

CHAPTER 16.1-11 NOMINATIONS FOR OFFICE - PRIMARY ELECTION

16.1-11-01. Primary election - When held - Nomination of candidates - Nomination for special elections. On the second Tuesday in June of every general election year, a primary election must be held for the nomination of candidates for the following offices in the years of their regular election: United States senators, member of the United States house of representatives, members of the legislative assembly, elected state officials, judges of the supreme court and district court, county officers, and county commissioners. In special elections the nominations for the officers enumerated in this section must be made as provided in this title.

16.1-11-02. Presidential preference contest - Time for holding. Repealed by S.L. 2003, ch. 174, § 6.

16.1-11-02.1. Presidential preference contest conduct - Mail ballot election. Repealed by S.L. 2003, ch. 174, § 6.

16.1-11-02.2. Presidential preference contest - Requirements. Expired under S.L. 1995, ch. 209, § 13.

16.1-11-02.3. Presidential preference contest - Rules. Repealed by S.L. 2003, ch. 174, § 6.

16.1-11-03. Political parties authorized to conduct presidential preference contest. Repealed by S.L. 2003, ch. 174, § 6.

16.1-11-03.1. 2000 presidential caucus. Expired pursuant to S.L. 1999, ch. 207, § 6.

16.1-11-04. Presidential preference contest. Repealed by S.L. 2003, ch. 174, § 6.

16.1-11-05. Secretary of state to give notice to county auditor of officers to be nominated. Between the first day of March and the first day of April in each primary election year, the secretary of state shall cause to be delivered to the county auditor of each county a notice specifying all the officers to be nominated in that county at the next primary election. The publication of the sample ballot by the county auditor constitutes the notice of the secretary of state in regard to the officers and candidates to be voted upon at the primary election.

16.1-11-05.1. Participation in endorsements for nomination. No person may participate directly or indirectly in the endorsement for nomination of more than one person for each office to be filled, except a person may sign a petition for placement of a candidate's name on the primary ballot:

1. For more than one person for each office for an office not under party designation.
2. For more than one person for each office for an office under party designation only if all the candidates for whom the person signs a petition for an office are running under the same party designation.

Except for persons allowed to seek nomination to more than one office pursuant to section 16.1-12-03, no person may accept endorsement for nomination by certificate or petition to more than one office. No political party is entitled to endorse for nomination by certificate more than one set of nominees.

16.1-11-06. State candidate's petition or political party certificate of endorsement required to get name on ballot - Contents - Filing.

1. Every candidate for United States senator, United States representative, a state office except the office of state senator or state representative, and judges of the

supreme and district courts shall present to the secretary of state, between the first date candidates may begin circulating nominating petitions according to this chapter and before four p.m. of the sixtieth day before any primary election, either:

- a. The certificate of endorsement signed by the state chairman of any legally recognized political party containing the candidate's name, post-office address, and telephone number, the title of the office to which the candidate aspires, and the party which the candidate represents; or
 - b. The nominating petition containing the following:
 - (1) The candidate's name, post-office address, and telephone number, and the title of the office to which the candidate aspires, the appropriate district judgeship number if applicable, and whether the petition is intended for nomination for an unexpired term of office if applicable.
 - (2) The name of the party the candidate represents if the petition is for an office under party designation.
 - (3) The signatures of qualified electors, the number of which must be determined as follows:
 - (a) If the office is under party designation, the signatures of three percent of the total vote cast for the candidates of the party with which the candidate affiliates for the same position at the last general election. However, no more than three hundred signatures may be required.
 - (b) If there was no candidate of a party for a position at the preceding general election, at least three hundred signatures.
 - (c) If the office is under the no-party designation, at least three hundred signatures.
 - (4) The mailing address and the date of signing for each signer.
2. If the petition or certificate of endorsement is for the office of governor or lieutenant governor, the petition or certificate must contain the names and other information required of candidates for both those offices. If the petition or certificate of endorsement is mailed, it must be in the possession of the secretary of state before four p.m. of the sixtieth day before the primary election.

16.1-11-07. Presidential candidates on ballot - Filing time. Repealed by S.L. 2007, ch. 197, § 9.

