

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 412

Short Title: Election Enforcement/AB.

(Public)

Sponsors: Representatives Lemmond; and Sexton.

Referred to: Judiciary II.

March 9, 1995

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE ENFORCEMENT OF ELECTION LAWS.

The General Assembly of North Carolina enacts:

Section 1. Article 22 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-278.1. Copies of State Bureau of Investigation reports.

In all instances where the State Board of Elections requests the State Bureau of Investigation to investigate any violation of this Chapter, the State Bureau of Investigation shall furnish a copy of the report of its investigation to the State Board of Elections, and the copy of the report of the investigation in the possession of the State Board of Elections or its staff shall not be considered a public record within the meaning of Chapter 132 of the General Statutes and may be made available to the public only upon an order of a court of competent jurisdiction."

Sec. 2. G.S. 163-106 reads as rewritten:

"§ 163-106. Notices of candidacy; ~~pledge; certification, oath, and pledge;~~ with whom filed; date for filing; withdrawal.

(a) Notice and Pledge. – No one shall be voted for in a primary election unless he shall have filed a notice of candidacy with the appropriate board of elections, State or county, as required by this section. To this end every candidate for selection as the nominee of a political party shall file with and place in the possession of the board of

1 elections specified in subsection (c) of this section, a notice and pledge in the following
2 form: 'Date I hereby file notice as a candidate for nomination as
3 in the party primary election to be held on, 19..... I affiliate with the
4 party, (and I certify that I am now registered on the registration records of the
5 precinct in which I reside as an affiliate of the party.)

6 I pledge that if I am defeated in the primary, I will not run for any
7 office as a write-in candidate in the next general election. Signed

8 Name of candidate Witness:

9 _____
10 _____

11 (Title of witness)' Each candidate shall sign his notice of candidacy in the
12 presence of the chairman or secretary of the board of elections, State or county, with
13 which he files. In the alternative, a candidate may have his signature on the notice of
14 candidacy acknowledged and certified to by an officer authorized to take
15 acknowledgments and administer oaths, in which case the candidate may mail his notice
16 of candidacy to the appropriate board of elections.

17 ~~In signing his notice of candidacy the candidate shall use only his legal name and, in
18 his discretion, any nickname by which he is commonly known. A candidate may also, in
19 lieu of his legal first name and legal middle initial or middle name (if any) sign his
20 nickname, provided that he appends to the notice of candidacy an affidavit that he has
21 been commonly known by that nickname for at least five years prior to the date of
22 making the affidavit. The candidate shall also include with the affidavit the way his name
23 (as permitted by law) should be listed on the ballot if another candidate with the same last
24 name files a notice of candidacy for that office.~~

25 ~~A notice of candidacy signed by an agent or any person other than the candidate
26 himself shall be invalid.~~

27 ~~Prior to the date on which candidates may commence filing, the State Board of
28 Elections shall print and furnish, at State expense, to each county board of elections a
29 sufficient number of the notice of candidacy forms prescribed by this subsection for use
30 by candidates required to file with county boards of elections.~~

31 (a1) Notice, Certification, Oath, and Pledge. – No one shall be voted for in a
32 primary election unless that person shall have filed the notice of candidacy, signed the
33 certification, and taken the oath at the appropriate board of elections as required by this
34 section. The applicant shall file a notice on a form to be prescribed by the State Board of
35 Elections. Before questioning any applicant for candidacy as to that applicant's
36 qualifications, the examining official shall present to the applicant a certification, which
37 shall be read by or to the applicant on request and then signed by the applicant: 'I hereby
38 certify that the information I shall give with respect to my qualifications and identity is
39 true and correct to the best of my knowledge.

40 _____
41 (Signature of applicant)'

42 After signing the certification, the applicant shall state as accurately as possible his name,
43 age, place of residence, political party affiliation, if any, under the provisions of G.S.

1 163-82.4(c) and any other information that may be material to a determination of the
2 applicant's identity, qualification to be a candidate for the office sought, and potential
3 qualification to serve in that office. The applicant shall also present to the examining
4 official written or documentary evidence of identity. The examining official, if in doubt
5 as to the right of the person to be a candidate for the office, may require other evidence
6 satisfactory to that official as to the applicant's qualifications. The examining official
7 shall make the inspection of county registration records required by subsection (g) of this
8 section or examine the certificate of registration required by subsection (f) of this section.

9 If the examining official finds the applicant duly qualified to be a candidate, that
10 official shall administer the following oath to the applicant: 'I,, do solemnly swear
11 (or affirm) that to the best of my knowledge I meet all the constitutional and statutory
12 qualifications to be a candidate for the office of and that I am now capable of
13 meeting all the constitutional and statutory qualifications of the office of at the
14 time I will legally be required to meet them, so help me God.'

15 In addition to the notice, certification, and oath, the applicant shall sign the following
16 pledge: 'I,, pledge that if I am defeated in the primary, I will not run for any
17 office as a write-in candidate in the next general election.'

