

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 225*

Short Title: Electoral Freedom Act of 2011. (Public)

Sponsors: Senators Brock and Kinnaird.

Referred to: Rules and Operations of the Senate.

March 7, 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; TO REDUCE THE NUMBER OF SIGNATURES REQUIRED FOR UNAFFILIATED CANDIDATES TO OBTAIN BALLOT ACCESS ELIGIBILITY; AND TO ELIMINATE THE NEED FOR PETITIONS FOR WRITE-IN CANDIDACY.

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:

- (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, or for presidential electors, at least two percent (2%) of the entire vote cast in the State for Governor or for presidential electors; 10,000 votes; or
- (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 at least 10,000 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. 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~~ third Friday in July 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 of the proposed new political party."

SECTION 2. G.S. 163-122(a) is repealed.

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

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



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

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

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

26 (c) If a political party has elected under subsection (b) of this section to be exempt from
27 Article 10 of this Chapter, as provided by subsection (b) of this section, it shall select its
28 candidates by party convention. Following adjournment of the nominating convention, but not
29 later than the first day of July prior to the general election, the presiding officer of the
30 convention shall certify to the State Board of Elections the names of persons chosen in the
31 convention as the new party's candidates in the ensuing general election. Any candidate
32 nominated shall be affiliated with the party at the time of certification to the State Board of
33 Elections. The requirement of affiliation with the party will be met if the candidate submits at
34 or before the time of certification as a candidate an application to change party affiliation to
35 that party. The State Board of Elections shall print names thus certified on the appropriate
36 ballots as the nominees of the party. The State Board of Elections shall send to each county
37 board of elections the list of any party candidates so that the county board can add those names
38 to the 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 4.** G.S. 163-111 is amended by adding a new subsection to read:

43 "(g) No Second Primaries for Certain Political Parties Covered by This Article. – This
44 section does not apply to political parties with less than ten percent (10%) of the registered
45 voters in the State."

46 **SECTION 5.** 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 as defined by G.S. 163-98(b) that, as of
50 January 1 of the year that the primary election is to be held, have less than ten percent (10%) of

1 the registered voters in the State and to parties with a greater number of registered voters who
2 have elected to be covered by this section under G.S. 163-111(g).

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

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

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

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

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

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

21 **SECTION 6.** G.S. 163-122 is amended by adding a new subsection to read:

22 "(a1) When and Where to File. – Any qualified voter who seeks to have his name printed
23 on the general election ballot as an unaffiliated candidate shall:

24 (1) File written petitions with the State Board of Elections supporting the voter's
25 candidacy for any statewide or district office comprised of more than one
26 county. These petitions must be filed with the State Board of Elections on or
27 before 12:00 noon on the third Friday in July preceding the general election.
28 No later than 5:00 P.M. on the fifteenth day preceding the date the petitions
29 are due to be filed with the State Board of Elections, each petition shall be
30 presented to the chairman of the board of elections of the county in which
31 the signatures were obtained. Provided the petitions are timely submitted, the
32 chairman shall examine the names on the petition and place a check mark on
33 the petition by the name of each signer who is qualified and registered to
34 vote in the signer's county and shall attach to the petition a signed certificate.
35 Said certificates shall state that the signatures on the petition have been
36 checked against the registration records and shall indicate the number of
37 signers to be qualified and registered to vote in the signer's county. The
38 chairman shall return each petition, together with the certificate required in
39 this section, to the person who presented it for checking. Verification by the
40 chairman of the county board of elections shall be completed within two
41 weeks from the date such petitions are presented.

42 (2) File written petitions with the appropriate county board of elections
43 supporting the voter's candidacy for any district office containing one or less
44 than one county, county office, partisan municipal office, or any other office
45 comprised of one or less than one county. These petitions must be filed
46 with the county board of elections on or before 12:00 noon on the third
47 Friday in July preceding the general election. Provided the petitions are
48 timely submitted, the chairman shall examine, or cause to be examined, the
49 names on the petition, and the procedure for certification shall be the same
50 as specified in subdivision (1) above."

51 **SECTION 7.** G.S. 163-122 is amended by adding a new subsection to read:

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

4 (1) 10,000 signatures, with at least 200 signatures from three congressional
5 districts: President of the United States as provided in G.S. 163-209, United
6 States Senator, Governor, Lieutenant Governor, Secretary of State, Auditor,
7 Treasurer, Superintendent of Public Instruction, Attorney General,
8 Commissioner of Agriculture, Commissioner of Labor, Commissioner of
9 Insurance, and any other statewide office.

10 (2) 1,000 signatures: United States House of Representatives.

11 (3) 300 signatures: North Carolina State Senate.

12 (4) 150 signatures: North Carolina House of Representatives, any county office
13 where there are more than 25,000 registered voters within the county as of
14 the first day of January before the general election, and any partisan
15 municipal office where there are more than 25,000 registered voters within
16 the municipality as of the first day of January before the municipal election.

