

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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SENATE BILL 656
Select Committee on Elections Committee Substitute Adopted 4/25/17
House Committee Substitute Favorable 6/21/17
House Committee Substitute #2 Favorable 6/28/17
Proposed Conference Committee Substitute S656-PCCS45502-TC-4

Short Title: Electoral Freedom Act of 2017.

(Public)

Sponsors:

Referred to:

April 5, 2017

A BILL TO BE ENTITLED

AN ACT TO CHANGE THE DEFINITION OF A "POLITICAL PARTY" BY REDUCING THE NUMBER OF SIGNATURES REQUIRED FOR THE FORMATION OF A NEW POLITICAL PARTY AND FOR UNAFFILIATED CANDIDATES TO OBTAIN BALLOT ACCESS ELIGIBILITY; TO AUTHORIZE ESTABLISHMENT OF POLITICAL PARTIES RECOGNIZED IN A SUBSTANTIAL NUMBER OF STATES IN THE PRIOR PRESIDENTIAL ELECTION; TO CHANGE TIMING OF FILING OF PETITIONS; TO REDUCE THE THRESHOLD FOR A SUBSTANTIAL PLURALITY TO THIRTY PERCENT; AND TO ELIMINATE JUDICIAL PRIMARIES FOR THE 2018 GENERAL ELECTION.

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 one of the following:~~

(1) Any group of voters which, at the last preceding general State election, polled for its candidate for Governor, or for presidential electors, at least two percent (2%) of the entire vote cast in the State for Governor or for presidential ~~electors; or electors.~~

(2) Any group of voters which shall have filed with the State Board of Elections petitions for the formulation of a new political party which are signed by registered and qualified voters in this State equal in number to ~~two percent (2%)~~ one-quarter of one percent (0.25%) of the total number of voters who voted in the most recent general election for Governor. Also the petition must be signed by at least 200 registered voters from each of ~~four~~ three congressional districts in North Carolina. To be effective, the petitioners must file their petitions 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 filed with it and shall immediately communicate its determination to the State ~~chairman~~ chair of the proposed new political party.

(3) Any group of voters which shall have filed with the State Board of Elections documentation that the group of voters had a candidate nominated by that



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1 group on the general election ballot of at least seventy percent (70%) of the
2 states in the prior Presidential election. To be effective, the group must file
3 their documentation with the State Board of Elections before 12:00 noon on
4 the first day of June preceding the day on which is to be held the first general
5 State election in which the new political party desires to participate. The
6 State Board of Elections shall forthwith verify the documentation filed with
7 it and shall immediately communicate its determination to the State chair of
8 the proposed new political party."

9 **SECTION 2.(a)** G.S. 163-122(a), as amended by Section 10 of S.L. 2017-3, reads
10 as rewritten:

11 "(a) Procedure for Having Name Printed on Ballot as Unaffiliated Candidate. – Any
12 qualified voter who seeks to have the voter's name printed on the general election ballot as an
13 unaffiliated candidate shall:

14 (1) If the office is a statewide office, file written petitions with the State Board
15 of Elections supporting the voter's candidacy for a specified office. These
16 petitions must be filed with the State Board of Elections on or before 12:00
17 noon on the ~~second Wednesday prior to day~~ of the primary election and must
18 be signed by qualified voters of the State equal in number to ~~two percent~~
19 ~~(2%)~~ one and a half percent (1.5%) of the total number of voters who voted
20 in the most recent general election for Governor. Also, the petition must be
21 signed by at least 200 registered voters from each of ~~four~~ three congressional
22 districts in North Carolina. The petitions shall be divided into sections based
23 on the county in which the signatures were obtained. Provided the petitions
24 are timely filed, the State Board of Elections shall require the filed petition
25 be verified no later than 15 business days after canvass of the primary in one
26 of the following ways:

27 a. The Executive Director shall examine the names on the petition and
28 place a check mark on the petition by the name of each signer who is
29 qualified and registered to vote in the designated county and shall
30 attach to the petition a signed certificate. Said certificates shall state
31 that the signatures on the petition have been checked against the
32 registration records and shall indicate the number of signers to be
33 qualified and registered to vote in each county.

