

NOMINATION OF CANDIDATES

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by announcing that intention under G.S. 163–166.7(a). For a party to withdraw its permission, it must do so by action of its State Executive Committee, similarly reported to the State Board of Elections no later than the first day of December preceding the primary where the withdrawal is to become effective.

Added by Laws 1993 (Reg. Sess., 1994), c. 762, § 7, eff. Jan. 1, 1995. Amended by S.L. 2002–159, § 21(a), eff. Oct. 11, 2002.

Historical and Statutory Notes

Laws 1993, c. 762, § 73, provides:
“Sections 1 through 68 of this act become effective January 1, 1995, and apply to all primaries and elections occurring on or after that date. The remainder of this act is effective upon ratification and shall apply to all primaries and elections occurring on or after the date of ratification. Prosecutions for, or sentences based on, offenses occurring before the effective date of any section of this act are not abated or affected by this act and the statutes that

would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.” [Amended by Laws 1995, c. 507, § 25.10(c), eff. July 1, 1995; Laws 1995, c. 608, § 1, eff. July 1, 1996.]

2002 Legislation

S.L. 2002–159, § 21(a), eff. Oct. 11, 2002, in the first sentence, substituted “G.S. 163–166.7(a).” for “G.S. 163–150(a).”

Cross References

Absentee voting in primary, see § 163–226.1.

Voting in presidential preference primary, ballots, persons registered as Unaffiliated, see § 163–213.7.

Notes of Decisions

Validity 1

1. Validity

North Carolina statute permitting political party to allow unaffiliated voters

to participate in its primary election was not an unconstitutional abridgment of candidate’s First Amendment right of free association. *Hole v. North Carolina Bd. of Elections*, 2000, 112 F.Supp.2d 475. Constitutional Law ¶ 1468; Elections ¶ 24

§§ 163–120, 163–121. Reserved

Article 11

Nomination by Petition

Section

163–122. Unaffiliated candidates nominated by petition.

163–123. Declaration of intent and petitions for write-in candidates in partisan elections.

163–124. Reserved.

§ 163–122. Unaffiliated candidates nominated by petition

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

- (1) If the office is a statewide office, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the State equal in number to two percent (2%) 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 congressional districts in North Carolina. No later than 5:00 p.m. on the fifteenth day preceding the date the petitions are due to be filed with the State Board of Elections, each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained. Provided the petitions are timely submitted, the chairman shall examine the names on the petition and place a check mark on the petition by the name of each signer who is qualified and registered to vote in his county and shall attach to the petition his signed certificate. Said certificates shall state that the signatures on the petition have been checked against the registration records and shall indicate the number of signers to be qualified and registered to vote in his county. The chairman shall return each petition, together with the certificate required in this section, to the person who presented it to him for checking. Verification by the chairman of the county board of elections shall be completed within two weeks from the date such petitions are presented.
- (2) If the office is a district office under the jurisdiction of the State Board of Elections under G. S. 163–182.4(b), file written petitions with the State Board of Elections supporting that voter's candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the district equal in number to four percent (4%) of the total number of registered voters in the district as reflected by the voter registration records of the State Board of Elections as of January 1 of the year in which the general election is to be held. Each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained. The chairman shall examine the names on the petition and the procedure for certification and deadline for submission to the county board shall be the same as specified in (1) above.

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- (3) If the office is a county office or a single county legislative district, file written petitions with the chairman or director of the county board of elections supporting his candidacy for a specified county office. These petitions must be filed with the county board of elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the county equal in number to four percent (4%) of the total number of registered voters in the county as reflected by the voter registration records of the State Board of Elections as of January 1 of the year in which the general election is to be held, except if the office is for a district consisting of less than the entire county and only the voters in that district vote for that office, the petitions must be signed by qualified voters of the district equal in number to four percent (4%) of the total number of voters in the district according to the voter registration records of the State Board of Elections as of January 1 of the year in which the general election is to be held. Each petition shall be presented to the chairman or director of the county board of elections. The chairman shall examine, or cause to be examined, the names on the petition and the procedure for certification shall be the same as specified in (1) above.
- (4) If the office is a partisan municipal office, file written petitions with the chairman or director of the county board of elections in the county wherein the municipality is located supporting his candidacy for a specified municipal office. These petitions must be filed with the county board of elections on or before the time and date specified in G.S. 163-296 and must be signed by the number of qualified voters specified in G.S. 163-296. The procedure for certification shall be the same as specified in (1) above.

