

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 1249

Short Title: Open Primaries.

(Public)

Sponsors: Representatives Mills; and Wood.

Referred to: Judiciary.

April 12, 1989

A BILL TO BE ENTITLED

AN ACT TO ALLOW A VOTER TO VOTE IN THE PRIMARY OF ANOTHER PARTY REGARDLESS OF PARTY AFFILIATION, WITH THE APPROVAL OF THE POLITICAL PARTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-59 reads as rewritten:

"§ 163-59. Right to participate or vote in party primary.

No person shall be entitled to vote or otherwise participate in the primary election of any political party unless he

- (1) Is a registered voter, and
- (2) Has declared and has had recorded on the registration book or record the fact that he affiliates with the political party in whose primary he proposes to vote or participate, and
- (3) Is in good faith a member of that party.

Notwithstanding the previous paragraph, any unaffiliated voter who is authorized under G.S. 163-74(a1) may also vote in the primary if the voter is otherwise eligible to vote in that primary except for subdivisions (2) and (3) of the previous paragraph. Notwithstanding the previous paragraph, any voter who is affiliated with another political party who is authorized under G.S. 163-74(a2) may also vote in the primary if the voter is otherwise eligible to vote in that primary except for subdivisions (2) and (3) of the previous paragraph, except that a voter who has voted in the primary of one party may not vote in the second primary of another party.

Any person who will become qualified by age or residence to register and vote in the general election or regular municipal election for which the primary is held, even

1 though not so qualified by the date of the primary, shall be entitled to register for the
2 primary and general or regular municipal election prior to the primary and then to vote
3 in the primary after being registered. Such person may register not earlier than 60 days
4 nor later than the 21st day (excluding Saturdays and Sundays) prior to the primary. In
5 addition, persons who will become qualified by age to register and vote in the general
6 election or regular municipal election for which the primary is held, who do not register
7 during the special period may register to vote after such period as if they were qualified
8 on the basis of age, but until they are qualified by age to vote, they may vote only in
9 primary elections."

10 Sec. 2. G.S. 163-283 reads as rewritten:

11 **"§ 163-283. Right to participate or vote in party primary.**

12 No person shall be entitled to vote or otherwise participate in the primary election of
13 any political party unless he

- 14 (1) Is a registered voter, and
- 15 (2) Has declared and has had recorded on the registration book or record
16 the fact that he affiliates with the political party in whose primary he
17 proposes to vote or participate, and
- 18 (3) Is in good faith a member of that party.

19 Notwithstanding the previous paragraph, any unaffiliated voter who is authorized
20 under G.S. 163-74(a1) may also vote in the primary if the voter is otherwise
21 eligible to vote in that primary except for subdivisions (2) and (3) of the previous
22 paragraph. Notwithstanding the previous paragraph, any voter who is affiliated with
23 another political party who is authorized under G.S. 163-74(a2) may also vote in the
24 primary if the voter is otherwise eligible to vote in that primary except for subdivisions
25 (2) and (3) of the previous paragraph, except that a voter who has voted in the primary
26 of one party may not vote in the second primary of another party.

27 Any person who will become qualified by age or residence to register and vote in the
28 general election for which the primary is held, even though not so qualified by the date
29 of the primary election, shall be entitled to register while the registration books are open
30 during the regular registration period prior to the primary and then to vote in the
31 primary after being registered, provided however, under full-time and permanent
32 registration, such an individual may register not earlier than 60 days nor later than the
33 21st day prior to the primary. In addition, persons who will become qualified by age to
34 register and vote in the general election for which the primary is held, who do not
35 register during the special period may register to vote after such period as if they were
36 qualified on the basis of age, but until they are qualified by age to vote, they may vote
37 only in primary elections."