18 In signing his notice of candidacy, certification, and pledge, the applicant for
19 candidacy shall use only the applicant's legal name and, in the applicant's discretion, any
20 nickname by which the applicant is commonly known. An applicant may also, in lieu of
21 legal first name and legal middle initial or middle name (if any) sign his nickname,
22 provided that he appends to the notice of candidacy an affidavit that he has been
23 commonly known by that nickname for at least five years prior to the date of making the
24 affidavit. The applicant shall also include with the affidavit the way his name (as
25 permitted by law) should be listed on the ballot if another candidate with the same last
26 name files a notice of candidacy for that office.

27 For the purpose of this section, 'examining official' means the chair, board member,
28 Executive Secretary-Director, or supervisor of the appropriate board of elections as
29 determined by subsection (c) of this section.

30 In prescribing the format of the notice form, the State Board of Elections shall include
31 the certification, oath, and pledge required by this subsection on the same form. Prior to
32 the date on which candidates may commence filing, the State Board of Elections shall
33 print and furnish, at State expense, to each county board of elections a sufficient number
34 of the notice of candidacy forms prescribed by this subsection for use by applicants
35 required to file with county boards of elections.

36 A notice of candidacy, certification, or pledge signed by an agent of the applicant or
37 any person other than the applicant shall be invalid.

38 Notwithstanding the requirement of this subsection that the applicant shall file the
39 notice, sign the certification and pledge, and take the oath at the appropriate board of
40 elections, the State Board of Elections may promulgate rules to permit the long-distance
41 execution of those required actions through telecommunications systems.

42 (a2) Denial of Application of Candidacy; Appeal of Denial. – If the examining
43 official determines that the applicant for candidacy does not meet the qualifications to be

1 a candidate for the office sought or is not capable of meeting the qualifications of office
2 at the time the applicant must meet those qualifications, the examining official shall issue
3 a written denial to the applicant. The applicant may appeal the denial according to the
4 same procedure provided in G.S. 163-82.18 for appeal of denial of voter registration.
5 While any such appeal is pending, the applicant for candidacy shall not be excluded from
6 the ballot. No applicant's candidacy shall be denied on the grounds that the person did not
7 timely file a notice of candidacy if that person applied by the deadline provided in
8 subsection (c) of this section.

9 (b) Eligibility to File. – No person shall be permitted to file as a candidate in a
10 primary if, at the time he offers to file notice of candidacy, he is registered on the
11 appropriate registration book or record as an affiliate of a political party other than that in
12 whose primary he is attempting to file. No person who has changed his political party
13 affiliation or who has changed from unaffiliated status to party affiliation as permitted in
14 G.S. 163-82.17, shall be permitted to file as a candidate in the primary of the party to
15 which he changed unless he has been affiliated with the political party in which he seeks
16 to be a candidate for at least 90 days prior to the filing date for the office for which he
17 desires to file his notice of candidacy.

18 A person registered as 'unaffiliated' shall be ineligible to file as a candidate in a party
19 primary election.

20 (c) Time for Filing Notice of Candidacy. – Candidates seeking party primary
21 nominations for the following offices shall file their notice of candidacy with the State
22 Board of Elections no earlier than 12:00 noon on the first Monday in January and no later
23 than 12:00 noon on the first Monday in February preceding the primary:

24 Governor

25 Lieutenant Governor

26 All State executive officers

27 Justices of the Supreme Court, Judges of the Court of Appeals

28 Judges of the superior courts

29 Judges of the district courts

30 United States Senators

31 Members of the House of Representatives of the United States

32 District attorneys

33 Candidates seeking party primary nominations for the following offices shall file their
34 notice of candidacy with the county board of elections no earlier than 12:00 noon on the
35 first Monday in January and no later than 12:00 noon on the first Monday in February
36 preceding the primary:

37 State Senators

38 Members of the State House of Representatives

39 All county offices.

40 (d) Notice of Candidacy for Certain Offices to Indicate Vacancy. – In any primary
41 in which there are two or more vacancies for Chief Justice and associate justices of the
42 Supreme Court, two or more vacancies for judge of the Court of Appeals, or two
43 vacancies for United States Senator from North Carolina or two or more vacancies for the

1 office of district court judge to be filled by nominations, each candidate shall, at the time
2 of filing notice of candidacy, file with the State Board of Elections a written statement
3 designating the vacancy to which he seeks nomination. Votes cast for a candidate shall be
4 effective only for his nomination to the vacancy for which he has given notice of
5 candidacy as provided in this subsection.

6 A person seeking party nomination for a specialized district judgeship established
7 under G.S. 7A-147 shall, at the time of filing notice of candidacy, file with the State
8 Board of Elections a written statement designating the specialized judgeship to which he
9 seeks nomination.

10 (e) Withdrawal of Notice of Candidacy. – Any person who has filed notice of
11 candidacy for an office shall have the right to withdraw it at any time prior to the date on
12 which the right to file for that office expires under the terms of subsection (c) of this
13 section. If a candidate does not withdraw before the filing deadline, except as provided in
14 G.S. 163-112, his name shall be printed on the primary ballot, any votes for him shall be
15 counted, and he shall not be refunded his filing fee.

