters in the district as reflected by
5 the voter registration records of the State Board of Elections as of January 1
6 of the year in which the general election is to be held. Each petition shall be
7 presented to the chairman of the board of elections of the county in which
8 the signatures were obtained. The chairman shall examine the names on the
9 petition and the procedure for certification and deadline for submission to
10 the county board shall be the same as specified in (1) above.

11 (3) If the office is a county office or a single county legislative district, file
12 written petitions with the chairman or director of the county board of
13 elections supporting his candidacy for a specified county office. These
14 petitions must be filed with the county board of elections on or before 12:00
15 noon on the last Friday in June preceding the general election and must be
16 signed by qualified voters of the county equal in number to four percent
17 (4%) of the total number of registered voters in the county as reflected by the
18 voter registration records of the State Board of Elections as of January 1 of
19 the year in which the general election is to be held, except if the office is for
20 a district consisting of less than the entire county and only the voters in that
21 district vote for that office, the petitions must be signed by qualified voters
22 of the district equal in number to four percent (4%) of the total number of
23 voters in the district according to the voter registration records of the State
24 Board of Elections as of January 1 of the year in which the general election
25 is to be held. Each petition shall be presented to the chairman or director of
26 the county board of elections. The chairman shall examine, or cause to be
27 examined, the names on the petition and the procedure for certification shall
28 be the same as specified in (1) above.

29 (4) If the office is a partisan municipal office, file written petitions with the
30 chairman or director of the county board of elections in the county wherein
31 the municipality is located supporting his candidacy for a specified
32 municipal office. These petitions must be filed with the county board of
33 elections on or before the time and date specified in G.S. 163-296 and must
34 be signed by the number of qualified voters specified in G.S. 163-296. The
35 procedure for certification shall be the same as specified in (1) above.

36 Upon compliance with the provisions of (1), (2), (3), or (4) of this subsection, the board of
37 elections with which the petitions have been timely filed shall cause the unaffiliated candidate's
38 name to be printed on the general election ballots in accordance with Article 14A of this
39 Chapter.

40 An individual whose name appeared on the ballot in a primary election preliminary to the
41 general election shall not be eligible to have his name placed on the general election ballot as
42 an unaffiliated candidate for the same office in that year.

43 (a1) When and Where to File. – Any qualified voter who seeks to have that voter's name
44 printed on the general election ballot as an unaffiliated candidate shall:

45 (1) File written petitions with the State Board of Elections supporting the voter's
46 candidacy for any statewide or district office comprised of more than one
47 county. These petitions must be filed with the State Board of Elections on or
48 before 12:00 noon on the last Friday in June preceding the general election.
49 No later than 5:00 P.M. on the fifteenth day preceding the date the petitions
50 are due to be filed with the State Board of Elections, each petition shall be
51 presented to the chairman of the board of elections of the county in which

1 the signatures were obtained. Provided the petitions are timely submitted, the
2 chairman shall examine the names on the petition and place a check mark on
3 the petition by the name of each signer who is qualified and registered to
4 vote in the signer's county and shall attach to the petition a signed certificate.
5 Said certificates shall state that the signatures on the petition have been
6 checked against the registration records and shall indicate the number of
7 signers to be qualified and registered to vote in the signer's county. The
8 chairman shall return each petition, together with the certificate required in
9 this section, to the person who presented it for checking. Verification by the
10 chairman of the county board of elections shall be completed within two
11 weeks from the date such petitions are presented.

12 (2) File written petitions with the appropriate county board of elections
13 supporting the voter's candidacy for any district office containing one or less
14 than one county, county office, partisan municipal office, or any other office
15 comprised of one or less than one county. These petitions must be filed with
16 the county board of elections on or before 12:00 noon on the last Friday in
17 June preceding the general election. Provided the petitions are timely
18 submitted, the chairman shall examine, or cause to be examined, the names
19 on the petition, and the procedure for certification shall be the same as
20 specified in subdivision (1) of this subsection.

21 (a2) Number of Signatures Required. – Candidates seeking election to a partisan office
22 as an unaffiliated candidate shall obtain no less than the following number of signatures for the
23 office sought:

24 (1) For President of the United States as provided in G.S. 163-209, United
25 States Senator, Governor, Lieutenant Governor, Secretary of State, Auditor,
26 Treasurer, Superintendent of Public Instruction, Attorney General,
27 Commissioner of Agriculture, Commissioner of Labor, Commissioner of
28 Insurance, and any other statewide office: At least one-fourth of one percent
29 (.25%) of the entire vote cast in the State for Governor or presidential
30 electors, with at least 200 signatures from three congressional districts.