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

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

(b) Form of Petition. — Petitions requesting an unaffiliated candidate to be placed on the general election ballot shall contain on the heading of each page of the petition in bold print or in all capital letters the words: "THE UNDERSIGNED REGISTERED VOTERS IN _____ COUNTY HEREBY PETITION ON BEHALF OF _____ AS AN UNAFFILIATED CANDI-

DATE FOR THE OFFICE OF _____ IN THE NEXT GENERAL ELECTION. THE UNDERSIGNED HEREBY PETITION THAT SUBJECT CANDIDATE BE PLACED ON THE APPROPRIATE BALLOT UPON COMPLIANCE WITH THE PROVISIONS CONTAINED IN G.S. 163–122.”

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

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

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

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

Added by Laws 1967, c. 775, § 1. Amended by Laws 1973, c. 793, § 50; Laws 1977, c. 408, § 3; Laws 1979, c. 23, § 1; Laws 1979, c. 23, § 3; Laws 1979, c. 534, § 2; Laws 1981, c. 637; Laws 1991, c. 297, § 1; Laws 1995, c. 243, § 1, eff. Jan. 1, 1996; Laws 1996 (2nd Ex. Sess.), c. 9, § 14; S.L. 1999–424, § 5(b), eff. Aug. 5, 1999; S.L. 2002–159, § 21(b), eff. Oct. 11, 2002; S.L. 2004–127, § 8(a), eff. July 26, 2004; S.L. 2006–155, § 3, eff. Jan. 1, 2007; S.L. 2006–234, §§ 4, 5, eff. Jan. 1, 2007; S.L. 2007–391, § 8(a), eff. Aug. 19, 2007; S.L. 2007–484, § 21, eff. Aug. 30, 2007.

Historical and Statutory Notes

Laws 1995, c. 243, § 1, provides:
 “Wherever the term ‘supervisor’ appears in the General Statutes of North Carolina or in any local act in reference to the county supervisor of elections as provided in G.S. 163–35, the term is changed to read ‘director.’”

Laws 1996, 2 Ex. Sess., c. 9, § 24, provides, in part, that part 2 of this act “becomes effective with respect to elections conducted in 1998 and thereafter”.

2002 Legislation

S.L. 2002–21 (Ex. Sess.), §§ 1(a) to 2, eff. July 16, 2002, provide:

“Section 1.(a) Notwithstanding G.S. 163–1(b), the date of the primary election in 2002 shall be September 10, 2002.

“Section 1.(b) In order to accommodate the scheduling of the 2002 primary on September 10, 2002, and in order to comply with the requirements of Section 5 of the Voting Rights Act of 1965

and any court orders, and in order to comply with any objections interposed under Section 5, the State Board of Elections may issue temporary orders that may change, modify, delete, amend, or add to any statute contained in Chapter 163 of the General Statutes, any rules contained in Title 8 of the North Carolina Administrative Code, or any other election regulation or guideline that may affect the 2002 primaries and general elections. These temporary orders are only effective for the 2002 primary and 2002 general election. These orders shall include a primary election schedule.

“Section 1.(c) Notwithstanding G.S. 163-111 or any local act, in 2002 only, the result of the primary shall be determined by a plurality and no second primary shall be held. Any runoff election for local office that might by local act have been held on the date of the second primary shall instead be held on the date of the general election. If there is a tie in a primary in 2002, the result shall be determined in accordance with G.S. 163-111(f) under the same rule as if there had been a tie in a second primary.

“Section 1.(d) The authority to adopt orders also extends to any elections originally scheduled to be held on May 7, 2002, any elections ordered by the State Board of Elections to be held on the date of a county primary that were originally scheduled to be held on May 7, 2002, or any elections to be held on the date of the second primary. If any municipality had its election scheduled under G.S. 160A-23.1(d)(2) to be on the date of the second primary in 2002, the election shall instead be held on the date of the general election in 2002.

