

GENERAL ASSEMBLY OF NORTH CAROLINA
SECOND EXTRA SESSION 1996

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HOUSE BILL 47

Short Title: Abolish Second Primary.

(Public)

Sponsors: Representatives Wood; and Watson.

Referred to: Rules.

July 10, 1996

A BILL TO BE ENTITLED

AN ACT TO ABOLISH THE SECOND PRIMARY, THEREBY REDUCING COST
TO STATE AND COUNTIES AND FACILITATING A SHORTER CYCLE FOR
SPECIAL ELECTIONS IN REDRAWN CONGRESSIONAL DISTRICTS.

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.~~

1 ~~(2) If nominees for two or more offices (constituting a group) are to be~~
2 ~~selected, and there are more persons seeking nomination than there are~~
3 ~~offices, the substantial plurality shall be ascertained by dividing the total~~
4 ~~vote cast for all aspirants by the number of positions to be filled, and by~~
5 ~~multiplying the result by forty percent (40%). Any excess of the sum so~~
6 ~~ascertained shall be a substantial plurality, and the aspirants who obtain~~
7 ~~a substantial plurality shall be declared the nominees. If more candidates~~
8 ~~obtain a substantial plurality than there are positions to be filled, those~~
9 ~~having the highest vote (equal to the number of positions to be filled)~~
10 ~~shall be declared the nominees.~~

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

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

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

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

37 ~~(1) A candidate who is apparently entitled to demand a second primary,~~
38 ~~according to the unofficial results, for one of the offices listed below,~~
39 ~~and desiring to do so, shall file a request for a second primary in writing~~
40 ~~or by telegram with the Executive Secretary Director of the State Board~~
41 ~~of Elections no later than 12:00 noon on the seventh day (including~~
42 ~~Saturdays and Sundays) following the date on which the primary was~~
43 ~~conducted, and such request shall be subject to the certification of the~~

1 official results by the State Board of Elections. If the vote certification
2 by the State Board of Elections determines that a candidate who was not
3 originally thought to be eligible to call for a second primary is in fact
4 eligible to call for a second primary, the Executive Secretary-Director of
5 the State Board of Elections shall immediately notify such candidate
6 and permit him to exercise any options available to him within a 48-
7 hour period following the notification:

8 Governor,

9 Lieutenant Governor,

10 All State executive officers,

11 Justices, Judges, or District Attorneys of the General Court of
12 Justice,

13 United States Senators,

14 Members of the United States House of Representatives, State
15 Senators in multi-county senatorial districts, and Members of the
16 State House of Representatives in multi-county representative
17 districts.

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

26 State Senators in single-county senatorial districts, Members of
27 the State House of Representatives in single-county
28 representative districts, and

29 All county officers.

30 (3) Immediately upon receipt of a request for a second primary the
31 appropriate board of elections, State or county, shall notify all
32 candidates entitled to participate in the second primary, by telephone
33 followed by written notice, that a second primary has been requested
34 and of the date of the second primary.

35 (d) Tie Votes; How Determined.—

36 (1) In the event of a tie for the highest number of votes in a first primary
37 between two candidates for party nomination for a single county, or
38 single-county legislative district office, the board of elections of the
39 county in which the two candidates were voted for shall conduct a
40 recount and declare the results. If the recount shows a tie vote, a second
41 primary shall be held on the date prescribed in subsection (e) of this
42 section between the two candidates having an equal vote, unless one of
43 the aspirants, within three days after the result of the recount has been

1 officially declared, files a written notice of withdrawal with the board of
2 elections with which he filed notice of candidacy. Should that be done,
3 the remaining aspirant shall be declared the nominee. In the event of a
4 tie for the highest number of votes in a first primary among more than
5 two candidates for party nomination for one of the offices mentioned in
6 this subdivision, no recount shall be held, but all of the tied candidates
7 shall be entered in a second primary.

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

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

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

40 There shall be no registration of voters between the dates of the first and second
41 primaries. Persons whose qualifications to register and vote mature after the day of the
42 first primary and before the day of the second primary may register on the day of the
43 second primary and, when thus registered, shall be entitled to vote in the second primary.

1 The second primary is a continuation of the first primary and any voter who files a proper
2 and timely affidavit of transfer of precinct, under the provisions of G.S. 163-72(e), before
3 the first primary may vote in the second primary without having to refile the affidavit of
4 transfer if he is otherwise qualified to vote in the second primary. Subject to this
5 provision for registration, the second primary shall be held under the laws, rules, and
6 regulations provided for the first primary.

