

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE DRH70257-RR-20 (2/2)

Short Title: Instant Runoff Voting. (Public)

Sponsors: Representative Luebke.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR INSTANT RUNOFF VOTING IN STATEWIDE
PARTY PRIMARIES AND CERTAIN STATEWIDE JUDICIAL VACANCY
ELECTIONS.

The General Assembly of North Carolina enacts:

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

"§ 163-111A. Instant runoff voting.

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

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

- (1) That in addition to marking their first-choice candidate, the voter may rank alternate choice candidates.
- (2) That marking a second or other choice candidate can never defeat the voter's first choice.

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

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

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

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

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

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

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

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

33 **"§ 163-111. Determination of primary results; second primaries.**

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

39 (1) If a nominee for a single office is to be selected, and there is more than
40 one person seeking nomination, the substantial plurality shall be
41 ascertained by multiplying the total vote cast for all aspirants by forty
42 percent (40%). Any excess of the sum so ascertained shall be a
43 substantial plurality, and the aspirant who obtains a substantial
44 plurality shall be declared the nominee. If two candidates receive a

1 substantial plurality, the candidate receiving the highest vote shall be
2 declared the nominee.

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

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

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

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

38 (c) Procedure for Requesting Second Primary. –

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

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

9 ~~Governor,~~

10 ~~Lieutenant Governor,~~

11 ~~All State executive officers,~~

12 District Attorneys of the General Court of Justice,

13 ~~United States Senators,~~

14 Members of the United States House of Representatives,

15 State Senators in multi-county senatorial districts, and

16 Members of the State House of Representatives in multi-county
17 representative districts.

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

26 State Senators in single-county senatorial districts,

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

29 All county officers.

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

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

39 (d) Tie Votes; How Determined. –

- 40 (1) In the event of a tie for the highest number of votes in a first primary
41 between two candidates for party nomination for a single county, or
42 single-county legislative district office, the board of elections of the
43 county in which the two candidates were voted for shall conduct a
44 recount and declare the results. If the recount shows a tie vote, a

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

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

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

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

43 There shall be no registration of voters between the dates of the first and second
44 primaries. Persons whose qualifications to register and vote mature after the day of the

1 first primary and before the day of the second primary may register on the day of the
2 second primary and, when thus registered, shall be entitled to vote in the second
3 primary. The second primary is a continuation of the first primary and any voter who
4 files a proper and timely affidavit of transfer of precinct, under the provisions of
5 G.S. 163-82.15, before the first primary may vote in the second primary without having
6 to refile the affidavit of transfer if he is otherwise qualified to vote in the second
7 primary. Subject to this provision for registration, the second primary shall be held
8 under the laws, rules, and regulations provided for the first primary.

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

14 **SECTION 3.** G.S. 163-329 reads as rewritten:

15 "**§ 163-329. Elections to fill vacancy created after primary filing period to use**
16 **plurality or instant runoff voting method.**

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

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

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

- 1 (2) When more than one person is seeking election to a single office, the
2 candidate who receives the highest number of votes shall be declared
3 ~~elected.~~ elected, except that elections for justice of the Supreme Court
4 and judge of the Court of Appeals shall be determined by instant
5 runoff voting as provided in subsection (a) of this section.
- 6 (3) When more persons are seeking election to two or more offices
7 (constituting a group) than there are offices to be filled, those
8 candidates receiving the highest number of votes, equal in number to
9 the number of offices to be filled, shall be declared elected.
- 10 (4) If two or more candidates receiving the highest number of votes each
11 receive the same number of votes, the board of elections shall resolve
12 the tie in accordance with ~~G.S. 163-182.8.~~ G.S. 163-182.8, except that
13 ties in elections for justice of the Supreme Court and judge of the
14 Court of Appeals shall be resolved by instant runoff voting as provided
15 in subsection (a) of this section. If instant runoff voting results in a tie,
16 the provisions of G.S. 163-182.8 shall apply.
- 17 (5) Except as provided in this section, the provisions of this Article apply
18 to elections conducted under this section."

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