

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1024

Short Title: Instant Runoff Voting.

(Public)

Sponsors: Representatives Luebke; Fisher and Harrison.

Referred to: Election Law and Campaign Finance Reform.

March 31, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR INSTANT RUNOFF VOTING IN STATEWIDE
3 PARTY PRIMARIES AND CERTAIN STATEWIDE JUDICIAL VACANCY
4 ELECTIONS.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** Article 10 of Chapter 163 of the General Statutes is amended
7 by adding a new section to read:

8 "**§ 163-111A. Instant runoff voting.**

9 (a) Definition. – As used in this Chapter, 'instant runoff voting' means a method
10 of casting and counting votes as set forth in this section that accomplishes the same
11 effect as all voters participating in a second primary or runoff election. In casting votes,
12 voters rank candidates by order of preference. In counting votes, ballots are counted in
13 rounds. In the first round, only first-choice votes are counted. If the top candidate
14 receives a substantial plurality of the first-choice votes, that candidate wins. If no
15 candidate receives a substantial plurality in the first round, there is a second round of
16 counting. Only the two candidates with the greatest number of first-choice votes
17 advance to the second round of counting. In this second round, each ballot counts as a
18 vote for whichever of the two final candidates is ranked higher on the ballot. The
19 candidate with the greater number of votes in the second round wins.

20 (b) Voting. – On every ballot using instant runoff voting, the voters shall be
21 given the opportunity to rank candidates in the order of their preference. Ballots shall be
22 made simple and easy to understand. The instructions for the ballot shall inform the
23 voter of all of the following:

24 (1) That in addition to marking their first-choice candidate, the voter may
25 rank alternate choice candidates.

26 (2) That marking a second or other choice candidate can never defeat the
27 voter's first choice.

28 (c) Counting. – The following procedures shall be used to determine winners in
29 instant runoff voting:

1 (1) The ballots shall be counted initially according to the first choice
2 marked on each ballot. If one candidate receives a substantial plurality
3 of the votes cast, the board of elections shall certify that candidate as
4 the winner.

5 (2) If at the end of the initial round of counting, no candidate received a
6 substantial plurality of first choices, all candidates shall be eliminated
7 except the two candidates with the greatest number of first choices.
8 The board of elections shall then conduct a second, final round of
9 counting in which ballots that rank eliminated candidates as a first
10 choice and that indicate one of the uneliminated candidates as an
11 alternative choice shall be counted as votes for whichever of the
12 uneliminated candidates is ranked higher on each ballot. In the second
13 round, each ballot is counted as one vote for the highest ranked
14 candidate on that ballot who has not been eliminated. The candidate
15 with the greater number of votes in the second round shall be certified
16 as the winner.

17 (d) General Provisions. – The following general provisions shall apply to instant
18 runoff voting:

19 (1) If after the first-choice candidate is eliminated, a ballot does not
20 indicate one of the uneliminated candidates as an alternative choice,
21 the ballot is exhausted and shall not be counted after the initial round.

22 (2) The fact that the voter gives more than one ranking to the same
23 candidate shall not invalidate the vote. The highest ranking given a
24 particular candidate shall count as long as the candidate is not
25 eliminated.

26 (3) In case of a tie between candidates such that two or more candidates
27 have an equal number of first choices and more than two candidates
28 qualify for the second round, instant runoff voting shall be used to
29 determine which two candidates shall advance to the second round."

30 **SECTION 2.** G.S. 163-111 reads as rewritten:

31 **"§ 163-111. Determination of primary results; second primaries.**

32 (a) Nomination Determined by Substantial Plurality; Definition of Substantial
33 Plurality. – Except as otherwise provided in this section, nominations in primary
34 elections shall be determined by a substantial plurality of the votes cast. A substantial
35 plurality within the meaning of this section and G.S. 163-111A shall be determined as
36 follows:

37 (1) If a nominee for a single office is to be selected, and there is more than
38 one person seeking nomination, the substantial plurality shall be
39 ascertained by multiplying the total vote cast for all aspirants by forty
40 percent (40%). Any excess of the sum so ascertained shall be a
41 substantial plurality, and the aspirant who obtains a substantial
42 plurality shall be declared the nominee. If two candidates receive a
43 substantial plurality, the candidate receiving the highest vote shall be
44 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
4 total vote cast for all aspirants by the number of positions to be filled,
5 and by multiplying the result by forty percent (40%). Any excess of
6 the sum so ascertained shall be a substantial plurality, and the aspirants
7 who obtain a substantial plurality shall be declared the nominees. If
8 more candidates obtain a substantial plurality than there are positions
9 to be filled, those having the highest vote (equal to the number of
10 positions to be filled) 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
16 receives a substantial plurality of the votes cast, the aspirant receiving
17 the highest number of votes shall be declared nominated by the
18 appropriate board of elections unless the aspirant receiving the second
19 highest number of votes shall request a second primary in accordance
20 with the provisions of subsection (c) of this section. In the second
21 primary only the two aspirants who received the highest and next
22 highest number of votes 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
26 equal in number to the positions remaining to be filled and having the
27 highest number of votes shall be declared the nominees unless some
28 one or all of the aspirants equal in number to the positions remaining
29 to be filled and having the second highest number of votes shall
30 request a second primary in accordance with the provisions of
31 subsection (c) of this section. In the second primary to select nominees
32 for the positions in the group remaining to be filled, the names of all
33 those candidates receiving the highest number of votes and all those
34 receiving the second highest number of votes and demanding a second
35 primary shall be printed on 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
40 writing with the Executive Director of the State Board of Elections no
41 later than 12:00 noon on the ninth day (including Saturdays and
42 Sundays) following the date on which the primary was conducted, and
43 such request shall be subject to the certification of the official results
44 by the State Board of Elections. If the vote certification by the State

