

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H.B. 177
Feb 22, 2017
HOUSE PRINCIPAL CLERK

H

D

HOUSE BILL DRH10055-BB-3 (01/03)

Short Title: Eliminate Second Primaries. (Public)

Sponsors: Representatives Floyd, Jordan, Michaux, and C. Graham (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE SECOND PRIMARIES.

The General Assembly of North Carolina enacts:

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

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

(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~~ Nominations in primary elections 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 number of votes shall be declared the nominee.

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

(a1) When more than one person is seeking election to a single office and two or more candidates receiving the highest numbers of votes each receive the same number of votes, the board of elections shall determine the nominee by lot.

(a2) When there are more persons seeking nomination to two or more offices (constituting a group) than there are offices to be filled, and two or more candidates receiving the lowest numbers of votes necessary for nomination each receive the same number of votes, the board of elections shall, from among those candidates receiving the same number of votes, determine the nominee by lot.

(a3) This section prevails over any local act.



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

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

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

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

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

35 ~~Governor,~~

36 ~~Lieutenant Governor,~~

37 ~~All State executive officers,~~

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

39 ~~United States Senators,~~

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

41 ~~State Senators in multi-county senatorial districts, and~~

42 ~~Members of the State House of Representatives in multi-county~~
43 ~~representative districts.~~

44 (2) ~~A candidate who is apparently entitled to demand a second primary, according~~
45 ~~to the unofficial results, for one of the offices listed below and desiring to do so,~~
46 ~~shall file a request for a second primary in writing with the chairman or director~~
47 ~~of the county board of elections no later than 12:00 noon on the ninth day~~
48 ~~(including Saturdays and Sundays) following the date on which the primary~~
49 ~~was conducted, and such request shall be subject to the certification of the~~
50 ~~official results by the county board of elections:~~

51 ~~State Senators in single-county senatorial districts,~~

- 1 Members of the State House of Representatives in single-county
2 representative districts, and
3 All county officers.
- 4 (3) Immediately upon receipt of a request for a second primary the appropriate
5 board of elections, State or county, shall notify all candidates entitled to
6 participate in the second primary, by telephone followed by written notice, that
7 a second primary has been requested and of the date of the second primary.
- 8 (d) Tie Votes; How Determined.—
- 9 (1) In the event of a tie for the highest number of votes in a first primary between
10 two candidates for party nomination for a single county, or single county
11 legislative district office, the board of elections of the county in which the two
12 candidates were voted for shall conduct a recount and declare the results. If the
13 recount shows a tie vote, a second primary shall be held on the date prescribed
14 in subsection (e) of this section between the two candidates having an equal
15 vote, unless one of the aspirants, within three days after the result of the recount
16 has been officially declared, files a written notice of withdrawal with the board
17 of elections with which he filed notice of candidacy. Should that be done, the
18 remaining aspirant shall be declared the nominee. In the event of a tie for the
19 highest number of votes in a first primary among more than two candidates for
20 party nomination for one of the offices mentioned in this subdivision, no
21 recount shall be held, but all of the tied candidates shall be entered in a second
22 primary.
- 23 (2) In the event of a tie for the highest number of votes in a first primary between
24 two candidates for a State office, for United States Senator, or for any district
25 office (including State Senator in a multi-county senatorial district and member
26 of the State House of Representatives in a multi-county representative district),
27 no recount shall be held solely by reason of the tie, but the two candidates
28 having an equal vote shall be entered in a second primary to be held on the date
29 prescribed in subsection (e) of this section, unless one of the two candidates
30 files a written notice of withdrawal with the State Board of Elections within
31 three days after the result of the first primary has been officially declared and
32 published. Should that be done, the remaining aspirant shall be declared the
33 nominee. In 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 offices
35 mentioned in this subdivision, no recount shall be held, but all of the tied
36 candidates shall be entered in a second primary.
- 37 (3) In the event one candidate receives the highest number of votes cast in a first
38 primary, but short of a substantial plurality, and two or more of the other
39 candidates receive the second highest number of votes cast in an equal number,
40 the proper board of elections shall declare the candidate having the highest vote
41 to be the party nominee, unless all but one of the tied candidates give written
42 notice of withdrawal to the proper board of elections within three days after the
43 result of the first primary has been officially declared. If all but one of the tied
44 candidates withdraw within the prescribed three-day period, and the remaining
45 candidate demands a second primary in accordance with the provisions of
46 subsection (e) of this section, a second primary shall be held between the
47 candidate who received the highest vote and the remaining candidate who
48 received the second highest vote.
- 49 (e) Date of Second Primary; Procedures.— If a second primary is required under the
50 provisions of this section, the appropriate board of elections, State or county, shall order that it be
51 held 10 weeks after the first primary if any of the offices for which a second primary is required

1 are for a candidate for the office of United States Senate or member of the United States House of
2 Representatives. Otherwise, the second primary shall be held seven weeks after the first primary.

