

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 193

Short Title: Abolish Runoff Primary.

(Public)

Sponsors: Senators Hunt; and Bryan.

Referred to: Election Laws.

February 27, 1991

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A BILL TO BE ENTITLED
AN ACT TO ABOLISH THE RUNOFF PRIMARY.
The General Assembly of North Carolina enacts:

PART 1. GENERAL LAW AMENDMENTS

Section 1. G.S. 163-111 reads as rewritten:

"§ 163-111. Determination of primary results; ~~second primaries.~~

~~(a) Nomination Determined by Substantial Plurality; Definition of Substantial Plurality. — Except as otherwise provided in this section, nominations in primary elections shall be determined by a substantial plurality of the votes cast. A substantial plurality within the meaning of this section shall be determined as follows:~~

- ~~(1) If a nominee for a single office is to be selected, and there is more than one person seeking nomination, the substantial plurality shall be ascertained by multiplying the total vote cast for all aspirants by forty percent (40%). Any excess of the sum so ascertained shall be a substantial plurality, and the aspirant who obtains a substantial plurality shall be declared the nominee. If two candidates receive a substantial plurality, the candidate receiving the highest vote shall be declared the nominee.~~
- ~~(2) If nominees for two or more offices (constituting a group) are to be selected, and there are more persons seeking nomination than there are offices, the substantial plurality shall be ascertained by dividing the total vote cast for all aspirants by the number of positions to be filled, and by multiplying the result by forty percent (40%). Any excess of the sum so ascertained shall be a substantial plurality, and the aspirants~~

~~who obtain a substantial plurality shall be declared the nominees. If more candidates obtain a substantial plurality than there are positions to be filled, those having the highest vote (equal to the number of positions to be filled) shall be declared the nominees.~~

~~(b) Right to Demand Second Primary. — If an insufficient number of aspirants receive a substantial plurality of the votes cast for a given office or group of offices in a primary, a second primary, subject to the conditions specified in this section, shall be held:~~

~~(1) If a nominee for a single office is to be selected and no aspirant receives a substantial plurality of the votes cast, the aspirant receiving the highest number of votes shall be declared nominated by the appropriate board of elections unless the aspirant receiving the second highest number of votes shall request a second primary in accordance with the provisions of subsection (c) of this section. In the second primary only the two aspirants who received the highest and next highest number of votes shall be voted for.~~

~~(2) If nominees for two or more offices (constituting a group) are to be selected and aspirants for some or all of the positions within the group do not receive a substantial plurality of the votes, those candidates equal in number to the positions remaining to be filled and having the highest number of votes shall be declared the nominees unless some one or all of the aspirants equal in number to the positions remaining to be filled and having the second highest number of votes shall request a second primary in accordance with the provisions of subsection (c) of this section. In the second primary to select nominees for the positions in the group remaining to be filled, the names of all those candidates receiving the highest number of votes and all those receiving the second highest number of votes and demanding a second primary shall be printed on the ballot.~~

~~(c) Procedure for Requesting Second Primary. —~~

~~(1) A candidate who is apparently entitled to demand a second primary, according to the unofficial results, for one of the offices listed below, and desiring to do so, shall file a request for a second primary in writing or by telegram with the Executive Secretary-Director of the State Board of Elections no later than 12:00 noon on the seventh day (including Saturdays and Sundays) following the date on which the primary was conducted, and such request shall be subject to the certification of the official results by the State Board of Elections. If the vote certification by the State Board of Elections determines that a candidate who was not originally thought to be eligible to call for a second primary is in fact eligible to call for a second primary, the Executive Secretary-Director of the State Board of Elections shall 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 of the General Court of
7 Justice;

8 United States Senators;

9 Members of the United States House of Representatives, State

10 Senators in multi-county senatorial districts, and Members of

11 the State House of Representatives in multi-county

12 representative districts.