38 Sec. 3. G.S. 163-74 reads as rewritten:

39 **"§ 163-74. Record of political party affiliation or unaffiliated status; changing**
40 **recorded affiliation; correcting erroneous record.**

41 (a) Statement of Party Affiliation or Unaffiliated Status; Record Thereof. – Every
42 person who registers to vote shall, at the time application is made, (i) state his desired
43 political party affiliation or (ii) state that he wishes to be recorded as an 'unaffiliated'
44 voter. The person before whom the voter is registering shall record the affiliation

1 requested by the voter. Such recorded party affiliation, or unaffiliated designation, shall
2 thereafter be permanent unless, or until, the registrant changes it under the provisions of
3 subsection (b) of this section.

4 If the applicant (registrant) refuses to declare his party affiliation upon request,
5 or if the applicant refuses further to state that he desires to be recorded as unaffiliated,
6 then the registrar or other officer shall inform the applicant that although he may
7 register, his record shall be designated 'unaffiliated' and he shall not be eligible to vote
8 in any political party primary, except as authorized by a political party under G.S. 163-
9 74(a1), but may vote in any general election.

10 (a1) Voting by Unaffiliated Voter in Party Primary. – If a political party has, by
11 action of its State Executive Committee reported to the State Board of Elections by
12 resolution delivered no later than the first day of December preceding a primary,
13 provided that unaffiliated voters may vote in the primary of that party, an unaffiliated
14 voter may vote in the primary of that party by announcing that intention under G.S. 163-
15 150(a). For a party to withdraw its permission, it must do so by action of its State
16 Executive Committee, similarly reported to the State Board of Elections no later than
17 the first day of December preceding the primary where the withdrawal is to become
18 effective.

19 (a2) Voting by Voter Affiliated With Another Party in Party Primary. – If a
20 political party has, by action of its State Executive Committee reported to the State
21 Board of Elections by resolution delivered no later than the first day of December
22 preceding a primary, provided that voters affiliated with another political party may
23 vote in the primary of that party, a voter affiliated with another party may vote in the
24 primary of that party by announcing that intention under G.S. 163-150(a). For a party to
25 withdraw its permission, it must do so by action of its State Executive Committee,
26 similarly reported to the State Board of Elections no later than the first day of December
27 preceding the primary where the withdrawal is to become effective.

28 (b) Change of Party Affiliation or Unaffiliated Status. – No registered elector
29 shall be permitted to change the record of his party affiliation or unaffiliated status for a
30 primary, second primary or special or general election after the close of the registration
31 books immediately prior to any such election. Any registrant who desires to have the
32 record of his party affiliation or unaffiliated status changed on the registration book
33 shall, no later than the twenty-first day (not including Saturdays and Sundays) before
34 the election go to the chairman or the supervisor of elections of the county board of
35 elections or to other registration officials specified in G.S. 163-80 and request that the
36 change be made. Before being permitted to have the change made, the chairman,
37 supervisor of elections or other registration official shall require the registrant to take
38 the following oath, and it shall be the duty of the elections officer to administer it:

39 (1) If the voter desires to change from one political party to another, or
40 from unaffiliated to a political party:

41 I,, do solemnly swear (or affirm) that I desire in good faith to
42 change my party affiliation from the Party (or from unaffiliated
43 status) to the Party, and that such change of affiliation be made

1 on the registration records in the manner provided by law, so help me,
2 God.

3 (2) If the voter desires to change his affiliation with any political party to
4 unaffiliated status:

5 I,, do solemnly swear (or affirm) that I desire in good faith to
6 change my party affiliation with the Party to unaffiliated and that
7 such change of affiliation be made on the registration records in the
8 manner provided by law, so help me, God.

9 Upon receipt of the required oath, the county board of elections shall
10 immediately change the record of the registrant's party affiliation, or
11 unaffiliated status, to conform to that stated in the oath. Thereafter the
12 voter shall be considered registered and qualified to vote in accordance
13 with the effected change.