16.1-11-08. Reference to party affiliation in petition and affidavit prohibited for certain offices. No reference may be made to a party ballot or to the party affiliation of a candidate in a petition and affidavit filed by or on behalf of a candidate for nomination in the primary election to an elective county office, the office of judge of the supreme court, judge of the district court, or superintendent of public instruction.

16.1-11-09. Form of certificate of endorsement. A certificate of endorsement filed with the proper officer as provided in this chapter must be in substantially the following form:

CERTIFICATE OF ENDORSEMENT

I, _____, do certify that I am the state (district) chairman of the _____ political party of the _____ legislative district (if appropriate) of the state of North Dakota and that _____ (insert name of endorsee), residing at _____, was duly endorsed for nomination to the office of _____

- c. The signatures of qualified electors, the number of which must be determined as follows:
 - (1) If the office is a county office, the signatures of not less than two percent and not more than five percent of the total vote cast for the office at the most recent general election at which the office was voted upon.
 - (2) If the office is a county office and multiple candidates were elected to the office at the preceding general election at which the office was voted upon, the signatures of not less than two percent and not more than five percent of the votes cast for all candidates divided by the number of candidates that were to be elected to that office.
 - (3) If the office is a county office and no candidate was elected or no votes were cast for the office at any general election, the number of signers equal to the percentage as provided in paragraph 1 applied to the total average vote cast for the offices of sheriff and county auditor at the most recent general election at which those officers were elected in the petitioner's county. This average must be determined by dividing by two the total vote cast for those offices.
 - (4) If the office is a legislative office, the signatures of at least one percent of the total resident population of the legislative district as determined by the most recent federal decennial census.
 - (5) In no case may more than three hundred signatures be required.
- d. The mailing address and date of signing for each signer.

If the petition or certificate of endorsement is mailed, it must be in the possession of the county auditor before four p.m. on the sixtieth day before the primary election.

16.1-11-11.1. Deadline for placing county and city measures on primary, general, or special election ballots. Notwithstanding any other provision of law, a county may not submit a measure for consideration of the voters at a primary, general, or special statewide, district, or county election after four p.m. on the sixtieth day before the election. A city that has combined its regular or a special election with a primary, general, or special county election, according to the provisions set forth in section 40-21-02, may not submit a measure for consideration of the voters at that election after four p.m. on the sixtieth day before the election.

16.1-11-12. County auditor to place applicant's name on ballot. Upon receipt of the petition or certificate of endorsement provided for in section 16.1-11-11 by the county auditor and when accompanied by an affidavit as provided in section 16.1-11-10, the county auditor shall place the name of the applicant upon the primary election ballot in the party or appropriate column, as the case may be.

16.1-11-13. Filing petition or certificate of endorsement when legislative district composed of more than one county - Certificate of county auditor. When a legislative district is composed of more than one county, the certificate of endorsement or the petition provided for in section 16.1-11-11 must be filed with the county auditor of the county where the candidate resides, and that county auditor shall certify to the county auditors of the other counties comprising the legislative district the names and addresses of the candidates filing the petitions or certificates. At the same time, the county auditor shall certify to the secretary of state the names and addresses of all legislative candidates nominated in the county under this chapter.

16.1-11-14. Application by other persons to place name on ballot - Petition - Affidavit. Repealed by S.L. 1995, ch. 207, § 20.

16.1-11-15. Nominating petition not to be circulated more than ninety days prior to filing time. No nominating petition provided for in sections 16.1-11-06 and 16.1-11-11 may be circulated or signed more than ninety days previous to the time when any petition must be filed under the provisions of this chapter. Any signatures to a petition secured more than ninety days before that time may not be counted.

16.1-11-16. Form of nominating petitions.