16 (f) Candidates required to file their notice of candidacy with the State Board of
17 Elections under subsection (c) of this section shall file along with their notice a certificate
18 signed by the chairman of the board of elections or the supervisor of elections of the
19 county in which they are registered to vote, stating that the person is registered to vote in
20 that county, stating the party with which the person is affiliated, and that the person has
21 not changed his affiliation from another party or from unaffiliated within three months
22 prior to the filing deadline under subsection (c) of this section. In issuing such certificate,
23 the chairman or supervisor shall check the registration records of the county to verify
24 such information. During the period commencing 36 hours immediately preceding the
25 filing deadline the State Board of Elections shall accept, on a conditional basis, the notice
26 of candidacy of a candidate who has failed to secure the verification ordered herein
27 subject to receipt of verification no later than three days following the filing deadline.
28 The State Board of Elections shall prescribe the form for such certificate, and distribute it
29 to each county board of elections no later than the last Monday in December of each odd-
30 numbered year.

31 (g) When any candidate files a notice of candidacy with a county board of
32 elections under subsection (c) of this section or under G.S. 163-291(2), the chairman or
33 supervisor of elections shall, immediately upon receipt of the notice of candidacy, inspect
34 the registration records of the county, and ~~cancel~~ deny the notice of candidacy of any
35 person who is not eligible under subsection (c) of this section ~~qualified to be a candidate~~
36 for the office sought or capable of meeting the qualifications for the office sought at the
37 time those qualifications must be met. The Board shall give notice of cancellation to any
38 candidate whose notice of candidacy has been cancelled under this subsection by mail or
39 by having the notice served on him by the sheriff.

40 (h) No person may file a notice of candidacy for more than one office described in
41 subsection (c) of this section for any one election. If a person has filed a notice of
42 candidacy with a board of elections under this section for one office, then a notice of
43 candidacy may not later be filed for any other office under this section when the election

1 is on the same date unless the notice of candidacy for the first office is withdrawn under
2 subsection (e) of this section; provided that this subsection shall not apply unless the
3 deadline for filing notices of candidacy for both offices is the same. Notwithstanding this
4 subsection, a person may file a notice of candidacy for a full term as United States
5 Senator, and also file a notice of candidacy for the remainder of the unexpired term of
6 that same seat in an election held under G.S. 163-12, and may file a notice of candidacy
7 for a full term as a member of the United States House of Representatives, and also file a
8 notice of candidacy for the remainder of the unexpired term in an election held under
9 G.S. 163-13.

10 (i) No person may file a notice of candidacy for superior court judge unless that
11 person is at the time of filing the notice of candidacy a resident of the judicial district as it
12 will exist at the time the person would take office if elected. No person may be
13 nominated as a superior court judge under G.S. 163-114 unless that person is at the time
14 of nomination a resident of the judicial district as it will exist at the time the person
15 would take office if elected. This subsection implements Article IV Section 9(1) of the
16 North Carolina Constitution which requires regular Superior Court Judges to reside in the
17 district for which elected.

18 (j) Applicability to Replacement Nominees. – The certification and oath requirement
19 of subsection (a1) of this section and the appeals procedures of subsection (a2) of this
20 section shall apply to replacement candidates chosen according to G.S. 163-114, except
21 that the State Board of Elections shall modify its forms where necessary to be suitable for
22 nominees chosen under G.S. 163-114."

23 Sec. 3. Article 9 of Chapter 163 of the General Statutes is amended by adding
24 a new section to read:

25 **"§ 163-100. Certification and oath; appeals procedures.**

26 Nominees of political parties not elected in primaries but nominated in accordance
27 with G.S. 163-98 shall be subject to the certification and oath requirements of G.S. 163-
28 106(a1) and shall be entitled to the appeals procedures of G.S. 163-106(a2), except that
29 the State Board of Elections shall modify its forms where necessary to be suitable for
30 nominees of parties under G.S. 163-98."

31 Sec. 4. Article 11 of Chapter 163 of the General Statutes is amended by
32 adding a new section to read:

33 **"§ 163-124. Certification and oath; appeals procedures.**

34 Candidates seeking to have their names printed on the general election ballot or
35 counted as write-in candidates in accordance with this Article shall be subject to the
36 certification and oath requirements of G.S. 163-106(a1) and shall be entitled to the
37 appeals procedures of G.S. 163-106(a2), except that the State Board of Elections shall
38 modify its forms where necessary to be suitable for candidates under this Article."

39 Sec. 5. G.S. 163-294.2 is amended by adding a new subsection to read:

40 "(a1) Notwithstanding anything in subsection (a) of this section to the contrary,
41 candidates for municipal office under this section shall be subject to the certification and
42 oath requirements of G.S. 163-106(a1) and shall be entitled to the appeals procedures of

1 G.S. 163-106(a2), except that the State Board of Elections shall modify its forms to make
2 them suitable for candidates under this section."

3 Sec. 6. Section 1 of this act is effective upon ratification. Sections 2 through 5
4 of this act become effective January 1, 1996, and apply to all primaries and elections after
5 that date.