- 13 (2) A candidate who is apparently entitled to demand a second primary,
14 according to the unofficial results, for one of the offices listed below
15 and desiring to do so, shall file a request for a second primary in
16 writing or by telegram with the chairman or supervisor of the county
17 board of elections no later than 12:00 noon on the seventh day
18 (including Saturdays and Sundays) following the date on which the
19 primary was conducted, and such request shall be subject to the
20 certification of the official results by the county board of elections:

21 State Senators in single-county senatorial districts, Members of
22 the State House of Representatives in single-county
23 representative districts, and

24 All county officers.

- 25 (3) Immediately upon receipt of a request for a second primary the
26 appropriate board of elections, State or county, shall notify all
27 candidates entitled to participate in the second primary, by telephone
28 followed by written notice, that a second primary has been requested
29 and of the date of the second primary.

30 (d) Tie Votes; How Determined.—

- 31 (1) In the event of a tie for the highest number of votes in a first primary
32 between two candidates for party nomination for a single county, or
33 single-county legislative district office, the board of elections of the
34 county in which the two candidates were voted for shall conduct a
35 recount and declare the results. If the recount shows a tie vote, a
36 second primary shall be held on the date prescribed in subsection (e) of
37 this section between the two candidates having an equal vote, unless
38 one of the aspirants, within three days after the result of the recount
39 has been officially declared, files a written notice of withdrawal with
40 the board of elections with which he filed notice of candidacy. Should
41 that be done, the remaining aspirant shall be declared the nominee. In
42 the event of a tie for the highest number of votes in a first primary
43 among more than two candidates for party nomination for one of the

1 offices mentioned in this subdivision, no recount shall be held, but all
2 of the tied candidates shall be entered in a second primary.

3 (2) In the event of a tie for the highest number of votes in a first primary
4 between two candidates for a State office, for United States Senator, or
5 for any district office (including State Senator in a multi-county
6 senatorial district and member of the State House of Representatives in
7 a multi-county representative district), no recount shall be held solely
8 by reason of the tie, but the two candidates having an equal vote shall
9 be entered in a second primary to be held on the date prescribed in
10 subsection (e) of this section, unless one of the two candidates files a
11 written notice of withdrawal with the State Board of Elections within
12 three days after the result of the first primary has been officially
13 declared and published. Should that be done, the remaining aspirant
14 shall be declared the nominee. In the event of a tie for the highest
15 number of votes in a first primary among more than two candidates for
16 party nomination for one of the offices mentioned in this subdivision,
17 no recount shall be held, but all of the tied candidates shall be entered
18 in a second primary.

19 (3) In the event one candidate receives the highest number of votes cast in
20 a first primary, but short of a substantial plurality, and two or more of
21 the other candidates receive the second highest number of votes cast in
22 an equal number, the proper board of elections shall declare the
23 candidate having the highest vote to be the party nominee, unless all
24 but one of the tied candidates give written notice of withdrawal to the
25 proper board of elections within three days after the result of the first
26 primary has been officially declared. If all but one of the tied
27 candidates withdraw within the prescribed three-day period, and the
28 remaining candidate demands a second primary in accordance with the
29 provisions of subsection (e) of this section, a second primary shall be
30 held between the candidate who received the highest vote and the
31 remaining candidate who received the second highest vote.

32 (e) Date of Second Primary; Procedures.— If a second primary is required under
33 the provisions of this section, the appropriate board of elections, State or county, shall
34 order that it be held four weeks after the first primary.

35 There shall be no registration of voters between the dates of the first and second
36 primaries. Persons whose qualifications to register and vote mature after the day of the
37 first primary and before the day of the second primary may register on the day of the
38 second primary and, when thus registered, shall be entitled to vote in the second
39 primary. The second primary is a continuation of the first primary and any voter who
40 files a proper and timely affidavit of transfer of precinct, under the provisions of G.S.
41 163-72(e), before the first primary may vote in the second primary without having to
42 refile the affidavit of transfer if he is otherwise qualified to vote in the second primary.
43 Subject to this provision for registration, the second primary shall be held under the
44 laws, rules, and regulations provided for the first primary.