31 (2) For all other offices: At least one percent (1%) of the total number of
32 registered voters eligible to vote for that office on January 1 of the year of
33 the election.

34 (a3) Losing Candidate's Provision. – Upon compliance with the provisions of
35 subsections (a1) and (a2) of this section, the board of elections with which the petitions have
36 been timely filed shall cause the unaffiliated candidate's name to be printed on the general
37 election ballots in accordance with Article 14A of this Chapter.

38 An individual whose name appeared on the ballot in a primary election preliminary to the
39 general election shall not be eligible to have that individual's name placed on the general
40 election ballot as an unaffiliated candidate for the same office in that year.

41 (b) Form of Petition. – Petitions requesting an unaffiliated candidate to be placed on the
42 general election ballot shall contain on the heading of each page of the petition in bold print or
43 in all capital letters the words: "THE UNDERSIGNED REGISTERED VOTERS IN
44 _____ COUNTY HEREBY PETITION ON BEHALF OF _____ AS AN
45 UNAFFILIATED CANDIDATE FOR THE OFFICE OF _____ IN THE NEXT
46 GENERAL ELECTION. THE UNDERSIGNED HEREBY PETITION THAT SUBJECT
47 CANDIDATE BE PLACED ON THE APPROPRIATE BALLOT UPON COMPLIANCE
48 WITH THE PROVISIONS CONTAINED IN G.S. 163-122."

49 (c) This section does not apply to elections under Article 25 of this Chapter.

50 (d) When any person files a petition with a board of elections under this section, the
51 board of elections shall, immediately upon receipt of the petition, inspect the registration

1 records of the county and cancel the petition of any person who does not meet the constitutional
2 or statutory qualifications for the office, including residency.

3 The board shall give notice of cancellation to any person whose petition has been cancelled
4 under this subsection by mail or by having the notice served on that person by the sheriff and to
5 any other candidate filing for the same office. A person whose petition has been cancelled or
6 another candidate for the same office affected by a substantiation under this subsection may
7 request a hearing on the issue of constitutional or statutory qualifications for the office. If the
8 person requests a hearing, the hearing shall be conducted in accordance with Article 11B of
9 Chapter 163 of the General Statutes.

10 (e) Any candidate seeking to have that candidate's name printed on the general election
11 ballot under this section shall pay a filing fee equal to that provided for candidates for the office
12 in G.S. 163-107 or comply with the alternative available to candidates for the office in
13 G.S. 163-107.1."

14 **SECTION 6.** G.S. 163-296 reads as rewritten:

15 "**§ 163-296. Nomination by petition.**

16 In cities conducting partisan elections, any qualified voter who seeks to have ~~his~~that voter's
17 name printed on the regular municipal election ballot as an unaffiliated candidate ~~may~~shall do
18 so in the manner provided in ~~G.S. 163-122, except that the petitions and affidavits shall be filed~~
19 ~~not later than 12:00 noon on the Friday preceding the seventh Saturday before the election, and~~
20 ~~the petitions shall be signed by a number of qualified voters of the municipality equal to at least~~
21 ~~four percent (4%) of the whole number of voters qualified to vote in the municipal election~~
22 ~~according to the voter registration records of the State Board of Elections as of January 1 of the~~
23 ~~year in which the general municipal election is held. G.S. 163-122. A person~~An individual
24 whose name appeared on the ballot in a primary election is not eligible to have ~~his~~that
25 individual's name placed on the regular municipal election ballot as an unaffiliated candidate
26 for the same office in that year. ~~The Board of Elections shall examine and verify the signatures~~
27 ~~on the petition, and shall certify only the names of signers who are found to be qualified~~
28 ~~registered voters in the municipality. Provided that in the case where a qualified voter seeks to~~
29 ~~have his name printed on the regular municipal election ballot as an unaffiliated candidate for~~
30 ~~election from an election district within the municipality, the petition shall be signed by four~~
31 ~~percent (4%) of the voters qualified to vote for that office."~~

32 **SECTION 7.** This act becomes effective January 1, 2012, and applies to elections
33 held on or after that date.