1. Each nominating petition circulated by candidates for any state, district, county, or other political subdivision office must include or have attached the following information, which must be made available to each signer at the time of signing:
 - a. The candidate's name, address, and telephone number and the title of the office to which the candidate aspires, including the appropriate district number if applicable, or whether the petition is intended for an unexpired term of office if applicable.
 - b. The name of the party the candidate represents if the petition is for an office under party designation.
 - c. The date of the election at which the candidate is seeking nomination or election.
2. Only qualified electors of the state, district, county, or other political subdivision, as the case may be, may sign nominating petitions. In addition to signing the person's name, petition signers shall include the following information:
 - a. The date of signing.
 - b. Their complete residential address, rural route, or general delivery.
 - c. Either the North Dakota city or its corresponding zip code.
3. Incomplete signatures or accompanying information of petition signers which do not meet the requirements of this section invalidate such signatures. The use of ditto marks to indicate that the information contained on the previous signature line carries over does not invalidate a signature. Signatures that are not accompanied by a complete date are not invalid if the signatures are preceded and followed by a signature that is accompanied by a complete date.

16.1-11-17. Filling vacancy in party primary election ballot permissible - Petition - Affidavit. Repealed by S.L. 1995, ch. 207, § 20.

16.1-11-18. Party committees to fill vacancy occurring in nomination for party office.

1. If a vacancy occurs in any party certificate of endorsement at the primary election for any state or legislative district office, the proper state or district executive committee of the political party may fill the vacancy by filing another certificate of endorsement with the proper officer as provided in sections 16.1-11-06 and 16.1-11-11.
2. If no party endorsement has been made by certificate and a vacancy occurs in a slate of candidates seeking party nomination by petition at the primary election, the proper state or district executive committee may fill the vacancy by filing a certificate of endorsement with the proper officer as provided in sections 16.1-11-06 and 16.1-11-11.
3. If party endorsements by certificate have been made for any state or district office and a vacancy occurs in the slate of persons seeking nomination at the primary

election because of the unavailability of the person who is seeking nomination by petition, that vacancy may not be filled except by petition.

4. If a vacancy occurs in a slate of statewide candidates after the candidates have been nominated at the primary election, the proper state executive committee may fill any vacancy by filing a certificate of nomination with the secretary of state. The chairman and secretary of the committee shall make and file with the secretary of state a certificate setting forth the cause of the vacancy, the name of the person for whom the new nominee is to be substituted, the fact that the committee was authorized to fill vacancies, and any further information as may be required to be given in an original certificate of nomination. When such a certificate is filed, the secretary of state shall certify the new nomination and the name of the person who has been nominated to fill the vacancy in place of the original nominee to the various auditors. If the secretary of state already has forwarded the certificate, the secretary of state forthwith shall certify to the auditors the name and address of the new nominee, the office the new nominee is nominated for, the party or political principle the new nominee represents, and the name of the person for whom the new nominee is substituting. Failure to publish the name of a new nominee does not invalidate the election.
5. If a vacancy occurs in a slate of legislative candidates after the candidates have been nominated at the primary election, the proper district executive committee may fill the vacancy by filing a certificate of nomination with the county auditor of the new nominee's county of residence. The chairman and secretary of the committee shall make and file with the county auditor of the new nominee's county of residence a certificate setting forth the cause of the vacancy, the name of the person for whom the new nominee is to be substituted, the fact that the committee was authorized to fill vacancies, and any further information as may be required to be given in an original certificate of nomination. When the certificate is filed, the county auditor of the new nominee's county of residence shall certify the new nomination to the various auditors affected by the change and to the secretary of state by forwarding to them the name of the person who has been nominated to fill the vacancy in place of the original nominee. The certification must include the name and address of the new nominee, the office the new nominee is nominated for, the party or political principle the new nominee represents, and the name of the person for whom the new nominee is substituting. Failure to publish the name of a new nominee does not invalidate the election.
6. A vacancy in a nomination following a primary election may not be filled according to subsection 4 or 5 unless the nominated candidate:
 - a. Dies;
 - b. Would be unable to serve, if elected, as a result of a debilitating illness;
 - c. Ceases to be a resident of the state or an individual nominated for legislative office will not be a resident of the legislative district at the time of the election;
or
 - d. Ceases to be qualified to serve, if elected, as otherwise provided by law.

Vacancies to be filled according to the provisions of this section may be filled not later than sixty days prior to the election.