14 (c) Correction of Erroneous Record of Party Affiliation. – If at any time the
15 chairman or supervisor of elections of the county board of elections shall be satisfied
16 that an error has been made in designating the party affiliation of any voter on the
17 registration records, then the chairman or supervisor of elections of the county board of
18 elections shall make the necessary correction after first administering to the voter the
19 following oath:

20 I,, do solemnly swear (or affirm) that I desire in good faith to have the
21 erroneous entry of my affiliation with the Party, or my unaffiliated status on
22 the registration records corrected in the manner provided by law to show that I affiliate
23 with the Party (or that I elect to be recorded as an unaffiliated voter), so help
24 me, God."

25 Sec. 4. G.S. 163-150 reads as rewritten:

26 "§ 163-150. Voting procedures.

27 (a) Checking Registration. – A person seeking to vote shall enter the voting
28 enclosure at the voting place through the appropriate entrance and shall at once state his
29 name and place of residence to one of the judges of election. In a primary election, the
30 voter shall also state the political party with which he affiliates and in whose primary he
31 desires to vote, or if the voter is an unaffiliated voter, or is affiliated with another party,
32 and is permitted to vote in the primary of a particular party under G.S. 163-74(a1) or
33 G.S. 163-74(a2), the voter shall state the name of the authorizing political party in
34 whose primary he wishes to vote. The judge to whom the voter gives this information
35 shall announce the name and residence of the voter in a distinct tone of voice. After
36 examining the precinct registration records, the registrar shall state whether the person
37 seeking to vote is duly registered.

38 (b) Distribution of Ballots; Information. – If the voter is found to be registered
39 and is not challenged, or, if challenged and the challenge is overruled as provided in
40 G.S. 163-88, the responsible judge of election shall hand him an official ballot of each
41 kind he is entitled to vote. In a primary election the voter shall be furnished ballots of
42 the political party with which he affiliates and no others, except that unaffiliated voters,
43 and voters affiliated with another party, who are permitted to vote in a party primary
44 under G.S. 163-74(a1) or G.S. 163-74(a2), shall be furnished ballots for that primary.

1 No such unaffiliated voter shall vote in the primary of more than one party on the same
2 day. No voter who votes in the primary of one party may vote in the second primary of
3 any other party. It shall be the duty of the registrar and judges holding the primary or
4 election to give any voter any information he desires in regard to the kinds of ballots he
5 is entitled to vote and the names of the candidates on the ballots. In response to
6 questions asked by the voter, the registrar and judges shall communicate to him any
7 information necessary to enable him to mark his ballot as he desires.

8 (c) Act of Voting. – When a person is given official ballots by the judge, he shall
9 be deemed to have begun the act of voting, and he shall not leave the voting enclosure
10 until he has deposited his ballots in the ballot boxes or returned them to the precinct
11 officials. When he leaves the voting enclosure, whether or not he has deposited his
12 ballots in the ballot boxes, he shall not be entitled to enter the voting enclosure again for
13 the purpose of voting. On receiving his ballots, the voter shall immediately retire alone
14 to one of the voting booths unless he is entitled to assistance under the provisions of
15 G.S. 163-152, and without undue delay he shall mark his ballots in accordance with the
16 provisions of G.S. 163-151.

17 (d) Spoiled and Damaged Ballots. – If a voter spoils or damages a ballot, he may
18 obtain another upon returning the spoiled or damaged ballot to the registrar. A voter
19 shall not be given a replacement ballot until he has returned the spoiled or damaged
20 ballot, and he shall not be given more than three replacement ballots in all. The registrar
21 shall deposit each spoiled or damaged ballot in the box provided for that purpose.