1 ~~(f) No Third Primary Permitted.—In no case shall there be a third primary. The~~
2 ~~candidates receiving the highest number of votes in the second primary shall be~~
3 ~~nominated. If in a second primary there is a tie for the highest number of votes between~~
4 ~~two candidates, the proper party executive committee shall select the party nominee for~~
5 ~~the office in accordance with the provisions of G.S. 163-114.~~

6 (g) Nominations in primary elections shall be determined as follows:

7 (1) When more than one person is seeking election to a single office, the
8 candidate who receives the highest number of votes shall be declared
9 the nominee.

10 (2) When more persons are seeking nomination to two or more offices
11 (constituting a group) than there are offices to be filled, those
12 candidates receiving the highest number of votes, equal in number to
13 the number of offices to be filled, shall be declared the nominees.

14 (h) When more than one person is seeking election to a single office, and two or
15 more candidates receiving the highest number of votes each receive the same number of
16 votes, the proper party executive committee shall, from among those candidates
17 receiving the same number of votes, select the party nominee in accordance with G.S.
18 163-114.

19 (i) When more persons are seeking nomination to two or more offices
20 (constituting a group) than there are offices to be filled, and two or more candidates
21 receiving the lowest number of votes necessary for nomination each receive the same
22 number of votes, the proper party executive committee shall, from among those
23 candidates receiving the same number of votes, select the party nominee in accordance
24 with G.S. 163-114."

25 Sec. 2. G.S. 163-227.1 is repealed.

26 Sec. 3. G.S. 163-227.3 reads as rewritten:

27 **"§ 163-227.3. Date by which absentee ballots must be available for voting.**

28 (a) The State Board of Elections shall provide absentee ballots of the kinds to be
29 furnished by the State Board, to the county boards of elections 60 days prior to the date
30 on which the election shall be conducted unless there shall exist an appeal before the
31 State Board or the courts not concluded, in which case the State Board shall provide the
32 ballots as quickly as possible upon the conclusion of such an appeal. In every instance
33 the State Board shall exert every effort to provide absentee ballots, of the kinds to be
34 furnished by the State Board, to each county by the date on which absentee voting is
35 authorized to commence.

36 ~~(b) Second Primary.—The State Board of Elections shall provide absentee~~
37 ~~ballots, of the kinds to be furnished by the State Board, as quickly as possible after the~~
38 ~~ballot information has been determined."~~

39 Sec. 4. G.S. 163-278.6(8) reads as rewritten:

40 "(8) The term 'election' means any general or special election, a ~~first or~~
41 ~~second~~ primary, a runoff election, or an election to fill a vacancy. The
42 term 'election' shall not include any local or statewide referendum."

43 Sec. 5. G.S. 163-278.9(a) reads as rewritten:

1 "(a) The treasurer of each candidate and of each political committee shall file
2 under verification with the Board the following reports:

- 3 (1) Organizational Report. – The appointment of the treasurer as required
4 by G.S. 163-278.7(a), the statement of organization required by G.S.
5 163-278.7(b), and a report of all contributions and expenditures not
6 previously reported shall be filed with the Board no later than the tenth
7 day following the day the candidate files his notice of candidacy or the
8 tenth day following the organization of the political committee,
9 whichever occurs first. Any candidate whose campaign is being
10 conducted by a political committee which is handling all contributions
11 and expenditures for his campaign shall file a statement with the Board
12 stating such fact at the time required herein for the organizational
13 report. Thereafter, the candidate's political committee shall be
14 responsible for filing all reports required by law.
- 15 (2) Preprimary Report. – The treasurer shall file a report with the Board no
16 later than the tenth day preceding the primary election.
- 17 (3) Postprimary Report(s). – The treasurer shall file a report with the
18 Board no later than the tenth day after the primary election if the
19 candidate was eliminated in the primary. ~~If there is a second primary, the~~
20 ~~treasurer shall file a report with the Board no later than the tenth day after~~
21 ~~the second primary election if the candidate was eliminated in the second~~
22 ~~primary.~~
- 23 (4) Preelection Report. – The treasurer shall file a report with the Board
24 not later than the tenth day preceding the general election.
- 25 (5) Repealed by Session Laws 1985, c. 164, s. 1, effective January 1,
26 1986.
- 27 (6) Annual Reports. – If contributions are received or expenditures made
28 during a calendar year, for which no reports are otherwise required by
29 this Article, any and all such contributions and expenditures shall be
30 reported by the last Friday in January of the following year."