“Section 1.(e) The orders shall provide for candidate filing for member of the State Senate and State House of Representatives to open as soon as practicable.

“Section 1.(f) The State Board of Elections may set a period of time for unaffiliated candidates who wish to obtain ballot access by petition, under the provisions of G.S. 163-122, for legislative races in districts used in new legislative filings, to obtain and submit signed petitions for such purpose. Any unaffiliated candidate for a legislative seat, in a district used under a previously approved legislative redistricting plan, who had submitted a petition in a timely manner under the provisions of G.S. 163-122, shall have the right under

any State Board plan to have any valid voter signatures contained in the previously approved petition, that meet the residency requirements of the new district, to be considered a part of any new petition to obtain ballot access for a legislative seat in that new district.

“Section 1.(g) The authority granted by this section shall be exercised only when needed to ensure the orderly and timely operations of the electoral process, the public good, and any valid interest of voters, candidates, and officeholders in order to accommodate the compressed schedule necessitated by holding the primary elections at such a late date. All orders of the State Board issued under this section shall be presumed to be reasonable and to serve the public interest.

“Section 1.(h) Orders issued under this section are not rules subject to the provisions of Chapter 150B of the General Statutes. Orders issued under this section shall, however, be published in the North Carolina Register as quickly as possible.

“Section 1.(i) The times to publish notice of a bond referendum required by G.S. 159-61(c) shall not apply to any bond referendum held on the date of the 2002 statewide primary. The local government unit holding the bond referendum on that date shall comply with the times to publish notice of the election prescribed by the State Board of Elections pursuant to this section.

“Section 1.(j) The provisions of G.S. 159-61(b) that provide that a bond referendum may not be held within 30 days before or 10 days after a statewide primary, election, or referendum shall not apply to any bond referendum previously called to be conducted on a date that is within 30 days before or 10 days after the date selected as the date for the 2002 statewide primary.

“Section 1.(k) As used in this section, “order” also includes guidelines and directives.

“Section 1.(l) Any orders issued under this section become void 10 days after the final certification of all elections that were originally scheduled to be held in 2002.

“This section expires 10 days after the final certification of all elections that were originally scheduled to be held in 2002.

“Section 1.1. Notwithstanding G.S. 163-106(h), any person who filed a notice of candidacy under G.S. 163-106(c)

during the filing period in 2002 for an office other than member of the State Senate or member of the State House of Representatives and did not withdraw that notice of candidacy before the filing deadline may not file a notice of candidacy as a member of the State Senate or member of the State House of Representatives unless either of the following applies:

“(1) If that person was declared the nominee of the party under G.S. 163–110, that person resigns the nomination (in which case the vacancy in nomination shall be filled in accordance with G.S. 163–114).

“(2) If that person is in a contested primary, that person withdraws the notice of candidacy. That notice of candidacy may be withdrawn notwithstanding the requirements of G.S. 163–106(e) that it be withdrawn prior to the filing deadline for that office. In the case of any such withdrawal, the appropriate board of election shall reopen filing for three days under the usual procedures of G.S. 163–112 notwithstanding the time of and reason for the withdrawal.

“Section 2. If any members of any county board of education are elected at the primary election and take office under a local act in July after the primary, in 2002 only, they shall instead take office on the same day in December after the primary, and the terms of any such member which would otherwise expire in July of 2002 are extended accordingly.”

S.L. 2002–159, § 21(b), eff. Oct. 11, 2002, in subsec. (b), inserted “FOR THE OFFICE OF _____”.

2004 Legislation

S.L. 2004–127, § 8(a), eff. July 26, 2004, in subsec. (a), rewrote subs. (1) to (3), which prior thereto read:

“(1) If the office is a statewide office, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the State equal in number to two percent (2%) of the total number of registered voters in the State as reflected by the most recent statistical report issued by the State Board of Elections. No later than 5:00 p.m. on the fifteenth day preceding the date the petitions are due to be filed with the State Board of Elections, each

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

“(2) If the office is a district office comprised of two or more counties, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the district equal in number to four percent (4%) of the total number of registered voters in the district as reflected by the latest statistical report issued by the State Board of Elections. Each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained. The chairman shall examine the names on the petition and the procedure for certification and deadline for submission to the county board shall be the same as specified in (1) above.