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

7 ~~Governor,~~

8 ~~Lieutenant Governor,~~

9 ~~All State executive officers,~~

10 District Attorneys of the General Court of Justice,

11 ~~United States Senators,~~

12 Members of the United States House of Representatives,

13 State Senators in multi-county senatorial districts, and

14 Members of the State House of Representatives in multi-county
15 representative districts.

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

24 State Senators in single-county senatorial districts,

25 Members of the State House of Representatives in single-county
26 representative districts, and

27 All county officers.

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

33 (c1) Primaries for Statewide Offices. – In all primaries for statewide office, if no
34 candidate receives a substantial plurality, the winner shall be determined by instant
35 runoff voting as provided in G.S. 163-111A. In those primaries, instant runoff voting
36 shall be used without the need for the second-place candidate to call for it.

37 (d) Tie Votes; How Determined. –

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

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

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

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

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

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

1 primary. The second primary is a continuation of the first primary and any voter who
2 files a proper and timely affidavit of transfer of precinct, under the provisions of
3 G.S. 163-82.15, before the first primary may vote in the second primary without having
4 to refile the affidavit of transfer if he is otherwise qualified to vote in the second
5 primary. Subject to this provision for registration, the second primary shall be held
6 under the laws, rules, and 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 **SECTION 3.** G.S. 163-329 reads as rewritten:

13 "**§ 163-329. Elections to fill vacancy created after primary filing period to use**
14 **plurality or instant runoff voting method.**

15 (a) General. – If a vacancy is created in the office of ~~justice of the Supreme~~
16 ~~Court, judge of the Court of Appeals, or judge of superior court~~ after the filing period
17 for the primary opens but more than 60 days before the general election, and under the
18 Constitution of North Carolina an election is to be held for that position, such that the
19 office shall be filled in the general election as provided in G.S. 163-9, the election to fill
20 the office for the remainder of the term shall be conducted without a primary using the
21 plurality method as provided in subsection (b) of this section. If a vacancy is created in
22 the office of justice of the Supreme Court or judge of the Court of Appeals during the
23 same time period, the vacancy shall be filled by instant runoff voting, as provided in
24 G.S. 163-111A, except that a candidate wins in the first round of counting only if that
25 candidate has a majority of all votes cast. If a vacancy is created in the office of justice
26 of the Supreme Court, judge of the Court of Appeals, or judge of superior court before
27 the filing period for the primary opens, and under the Constitution of North Carolina an
28 election is to be held for that position, such that the office shall be filled in the general
29 election as provided in G.S. 163-9, the election to fill the office for the remainder of the
30 term shall be conducted in accordance with G.S. 163-322.

31 (b) ~~Plurality Special Vacancy Election Rules.~~ – Elections under this section shall
32 be conducted using the following rules:

33 (1) The filing period shall be prescribed by the State Board of Elections,
34 but in no event may it be less than five working days. If a vacancy
35 occurs in a second office in the same superior court district after the
36 first filing period established under the section has closed, the State
37 Board of Elections shall reopen filing for a period of not less than five
38 working days for the office of justice of the Supreme Court, judge of
39 the Court of Appeals, or superior court judge. All persons filing in
40 either filing period shall run as a group and the election results shall be
41 determined by subdivision (3) of this subsection.

42 (2) When more than one person is seeking election to a single office, the
43 candidate who receives the highest number of votes shall be declared
44 ~~elected.~~ elected, except that elections for justice of the Supreme Court

1 and judge of the Court of Appeals shall be determined by instant
2 runoff voting as provided in subsection (a) of this section.

3 (3) When more persons are seeking election to two or more offices
4 (constituting a group) than there are offices to be filled, those
5 candidates receiving the highest number of votes, equal in number to
6 the number of offices to be filled, shall be declared elected.

7 (4) If two or more candidates receiving the highest number of votes each
8 receive the same number of votes, the board of elections shall resolve
9 the tie in accordance with ~~G.S. 163-182.8~~. G.S. 163-182.8, except that
10 ties in elections for justice of the Supreme Court and judge of the
11 Court of Appeals shall be resolved by instant runoff voting as provided
12 in subsection (a) of this section. If instant runoff voting results in a tie,
13 the provisions of G.S. 163-182.8 shall apply.

14 (5) Except as provided in this section, the provisions of this Article apply
15 to elections conducted under this section."

16 **SECTION 4.** This act becomes effective January 1, 2008, and applies to any
17 primaries or elections held on or after that date.