31 Sec. 6. G.S. 163-278.13(d) reads as rewritten:

32 "(d) For the purposes of this section, the term 'an election' means any primary;
33 ~~second primary~~, or general election in which the candidate or political committee may be
34 involved, without regard to whether the candidate is opposed or unopposed in the
35 election."

36 Sec. 7. G.S. 163-278.40B reads as rewritten:

37 "**§ 163-278.40B. Campaign report; partisan election.**

38 In any city election conducted on a partisan basis in accordance with G.S. 163-
39 279(a)(2) and 163-291, the following reports shall be filed in addition to the
40 organizational report:

- 41 (1) Pre-primary Report. – The treasurer shall file a report with the board
42 no later than the tenth day preceding each primary election.
- 43 (2) Pre-election Report. – The treasurer shall file a report 10 days prior to
44 the election, ~~unless a second primary is held and the candidate~~

1 ~~appeared on the ballot in the second primary, in which case the report~~
 2 ~~shall be filed 10 days before the second primary.~~

3 (3) Repealed by Session Laws 1985, c. 164, s. 2, effective January 1,
 4 1986.

5 (4) Annual Report. – If contributions are received or expenditures made
 6 during a calendar year, for which no reports are otherwise required by
 7 this section, any and all contributions and expenditures shall be
 8 reported by the last Friday in January of the following year."

9 Sec. 8. G.S. 163-279(a)(2) reads as rewritten:

10 "(a) Primaries and elections for offices filled by election of the people in cities,
 11 towns, incorporated villages, and special districts shall be held in ~~1973-1991~~ and every
 12 two or four years thereafter as provided by municipal charter on the following days:

13 (1) If the election is nonpartisan and decided by simple plurality, the
 14 election shall be held on Tuesday after the first Monday in November.

15 (2) If the election is partisan, the election shall be held on Tuesday after
 16 the first Monday in November, ~~the first primary shall be held on the~~
 17 ~~sixth Tuesday before the election, and the second primary, if required,~~
 18 ~~shall be held on the third Tuesday before the election~~ the primary shall
 19 be held on the fourth Tuesday before the elections."

20 (3) If the election is nonpartisan and the nonpartisan primary method of
 21 election is used, the election shall be held on Tuesday after the first
 22 Monday in November and the nonpartisan primary shall be held on the
 23 fourth Tuesday before the election.

24 (4) If the election is nonpartisan and the election and runoff election
 25 method of election is used, the election shall be held on the fourth
 26 Tuesday before the Tuesday after the first Monday in November, and
 27 the runoff election, if required, shall be held on Tuesday after the first
 28 Monday in November."

29 Sec. 9. G.S. 163-291 reads as rewritten:

30 "**§ 163-291. Partisan primaries and elections.**

31 The nomination of candidates for office in cities, towns, villages, and special
 32 districts whose elections are conducted on a partisan basis shall be governed by the
 33 provisions of this Chapter applicable to the nomination of county officers, and the terms
 34 'county board of elections,' 'chairman of the county board of elections,' 'county
 35 officers,' and similar terms shall be construed with respect to municipal elections to
 36 mean the appropriate municipal officers and candidates, except that:

37 (1) The dates of primary and election shall be as provided in G.S. 163-
 38 279.