22 (e) Depositing Ballots and Leaving Enclosure. – When the voter has marked his
23 ballots he shall leave the voting booth and deposit them in the appropriate boxes or hand
24 them to the registrar or a judge who shall deposit them for him. If he does not mark a
25 ballot he shall return it to one of the precinct officials before leaving the voting
26 enclosure. If the voter has been challenged and the challenge has been overruled, before
27 depositing his ballots in the boxes he shall write his name on each of his ballots so they
28 may be identified in the event his right to vote is again questioned. After depositing his
29 ballots in the ballot boxes, the voter shall immediately leave the voting enclosure unless
30 he is one of the persons authorized by law to remain within the enclosure for purposes
31 other than voting.

32 (f) Maintenance of Pollbook or Other Record of Voting. – At each primary,
33 general or special election, the precinct registrar shall appoint two precinct assistants
34 (one from each political party as recommended by the county chairman thereof), one to
35 be assigned to keep the pollbook or other voting record used in the county as approved
36 by the State Board of Elections, and the other to keep the registration books under the
37 supervision of the precinct officials. The names of all persons voting shall be checked
38 on the registration records and entered on the pollbook or other voting record. In an
39 election where observers may be appointed under G.S. 163-45 each voter's party
40 affiliation shall be entered in the proper column of the book or other approved record
41 opposite his name. The precinct assistant shall make each entry at the time the ballots
42 are handed to the voter. As soon as the polls are closed, the registrar and judges of
43 election shall sign the pollbook or other approved record immediately beneath the last
44 voter's name entered therein. The registrar or the judge appointed to attend the county

1 canvass shall deliver the pollbook or other approved record to the chairman of the
2 county board of elections at the time of the county canvass, and the chairman shall
3 remain responsible for its safekeeping.

4 (g) Occupation of Voting Booth. – Subject to the provisions of G.S. 163-152 and
5 G.S. 163-152.1, no voter shall be allowed to occupy a voting booth or voting machine
6 already occupied by another voter, provided, however, husbands and wives may occupy
7 the same voting booth if both wish to do so. No voter shall be allowed to occupy a
8 voting booth or voting machine more than five minutes if all the booths or machines are
9 in use and other voters are waiting to obtain booths or machines."

10 Sec. 5. G.S. 163-87 reads as rewritten:

11 **"§ 163-87. Challenges allowed on day of primary or election.**

12 On the day of a primary or election, at the time a registered voter offers to vote, any
13 other registered voter of the precinct may exercise the right of challenge, and when he
14 does so may enter the voting enclosure to make the challenge, but he shall retire
15 therefrom as soon as the challenge is heard.

16 On the day of a primary or election, any other registered voter of the precinct may
17 challenge a person for one or more of the following reasons:

- 18 (1) One or more of the reasons listed in G.S. 163-85(c), or
- 19 (2) That the person has already voted in that primary or election, or
- 20 (3) That the person presenting himself to vote is not who he represents
21 himself to be.

22 On the day of a party primary, any voter of the precinct who is registered as a
23 member of the political party conducting the primary may, at the time any registrant
24 proposes to vote, challenge his right to vote upon the ground that he does not affiliate
25 with the party conducting the primary or does not in good faith intend to support the
26 candidates nominated in that party's primary, and it shall be the duty of the registrar and
27 judges of election to determine whether or not the challenged registrant has a right to
28 vote in that primary according to the procedures prescribed in G.S. 163-88; provided
29 that no challenge may be made on the grounds specified in the paragraph against an
30 unaffiliated voter voting in the primary under G.S. 163-74(a1) or against a voter
31 affiliated with another party voting in the primary under G.S. 163-74(a2).

32 If a person is challenged under this subsection, and the challenge is sustained under
33 G.S. 163-85(c)(3), the voter may still transfer his registration under G.S. 163-72.3, if
34 eligible under that section, and the registration shall not be cancelled under G.S. 163-
35 90.2(a) if the transfer is made. A person who has transferred his registration under G.S.
36 163-72.3 may be challenged at the precinct to which the registration is being
37 transferred."

38 Sec. 6. This act shall become effective with respect to primaries held on or
39 after January 1, 1990.