“(3) If the office is a county office or a single county legislative district, file written petitions with the chairman or director of the county board of elections supporting his candidacy for a specified county office. These petitions must be filed with the county board of elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the county equal in number to four percent (4%) of the total number of registered voters in the county as reflected by the most recent statistical report issued by the State Board of Elections, except if the office is for a district consisting of less than the entire county

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and only the voters in that district vote for that office, the petitions must be signed by qualified voters of the district equal in number to four percent (4%) of the total number of voters in the district according to the most recent figures certified by the State Board of Elections. Each petition shall be presented to the chairman or director of the county board of elections. The chairman shall examine, or cause to be examined, the names on the petition and the procedure for certification shall be the same as specified in (1) above.”

2006 Legislation

S.L. 2006–155, § 3, eff. Jan. 1, 2007, added subsec. (d).

S.L. 2006–155, §§ 7 and 8, provide:

“Section. 7. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

“Section 8. This act becomes effective January 1, 2007, and applies to actions filed on or after that date.”

S.L. 2006–234, § 4, eff. Jan. 1, 2007, amended subd. (a)(1) by substituting “votes 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

congressional districts in North Carolina” for “registered votes in the State as reflected by the voter registration records of the State Board of Elections as of January 1 of the year in which the general election is to be held”.

S.L. 2006–234, § 5, eff. Jan. 1, 2007, added subsec. (d). This subsec. was renumbered as (e) pursuant to the direction of the Revisor of Statutes.

S.L. 2006–234, § 7, provides:

“This act becomes effective January 1, 2007, and applies to all primaries and elections held on or after that date.”

2007 Legislation

S.L. 2007–391, § 8(a), in subd. (a)(2), in the first sentence substituted “under the jurisdiction of the State Board of Elections under G. S. 163–182.4(b)” for “comprised of two or more counties” and “the voter’s” for “his”.

S.L. 2007–484, § 21, in subsec. (a), in the first undesignated paragraph, substituted “Article 14A of this Chapter” for “G.S. 163–140”.

Local Modifications

Avery County: S.L. 1997–99.

Anson County Board of Commissioners: Laws 1991 (Reg. Sess., 1992), c. 781, § 6.

Cross References

Confidentiality of date of birth, see § 163–82.10B.

Contents of official ballots, see § 163–165.5.

Statement of economic interests, filing required, see § 138A–22.

Time of regular elections and primaries, § 163–1.

Unaffiliated and new-party candidates, eligibility for revenues from Voter-Owned Elections Fund, see § 163–278.99C.

Notes of Decisions

Actions 3

Construction and application 2

Validity 1

1. Validity

North Carolina statute was void for vagueness, in violation of First Amendment, when it required candidate for governor not affiliated with political party to obtain signatures equal in number to two percent of registered voters, “as reflected by the most recent statistical report issued by the State Board of Elections;” report could be one or more “close of books” reports prepared

at time polls were closed for primary or general elections, or current voter registration, updated electronically and available on website. *Delaney v. Bartlett*, 2004, 370 F.Supp.2d 373. Constitutional Law ⇌ 1467; Elections ⇌ 21

First and Fourteenth Amendment rights of unaffiliated candidate for governor, and his supporters, were violated by North Carolina statute requiring candidate to obtain signatures of two percent of registered voters, when candidates representing new political parties were required to obtain signatures equal to two percent of number of voters for governor in most recent election, representing approximately 32,000 few-

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er signatures. *Delaney v. Bartlett*, 2004, 370 F.Supp.2d 373. Constitutional Law ⇨ 1467; Elections ⇨ 21

North Carolina statute requiring unaffiliated candidate for county commissioner to file petition signed by ten percent of registered voters in county infringes on candidate's rights to associate for advancement of political beliefs and to cast votes effectively, violates state and federal equal protection clauses, and violates state constitutional right to free elections. *Obie v. North Carolina State Bd. of Elections*, 1991, 762 F.Supp. 119. Constitutional Law ⇨ 1464; Constitutional Law ⇨ 3644; Counties ⇨ 41

