

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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SENATE BILL 209

Short Title: Nonpartisan DA Election. (Public)

Sponsors: Senators Clodfelter; Dalton, Gulley, Kinnaird, and Odom.

Referred to: Judiciary I.

February 22, 2001

A BILL TO BE ENTITLED
AN ACT TO PROVIDE FOR NONPARTISAN ELECTION OF DISTRICT
ATTORNEYS.

The General Assembly of North Carolina enacts:

SECTION 1. The title of Subchapter X and Article 25 of Chapter 163 of the General Statutes reads as rewritten:

"SUBCHAPTER X. ELECTION OF DISTRICT ATTORNEYS AND
SUPERIOR COURT JUDGES.

"Article 25.

"Nomination and Election of District Attorneys and
Superior Court Judges."

SECTION 2. G.S. 163-321 reads as rewritten:

"§ 163-321. Applicability.

The nomination and election of superior court judges of the General Court of Justice and district attorneys shall be as provided by this Article."

SECTION 3. G.S. 163-323 reads as rewritten:

"§ 163-323. Notice of candidacy.

(a) Form of Notice. – Each person offering to be a candidate for election shall do so by filing a notice of candidacy with the State Board of Elections in the following form, inserting the words in parentheses when appropriate:

"Date _____:

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

Signed _____:

(Name of Candidate)

Witness: _____".

The notice of candidacy shall be either signed in the presence of the chairman or secretary of the State Board of Elections, or signed and acknowledged before an officer

1 authorized to take acknowledgments who shall certify the notice under seal. An
2 acknowledged and certified notice may be mailed to the State Board of Elections. In
3 signing a notice of candidacy, the candidate shall use only the candidate's legal name
4 and, in his discretion, any nickname by which commonly known. A candidate may also,
5 in lieu of that candidate's first name and legal middle initial or middle name, if any, sign
6 that candidate's nickname, provided the candidate appends to the notice of candidacy an
7 affidavit that the candidate has been commonly known by that nickname for at least five
8 years prior to the date of making the affidavit. The candidate shall also include with the
9 affidavit the way the candidate's name (as permitted by law) should be listed on the
10 ballot if another candidate with the same last name files a notice of candidacy for that
11 office.

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

14 (b) Time for Filing Notice of Candidacy. – Candidates seeking election to the
15 following offices shall file their notice of candidacy with the State Board of Elections
16 no earlier than 12:00 noon on the first Monday in January and no later than 12:00 noon
17 on the first Monday in February preceding the election:

18 Judges of the superior courts.

19 District attorneys.

20 (c) Withdrawal of Notice of Candidacy. – Any person who has filed a notice of
21 candidacy for an office shall have the right to withdraw it at any time prior to the date
22 on which the right to file for that office expires under the terms of subsection (b) of this
23 section.

24 (d) Certificate That Candidate Is Registered Voter. – Candidates shall file along
25 with their notice a certificate signed by the chairman of the board of elections or the
26 supervisor of elections of the county in which they are registered to vote, stating that the
27 person is registered to vote in that county, and if the candidacy is for superior court
28 judge and the county contains more than one superior court district, stating the superior
29 court district of which the person is a resident. In issuing such certificate, the chairman
30 or supervisor shall check the registration records of the county to verify such
31 information. During the period commencing 36 hours immediately preceding the filing
32 deadline, the State Board of Elections shall accept, on a conditional basis, the notice of
33 candidacy of a candidate who has failed to secure the verification ordered herein subject
34 to receipt of verification no later than three days following the filing deadline. The State
35 Board of Elections shall prescribe the form for such certificate, and distribute it to each
36 county board of elections no later than the last Monday in December of each
37 odd-numbered year.

38 (e) Candidacy for More Than One Office Prohibited. – No person may file a
39 notice of candidacy for more than one office or group of offices described in subsection
40 (b) of this section, or for an office or group of offices described in subsection (b) of this
41 section and an office described in G.S. 163-106(c), for any one election. If a person has
42 filed a notice of candidacy with a board of elections under this section or under G.S.
43 163-106(c) for one office or group of offices, then a notice of candidacy may not later
44 be filed for any other office or group of offices under this section when the election is

1 on the same date unless the notice of candidacy for the first office is withdrawn under
2 subsection (c) of this section."