34 b. The chair shall examine the names on the petition and place a check
35 mark on the petition by the name of each signer who is qualified and
36 registered to vote in the chair's county and shall attach to the petition
37 the chair's signed certificate. Said certificates shall state that the
38 signatures on the petition have been checked against the registration
39 records and shall indicate the number of signers to be qualified and
40 registered to vote in the chair's county. The chair shall return the
41 petition and certificate to the State Board.

42 The State Board shall return a copy of each petition, together with a copy of
43 the certificate required in this section, to the person who presented it to the
44 State Board.

45 (2) Except as provided in this subsection, if the office is a district office under
46 the jurisdiction of the State Board of Elections under G.S. 163-182.4(b), file
47 written petitions with the State Board of Elections supporting that voter's
48 candidacy for a specified office. ~~These~~ For district offices other than General
49 Assembly seats, petitions must be filed with the State Board of Elections on
50 or before 12:00 noon on the ~~second Wednesday prior to day~~ of the primary
51 election and must be signed by qualified voters of the district equal in

1 number to ~~four~~ one and a half percent (4%)(1.5%) of the total number of
2 registered voters in the district as reflected by the voter registration records
3 of the State Board of Elections as of January 1 of the year in which the
4 general election is to be held. For General Assembly seats in which the
5 district lies in more than one county, petitions must be filed with the State
6 Board of Elections on or before 12:00 noon on the day of the primary
7 election and must be signed by qualified voters of the district equal in
8 number to four percent (4%) of the total number of registered voters in the
9 district as reflected by the voter registration records of the State Board of
10 Elections as of January 1 of the year in which the general election is to be
11 held. The petitions shall be divided into sections based on the county in
12 which the signatures were obtained. The petitions shall be verified as
13 specified in subdivision (1) of this subsection.

14 (3) If the office is a county office or a single county legislative district, file
15 written petitions with the chair or director of the county board of elections
16 supporting the voter's candidacy for a specified county office. These
17 petitions must be filed with the county board of elections on or before 12:00
18 noon on the ~~second Wednesday prior to~~ day of the primary election and must
19 be signed by qualified voters of the county equal in number to four percent
20 (4%) of the total number of registered voters in the county as reflected by the
21 voter registration records of the State Board of Elections as of January 1 of
22 the year in which the general election is to be held, except if the office is for
23 a district consisting of less than the entire county and only the voters in that
24 district vote for that office, the petitions must be signed by qualified voters
25 of the district equal in number to four percent (4%) of the total number of
26 voters in the district according to the voter registration records of the State
27 Board of Elections as of January 1 of the year in which the general election
28 is to be held. Each petition shall be presented to the ~~chairman~~ chair or
29 director of the county board of elections. The chair or director of the county
30 board of elections shall verify the filed petition no later than 15 business
31 days after canvass as provided in sub-subdivision b. of subdivision (1) of
32 this subsection, and shall return a copy of each petition, together with a copy
33 of the certificate required in this section, to the person who presented it to
34 the county board of elections.

35 (4) If the office is a partisan municipal office, file written petitions with the
36 chair or director of the county board of elections in the county wherein the
37 municipality is located supporting the voter's candidacy for a specified
38 municipal office. These petitions must be filed with the county board of
39 elections on or before the time and date specified in G.S. 163-296 and must
40 be signed by the number of qualified voters specified in G.S. 163-296. The
41 chair or director of the county board of elections shall verify the filed
42 petition no later than 15 business days after canvass as provided in
43 sub-subdivision b. of subdivision (1) of this subsection, and shall return a
44 copy of each petition, together with a copy of the certificate required in this
45 section, to the person who presented it to the county board of elections.

46 (5) If the office is a superior court judge or a district court judge, regardless of
47 whether the district lies entirely in one county or in more than one county,
48 file written petitions with the State Board of Elections supporting that voter's
49 candidacy for a specified office. These petitions must be filed with the State
50 Board of Elections on or before 12:00 noon on the ~~second Wednesday prior~~
51 ~~to~~ day of the primary election and must be signed by qualified voters of the

1 district equal in number to two percent (2%) of the total number of
2 registered voters in the district as reflected by the voter registration records
3 of the State Board of Elections as of January 1 of the year in which the
4 general election is to be held. The petitions shall be divided into sections
5 based on the county in which the signatures were obtained. The petitions
6 shall be verified as specified in subdivision (1) of this subsection.

