

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 4

Short Title: Abolish Second Primary.

(Public)

Sponsors: Representative Miller.

Referred to: Election Law and Campaign Finance Reform.

January 27, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO ABOLISH THE SECOND PRIMARY.

3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** G.S. 163-111 reads as rewritten:

5 "**§ 163-111. Determination of primary results; ~~second primaries results.~~**

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

10 (1) If a nominee for a single office is to be selected, and there is more than
11 one person seeking nomination, the substantial plurality shall be
12 ascertained by multiplying the total vote cast for all aspirants by forty
13 percent (40%). Any excess of the sum so ascertained shall be a
14 substantial plurality, and the aspirant who obtains a substantial
15 plurality shall be declared the nominee. If two candidates receive a
16 substantial plurality, the candidate receiving the highest vote shall be
17 declared the nominee.

18 (2) If nominees for two or more offices (constituting a group) are to be
19 selected, and there are more persons seeking nomination than there are
20 offices, the substantial plurality shall be ascertained by dividing the
21 total vote cast for all aspirants by the number of positions to be filled,
22 and by multiplying the result by forty percent (40%). Any excess of
23 the sum so ascertained shall be a substantial plurality, and the aspirants
24 who obtain a substantial plurality shall be declared the nominees. If
25 more candidates obtain a substantial plurality than there are positions
26 to be filled, those having the highest vote (equal to the number of
27 positions to be filled) shall be declared the nominees.

28 (b) ~~Right to Demand Second Primary.~~ If an insufficient number of aspirants
29 receive a substantial plurality of the votes cast for a given office or group of offices in a

1 ~~primary, a second primary, subject to the conditions specified in this section, shall be~~
2 ~~held:~~

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

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

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

25 (1) ~~A candidate who is apparently entitled to demand a second primary,~~
26 ~~according to the unofficial results, for one of the offices listed below,~~
27 ~~and desiring to do so, shall file a request for a second primary in~~
28 ~~writing with the Executive Director of the State Board of Elections no~~
29 ~~later than 12:00 noon on the ninth day (including Saturdays and~~
30 ~~Sundays) following the date on which the primary was conducted, and~~
31 ~~such request shall be subject to the certification of the official results~~
32 ~~by the State Board of Elections. If the vote certification by the State~~
33 ~~Board of Elections determines that a candidate who was not originally~~
34 ~~thought to be eligible to call for a second primary is in fact eligible to~~
35 ~~call for a second primary, the Executive Director of the State Board of~~
36 ~~Elections shall immediately notify such candidate and permit him to~~
37 ~~exercise any options available to him within a 48 hour period~~
38 ~~following the notification:~~

39 ~~Governor,~~

40 ~~Lieutenant Governor,~~

41 ~~All State executive officers,~~

42 ~~District Attorneys of the General Court of Justice,~~

43 ~~United States Senators,~~

44 ~~Members of the United States House of Representatives,~~

1 State Senators in multi-county senatorial districts, and
2 Members of the State House of Representatives in multi-county
3 representative districts.

- 4 (2) A candidate who is apparently entitled to demand a second primary,
5 according to the unofficial results, for one of the offices listed below
6 and desiring to do so, shall file a request for a second primary in
7 writing with the chairman or director of the county board of elections
8 no later than 12:00 noon on the ninth day (including Saturdays and
9 Sundays) following the date on which the primary was conducted, and
10 such request shall be subject to the certification of the official results
11 by the county board of elections:

12 State Senators in single-county senatorial districts,
13 Members of the State House of Representatives in single-county
14 representative districts, and
15 All county officers.