3 ~~There shall be no registration of voters between the dates of the first and second primaries.~~
4 ~~Persons whose qualifications to register and vote mature after the day of the first primary and~~
5 ~~before the day of the second primary may register on the day of the second primary and, when~~
6 ~~thus registered, shall be entitled to vote in the second primary. The second primary is a~~
7 ~~continuation of the first primary and any voter who files a proper and timely written affirmation of~~
8 ~~change of address within the county under the provisions of G.S. 163-82.15, in the first primary~~
9 ~~may vote in the second primary without having to refile that written affirmation if the voter is~~
10 ~~otherwise qualified to vote in the second primary. Subject to this provision for registration, the~~
11 ~~second primary shall be held under the laws, rules, and regulations provided for the first primary.~~

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

17 **SECTION 2.** G.S. 160A-23.1(d) reads as rewritten:

18 "(d) If the council adopts the resolution provided for in subsection (a) of this section and
19 does not adopt the changes, or does adopt the changes, but approval under the Voting Rights Act
20 of 1965, as amended, is required, and notice of such approval is not received, by the end of the
21 third day before the opening of the filing period, the municipal election shall be rescheduled as
22 provided in this subsection and current officeholders shall hold over until their successors are
23 elected and qualified. For cities using the:

- 24 (1) Partisan primary and election method under G.S. 163-291, the primary shall be
25 held on the primary election date for county officers in the second year
26 following a federal decennial census, ~~the second primary, if necessary, shall be~~
27 ~~held on the second primary election date for county officers in that year,~~census
28 and the general election shall be held on the general election date for county
29 officers in that year.
- 30 (2) Nonpartisan primary and election method under G.S. 163-294, the primary shall
31 be held on the primary election date for county officers in the second year
32 following a federal decennial census, and the election shall be held ~~on the date~~
33 ~~for the second primary at the same time as the election~~ for county officers in
34 that year.
- 35 (3) Nonpartisan plurality election method under G.S. 163-292, the election shall be
36 held on the primary election date for county officers in the second year
37 following a federal decennial census.
- 38 (4) Election and runoff method under G.S. 163-293, the election shall be held on
39 the primary election date for county officers in the second year following a
40 federal decennial census, ~~and the runoffs, if necessary, shall be held on the date~~
41 ~~for the second primary for county officers in that year.~~but the results shall
42 instead be determined by the nonpartisan plurality election method under
43 G.S. 163-292.

44 The organizational meeting of the new council may be held at any time after the results of the
45 election have been officially determined and published, but not later than the time and date of the
46 first regular meeting of the council in November of the second year following a federal decennial
47 census, except in the case of partisan municipal elections, when the organizational meeting shall
48 be held not later than the time and date of the first regular meeting of the council in December of
49 the second year following a federal decennial census."

50 **SECTION 3.** G.S. 163-13(b) reads as rewritten:

1 "(b) Nominating Procedures. – If a congressional vacancy occurs beginning on the tenth
2 day before the filing period ends under G.S. 163-106(c) preceding the next succeeding general
3 election, candidates for the special election to fill the vacancy shall not be nominated in primaries.
4 Instead, nominations may be made by the political party congressional district executive
5 committees in the district in which the vacancy occurs. The chairman and secretary of each
6 political party congressional district executive committee nominating a candidate shall
7 immediately certify his name and party affiliation to the State Board of Elections so that it may be
8 printed on the special election ballots.

9 If the congressional vacancy occurs before the tenth day before the filing period ends under
10 G.S. 163-106(c) prior to the next succeeding general election, the Governor shall call a special
11 primary for the purpose of nominating candidates to be voted on in a special election called by the
12 Governor in accordance with the provisions of subsection (a) of this section. Such a primary
13 election shall be conducted in accordance with the general laws governing primaries, except that
14 the opening and closing dates for filing notices of candidacy with the State Board of Elections
15 shall be fixed by the Governor in his call for the special primary. The Governor may also fix the
16 absentee voting period for the special election and for the special ~~first~~ primary, but such period
17 shall not be less than 30 days."