16.1-11-19. Filling vacancy existing on no-party ballot - Petition required - Time of filing. If a vacancy exists on a no-party ballot for a state office or for judge of a district court, the vacancy may be filled by filing with the secretary of state, before four p.m. on the sixtieth day prior to the primary election, a written petition as provided in section 16.1-11-06, stating that the petitioner desires to become a candidate for nomination to the office for which a vacancy exists.

If the petition is mailed, it must be in the possession of the secretary of state before four p.m. on the sixtieth day prior to the primary election. The petition for the nomination of any person to fill the vacancy must be signed by qualified electors equal in number to at least two percent of the total vote cast for governor at the most recent general election in the state or district at which the office of governor was voted upon, but in no case may more than three hundred signatures be required.

If a vacancy exists on a no-party ballot in a county or district within a county, the vacancy may be filled by filing with the county auditor, before four p.m. of the sixtieth day prior to the primary election, a written petition as provided in section 16.1-11-11, stating that the petitioner desires to become a candidate for nomination to the office for which a vacancy exists. If the petition is mailed, it must be in the possession of the county auditor before four p.m. on the sixtieth day prior to the primary election. The petition for the nomination of any person to fill the vacancy must be signed by qualified electors as provided in subdivision c of subsection 2 of section 16.1-11-11. A vacancy in the no-party ballot must be deemed to exist when a candidate who was qualified by filing a petition pursuant to section 16.1-11-06 or 16.1-11-11 dies, resigns, or otherwise becomes disqualified to have the candidate's name printed on the ballot.

16.1-11-20. Certified list of nominees transmitted to county auditor by secretary of state. At least fifty-five days before any primary election, the secretary of state shall transmit to each county auditor a certified list containing the names and post-office addresses of each person for whom nomination papers have been filed in the secretary of state's office and who are entitled to be voted for at the primary election. A designation of the office for which each is a candidate, and if applicable, the party or principle represented by each must be included.

16.1-11-21. County auditor to publish sample primary election ballot and notice of time and place of election. The county auditor shall publish in the official county newspaper, and if no newspaper is published in the county then in a newspaper published in an adjoining county in the state, the following:

1. A copy of the sample ballot of the primary election, as arranged by order and direction of the county auditor. The form of the sample ballot must conform in all respects to the form prescribed for the sample primary ballot by the secretary of state. The county auditor shall publish the sample ballot in all forms appropriate for the method or methods of voting in the county. Absent voters' ballots may not be considered in determining which form of voting is used. Candidates from each legislative district that falls within the boundaries of the county must be listed in a separate box or category within the sample ballot by legislative district number to enable the voters in each legislative district to ascertain the legislative candidates in their specific district.
2. The date of the primary election.
3. The hours during which the polls will be open.
4. The statement that the primary election balloting will be held in the regular polling place in each precinct.

The notice must be published in the official county newspaper once each week for two consecutive weeks before the primary election and include a statement in substantially the following format:

The arrangement of candidate names appearing on ballots in your precinct may vary from the published sample ballots, depending upon the precinct and legislative district in which you reside.

16.1-11-22. Primary election ballot - Form - Voters to vote for candidates of only one party. At the primary election there may be only one ballot for all parties or principles. The ballot must be in the following form:

1. The ballot must be entitled the "consolidated primary election ballot".
2. Each party or principle having candidates at the primary election must have a separate column on the ballot.
3. At the head of each column must be printed the name of the political party or principle which it represents.
4. In each column below the party or principle title must be printed: "You may vote for the candidates of only one party at the primary election. If you cast votes in more than one party column and vote for candidates of more than one party, your party ballot will be rejected."
5. Immediately below the warning against voting for candidates of more than one party must be printed: "To vote for the candidate of your choice, you must darken the oval opposite the name of the candidate. To vote for a person whose name is not printed on the ballot, write that person's name in the blank space provided for that purpose and darken the oval opposite the space provided."
6. The offices specified in section 16.1-11-26 must be arranged in each column with the name of each office in the center of each party column at the head of the names of all the aspirants for the office.
7. Immediately under the name of each office must be printed: "Vote for no more than _____ name (or names)."
8. Immediately preceding and on the same line as the name of each aspirant must be printed an oval in which the voter is to mark the voter's choice by darkening the oval next to the name of the candidate chosen.
9. The political party or principle which cast the largest vote for governor at the most recent primary election at which the office of governor was voted upon must have the left-hand column, and the party or principle casting the next largest vote must have the next column, and so on.