7 Upon compliance with the provisions of subdivisions (1), (2), (3), (4), or (5) of this
8 subsection, the board of elections with which the petitions have been timely filed shall cause
9 the unaffiliated candidate's name to be printed on the general election ballots in accordance
10 with Article 14A of this Chapter."

11 **SECTION 2.(b)** G.S. 163-296 reads as rewritten:

12 **"§ 163-296. Nomination by petition.**

13 In cities conducting partisan elections, any qualified voter who seeks to have his name
14 printed on the regular municipal election ballot as an unaffiliated candidate may do so in the
15 manner provided in G.S. 163-122, except that the petitions and affidavits shall be filed not later
16 than 12:00 noon on the Friday preceding the seventh Saturday before the election, and the
17 petitions shall be signed by a number of qualified voters of the municipality equal to at least
18 ~~four percent (4%)~~ one and a half percent (1.5%) of the whole number of voters qualified to vote
19 in the municipal election according to the voter registration records of the State Board of
20 Elections as of January 1 of the year in which the general municipal election is held. A person
21 whose name appeared on the ballot in a primary election is not eligible to have his name placed
22 on the regular municipal election ballot as an unaffiliated candidate for the same office in that
23 year. The Board of Elections shall examine and verify the signatures on the petition, and shall
24 certify only the names of signers who are found to be qualified registered voters in the
25 municipality. Provided that in the case where a qualified voter seeks to have his name printed
26 on the regular municipal election ballot as an unaffiliated candidate for election from an
27 election district within the municipality, the petition shall be signed by ~~four percent (4%)~~ one
28 and a half percent (1.5%) of the voters qualified to vote for that office."

29 **SECTION 3.** G.S. 163-111(a) reads as rewritten:

30 "(a) Nomination Determined by Substantial Plurality; Definition of Substantial Plurality.
31 – Except as otherwise provided in this section, nominations in primary elections shall be
32 determined by a substantial plurality of the votes cast. A substantial plurality within the
33 meaning of this section shall be determined as follows:

- 34 (1) If a nominee for a single office is to be selected, and there is more than one
35 person seeking nomination, the substantial plurality shall be ascertained by
36 multiplying the total vote cast for all aspirants by ~~forty percent (40%)~~ thirty
37 percent (30%). Any excess of the sum so ascertained shall be a substantial
38 plurality, and the aspirant who obtains a substantial plurality shall be
39 declared the nominee. If two candidates receive a substantial plurality, the
40 candidate receiving the highest vote shall be declared the nominee.
- 41 (2) If nominees for two or more offices (constituting a group) are to be selected,
42 and there are more persons seeking nomination than there are offices, the
43 substantial plurality shall be ascertained by dividing the total vote cast for all
44 aspirants by the number of positions to be filled, and by multiplying the
45 result by ~~forty percent (40%)~~ thirty percent (30%). Any excess of the sum so
46 ascertained shall be a substantial plurality, and the aspirants who obtain a
47 substantial plurality shall be declared the nominees. If more candidates
48 obtain a substantial plurality than there are positions to be filled, those
49 having the highest vote (equal to the number of positions to be filled) shall
50 be declared the nominees."

1 **SECTION 4.(a)** No 2018 Primary for Judicial Offices. – Notwithstanding
 2 G.S. 163-106, no party primaries shall be held for candidates seeking the following offices in
 3 the general election held on November 6, 2018:

4 Justices of the Supreme Court.

5 Judges of the Court of Appeals.

6 Judges of the superior courts.

7 Judges of the district courts.

8 Candidates seeking the office of Justice of the Supreme Court, judge of the Court of
 9 Appeals, judge of the superior court, or judge of the district court shall file their notice of
 10 candidacy with the State Board of Elections and Ethics Enforcement no earlier than 12:00 noon
 11 on June 18, 2018, and no later than 12:00 noon on June 29, 2018.

12 **SECTION 4.(b)** Form of Notice. – Each person offering to be a candidate for
 13 election shall do so by filing a notice of candidacy with the State Board of Elections and Ethics
 14 Enforcement in the following form, inserting the words in parentheses when appropriate:

15 Date _____

16 I hereby file notice that I am a candidate for election to the office of _____ in
 17 the regular election to be held _____, _____.