3 **SECTION 4.** G.S. 163-325 reads as rewritten:

4 "**§ 163-325. Petition in lieu of payment of filing fee.**

5 (a) General. – Any qualified voter who seeks election under this Article may, in
6 lieu of payment of any filing fee required for the office he seeks, file a written petition
7 requesting him to be a candidate for a specified office with the State Board of Elections.

8 (b) Requirements of Petition; Deadline for Filing. – If the candidate is seeking
9 the office of district attorney or superior court judge, that individual shall file a written
10 petition with the State Board of Elections no later than 12:00 noon on Monday
11 preceding the filing deadline before the primary. The petition shall be signed by ten
12 percent (10%) of the registered voters of the election area in which the office will be
13 voted for. The board of elections shall verify the names on the petition, and if the
14 petition and notice of candidacy are found to be sufficient, the candidate's name shall be
15 printed on the appropriate ballot. Petitions must be presented to the county board of
16 elections for verification at least 15 days before the petition is due to be filed with the
17 State Board of Elections. The State Board of Elections may adopt rules to implement
18 this section and to provide standard petition forms."

19 **SECTION 5.** G.S. 163-326(b) reads as rewritten:

20 "(b) Notification of Local Boards. – No later than 10 days after the time for filing
21 notices of candidacy under the provisions of G.S. 163-323(b) has expired, the chairman
22 of the State Board of Elections shall certify to the chairman of the county board of
23 elections in each county in the appropriate district the names of candidates for
24 nomination to the offices of district attorney and superior court judge who have filed the
25 required notice and paid the required filing fee or presented the required petition to the
26 State Board of Elections, so that their names may be printed on the official judicial
27 ballot for district attorney and superior court."

28 **SECTION 6.** G.S. 163-327(b) reads as rewritten:

29 "(b) Death, Disqualification, or Resignation of Official After Election. – If a
30 person elected to the office of district attorney or superior court judge dies, becomes
31 disqualified, or resigns on or after election day and before he has qualified by taking the
32 oath of office, the office shall be deemed vacant and shall be filled as provided by law."

33 **SECTION 7.** G.S. 163-332(b) reads as rewritten:

34 "(b) ~~Ballots to be~~ Be Furnished by County Board of Elections. – It shall be the
35 duty of the county board of elections to print official ballots for the following offices to
36 be voted for in the primary:

37 Superior court judge.

38 District attorney.

39 In printing ballots, the county board of elections shall be governed by instructions of
40 the State Board of Elections with regard to width, color, kind of paper, form, and size of
41 type.

42 Three days before the election, the chairman of the county board of elections shall
43 distribute official ballots to the chief judge of each precinct in his county, and the chief
44 judge shall give a receipt for the ballots received. On the day of the primary, it shall be

1 the chief judge's duty to have all the ballots so delivered available for use at the precinct
2 voting place."

3 **SECTION 8.** G.S. 163-106(c) reads as rewritten:

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

- 8 Governor
- 9 Lieutenant Governor
- 10 All State executive officers
- 11 Justices of the Supreme Court, Judges of the Court of Appeals
- 12 Judges of the district court
- 13 United States Senators
- 14 Members of the House of Representatives of the United States
- 15 ~~District attorneys~~

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

- 20 State Senators
- 21 Members of the State House of Representatives
- 22 All county offices."

23 **SECTION 9.** G.S. 163-107(a) reads as rewritten:

24 "(a) Fee Schedule. – At the time of filing a notice of candidacy, each candidate
25 shall pay to the board of elections with which he files under the provisions of G.S.
26 163-106 a filing fee for the office he seeks in the amount specified in the following
27 tabulation:

28 Office Sought	Amount of Filing Fee
29 Governor	One percent (1%) of the annual salary of the office sought
30 Lieutenant Governor	One percent (1%) of the annual salary of the office sought
31 All State executive offices	One percent (1%) of the annual salary of the office sought
32 All Justices, Judges, and 33 District Attorneys Justices 34 <u>and Judges</u> of the General 35 Court of Justice other than 36 superior court judge	One percent (1%) of the annual salary of the office sought
37 United States Senator	One percent (1%) of the annual salary of the office sought
38 Members of the United States 39 House of Representatives	One percent (1%) of the annual salary of the office sought