18 **SECTION 4.** G.S. 163-55(c) reads as rewritten:

19 "(c) Elections. – For purposes of the 30-day residence requirement to vote in an election in
20 subsection (a) of this section, the term "election" means the day of the primary, ~~second primary,~~
21 general election, special election, or referendum."

22 **SECTION 5.** G.S. 163-82.6(d) reads as rewritten:

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

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

28 (2) The county director of elections; or

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

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

44 **SECTION 6.** G.S. 163-82.17(a) reads as rewritten:

45 "(a) Registrant's Duty to Report. – Any registrant who desires to have the record of his
46 party affiliation or unaffiliated status changed on the registration list shall, no later than the last
47 day for making application to register under G.S. 163-82.6 before the election, indicate the change
48 on an application form as described in G.S. 163-82.3 or on a voter registration card described in
49 G.S. 163-82.8. No registrant shall be permitted to change party affiliation or unaffiliated status for
50 a primary, ~~second primary,~~ or special or general election after the deadline for registration
51 applications for that election as set out in G.S. 163-82.6."

1 **SECTION 7.** G.S. 163-182.11(a) reads as rewritten:

2 "**§ 163-182.11. Appeal of a protest decision by the county board to the State Board of**
3 **Elections.**

4 (a) Notice and Perfection of Appeal. – The decision by the county board of elections on an
5 election protest may be appealed to the State Board of Elections by any of the following:

6 (1) The person who filed the protest.

7 (2) A candidate or elected official adversely affected by the county board's
8 decision.

9 (3) Any other person who participated in the hearing and has a significant interest
10 adversely affected by the county board's decision.

11 Written notice of the appeal must be given to the county board within 24 hours after the county
12 board files the written decision at its office. The appeal to the State Board must be in writing. The
13 appeal must be delivered or deposited in the mail, addressed to the State Board, by the appropriate
14 one of the following: (i) the end of the second day after the day the decision was filed by the
15 county board in its office, if the decision concerns a ~~first~~-primary; or (ii) the end of the fifth day
16 after the day the decision was filed in the county board office, if the decision concerns an election
17 other than a ~~first~~-primary.

18 The State Board shall prescribe forms for filing appeals from the county board."

19 **SECTION 8.** G.S. 163-226(c) reads as rewritten:

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

23 **SECTION 9.** G.S. 163-227.1 is repealed.

24 **SECTION 10.** G.S. 163-227.3(b) is repealed.

25 **SECTION 11.** G.S. 163-258.9(a) reads as rewritten:

26 "(a) Not later than 60 days before the statewide general election in even-numbered years
27 and not later than 50 days before any other election, the county board of elections shall transmit a
28 ballot and balloting materials to all covered voters who by that date submit a valid
29 military-overseas ballot ~~application, except for a second primary application.~~ application. Provided, in a
30 presidential election year, the board of elections shall provide general election ballots no later than
31 three days after nomination of the presidential and vice presidential candidates if that nomination
32 occurs later than 63 days prior to the statewide general election and makes compliance with the
33 60-day deadline impossible. However, in the case of municipal elections, absentee ballots shall be
34 made available no later than 30 days before an election. ~~For a second primary which includes a~~
35 ~~candidate for federal office, the county board of elections shall transmit a ballot and balloting~~
36 ~~material to all covered voters who by that date submit a valid military-overseas ballot application~~
37 ~~no later than 45 days before the second primary. For a second primary which does not include a~~
38 ~~candidate for federal office, the transmission of the ballot and ballot materials shall be as soon as~~
39 ~~practicable and shall be transmitted electronically no later than three business days and by mail no~~
40 ~~later than 15 days from the date the appropriate board of elections orders that the second primary~~
41 ~~be held pursuant to G.S. 163-111. If additional offices are added to the ballot to fill a vacancy~~
42 occurring after the deadline provided by this subsection, those ballots shall be transmitted as soon
43 as practicable."

44 **SECTION 12.** G.S. 163-258.16(a) reads as rewritten:

45 "(a) Not later than 100 days before a regularly scheduled election to which this Article
46 applies, and as soon as practicable in the case of an election or vacancy election not regularly
47 scheduled, each county board of elections shall prepare an election notice for that jurisdiction to be
48 used in conjunction with the federal write-in absentee ballot described in G.S. 163-258.11. ~~For a~~
49 ~~second primary required by G.S. 163-111, the county board of elections shall prepare, no later~~
50 ~~than the day following the date the appropriate board of elections orders that a second primary be~~
51 ~~held, an election notice for that jurisdiction to be used in conjunction with the federal write in~~

1 ~~absentee ballot.~~ The election notice shall contain a list of all of the ballot measures and federal,
2 State, and local offices that, as of that date, the official expects to be on the ballot on the date of
3 the election. The notice also shall contain specific instructions for how a voter is to indicate on the
4 federal write-in absentee ballot the voter's choice for each office to be filled and for each ballot
5 measure to be contested."