18 Signed _____

19 (Name of Candidate)

20 Witness:

21 _____
 22 The notice of candidacy shall be either signed in the presence of the chair or
 23 secretary of the State Board of Elections and Ethics Enforcement or signed and acknowledged
 24 before an officer authorized to take acknowledgments who shall certify the notice under seal.
 25 An acknowledged and certified notice may be mailed to the State Board of Elections and Ethics
 26 Enforcement. In signing a notice of candidacy, the candidate shall use only the candidate's legal
 27 name and, in the candidate's discretion, any nickname by which commonly known. A candidate
 28 may also, in lieu of that candidate's first name and legal middle initial or middle name, if any,
 29 sign that candidate's nickname, provided the candidate appends to the notice of candidacy an
 30 affidavit that the candidate has been commonly known by that nickname for at least five years
 31 prior to the date of making the affidavit. The candidate shall also include with the affidavit the
 32 way the candidate's name (as permitted by law) should be listed on the ballot if another
 33 candidate with the same last name files a notice of candidacy for that office.

34 A notice of candidacy signed by an agent or any person other than the candidate
 35 shall be invalid.

36 A candidate, at the time of filing the notice of candidacy under this section, shall
 37 indicate on the notice of candidacy the political party recognized under Article 18 of Chapter
 38 163A of the General Statutes with which that candidate is affiliated or any unaffiliated status.
 39 The certificate required by subsection (d) of this section shall verify the party designation or
 40 unaffiliated status, and the verified party designation or unaffiliated status shall be included on
 the ballot.

41 **SECTION 4.(c)** Withdrawal of Notice of Candidacy. – Any person who has filed a
 42 notice of candidacy for an office under this section shall have the right to withdraw it at any
 43 time prior to the close of business on the third business day prior to the date on which the right
 44 to file for that office expires under the terms of subsection (b) of this section.

45 **SECTION 4.(d)** Certificate That Candidate Is Registered Voter. – Candidates shall
 46 file along with their notice a certificate signed by the chair of the board of elections or the
 47 director of elections of the county in which they are registered to vote, stating that the person is
 48 registered to vote in that county, and if the candidacy is for superior court judge or district court
 49 judge, and the county contains more than one superior court district or district court district,
 50 stating the judicial district of which the person is a resident. In issuing such certificate, the
 51 chairman or director shall check the registration records of the county to verify such

1 information. During the period commencing 36 hours immediately preceding the filing
2 deadline, the State Board of Elections and Ethics Enforcement shall accept, on a conditional
3 basis, the notice of candidacy of a candidate who has failed to secure the verification ordered
4 herein subject to receipt of verification no later than three days following the filing deadline.
5 The State Board of Elections and Ethics Enforcement shall prescribe the form for such
6 certificate and distribute it to each county board of elections no later than the last Monday in
7 December of 2017.

8 **SECTION 4.(e)** Candidacy for More Than One Office Prohibited. – No person
9 may file a notice of candidacy for more than one office or group of offices described in
10 subsection (a) of this section, or for an office or group of offices described in subsection (a)
11 of this section and an office described in G.S. 163-106(c), for any one election. If a person has
12 filed a notice of candidacy with a board of elections under this section or under G.S. 163-106(c)
13 for one office or group of offices, then a notice of candidacy may not later be filed for any other
14 office or group of offices under this section when the election is on the same date unless the
15 notice of candidacy for the first office is withdrawn under subsection (c) of this section.

16 **SECTION 4.(f)** Notice of Candidacy for Certain Offices to Indicate Vacancy. – In
17 any election in which there are two or more vacancies for the office of justice of the Supreme
18 Court, judge of the Court of Appeals, superior court judge, or district court judge to be filled by
19 nominations, each candidate shall, at the time of filing notice of candidacy, file with the State
20 Board of Elections and Ethics Enforcement a written statement designating the vacancy to
21 which the candidate seeks election. Votes cast for a candidate shall be effective only for
22 election to the vacancy for which the candidate has given notice of candidacy as provided in
23 this subsection.

24 A person seeking election for a specialized district judgeship established under
25 G.S. 7A-147 shall, at the time of filing notice of candidacy, file with the State Board of
26 Elections and Ethics Enforcement a written statement designating the specialized judgeship to
27 which the person seeks nomination.