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

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

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

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

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

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

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

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

32 "**§ 163-227.3. Date by which absentee ballots must be available for voting.**

33 (a) The State Board of Elections shall provide absentee ballots of the kinds to be
34 furnished by the State Board, to the county boards of elections 50 days prior to the date
35 on which the election shall be conducted unless there shall exist an appeal before the
36 State Board or the courts not concluded, in which case the State Board shall provide the
37 ballots as quickly as possible upon the conclusion of such an appeal. In every instance the
38 State Board shall exert every effort to provide absentee ballots, of the kinds to be
39 furnished by the State Board, to each county by the date on which absentee voting is
40 authorized to commence.

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

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

2 "(8) The term 'election' means any general or special election, a ~~first-or~~
3 ~~second~~-primary, a run-off election, or an election to fill a vacancy. The
4 term 'election' shall not include any local or statewide referendum."

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

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

8 (1) Organizational Report. – The appointment of the treasurer as required
9 by G.S. 163-278.7(a), the statement of organization required by G.S.
10 163-278.7(b), and a report of all contributions and expenditures not
11 previously reported shall be filed with the Board no later than the tenth
12 day following the day the candidate files his notice of candidacy or the
13 tenth day following the organization of the political committee,
14 whichever occurs first. Any candidate whose campaign is being
15 conducted by a political committee which is handling all contributions
16 and expenditures for his campaign shall file a statement with the Board
17 stating such fact at the time required herein for the organizational report.
18 Thereafter, the candidate's political committee shall be responsible for
19 filing all reports required by law.

20 (2) Preprimary Report. – The treasurer shall file a report with the Board no
21 later than the tenth day preceding the primary election.

22 (3) Postprimary Report(s). – The treasurer shall file a report with the Board
23 no later than the tenth day after the primary election if the candidate was
24 eliminated in the primary. ~~If there is a second primary, the treasurer shall~~
25 ~~file a report with the Board no later than the tenth day after the second~~
26 ~~primary election if the candidate was eliminated in the second primary.~~

27 (4) Preelection Report. – The treasurer shall file a report with the Board not
28 later than the tenth day preceding the general election.

29 (5) Repealed by Session Laws 1985, c. 164, s. 1, effective January 1, 1986.

30 (6) Annual Reports. – If contributions are received or expenditures made
31 during a calendar year, for which no reports are otherwise required by
32 this Article, any and all such contributions and expenditures shall be
33 reported by the last Friday in January of the following year."

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

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

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

40 "**§ 163-278.40B. Campaign report; partisan election.**

41 In any city election conducted on a partisan basis in accordance with G.S. 163-
42 279(a)(2) and 163-291, the following reports shall be filed in addition to the
43 organizational report:

- 1 (1) Pre-primary Report. – The treasurer shall file a report with the board no
2 later than the tenth day preceding each primary election.
- 3 (2) Pre-election Report. – The treasurer shall file a report 10 days prior to
4 the election, ~~unless a second primary is held and the candidate appeared~~
5 ~~on the ballot in the second primary, in which case the report shall be~~
6 ~~filed 10 days before the second primary.~~
- 7 (3) Repealed by Session Laws 1985, c. 164, s. 2, effective January 1, 1986.
- 8 (4) Annual Report. – If contributions are received or expenditures made
9 during a calendar year, for which no reports are otherwise required by
10 this section, any and all contributions and expenditures shall be reported
11 by the last Friday in January of the following year."

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

13 "(a) Primaries and elections for offices filled by election of the people in cities,
14 towns, incorporated villages, and special districts shall be held in ~~1973-1997~~ and every
15 two or four years thereafter as provided by municipal charter on the following days:

- 16 (1) If the election is nonpartisan and decided by simple plurality, the
17 election shall be held on Tuesday after the first Monday in November.
- 18 (2) If the election is partisan, the election shall be held on Tuesday after the
19 first Monday in November, ~~the first primary shall be held on the sixth~~
20 ~~Tuesday before the election, and the second primary, if required, shall~~
21 ~~be held on the third Tuesday before the election and the primary shall be~~
22 ~~held on the fourth Tuesday before the election.~~
- 23 (3) If the election is nonpartisan and the nonpartisan primary method of
24 election is used, the election shall be held on Tuesday after the first
25 Monday in November and the nonpartisan primary shall be held on the
26 fourth Tuesday before the election.
- 27 (4) If the election is nonpartisan and the election and runoff election method
28 of election is used, the election shall be held on the fourth Tuesday
29 before the Tuesday after the first Monday in November, and the runoff
30 election, if required, shall be held on Tuesday after the first Monday in
31 November."

