

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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HOUSE BILL 1184

Short Title: Abolish Second Primary.

(Public)

Sponsors: Representatives Blue; and Wainwright.

Referred to: Election Law and Campaign Finance Reform.

April 12, 2001

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

3 The General Assembly of North Carolina enacts:

4 PART 1. GENERAL LAW AMENDMENTS

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

6 "**§ 163-111. Determination of primary results; ~~second primaries.~~ results.**

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

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

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

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

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

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

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

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

42 ~~Governor,~~

43 ~~Lieutenant Governor,~~

44 ~~All State executive officers;~~

1 Justices, Judges, or District Attorneys of the General
2 ~~—Court of Justice, other than superior court judge,~~
3 ~~United States Senators,~~
4 ~~Members of the United States House of~~
5 ~~Representatives,~~
6 ~~State Senators in multi-county senatorial districts, and~~
7 ~~Members of the State House of Representatives in~~
8 ~~multi-county representative districts.~~

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

17 ~~State Senators in single county senatorial districts,~~
18 ~~Members of the State House of Representatives in~~
19 ~~single county representative districts, and~~
20 ~~All county officers.~~

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

26 (d) ~~Tie Votes; How Determined.—~~

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

42 (2) ~~In the event of a tie for the highest number of votes in a first primary~~
43 ~~between two candidates for a State office, for United States Senator, or~~
44 ~~for any district office (including State Senator in a multi-county~~

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

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

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

30 There shall be no registration of voters between the dates of the first and second
31 primaries. Persons whose qualifications to register and vote mature after the day of the
32 first primary and before the day of the second primary may register on the day of the
33 second primary and, when thus registered, shall be entitled to vote in the second
34 primary. The second primary is a continuation of the first primary and any voter who
35 files a proper and timely affidavit of transfer of precinct, under the provisions of G.S.
36 163-82.15, before the first primary may vote in the second primary without having to
37 refile the affidavit of transfer if he is otherwise qualified to vote in the second primary.
38 Subject to this provision for registration, the second primary shall be held under the
39 laws, rules, and regulations provided for the first primary.

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

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

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

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

9 (h) When more than one person is seeking election to a single office, and two or
10 more candidates receiving the highest number of votes each receive the same number of
11 votes, the proper party executive committee shall, from among those candidates
12 receiving the same number of votes, select the party nominee in accordance with G.S.
13 163-114.

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

20 **SECTION 2.** G.S. 163-227.1 is repealed.

21 **SECTION 3.** G.S. 163-227.3(b) is repealed.

22 **SECTION 4.** G.S. 163-278.6(8) reads as rewritten:

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

27 **SECTION 5.** G.S. 163-278.13(d) reads as rewritten:

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

33 **SECTION 6.** G.S. 163-278.40B(2) reads as rewritten:

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

38 **SECTION 7.** G.S. 163-279(a)(2) reads as rewritten:

39 "(a) Primaries and elections for offices filled by election of the people in cities,
40 towns, incorporated villages, and special districts shall be held in ~~1973-2003~~ and every
41 two or four years thereafter as provided by municipal charter on the following days:

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

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

15 **SECTION 8.** G.S. 163-291 reads as rewritten:

16 **"§ 163-291. Partisan primaries and elections.**

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

- 23 (1) The dates of primary and election shall be as provided in G.S.
24 163-279.
- 25 (2) A candidate seeking party nomination for municipal or district office
26 shall file his notice of candidacy with the board of elections no earlier
27 than 12:00 noon on the first Friday in July and no later than 12:00
28 noon on the first Friday in August preceding the election, except:
- 29 a. In 2001 a candidate seeking party nomination for municipal or
30 district office in any city which elects members of its governing
31 board on a district basis, or requires that candidates reside in a
32 district in order to run, shall file his notice of candidacy with the
33 board of elections no earlier than 12:00 noon on the fourth
34 Monday in July and no later than 12:00 noon on the second
35 Friday in August preceding the election; and
- 36 b. In 2002 if the election is held then under G.S. 160A-23.1, a
37 candidate seeking party nomination for municipal or district
38 office shall file his notice of candidacy with the board of
39 elections at the same time as notices of candidacy for county
40 officers are required to be filed under G.S. 163-106.

41 No person may file a notice of candidacy for more than one
42 municipal office at the same election. If a person has filed a
43 notice of candidacy for one office with the county board of
44 elections under this section, then a notice of candidacy may not

1 later be filed for any other municipal office for that election
2 unless the notice of candidacy for the first office is withdrawn
3 first.

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

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

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

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

23 **SECTION 9.** G.S. 163-179.1(a) reads as rewritten:

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

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

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

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

37 **SECTION 10.** G.S. 163-192.1(a) reads as rewritten:

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

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

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

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

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

18 **SECTION 11.** Section 6 of Chapter 603, Session Laws of 1977, as enacted
19 by Section 2 of Chapter 1214, Session Laws of 1981, reads as rewritten:

20 "Sec. 6. If a runoff election is required, the runoff election shall be held ~~at the time~~
21 ~~for the second primary as provided in G.S. 163-111(e)~~ on the fourth Tuesday after the
22 primary election, and those persons elected members of Orange County Board of
23 Education shall qualify and take office on the first Monday of the month following their
24 election."

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

26 **SECTION 12.** The third and fourth paragraphs of Section 1 of Chapter 203,
27 Session Laws of 1973, as rewritten by Section 1 of Chapter 135, Session Laws of 1985,
28 is amended by deleting the words "on the date provided by G.S. 163-111(e)" and
29 substituting "on the fourth Tuesday after the primary election".

30 **PART 4. OMNIBUS LOCAL ACT AMENDMENTS**

31 **SECTION 13.** Any merger plan adopted under Article 7 of Chapter 115C of
32 the General Statutes or any local act that provides that a nonpartisan runoff election
33 shall be held on the date of the second primary is amended to provide that the runoff
34 election shall be held on the fourth Tuesday after the primary.

35 **SECTION 14.** Any local act or merger plan in conflict with this act is
36 repealed to the extent of the conflict.

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