6 **SECTION 13.** G.S. 163-258.29 reads as rewritten:

7 "**§ 163-258.29. Absentee voting at office of board of elections.**

8 Notwithstanding any other provisions of this Chapter, any covered voter under this Article
9 shall be permitted to vote an absentee ballot pursuant to G.S. 163-227.2 if the covered voter has
10 not already voted an absentee ballot which has been returned to the board of elections, and if the
11 covered voter will not be in the county on the day of the primary or election.

12 In the event an absentee application or ballot has already been mailed to the covered voter
13 applying to vote pursuant to G.S. 163-227.2, the board of elections shall void the application and
14 ballot unless the voted absentee ballot has been received by the board of elections. The covered
15 voter shall be eligible to vote pursuant to G.S. 163-227.2 no later than 5:00 P.M. on the day next
16 preceding the ~~primary, second~~ primary or election."

17 **SECTION 14.** G.S. 163-278.6(8) reads as rewritten:

18 "**§ 163-278.6. Definitions.**

19 When used in this Article:

20 ...

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

24 **SECTION 15.** G.S. 163-278.13(d) reads as rewritten:

25 "(d) For the purposes of this section, the term "an election" means the period of time from
26 January 1 of an odd-numbered year through the day of the ~~primary, the day after the primary~~
27 ~~through the day of the second primary,~~ primary or the day after the primary through December 31
28 of the next even-numbered year, without regard to whether the candidate is opposed or unopposed
29 in the election, ~~except that where a candidate is not on the ballot in a second primary, that second~~
30 ~~primary is not "an election" with respect to that candidate.~~ election."

31 **SECTION 16.** G.S. 163-278.13B(d) is repealed.

32 **SECTION 17.** G.S. 163-278.40B(2) reads as rewritten:

33 "**§ 163-278.40B. Campaign report; partisan election.**

34 In any city election conducted on a partisan basis in accordance with G.S. 163-279(a)(2) and
35 163-291, the following reports shall be filed in addition to the organizational report:

36 ...

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

41 **SECTION 18.** G.S. 163-279(a)(2) reads as rewritten:

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

45 ...

46 (2) If the election is partisan, the election shall be held on Tuesday after the first
47 Monday in ~~November, the first~~ November and the primary shall be held on the
48 second Tuesday after Labor Day, and the second primary, if required, shall be
49 held on the fourth Tuesday before the election. Day."

50 **SECTION 19.** G.S. 163-291 reads as rewritten:

51 "**§ 163-291. Partisan primaries and elections.**

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

7 ...

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

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

14 **SECTION 20.** G.S. 163-329(b1) reads as rewritten:

15 "(b1) Method for Vacancy Election. – If a vacancy for the office of justice of the Supreme
16 Court, judge of the Court of Appeals, or judge of the superior court occurs more than 60 days
17 before the general election and after the opening of the filing period for the primary, then the State
18 Board of Elections shall designate a special filing period of one week for candidates for the office.
19 If more than two candidates file and qualify for the office in accordance with G.S. 163-323, then
20 the Board shall conduct ~~the election for the office as follows:~~

21 (1) ~~When the vacancy described in this section occurs more than 63 days before the~~
22 ~~date of the second primary for members of the General Assembly, a special~~
23 ~~primary shall be held on the same day as the second primary. The two~~
24 ~~candidates with the most votes in the special primary shall have their names~~
25 ~~placed on the ballot for the general election held on the same day as the general~~
26 ~~election for members of the General Assembly.~~

27 (2) ~~When the vacancy described in this section occurs less than 64 days before the~~
28 ~~date of the second primary, a general election for all the candidates shall be~~
29 ~~held on the same day as the general election for members of the General~~
30 ~~Assembly and the results shall be determined on a plurality basis as provided by~~
31 ~~G.S. 163-292.~~

32 (3) ~~Repealed by Session Laws 2013-381, s. 51.1, effective January 1, 2014."~~

33 **SECTION 21.** This act is effective when it becomes law and applies to elections held
34 on or after that date.