The judges and the inspector of elections shall inform each elector at the primary, before voting, that if the voter votes for candidates of more than one party the voter's party ballot will be rejected.

16.1-11-23. Presidential preference contest ballots. Repealed by S.L. 2005, ch. 185, § 18.

16.1-11-24. No-party primary ballot - Contents. There must be a separate ballot at all primary elections which must be entitled "no-party primary ballot". The names of aspirants for nomination to each office must be arranged on the no-party primary ballot in separate groups in their order. The separate ballot may be on the same paper or electronic ballot, but the list of offices and candidates must be entitled "no-party primary ballot" in a manner to indicate clearly the separation of the no-party list of offices and candidates from the party list of offices and candidates. The names of all candidates for any of the offices mentioned in section 16.1-11-08 must be placed on the ballot without party designation. Immediately under the name of each office must be placed the language "Vote for no more than _____ name (or names)." The number inserted must be the number to be elected to the office at the next succeeding general election.

16.1-11-25. Preparation, printing, distributing, canvassing, and returning of no-party ballot. The no-party ballot must be prepared, printed, distributed, canvassed, and returned in the same manner provided for other primary election ballots.

16.1-11-26. Order in which names of offices shall appear on ballot. The primary election ballot for party nominations shall contain the following offices in the following order under each party column:

1. Congressional:

United States senator

representative in Congress

2. Legislative:

state senator _____ district

state representative _____ district

3. State offices:

governor and lieutenant governor

secretary of state

state auditor

state treasurer

attorney general

insurance commissioner

agriculture commissioner

public service commissioner

tax commissioner

16.1-11-27. Arrangement of names on ballots. Sample ballots used for publication purposes must be arranged using the rotation of the ballot in the precinct in the county which cast the highest total vote for governor at the last general election at which the office of governor was filled. In the event that this determination is no longer possible due to changes in precinct boundaries, the precincts are to be ordered according to the precincts with the greatest voting age population to the least. This information is to be provided by the North Dakota state data center or based on the best available data as determined by the county auditor. On the official ballot used at the election, including electronic voting system ballots, the names of candidates beside or under headings designating each office to be voted for must be alternated in the following manner:

1. The ballot must first be arranged with all the names for each office on the ballot in an order determined by lot by the county auditor and prepared by the county auditor for all state, district, and county offices. The position of names that require alternating under the provisions of this section must be alternated by an algorithm approved by the secretary of state designed to ensure to the extent possible that each name on the ballot for an office is listed in each position order on an equal number of precinct ballots spread across the county. There must be a different alternation sequence for each of the following, based on the geographical area by which the office is filled:

- a. Offices to be filled by the electors of the state, the entire county, or any district which includes the entire county.

- b. Offices to be filled by the electors of districts smaller than the county, with a different rotation for each of those districts.
2. Although the names are to be alternated within the offices on the ballot, the name order for an office is to be the same for all ballots within a precinct.

16.1-11-28. Piling, cutting, and blocking ballots. Repealed by S.L. 1999, ch. 209, § 2.

16.1-11-29. Preparation of ballot. Unless otherwise provided in this chapter, the primary election ballot must be prepared as provided in chapter 16.1-06.

16.1-11-30. Separate column on primary election ballot required for each political party. Any party that had printed on the ballot at the last preceding presidential election the names of a set of presidential electors pledged to the election of the party's candidates for president and vice president or a candidate for governor and those candidates for presidential electors or governor received at least five percent of the total vote cast for presidential electors or the office of governor within this state at that election; any party that had printed on the ballot at the last preceding nonpresidential election a candidate for attorney general or secretary of state, and the candidate received at least five percent of the total vote cast for the office the candidate was seeking at the election; or any party that has organized according to all the requirements of chapter 16.1-03 must be provided with a separate column on primary election ballots.