1	State Senator	One percent(1%) of the annual
2		salary of the office sought
3	Member of the State House of	One percent (1%) of the annual
4	Representatives	salary of the office sought
5	All county offices not	One percent (1%) of the annual
6	compensated by fees	salary of the office sought
7	County commissioners, if	Ten dollars (\$10.00)
8	compensated entirely by fees	
9	Members of county board of	Five dollars (\$5.00)
10	education, if compensated	
11	entirely by fees	
12	Sheriff, if compensated	Forty dollars (\$40.00), plus one
13	entirely by fees	percent (1%) of the income
14		of the office above four
15		thousand dollars (\$4,000)
16	Clerk of superior court, if	Forty dollars (\$40.00), plus one
17	compensated entirely by fees	percent (1%) of the income
18		of the office above four
19		thousand dollars (\$4,000)
20	Register of deeds, if	Forty dollars (\$40.00), plus one
21	compensated entirely by fees	percent (1%) of the income
22		of the office above four
23		thousand dollars (\$4,000)
24	Any other county office, if	Twenty dollars (\$20.00), plus one
25	compensated entirely by fees	percent (1%) of the income
26		of the office above two
27		thousand dollars (\$2,000)
28	All county offices compensated	One percent (1%) of the first
29	partly by salary and partly	annual salary to be received
30	by fees	(exclusive of fees)."

31 **SECTION 10.** G.S. 163-111(c)(1) reads as rewritten:

32 "(1) A candidate who is apparently entitled to demand a second primary,
33 according to the unofficial results, for one of the offices listed below,
34 and desiring to do so, shall file a request for a second primary in
35 writing or by telegram with the Executive Secretary-Director of the
36 State Board of Elections no later than 12:00 noon on the seventh day
37 (including Saturdays and Sundays) following the date on which the
38 primary was conducted, and such request shall be subject to the
39 certification of the official results by the State Board of Elections. If
40 the vote certification by the State Board of Elections determines that a
41 candidate who was not originally thought to be eligible to call for a
42 second primary is in fact eligible to call for a second primary, the
43 Executive Secretary-Director of the State Board of Elections shall
44 immediately notify such candidate and permit him to exercise any

1 options available to him within a 48-hour period following the
2 notification:

3 Governor,
4 Lieutenant Governor,
5 All State executive officers,
6 ~~Justices, Judges, or District Attorneys~~ Justices and Judges of the
7 General Court of Justice, other than superior court judge,
8 United States Senators,
9 Members of the United States House of Representatives,
10 State Senators in multi-county senatorial districts, and
11 Members of the State House of Representatives in multi-county
12 representative districts."

13 **SECTION 11.** G.S. 163-140(a)(8) reads as rewritten:

14 "(8) ~~Judicial ballot~~ Ballot for district attorney and superior court."

15 **SECTION 12.** G.S. 163-107.1(c) reads as rewritten:

16 "(c) County, Municipal and District Primaries. – If the candidate is seeking one of
17 the offices set forth in G.S. 163-106(c) but which is not listed in subsection (b) of this
18 section, or a municipal or any other office requiring a partisan primary which is not set
19 forth in G.S. 163-106(c) or (d), he shall file a written petition with the appropriate board
20 of elections no later than 12:00 noon on Monday preceding the filing deadline before
21 the primary. The petition shall be signed by ten percent (10%) of the registered voters of
22 the election area in which the office will be voted for, who are affiliated with the same
23 political party in whose primary the candidate desires to run, or in the alternative, the
24 petition shall be signed by no less than 200 registered voters regardless of said voter's
25 political party affiliation, whichever requirement is greater. The board of elections shall
26 verify the names on the petition, and if the petition is found to be sufficient, the
27 candidate's name shall be printed on the appropriate primary ballot. Petitions for
28 candidates for member of the U.S. House of ~~Representatives, District Attorney,~~
29 Representatives and judge of the District Court or members of the State House of
30 Representatives from multi-county districts or members of the State Senate from
31 multi-county districts must be presented to the county board of elections for verification
32 at least 15 days before the petition is due to be filed with the State Board of Elections,
33 and such petition must be filed with the State Board of Elections no later than 12:00
34 noon on Monday preceding the filing deadline. The State Board of Elections may adopt
35 rules to implement this section and to provide standard petition forms."