That portion of state election statute which required an independent candidate for President to file written petition signed by qualified voters equal in number of ten percent of those who voted for Governor in the last gubernatorial election was an unconstitutional infringement upon plaintiffs' rights to associate for the advancement of political beliefs, to cast their votes effectively, and to enjoy equal protection under law, in that in 1980 statute required independent candidates to produce over 166,000 signatures, while group of voters seeking a place on the ballot as a new party and candidate desiring to run in Presidential primary had to submit petitions signed by only 10,000 voters, and state asserted no rational basis, much less any compelling interest, for such disparate treatment. *Greaves v. State Bd. of Elections of North Carolina*, 1980, 508 F.Supp. 78. Constitutional Law ⇨ 1464; Constitutional Law ⇨ 3644; Elections ⇨ 21

Filing deadline contained in state election law, under which independent candidate's petitions had to be submitted to State Board of Elections by the last Friday in April before the general election, did not serve a compelling state interest and was an unconstitutional restriction on plaintiffs' rights to associate for advancement of political beliefs, to cast their votes effectively, and to enjoy equal protection under law, in that early filing deadline was not necessary to preserve integrity of either

direct party primary or general election ballot, and no interest was asserted, compelling or otherwise, which justified disparity in treatment of independent and party candidates. *Greaves v. State Bd. of Elections of North Carolina*, 1980, 508 F.Supp. 78. Constitutional Law ⇨ 1464; Constitutional Law ⇨ 3644; Elections ⇨ 21

2. Construction and application

Under North Carolina law, three ways exist for candidate to secure spot on general election ballot for any federal, state, county, or municipal office; candidate may secure spot by becoming nominee of major political party selected by primary election, by becoming nominee of "new" political party selected at that party's state convention, or by being nominated by petition as unaffiliated candidate. *McLaughlin v. North Carolina Bd. of Elections*, 1995, 65 F.3d 1215, certiorari denied 116 S.Ct. 1320, 517 U.S. 1104, 134 L.Ed.2d 472. Elections ⇨ 126(1); Elections ⇨ 128; Elections ⇨ 141

3. Actions

Independent candidate for President had standing to challenge state filing deadline where his petition was submitted before the filing deadline but with less than the statutorily required number of signatures, in that the deadline curtailed candidate's ability to collect the required number of signatures, and the injury to candidate was not necessarily cured by district court's declaration that the statutory requirement for signatures was unconstitutional. *Greaves v. State Bd. of Elections of North Carolina*, 1980, 508 F.Supp. 78. Constitutional Law ⇨ 703

Alternative means of access to the general election ballot, by means of running as an independent or third-party candidate or conducting a write-in campaign to obtain nomination, did not vitiate constitutional challenge to North Carolina statute which restricted access to primary election ballot by requiring payment of filing fee. *Brown v. North Carolina State Bd. of Elections*, 1975, 394 F.Supp. 359. Elections ⇨ 21

§ 163–123. Declaration of intent and petitions for write-in candidates in partisan elections

(a) Procedure for Qualifying as a Write-In Candidate.—Any qualified voter who seeks to have write-in votes for him counted in a general election shall file a declaration of intent in accordance

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with subsection (b) of this section and petition(s) in accordance with subsection (c) of this section.

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

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

(c) Petitions for Write-in Candidacy.—An applicant for write-in candidacy shall:

- (1) If the office is a statewide office, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions shall be filed on or before noon on the 90th day before the general election. They shall be signed by 500 qualified voters of the State. No later than 5:00 p.m. on the fifteenth day preceding the date the petitions are due to be filed with the State Board of Elections, each petition shall be presented to the board of elections of the county in which the signatures were obtained. A petition presented to a county board of elections shall contain only names of voters registered in that county. Provided the petitions are timely submitted, the chairman of the county board of elections shall examine the names on the petition and place a check mark by the name of each signer who is qualified and registered to vote in his county. The chairman of the county board shall attach to the petition his signed certificate. On his certificate the chairman shall state that the signatures on the petition have been checked against the registration records and shall indicate the number of signers who are qualified and registered to vote in his county and eligible to vote for that office. The chairman shall return each petition, together with the certificate required in this section, to the person who presented it to him for checking. The chairman of the county board shall complete the verification within two weeks from the date the petition is presented.
- (2) If the office is a district office under the jurisdiction of the State Board of Elections under G.S. 163-182.4(b), file written petitions with the State Board of Elections supporting that applicant's candidacy for a specified office.