28 **SECTION 4.(g)** Residency Requirements. – No person may file a notice of
29 candidacy for superior court judge or district court judge unless that person is at the time of
30 filing the notice of candidacy a resident of the judicial district as it will exist at the time the
31 person would take office if elected. This subsection implements Section 9(1) of Article IV of
32 the North Carolina Constitution, which requires regular superior court judges to reside in the
33 district for which elected, and Section 10 of Article IV of the North Carolina Constitution,
34 which requires every district court judge to reside in the district for which elected.

35 **SECTION 4.(h)** Filing Fees. – Candidates shall pay filing fees as required by
36 G.S. 163-107 and G.S. 163-107.1.

37 **SECTION 4.(i)** Failure of Candidates to File; Death or Other Disqualification of a
38 Candidate; No Withdrawal From Candidacy. –

39 (1) Insufficient number of candidates. – If when the filing period expires,
40 candidates have not filed for an office to be filled under this section, the
41 State Board of Elections and Ethics Enforcement shall extend the filing
42 period for five days for any such offices.

43 (2) Vacancies; reopening filing. – If only one or two candidates have filed for a
44 single office, or the number of candidates filed for a group of offices does
45 not exceed twice the number of positions to be filled, and thereafter a
46 remaining candidate dies or otherwise becomes disqualified before the
47 election and before the ballots are printed, the State Board of Elections and
48 Ethics Enforcement shall, upon notification of the death or other
49 disqualification, immediately reopen the filing period for an additional five
50 days during which time additional candidates shall be permitted to file for
51 election. If the ballots have been printed at the time the State Board of

1 Elections and Ethics Enforcement receives notice of the candidate's death or
2 other disqualification, the Board shall determine whether there will be
3 sufficient time to reprint them before the election if the filing period is
4 reopened for three days. If the Board determines that there will be sufficient
5 time to reprint the ballots, it shall reopen the filing period for three days to
6 allow other candidates to file for election.

7 (3) Later vacancies; ballots not reprinted. – If the ballots have been printed at
8 the time the State Board of Elections and Ethics Enforcement receives notice
9 of a candidate's death or other disqualification, and if the Board determines
10 that there is not enough time to reprint the ballots before the election if the
11 filing period is reopened for three days, then regardless of the number of
12 candidates remaining for the office or group of offices, the ballots shall not
13 be reprinted and the name of the vacated candidate shall remain on the
14 ballots. If a vacated candidate should poll the highest number of votes in the
15 election for a single office or enough votes to be elected to one of a group of
16 offices, the State Board of Elections and Ethics Enforcement shall declare
17 the office vacant and it shall be filled in the manner provided by law.

18 (4) No withdrawal permitted of living, qualified candidate after close of filing. –
19 After the close of the candidate filing period, a candidate who has filed a
20 notice of candidacy for an office under this section, who has not withdrawn
21 notice before the close of filing as permitted by subsection (c) of this section,
22 who remains alive, and has not become disqualified for the office may not
23 withdraw his or her candidacy. That candidate's name shall remain on the
24 ballot, any votes cast for the candidacy shall be counted in primary or
25 election, and if the candidate wins, the candidate may fail to qualify by
26 refusing to take the oath of office.

27 (5) Death, disqualification, or failure to qualify after election. – If a person
28 elected to the office of justice of the Supreme Court, judge of the Court of
29 Appeals, or superior or district court judge dies or becomes disqualified on
30 or after election day and before that person has qualified by taking the oath
31 of office, or fails to qualify by refusing to take the oath of office, the office
32 shall be deemed vacant and shall be filled as provided by law.

33 **SECTION 4.(j)** Ballot Order. – For the 2018 general election, the State Board of
34 Elections and Ethics Enforcement shall place elections for the offices elected as provided in
35 this section with other partisan offices, as provided in G.S. 163-165.6(b)(3). Order of
36 candidates for those offices shall be determined as provided in G.S. 163-165.6(c).

37 **SECTION 4.(k)** Determination of Election Winners. – A general election for all
38 candidates seeking office as provided in this section shall be held on November 6, 2018. In the
39 general election, the candidate for a single office receiving the highest number of votes shall be
40 elected. Those candidates for a group of offices receiving the highest number of votes, equal in
41 number to the number of positions to be filled, shall be elected. If two candidates receiving the
42 highest number of votes each received the same number of votes, the State Board of Elections
43 and Ethics Enforcement shall determine the winner by lot.

44 **SECTION 5.** This act becomes effective January 1, 2018, and applies to all
45 primaries and elections held on or after that date.