17 (5) 50 signatures: Any county office where there are 25,000 or fewer registered
18 voters within the county as of the first day of January before the general
19 election, any partisan municipal office where there are 25,000 or fewer
20 registered voters within the municipality as of the first day of January before
21 the municipal election, and any other partisan office not specified in
22 subdivision (1), (2), (3), or (4) of this subsection as of the first day of
23 January before the general election."

24 **SECTION 8.** G.S. 163-122 is amended by adding a new subsection to read:

25 "(a3) Unaffiliated Candidates to Be Printed on the General Election Ballot and Primary
26 Election Losing Candidates Provision. – Upon compliance with the provisions of
27 G.S. 163-122(a1) and (a2), the board of elections with which the petitions have been timely
28 filed shall cause the unaffiliated candidate's name to be printed on the general election ballots
29 in accordance with Article 14A of this Chapter.

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

33 **SECTION 9.** G.S. 163-296 reads as rewritten:

34 **"§ 163-296. Nomination by petition.**

35 In cities conducting partisan elections, any qualified voter who seeks to have his name
36 printed on the regular municipal election ballot as an unaffiliated candidate ~~may~~ shall do so in
37 the manner provided in G.S. 163-122, ~~except that the petitions and affidavits shall be filed not~~
38 ~~later than 12:00 noon on the Friday preceding the seventh Saturday before the election, and the~~
39 ~~petitions shall be signed by a number of qualified voters of the municipality equal to at least~~
40 ~~four percent (4%) of the whole number of voters qualified to vote in the municipal election~~
41 ~~according to the voter registration records of the State Board of Elections as of January 1 of the~~
42 ~~year in which the general municipal election is held. G.S. 163-122. A~~ As provided in
43 G.S. 163-122(a3), a person whose name appeared on the ballot in a primary election is not
44 eligible to have his name placed on the regular municipal election ballot as an unaffiliated
45 candidate for the same office in that year. The Board of Elections shall examine and verify the
46 signatures on the petition, and shall certify only the names of signers who are found to be
47 qualified registered voters in the municipality. Provided that in the case where a qualified voter
48 seeks to have his name printed on the regular municipal election ballot as an unaffiliated
49 candidate for election from an election district within the municipality, the petition shall be
50 signed by four percent (4%) of the voters qualified to vote for that office."

51 **SECTION 10.** G.S. 163-123 reads as rewritten:

1 "§ 163-123. Declaration of intent ~~and petitions~~ for write-in candidates in partisan
2 elections.

3 (a) Procedure for Qualifying as a Write-In Candidate. – Any qualified voter who seeks
4 to have write-in votes for him counted in a general election shall file a declaration of intent in
5 accordance with subsection (b) ~~of this section and petition(s) in accordance with subsection (c)~~
6 of this section.

7 (b) Declaration of Intent. – The applicant for write-in candidacy shall file ~~his~~ a
8 declaration of intent ~~at the same time and with the same board of elections as his petition~~, as set
9 out in subsection (c) of this section. The declaration shall contain:

- 10 (1) Applicant's name,
- 11 (2) Applicant's residential address,
- 12 (3) Declaration of applicant's intent to be a write-in candidate,
- 13 (4) Title of the office sought,
- 14 (5) Date of the election,
- 15 (6) Date of the declaration,
- 16 (7) Applicant's signature.

17 (c) ~~Petitions for Write-In Candidacy.~~ Filing of Declaration of Intent. – An applicant for
18 write-in candidacy shall:

19 (1) If the office is a statewide office, file ~~written petitions~~ a declaration of intent
20 with the State Board of Elections supporting his candidacy for a specified
21 office. ~~These petitions~~ The declaration of intent shall be filed on or before
22 noon on the 90th day before the general election. ~~They shall be signed by~~
23 ~~500 qualified voters of the State. No later than 5:00 p.m. on the fifteenth day~~
24 ~~preceding the date the petitions are due to be filed with the State Board of~~
25 ~~Elections, each petition shall be presented to the board of elections of the~~
26 ~~county in which the signatures were obtained. A petition presented to a~~
27 ~~county board of elections shall contain only names of voters registered in~~
28 ~~that county. Provided the petitions are timely submitted, the chairman of the~~
29 ~~county board of elections shall examine the names on the petition and place~~
30 ~~a check mark by the name of each signer who is qualified and registered to~~
31 ~~vote in his county. The chairman of the county board shall attach to the~~
32 ~~petition his signed certificate. On his certificate the chairman shall state that~~
33 ~~the signatures on the petition have been checked against the registration~~
34 ~~records and shall indicate the number of signers who are qualified and~~
35 ~~registered to vote in his county and eligible to vote for that office. The~~
36 ~~chairman shall return each petition, together with the certificate required in~~
37 ~~this section, to the person who presented it to him for checking. The~~
38 ~~chairman of the county board shall complete the verification within two~~
39 ~~weeks from the date the petition is presented.~~