These petitions must be filed with the State Board of Elections on or before noon on the 90th day before the general election and must be signed by 250 qualified voters. Before being filed with the State Board of Elections, each petition shall be presented to the board of elections of the county in which the signatures were obtained. A petition presented to a county board of elections shall contain only names of voters registered in that county who are eligible to vote for that office. The chairman of the county board shall examine the names on the petition and the procedure for certification shall be the same as specified in subdivision (1).

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

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

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

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

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

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

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

Added by Laws 1959, c. 1203, § 6. Amended by Laws 1987, c. 393, § 1; S.L. 1999–424, § 5(b), eff. Aug. 5, 1999; S.L. 2001–319, § 9(a), eff. July 28, 2001; S.L. 2001–398, § 7, eff. Jan. 1, 2002; S.L. 2001–403, § 12, eff. Jan. 1, 2002; S.L. 2002–158, § 13, eff. Jan. 1, 2004; S.L. 2004–127, § 7, eff. July 26, 2004; S.L. 2006–155, § 4, eff. Jan. 1, 2007; S.L. 2007–391, § 8(b), eff. Aug. 19, 2007.

Historical and Statutory Notes

2001 Legislation

S.L. 2001–319, § 9(a), eff. July 28, 2001, in subsec. (g), inserted “elections except for superior court judge elections under Article 25 of this Chapter.”

S.L. 2001–398, § 7, eff. Jan. 1, 2002, in the first sentence of subsec. (f), substituted “163–182.1” for “163–170(5)”.

S.L. 2001–403, § 12, eff. Jan. 1, 2002, in subsec. (g), inserted “and district court judge”.

2002 Legislation

S.L. 2002–158, § 13, eff. Jan. 1, 2004, in subsec. (g), deleted “superior court judge” after “except for”.

S.L. 2002–158, § 16, provides:

“Section 1 of this act is effective when it becomes law, provided that distributions from the Fund shall begin in the 2004 election year. Section 2 becomes effective January 1, 2003. Section 3 becomes effective July 1, 2003. Sections 4 and 6(a) become effective for taxable years beginning on or after January 1, 2003. Section 5 becomes effec-

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tive January 1, 2003. Sections 7 through 13 become effective with respect to primaries and elections held on or after January 1, 2004. Except as otherwise provided in this act, this act is effective when it becomes law.”

2004 Legislation

S.L. 2004–127, § 7, eff. July 26, 2004, in subsec. (g), deleted “and district court judge” following “except for”.

2006 Legislation

S.L. 2006–155, § 4, eff. Jan. 1, 2007, added subsec. (f1).

S.L. 2006–155, §§ 7 and 8, provide:

“Section. 7. If any section or provision of this act is declared unconstitu-

tional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

“Section 8. This act becomes effective January 1, 2007, and applies to actions filed on or after that date.”

2007 Legislation

S.L. 2007–391, § 8(b), in subd. (c)(2), in the first sentence substituted “under the jurisdiction of the State Board of Elections under G.S. 163–182.4(b)” for “comprising all or part of two or more counties” and “that applicant’s” for “his”.

Cross References

Arrangement of official ballots, see § 163–165.6.
Confidentiality of date of birth, see § 163–82.10B.
Contents of official ballots, see § 163–165.5.
Counting official ballots, see § 163–182.1.
Counting of write-in votes, see § 163–182.1.

§ 163–124. Reserved

Article 11A

Resign-to-Run [Repealed]

Section

163–125. Repealed.
163–126, 163–127. Reserved.

§ 163–125. Repealed by Laws 1995, c. 379, § 18, eff. July 6, 1995

Historical and Statutory Notes

Article 11A was comprised of § 163–125 and §§ 163–126 and 163–127 were reserved for future codification. Laws 1995, c. 379, § 20, provides that this act “does not affect pending litigation”.

§§ 163–126, 163–127. Reserved

Article 11B

Challenge to a Candidacy

Section

163–127.1. Definitions.
163–127.2. When and how a challenge to a candidate may be made.
163–127.3. Panel to conduct the hearing on a challenge.
163–127.4. Conduct of hearing by panel.