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

33 **"§ 163-291. Partisan primaries and elections.**

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

- 40 (1) The dates of primary and election shall be as provided in G.S. 163-279.
- 41 (2) A candidate seeking party nomination for municipal or district office
42 shall file his notice of candidacy with the board of elections no earlier

1 than 12:00 noon on the first Friday in July and no later than 12:00 noon
2 on the first Friday in August preceding the election.

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

9 (3) The filing fee for municipal and district primaries shall be fixed by the
10 governing board not later than the day before candidates are permitted
11 to begin filing notices of candidacy. There shall be a minimum filing fee
12 of five dollars (\$5.00). The governing board shall have the authority to
13 set the filing fee at not less than five dollars (\$5.00) nor more than one
14 percent (1%) of the annual salary of the office sought unless one percent
15 (1%) of the annual salary of the office sought is less than five dollars
16 (\$5.00), in which case the minimum filing fee of five dollars (\$5.00)
17 will be charged. The fee shall be paid to the board of elections at the
18 time notice of candidacy is filed.

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

20 (5) The canvass of the primary and second primary shall be held on the
21 third day (Sunday excepted) following the ~~primary or second~~ primary.
22 In accepting the filing of complaints concerning the conduct of an
23 election, a board of elections shall be subject to the rules concerning
24 Sundays and holidays set forth in G.S. 103-5.

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

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

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

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

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

35 and the number of votes received by any candidate in the race is not more than one
36 percent (1%) of the total votes which were cast for that office, except in multi-seat races
37 one percent (1%) of the total votes cast for those two candidates, the county board of
38 elections shall, before declaring the person nominated, order a recount of the primary if a
39 candidate whose votes fell within one percent (1%) of a successful candidate shall, by
40 noon on the second day (Saturdays and Sundays excepted) following the canvass, request
41 in writing such a recount."

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

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

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

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

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

23 **PART 2. ORANGE COUNTY BOARD OF EDUCATION**

24 Sec. 12. Section 6 of Chapter 603, Session Laws of 1977, as enacted by
25 Section 2 of Chapter 1214, Session Laws of 1981, reads as rewritten:

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

31 **PART 3. YANCEY COUNTY BOARD OF EDUCATION**

32 Sec. 13. The third and fourth paragraphs of Section 1 of Chapter 203, Session
33 Laws of 1973, as rewritten by Section 1 of Chapter 135, Session Laws of 1985, is
34 amended by deleting the words "on the date provided by G.S. 163-111(e)" and
35 substituting "on the date of the general election as provided by G.S. 163-1(c)".

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

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

38 "Section 1. Notwithstanding the provisions of G.S.115C-37, the McDowell County
39 Board of Education shall be elected on a nonpartisan basis at the time of the primary
40 election in 1988 and biennially thereafter. The names of the candidates shall be printed
41 on the ballot without reference to any party affiliations. The nonpartisan election and
42 runoff election method shall be used with the results determined as provided in G.S. 163-

1 293, except that the runoff shall be held on the date ~~provided by G.S. 163-111(e)~~ of the
2 general election as provided by G.S. 163-1(c)."

3 **PART 5. OMNIBUS LOCAL ACT AMENDMENTS**

4 Sec. 15. Any merger plan adopted under Article 7 of Chapter 115C of the
5 General Statutes or any local act that provides that a nonpartisan runoff election shall be
6 held on the date of the second primary is amended to provide that the runoff election shall
7 be held on the date of the general election established by G.S. 163-1(c). If such local act
8 or merger plan provides that the persons elected take office at some other time than the
9 first Monday in December, it is amended to provide that they take office on the first
10 Monday in December.

11 Sec. 16. Any local act or merger plan in conflict with this act is repealed to the
12 extent of the conflict.

13 Sec. 17. This act is effective upon ratification and applies to all primary
14 elections held on or after the date of ratification.