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

21 (d) Tie Votes; How Determined.—

- 22 (1) In the event of a tie for the highest number of votes in a first primary
23 between two candidates for party nomination for a single county, or
24 single county legislative district office, the board of elections of the
25 county in which the two candidates were voted for shall conduct a
26 recount and declare the results. If the recount shows a tie vote, a
27 second primary shall be held on the date prescribed in subsection (e) of
28 this section between the two candidates having an equal vote, unless
29 one of the aspirants, within three days after the result of the recount
30 has been officially declared, files a written notice of withdrawal with
31 the board of elections with which he filed notice of candidacy. Should
32 that be done, the remaining aspirant shall be declared the nominee. In
33 the event of a tie for the highest number of votes in a first primary
34 among more than two candidates for party nomination for one of the
35 offices mentioned in this subdivision, no recount shall be held, but all
36 of the tied candidates shall be entered in a second primary.

- 37 (2) In the event of a tie for the highest number of votes in a first primary
38 between two candidates for a State office, for United States Senator, or
39 for any district office (including State Senator in a multi-county
40 senatorial district and member of the State House of Representatives in
41 a multi-county representative district), no recount shall be held solely
42 by reason of the tie, but the two candidates having an equal vote shall
43 be entered in a second primary to be held on the date prescribed in
44 subsection (e) of this section, unless one of the two candidates files a

1 written notice of withdrawal with the State Board of Elections within
2 three days after the result of the first primary has been officially
3 declared and published. Should that be done, the remaining aspirant
4 shall be declared the nominee. In the event of a tie for the highest
5 number of votes in a first primary among more than two candidates for
6 party nomination for one of the offices mentioned in this subdivision,
7 no recount shall be held, but all of the tied candidates shall be entered
8 in a second primary.

9 (3) In the event one candidate receives the highest number of votes cast in
10 a first primary, but short of a substantial plurality, and two or more of
11 the other candidates receive the second highest number of votes cast in
12 an equal number, the proper board of elections shall declare the
13 candidate having the highest vote to be the party nominee, unless all
14 but one of the tied candidates give written notice of withdrawal to the
15 proper board of elections within three days after the result of the first
16 primary has been officially declared. If all but one of the tied
17 candidates withdraw within the prescribed three day period, and the
18 remaining candidate demands a second primary in accordance with the
19 provisions of subsection (c) of this section, a second primary shall be
20 held between the candidate who received the highest vote and the
21 remaining candidate who received the second highest vote.

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

25 There shall be no registration of voters between the dates of the first and second
26 primaries. Persons whose qualifications to register and vote mature after the day of the
27 first primary and before the day of the second primary may register on the day of the
28 second primary and, when thus registered, shall be entitled to vote in the second
29 primary. The second primary is a continuation of the first primary and any voter who
30 files a proper and timely affidavit of transfer of precinct, under the provisions of
31 G.S. 163-82.15, before the first primary may vote in the second primary without having
32 to refile the affidavit of transfer if he is otherwise qualified to vote in the second
33 primary. Subject to this provision for registration, the second primary shall be held
34 under the laws, rules, and regulations provided for the first primary.

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

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

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

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

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

10 (i) When more persons are seeking nomination to two or more offices
11 (constituting a group) than there are offices to be filled, and two or more candidates
12 receiving the lowest numbers of votes necessary for nomination each receive the same
13 number of votes, the proper party executive committee shall, from among those
14 candidates receiving the same numbers of votes, select the party nominee in accordance
15 with G.S. 163-114.

16 (j) This section prevails over any local act."

17 **SECTION 2.** G.S. 163-82.6(d) reads as rewritten:

18 "(d) Instances When Person May Register and Vote on Election Day. – If a person
19 has become qualified to register and vote between the twenty-fifth day before an
20 election and election day, then that person may apply to register on election day by
21 submitting an application form described in G.S. 163-82.3(a) or (b) to:

22 (1) A member of the county board of elections;

23 (2) The county director of elections; or

24 (3) The chief judge or a judge of the precinct in which the person is
25 eligible to vote,