Any other political organization is entitled to endorse candidates or have candidates petition to be included on the primary ballot in a consolidated column or on a special election ballot, if a petition signed by at least seven thousand qualified electors of this state is filed with the secretary of state before four p.m. of the sixtieth day before a primary or special election, naming the political organization, stating the platform principles of the party, and requesting the names of its candidates to be included on the state's primary ballot in a consolidated column. If the petition is mailed, it must be in the possession of the secretary of state before four p.m. on the sixtieth day prior to a primary or special election. Candidates of that party are entitled to the same rights and privileges as those of other parties. Petitions circulated according to this section must be filed with the secretary of state in accordance with section 1-01-50.

A political organization that had printed on the ballot at the last preceding presidential election the names of a set of presidential electors pledged to the election of the party's candidates for president and vice president or a candidate for governor and those candidates for presidential electors or governor received at least five percent of the total vote cast for presidential electors or the office of governor within this state at that election are entitled to organize according to the requirements of chapter 16.1-03.

16.1-11-31. Precinct election reports. Optical scan ballot tabulation machines must print reports detailing the election results from the precinct after the close of the polls.

16.1-11-32. Poll lists kept by clerks of elections. The clerks of primary elections shall keep either one paper or one electronic list of the names of all persons voting at each primary election. The clerks must return the list, which must be a part of the records and filed with other election returns. Only one complete list of voters may be kept whether or not a special election is held simultaneously with the primary election.

16.1-11-33. Judges of election to run report of primary election - Contents. The judges of a primary election in each precinct shall run a separate report for each political party or principle, containing the names of all persons voted for at the primary election, the number of votes cast for each candidate, and for what office. The report must be subscribed by the election judges and must be filed with the returns in the office of the county auditor.

16.1-11-34. Counting and canvassing of votes in presidential preference contest. Repealed by S.L. 2005, ch. 185, § 18.

16.1-11-35. Nominations by write-in. The provisions of this title do not prevent any elector from writing on the paper ballot, or in the case of direct-recording electronic voting system devices, entering by touchscreen or other data entry device, the name of any person for whom the elector desires to vote, and such vote must be counted according to the provisions for the counting of write-in votes found in section 16.1-12-02.2.

16.1-11-36. Vote required at primary election for nomination. A person may not be deemed nominated as a candidate for any office at any primary election unless that person receives a number of votes equal to the number of signatures required, or which would have been required had the person not had the person's name placed on the ballot through a certificate of endorsement, on a petition to have a candidate's name for that office placed on the primary ballot.

16.1-11-37. Vote required for nomination on no-party ballot - Partisan nominations prohibited. The number of persons to be nominated as candidates for any one no-party office must be that number of persons who receive the highest number of votes and who total twice the number of available positions for the office if that many persons are candidates for nomination. Provided, however, that a person may not be deemed nominated as a candidate for any no-party office at any primary election unless the number of votes received by the person equals the number of signatures of qualified electors required to be obtained on a petition to have a candidate's name for the office placed on the primary ballot. No partisan nominations may be made for any of the offices mentioned in section 16.1-11-08.

16.1-11-38. Tie vote determination. In case of a tie vote the nominee or nominees must be determined by a drawing of names in the presence of the candidates upon at least five days' notice to each candidate, by the canvassing board or boards concerned, at a time and place designated by the board. A candidate involved in a tie vote may withdraw the candidate's name from consideration if the candidate is willing to sign a statement to that effect in the presence of and witnessed by the filing officer of the election. If no candidates remain, the office is to be filled according to the rules of filling an office when a vacancy exists.

16.1-11-39. Persons nominated in accordance with provisions of chapter eligible as candidates in general election. All persons nominated in accordance with the provisions of this chapter are eligible as candidates to be voted for at the ensuing general election.

16.1-11-40. Primary election and ballot governed by general election provisions. Except as otherwise provided in this chapter, the primary election ballot must be arranged, and the primary election must be provided for, conducted, and the expenses thereof paid as in the case of a general election.