39 (2) A candidate seeking party nomination for municipal or district office
 40 shall file his notice of candidacy with the board of elections no earlier
 41 than 12:00 noon on the first Friday in July and no later than 12:00
 42 noon on the first Friday in August preceding the election, except:

43 a. In 1991 a candidate seeking party nomination for municipal or
 44 district office in any city which elects members of its governing

board on a district basis, or requires that candidates reside in a district in order to run, shall file his notice of candidacy with the board of elections no earlier than 12:00 noon on the fourth Monday in July and no later than 12:00 noon on the second Friday in August preceding the election; and

b. In 1992 if the election is held then under G.S. 160A-23.1, a candidate seeking party nomination for municipal or district office shall file his notice of candidacy with the board of elections at the same time as notices of candidacy for county officers are required to be filed under G.S. 163-106.

No person may file a notice of candidacy for more than one municipal office at the same election. If a person has filed a notice of candidacy for one office with the county board of elections under this section, then a notice of candidacy may not later be filed for any other municipal office for that election unless the notice of candidacy for the first office is withdrawn first.

(3) The filing fee for municipal and district primaries shall be fixed by the governing board not later than the day before candidates are permitted to begin filing notices of candidacy. There shall be a minimum filing fee of five dollars (\$5.00). The governing board shall have the authority to set the filing fee at not less than five dollars (\$5.00) nor more than one percent (1%) of the annual salary of the office sought unless one percent (1%) of the annual salary of the office sought is less than five dollars (\$5.00), in which case the minimum filing fee of five dollars (\$5.00) will be charged. The fee shall be paid to the board of elections at the time notice of candidacy is filed.

(4) The municipal ballot may not be combined with any other ballot.

(5) The canvass of the primary and second primary shall be held on the Thursday following the primary ~~or second primary~~.

(6) ~~Candidates having the right to demand a second primary shall do so not later than 12:00 noon on the Monday following the canvass of the first primary."~~

Sec. 10. G.S. 163-179.1(a) reads as rewritten:

"(a) Whenever, according to the canvass made under this Article, the difference between the number of votes received by a candidate who:

(1) ~~Has~~ has received the number of votes necessary to be declared nominated for an office in a primary election with a majority; ~~or~~

(2) ~~Has received the number of votes necessary to be declared nominated for an office in a second primary election~~

and the number of votes received by any candidate in the race is not more than one percent (1%) of the total votes which were cast for that office, except in multi-seat races one percent (1%) of the total votes cast for those two candidates, the county board of elections shall, before declaring the person nominated, order a recount of the primary if a candidate whose votes fell within one percent (1%) of a successful candidate shall, by

1 noon on the second day (Saturdays and Sundays excepted) following the canvass,
2 request in writing such a recount."

3 Sec. 11. G.S. 163-192.1(a) reads as rewritten:

4 "(a) Whenever, according to the canvass made under this Article, the difference
5 between the number of votes received by a candidate who-

6 (1) ~~Has~~ has received the number of votes necessary to be declared
7 nominated for an office in a primary election with a majority; ~~or~~

8 (2) ~~Received the number of votes necessary to be declared nominated for~~
9 ~~an office in a second primary election~~

10 and the number of votes received by any candidate in the race is not more than one
11 percent (1%) of the total votes which were cast for that office, except in multi-seat races
12 one percent (1%) of the total votes cast for those two candidates, the State Board of
13 Elections shall, before declaring the person nominated, order a recount of the primary if
14 a candidate whose votes, according to a tally of the canvasses made under Article 15 of
15 this Chapter, fell within one percent (1%) of a successful candidate shall, by noon on
16 the eighth day (Saturdays and Sundays included) following the election, request in
17 writing such a recount. Provided, however, that in a statewide contest, no candidate
18 shall be entitled to an automatic recount under this section unless the difference is at
19 least one-half of one percent (0.5%) of the votes cast, or 10,000 votes, whichever is less.
20 Provided further that if the canvass made under this Article determines that a candidate
21 who was not originally thought to be within the percentage entitling him to a recount
22 based on the tally of canvasses made under Article 15 of this Chapter is in fact within
23 the percentage entitling him to a recount, the Executive Secretary-Director of the State
24 Board of Elections shall immediately notify the candidate and the candidate shall be
25 entitled to a recount if he so requests within 48 hours of notification."