40 (2) If the office is a district office under the jurisdiction of the State Board of
41 Elections under G.S. 163-182.4(b), file ~~written petitions~~ a declaration of
42 intent with the State Board of Elections supporting that applicant's candidacy
43 for a specified office. ~~These petitions~~ The declaration of intent must be filed
44 with the State Board of Elections on or before noon on the 90th day before
45 the general ~~election.~~ election and must be signed by ~~250 qualified voters.~~
46 ~~Before being filed with the State Board of Elections, each petition shall be~~
47 ~~presented to the board of elections of the county in which the signatures~~
48 ~~were obtained. A petition presented to a county board of elections shall~~
49 ~~contain only names of voters registered in that county who are eligible to~~
50 ~~vote for that office. The chairman of the county board shall examine the~~

1 names on the petition and the procedure for certification shall be the same as
2 specified in subdivision (1).

- 3 (3) If the office is a county office, or is a school administrative unit office
4 elected on a partisan basis, or is a legislative district consisting of a single
5 county or a portion of a county, file ~~written petitions~~ a declaration of intent
6 with the county board of elections supporting his candidacy for a specified
7 office. ~~A petition presented to a county board of elections shall contain only~~
8 ~~names of voters registered in that county. These petitions~~ The declaration of
9 intent must be filed on or before noon on the 90th day before the general
10 election. ~~election and must be signed by 100 qualified voters who are eligible~~
11 ~~to vote for the office, unless fewer than 5,000 persons are eligible to vote for~~
12 ~~the office as shown by the most recent records of the appropriate board of~~
13 ~~elections. If fewer than 5,000 persons are eligible to vote for the office, an~~
14 ~~applicant's petition must be signed by not less than one percent (1%) of those~~
15 ~~registered voters. Before being filed with the county board of elections, each~~
16 ~~petition shall be presented to the county board of elections for examination.~~
17 ~~The chairman of the county board of elections shall examine the names on~~
18 ~~the petition and the procedure for certification shall be the same as specified~~
19 ~~in subdivision (1).~~

20 (d) ~~Form of Petition.~~ ~~Petitions requesting the qualification of a write-in candidate in a~~
21 ~~general election shall contain on the heading of each page of the petition in bold print or in~~
22 ~~capital letters the words: "THE UNDERSIGNED REGISTERED VOTERS IN _____~~
23 ~~COUNTY HEREBY PETITION ON BEHALF OF _____ AS A WRITE IN~~
24 ~~CANDIDATE IN THE NEXT GENERAL ELECTION. THE UNDERSIGNED HEREBY~~
25 ~~PETITION THAT SUBJECT CANDIDATE BE PLACED ON THE LIST OF QUALIFIED~~
26 ~~WRITE-IN CANDIDATES WHOSE VOTES ARE TO BE COUNTED AND RECORDED IN~~
27 ~~ACCORDANCE WITH G.S. 163-123."~~

28 (e) ~~Defeated Primary Candidate.~~ – No person whose name appeared on the ballot in a
29 primary election preliminary to the general election shall be eligible to have votes counted for
30 him as a write-in candidate for the same office in that year.

31 (f) ~~Counting and Recording of Votes.~~ – If a qualified voter has complied with the
32 provisions of subsections (a), (b) ~~and (c)~~ (a) and (b) of this section and is not excluded by
33 subsection (e), the board of elections ~~with which petition has been filed~~ conducting the election
34 shall count votes for ~~him~~ that voter according to the procedures set out in G.S. 163-182.1, and
35 the appropriate board of elections shall record those votes on the official abstract. Write-in
36 votes for names other than those of qualified write-in candidates shall not be counted for any
37 purpose and shall not be recorded on the abstract.

38 (f1) When any person files a ~~petition~~ declaration of intent with a board of elections
39 under this section, the board of elections shall, immediately upon receipt of the ~~petition,~~
40 declaration of intent, inspect the registration records of the county and cancel the ~~petition~~
41 declaration of intent of any person who does not meet the constitutional or statutory
42 qualifications for the office, including residency.

43 The board shall give notice of cancellation to any person whose ~~petition~~ declaration of
44 intent has been cancelled under this subsection by mail or by having the notice served on that
45 person by the sheriff. A person whose ~~petition~~ declaration of intent has been cancelled or
46 another candidate for the same office affected by a substantiation under this subsection may
47 request a hearing on the issue of constitutional or statutory qualifications for the office. If the
48 person requests a hearing, the hearing shall be conducted in accordance with Article 11B of
49 Chapter 163 of the General Statutes.

1 (g) Municipal and Nonpartisan Elections Excluded. – This section does not apply to
2 municipal elections conducted under Subchapter IX of Chapter 163 of the General Statutes, and
3 does not apply to nonpartisan elections except for elections under Article 25 of this Chapter."

4 **SECTION 11.** This act is effective with respect to all primaries and elections held
5 on or after the date this act becomes law, except that it shall apply to partisan municipal
6 elections held in 2011 only if it has received preclearance under Section 5 of the Voting Rights
7 Act of 1965 prior to July 1, 2011.