36 **SECTION 13.** G.S. 163-114 reads as rewritten:

37 "**§ 163-114. Filling vacancies among party nominees occurring after nomination**
38 **and before election.**

39 If any person nominated as a candidate of a political party for one of the offices
40 listed below (either in a primary or convention or by virtue of having no opposition in a
41 primary) dies, resigns, or for any reason becomes ineligible or disqualified before the
42 date of the ensuing general election, the vacancy shall be filled by appointment
43 according to the following instructions:
44

<p>1 Position 2 Any elective State office 3 United States Senator 4 5 6 A district office, including: 7 Member of the United States 8 House of Representatives 9 Judge of district court 10 District Attorney 11 State Senator in a multi- 12 county senatorial district 13 Member of State House of 14 Representatives in a multi- 15 county representative district 16 State Senator in a single- 17 county senatorial district 18 Member of State House of 19 Representatives in a 20 single-county 21 representative district 22 Any elective county office 23 24 25 26 27 28 29 30</p>	<p>Vacancy is to be filled by appointment of State executive committee of political party in which vacancy occurs</p> <p>Appropriate district executive committee of political party in which vacancy occurs</p> <p>County executive committee of political party in which vacancy occurs, provided, in the case of the State Senator or State Representative in a single-county district where not all the county is located in that district, then in voting, only those members of the county executive committee who reside within the district shall vote</p>
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31 The party executive making a nomination in accordance with the provisions of this
 32 section shall certify the name of its nominee to the chairman of the board of elections,
 33 State or county, charged with the duty of printing the ballots on which the name is to
 34 appear. If at the time a nomination is made under this section the general election ballots
 35 have already been printed, the provisions of G.S. 163-139 shall apply. If any person
 36 nominated as a candidate of a political party vacates such nomination and such vacancy
 37 arises from a cause other than death and the vacancy in nomination occurs more than
 38 120 days before the general election, the vacancy in nomination may be filled under this
 39 section only if the appropriate executive committee certifies the name of the nominee in
 40 accordance with this paragraph at least 75 days before the general election.

41 In a county not all of which is located in one congressional district, in choosing the
 42 congressional district executive committee member or members from that area of the
 43 county, only the county convention delegates or county executive committee members

1 who reside within the area of the county which is within the congressional district may
2 vote.

3 In a county which is partly in a multi-county senatorial district or which is partly in a
4 multi-county House of Representatives district, in choosing that county's member or
5 members of the senatorial district executive committee or House of Representatives
6 district executive committee for the multi-county district, only the county convention
7 delegates or county executive committee members who reside within the area of the
8 county which is within that multi-county district may vote."

9 **SECTION 14.** G.S. 163-135(f) reads as rewritten:

10 "(f) Prosecutorial and Judicial Elections. – Except as provided by Article 25 of
11 this Chapter, this Article shall apply to and control all elections for district attorney and
12 judges of the superior court."

13 **SECTION 15.** G.S. 163-140(b)(9) reads as rewritten:

14 "(9) ~~Judicial ballot for~~ Ballot for district attorney and superior court. The
15 form of the ~~judicial ballot for~~ district attorney and judges of the
16 superior court ~~and district court~~ shall be prepared by the county board
17 of elections. On the face of the ballot, shall be printed instructions for
18 marking the voter's choice, in addition to the following instruction: "If
19 you tear or deface or wrongly mark this ballot, return it and get
20 another." On the bottom of the ballot shall be printed an identified
21 facsimile of the signature of the chairman of the responsible county
22 board of elections. This ballot may not be combined with any other
23 ballot except another judicial ballot."

24 **SECTION 16.** G.S. 163-191 reads as rewritten:

25 **"§ 163-191. Contested primaries and elections; how tie broken.**

26 In a primary for party nomination for one or more of the offices to be canvassed by
27 the State Board of Elections under the provisions of G.S. 163-187, the results shall be
28 determined in accordance with the provisions of G.S. 163-111.

29 In a general election for one or more of the offices to be canvassed by the State
30 Board of Elections under the provisions of G.S. 163-187, the persons having the highest
31 number of votes for each office, respectively, shall be declared duly elected to that
32 office by the State Board of Elections. But if two or more be equal and highest in votes
33 for the office, then the State Board of Elections shall order a new election for the
34 purpose of breaking the tie except if there is a tie for district attorney or superior court
35 judge the tie shall be broken in accordance with Article 25 of this Chapter."

36 **SECTION 17.** This act is effective when it becomes law.