26 and, if the application is approved, that person may vote the same day. The official in
27 subdivisions (1) through (3) of this subsection to whom the application is submitted
28 shall decide whether the applicant is eligible to vote. The applicant shall present to the
29 official written or documentary evidence that the applicant is the person he represents
30 himself to be. The official, if in doubt as to the right of the applicant to register, may
31 require other evidence satisfactory to that official as to the applicant's qualifications. If
32 the official determines that the person is eligible, the person shall be permitted to vote in
33 the election and the county board shall add the person's name to the list of registered
34 voters. If the official denies the application, the person shall be permitted to vote a
35 challenged ballot under the provisions of G.S. 163-88.1, and may appeal the denial to
36 the full county board of elections. The State Board of Elections shall promulgate rules
37 for the county boards of elections to follow in hearing appeals for denial of election day
38 applications to register. ~~No person shall be permitted to register on the day of a second~~
39 ~~primary unless he shall have become qualified to register and vote between the date of~~
40 ~~the first primary and the date of the succeeding second primary."~~

41 **SECTION 3.** G.S. 163-82.17(a) reads as rewritten:

42 "(a) Registrant's Duty to Report. – Any registrant who desires to have the record
43 of his party affiliation or unaffiliated status changed on the registration list shall, no
44 later than the last day for making application to register under G.S. 163-82.6 before the

1 election, indicate the change on an application form as described in G.S. 163-82.3 or on
2 a voter registration card described in G.S. 163-82.8. No registrant shall be permitted to
3 change party affiliation or unaffiliated status for a ~~primary, second primary,~~ primary or
4 special or general election after the deadline for registration applications for that
5 election as set out in G.S. 163-82.6."

6 **SECTION 4.** G.S. 163-226(c) reads as rewritten:

7 "(c) The Term "Election". – As used in this Subchapter, unless the context clearly
8 requires otherwise, the term "election" includes a general, primary, ~~second primary,~~
9 runoff election, bond election, referendum, or special election."

10 **SECTION 5.** G.S. 163-227.1 is repealed.

11 **SECTION 6.** G.S. 163-255 reads as rewritten:

12 "**§ 163-255. Absentee voting at office of board of elections.**

13 Notwithstanding any other provisions of Chapter 163 of the General Statutes, any
14 person eligible to vote an absentee ballot pursuant to G.S. 163-245 shall be permitted to
15 vote an absentee ballot pursuant to G.S. 163-227.2 if the person has not already voted an
16 absentee ballot which has been returned to the board of elections, and if he will not be in
17 the county on the day of the primary or election.

18 In the event an absentee application or ballot has already been mailed to such person
19 applying to vote pursuant to G.S. 163-227.2, the board of elections shall void the
20 application and ballot unless the voted absentee ballot has been received by the board of
21 elections. Such person shall be eligible to vote pursuant to G.S. 163-227.2 no later than
22 5:00 P.M. on the day next preceding the ~~primary, second primary~~ primary or election."

23 **SECTION 7.** G.S. 163-227.3(b) is repealed.

24 **SECTION 8.** G.S. 163-278.6(8) reads as rewritten:

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

29 **SECTION 9.** G.S. 163-278.13(d) reads as rewritten:

30 "(d) For the purposes of this section, the term 'an election' means any ~~primary,~~
31 ~~second primary,~~ primary or general election in which the candidate or political
32 committee may be involved, without regard to whether the candidate is opposed or
33 unopposed in the election, ~~except that where a candidate is not on the ballot in a second~~
34 ~~primary, that second primary is not 'an election' with respect to that candidate.~~ election."

35 **SECTION 10.** G.S. 163-278.13B(d) is repealed.

