

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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HOUSE BILL 32  
Committee Substitute Favorable 6/3/11

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

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



1 **"§ 163-98. ~~General election participation~~ Participation by new political party~~certain~~**  
2 **political parties.**

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

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

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

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

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

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

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

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

48 **"§ 163-111.1. Determination of primary results for political parties.**

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

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

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

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

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

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

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

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

20 **"§ 163-122. Unaffiliated candidates nominated by petition.**

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

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

46 (2) ~~If the office is a district office under the jurisdiction of the State Board of~~  
47 ~~Elections under G.S. 163-182.4(b), file written petitions with the State Board~~  
48 ~~of Elections supporting that voter's candidacy for a specified office. These~~  
49 ~~petitions must be filed with the State Board of Elections on or before 12:00~~  
50 ~~noon on the last Friday in June preceding the general election and must be~~  
51 ~~signed by qualified voters of the district equal in number to four percent~~

1                   ~~(4%) of the total number of registered voters in the district as reflected by~~  
2                   ~~the voter registration records of the State Board of Elections as of January 1~~  
3                   ~~of the year in which the general election is to be held. Each petition shall be~~  
4                   ~~presented to the chairman of the board of elections of the county in which~~  
5                   ~~the signatures were obtained. The chairman shall examine the names on the~~  
6                   ~~petition and the procedure for certification and deadline for submission to~~  
7                   ~~the county board shall be the same as specified in (1) above.~~

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

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

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

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

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

42                   ~~(1) File written petitions with the State Board of Elections supporting the voter's~~  
43                   ~~candidacy for any statewide or district office comprised of more than one~~  
44                   ~~county. These petitions must be filed with the State Board of Elections on or~~  
45                   ~~before 12:00 noon on the last Friday in June preceding the general election.~~  
46                   ~~No later than 5:00 P.M. on the fifteenth day preceding the date the petitions~~  
47                   ~~are due to be filed with the State Board of Elections, each petition shall be~~  
48                   ~~presented to the chairman of the board of elections of the county in which~~  
49                   ~~the signatures were obtained. Provided the petitions are timely submitted, the~~  
50                   ~~chairman shall examine the names on the petition and place a check mark on~~  
51                   ~~the petition by the name of each signer who is qualified and registered to~~

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

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

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

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

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

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

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

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

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

47 (d) When any person files a petition with a board of elections under this section, the  
48 board of elections shall, immediately upon receipt of the petition, inspect the registration  
49 records of the county and cancel the petition of any person who does not meet the constitutional  
50 or statutory qualifications for the office, including residency.

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

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

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

13 **"§ 163-296. Nomination by petition.**

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

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