26 **PART 2. DURHAM COUNTY BOARD OF EDUCATION**

27 Sec. 12. Section 2 of Chapter 657, Session Laws of 1975, as amended by
28 Chapter 249, Session Laws of 1977, is amended by adding the following at the end:

29 "The runoff election shall be held on the date of the general election established by
30 G.S. 163-1(c)."

31 **PART 3. CHARLOTTE-MECKLENBURG BOARD OF EDUCATION**

32 Sec. 13. Section 7 of Chapter 378, Session Laws of 1959, is amended by
33 deleting "it shall be held at the time that the second primary would be held under the
34 general law dealing with nomination of State officers", and substituting ", it shall be
35 held on the date of the general election established by G.S. 163-1(c)".

36 **PART 4. ORANGE COUNTY BOARD OF EDUCATION**

37 Sec. 14. Section 6 of Chapter 603, Session Laws of 1977, as enacted by
38 Section 2 of Chapter 1214, Session Laws of 1981, reads as rewritten:

39 "Sec. 6. If a runoff election is required, the runoff election shall be held ~~at the time~~
40 ~~for the second primary as provided in G.S. 163-111(e)~~ on the date of the general
41 election established by G.S. 163-1(c) and those persons elected members of Orange
42 County Board of Education shall qualify and take office on the first Monday of ~~the~~
43 ~~month~~ December following their election."

44 **PART 5. BUNCOMBE COUNTY BOARD OF EDUCATION**

1 Sec. 15. Section 1.1(f) of Chapter 532, Session Laws of 1975, as added by
2 Section 2 of Chapter 178, Session Laws of 1981, reads as rewritten:

3 "(f) Runoff elections shall be held on the date ~~fixed in G.S. 163-111(e)~~the date of
4 the general election established in G.S. 163-1(c). The runoff election shall be held under
5 the laws, rules, and regulations provided for the first election."

6 Sec. 16. Sections 4 and 5 of Chapter 178, Session Laws of 1981, are
7 repealed.

8 **PART 6. YANCEY COUNTY BOARD OF EDUCATION**

9 Sec. 17. The third and fourth paragraphs of Section 1 of Chapter 203,
10 Session Laws of 1973, as rewritten by Section 1 of Chapter 135, Session Laws of 1985,
11 is amended by deleting the words "on the date provided by G.S. 163-111(e)" and
12 substituting "on the date of the general election as provided by G.S. 163-1(c)".

13 **PART 7. MCDOWELL COUNTY BOARD OF EDUCATION**

14 Sec. 18. Section 1 of Chapter 322, Session Laws of 1987, reads as rewritten:

15 "Section 1. Notwithstanding the provisions of G.S. 115C-37, the McDowell County
16 Board of Education shall be elected on a nonpartisan basis at the time of the primary
17 election in 1988 and biennially thereafter. The names of the candidates shall be printed
18 on the ballot without reference to any party affiliations. The nonpartisan election and
19 runoff election method shall be used with the results determined as provided in G.S.
20 163-293, except that the runoff shall be held on the date ~~provided by G.S. 163-111(e)~~
21 of the general election as provided by G.S. 163-1(c)."

22 **PART 8. OMNIBUS LOCAL ACT AMENDMENTS**

23 Sec. 19. Any local act which provides that a nonpartisan runoff election shall
24 be held on the date of the second primary is amended to provide that the runoff election
25 shall be held on the date of the general election established by G.S. 163-1(c). If such
26 local act provides that the persons elected take office at some other time than the first
27 Monday in December, it is amended to provide that they take office on the first Monday
28 in December.

29 Sec. 20. Any local acts in conflict with this act are repealed to the extent of
30 the conflict.

31 Sec. 21. This act becomes effective with respect to all primary elections held
32 on or after January 1, 1992.