36 **SECTION 11.** G.S. 163-278.40B(2) reads as rewritten:

37 "(2) Pre-election Report. – The treasurer shall file a report 10 days prior to
38 the election, ~~unless a second primary is held and the candidate~~
39 ~~appeared on the ballot in the second primary, in which case the report~~
40 ~~shall be filed 10 days before the second primary election.~~"

41 **SECTION 12.** G.S. 163-279(a)(2) reads as rewritten:

42 "(a) Primaries and elections for offices filled by election of the people in cities,
43 towns, incorporated villages, and special districts shall be held in ~~1973-2005~~ and every
44 two or four years thereafter as provided by municipal charter on the following days:

- 1 (1) If the election is nonpartisan and decided by simple plurality, the
2 election shall be held on Tuesday after the first Monday in November.
- 3 (2) If the election is partisan, the election shall be held on Tuesday after
4 the first Monday in November, ~~the first primary shall be held on the~~
5 ~~sixth Tuesday before the election, and the second primary, if required,~~
6 ~~shall be held on the third Tuesday before the election and the primary~~
7 ~~shall be held on the fourth Tuesday before the election.~~
- 8 (3) If the election is nonpartisan and the nonpartisan primary method of
9 election is used, the election shall be held on Tuesday after the first
10 Monday in November and the nonpartisan primary shall be held on the
11 fourth Tuesday before the election.
- 12 (4) If the election is nonpartisan and the election and runoff election
13 method of election is used, the election shall be held on the fourth
14 Tuesday before the Tuesday after the first Monday in November, and
15 the runoff election, if required, shall be held on Tuesday after the first
16 Monday in November."

17 **SECTION 13.** G.S. 163-291 reads as rewritten:

18 **"§ 163-291. Partisan primaries and elections.**

19 The nomination of candidates for office in cities, towns, villages, and special
20 districts whose elections are conducted on a partisan basis shall be governed by the
21 provisions of this Chapter applicable to the nomination of county officers, and the terms
22 "county board of elections," "chairman of the county board of elections," "county
23 officers," and similar terms shall be construed with respect to municipal elections to
24 mean the appropriate municipal officers and candidates, except that:

- 25 (1) The dates of primary and election shall be as provided in
26 G.S. 163-279.
- 27 (2) A candidate seeking party nomination for municipal or district office
28 shall file his notice of candidacy with the board of elections no earlier
29 than 12:00 noon on the first Friday in July and no later than 12:00
30 noon on the first Friday in August preceding the election, except:
- 31 a. In 2001 a candidate seeking party nomination for municipal or
32 district office in any city which elects members of its governing
33 board on a district basis, or requires that candidates reside in a
34 district in order to run, shall file his notice of candidacy with the
35 board of elections no earlier than 12:00 noon on the fourth
36 Monday in July and no later than 12:00 noon on the second
37 Friday in August preceding the election; and
- 38 b. In 2002 if the election is held then under G.S. 160A-23.1, a
39 candidate seeking party nomination for municipal or district
40 office shall file his notice of candidacy with the board of
41 elections at the same time as notices of candidacy for county
42 officers are required to be filed under G.S. 163-106.

43 No person may file a notice of candidacy for more than one
44 municipal office at the same election. If a person has filed a notice of

1 candidacy for one office with the county board of elections under this
2 section, then a notice of candidacy may not later be filed for any other
3 municipal office for that election unless the notice of candidacy for the
4 first office is withdrawn first.

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

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

16 (5) The canvass of the primary ~~and second primary~~ shall be held on the
17 seventh day following the ~~primary or second primary~~ primary. In
18 accepting the filing of complaints concerning the conduct of an
19 election, a board of elections shall be subject to the rules concerning
20 Sundays and holidays set forth in G.S. 103-5.

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

24 **SECTION 14.** G.S. 115C-37 is amended by adding a new subsection to
25 read:

26 "(j) The election of any county board of education held at the time of the primary,
27 whether under this section, a local act, or any merger plan adopted under Article 7 of
28 this Chapter, shall be determined by a plurality under G.S. 163-292. No runoff election
29 shall be held."

30 **SECTION 15.** This act is effective when it becomes law and applies to all
31 elections held on or after that date.