

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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SENATE DRS35145-ST-31A (03/07)

Short Title: No Second Primaries.

(Public)

Sponsors: Senator Davis.

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO ELIMINATE SECOND PRIMARIES.

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 Plurality.  
7 – Except as otherwise provided in this section, nominations in primary elections shall be  
8 determined by a substantial plurality of the votes cast. A substantial plurality within the  
9 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 one  
11 person seeking nomination, the substantial plurality shall be ascertained by  
12 multiplying the total vote cast for all aspirants by forty percent (40%). Any  
13 excess of the sum so ascertained shall be a substantial plurality, and the  
14 aspirant who obtains a substantial plurality shall be declared the nominee. If  
15 two candidates receive a substantial plurality, the candidate receiving the  
16 highest vote shall be declared the nominee.

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

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

30 (1) ~~If a nominee for a single office is to be selected and no aspirant receives a~~  
31 ~~substantial plurality of the votes cast, the aspirant receiving the highest~~  
32 ~~number of votes shall be declared nominated by the appropriate board of~~  
33 ~~elections unless the aspirant receiving the second highest number of votes~~  
34 ~~shall request a second primary in accordance with the provisions of~~  
35 ~~subsection (c) of this section. In the second primary only the two aspirants~~



- 1 who received the highest and next highest number of votes shall be voted  
2 for.
- 3 (2) If nominees for two or more offices (constituting a group) are to be selected  
4 and aspirants for some or all of the positions within the group do not receive  
5 a substantial plurality of the votes, those candidates equal in number to the  
6 positions remaining to be filled and having the highest number of votes shall  
7 be declared the nominees unless some one or all of the aspirants equal in  
8 number to the positions remaining to be filled and having the second highest  
9 number of votes shall request a second primary in accordance with the  
10 provisions of subsection (c) of this section. In the second primary to select  
11 nominees for the positions in the group remaining to be filled, the names of  
12 all those candidates receiving the highest number of votes and all those  
13 receiving the second highest number of votes and demanding a second  
14 primary shall be printed on the ballot.
- 15 (c) Procedure for Requesting Second Primary.—
- 16 (1) A candidate who is apparently entitled to demand a second primary,  
17 according to the unofficial results, for one of the offices listed below, and  
18 desiring to do so, shall file a request for a second primary in writing with the  
19 Executive Director of the State Board of Elections no later than 12:00 noon  
20 on the ninth day (including Saturdays and Sundays) following the date on  
21 which the primary was conducted, and such request shall be subject to the  
22 certification of the official results by the State Board of Elections. If the vote  
23 certification by the State Board of Elections determines that a candidate who  
24 was not originally thought to be eligible to call for a second primary is in  
25 fact eligible to call for a second primary, the Executive Director of the State  
26 Board of Elections shall immediately notify such candidate and permit him  
27 to exercise any options available to him within a 48 hour period following  
28 the notification:
- 29 Governor,  
30 Lieutenant Governor,  
31 All State executive officers,  
32 District Attorneys of the General Court of Justice,  
33 United States Senators,  
34 Members of the United States House of Representatives,  
35 State Senators in multi-county senatorial districts, and  
36 Members of the State House of Representatives in multi-county  
37 representative districts.
- 38 (2) A candidate who is apparently entitled to demand a second primary,  
39 according to the unofficial results, for one of the offices listed below and  
40 desiring to do so, shall file a request for a second primary in writing with the  
41 chairman or director of the county board of elections no later than 12:00  
42 noon on the ninth day (including Saturdays and Sundays) following the date  
43 on which the primary was conducted, and such request shall be subject to the  
44 certification of the official results by the county board of elections:
- 45 State Senators in single-county senatorial districts,  
46 Members of the State House of Representatives in single-county  
47 representative districts, and  
48 All county officers.
- 49 (3) Immediately upon receipt of a request for a second primary the appropriate  
50 board of elections, State or county, shall notify all candidates entitled to  
51 participate in the second primary, by telephone followed by written notice,

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

48       ~~There shall be no registration of voters between the dates of the first and second primaries.~~  
49       ~~Persons whose qualifications to register and vote mature after the day of the first primary and~~  
50       ~~before the day of the second primary may register on the day of the second primary and, when~~  
51       ~~thus registered, shall be entitled to vote in the second primary. The second primary is a~~

1 continuation of the first primary and any voter who files a proper and timely written affirmation  
2 of change of address within the county under the provisions of G.S. 163-82.15, in the first  
3 primary may vote in the second primary without having to refile that written affirmation if he is  
4 otherwise qualified to vote in the second primary. Subject to this provision for registration, the  
5 second primary shall be held under the laws, rules, and regulations provided for the first  
6 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 nominated. If~~  
9 ~~in a second primary there is a tie for the highest number of votes between two candidates, the~~  
10 ~~proper party executive committee shall select the party nominee for the office in accordance~~  
11 ~~with the provisions of G.S. 163-114."~~

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

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

- 19 (1) Partisan primary and election method under G.S. 163-291, the primary shall  
20 be held on the primary election date for county officers in the second year  
21 following a federal decennial census, ~~the second primary, if necessary, shall~~  
22 ~~be held on the second primary election date for county officers in that~~  
23 ~~year, census~~ and the general election shall be held on the general election  
24 date for county officers in that year.
- 25 (2) Nonpartisan primary and election method under G.S. 163-294, the primary  
26 shall be held on the primary election date for county officers in the second  
27 year following a federal decennial census, and the election shall be held on  
28 the date for the second primary for county officers in that year.
- 29 (3) Nonpartisan plurality election method under G.S. 163-292, the election shall  
30 be held on the primary election date for county officers in the second year  
31 following a federal decennial census.
- 32 (4) Election and runoff method under G.S. 163-293, the election shall be held on  
33 the primary election date for county officers in the second year following a  
34 federal decennial census, ~~and the runoffs, if necessary, shall be held on the~~  
35 ~~date for the second primary for county officers in that year, census.~~

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

42 **SECTION 3.** G.S. 163-55(c) reads as rewritten:

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

46 **SECTION 4.** G.S. 163-82.6(d) reads as rewritten:

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

- 51 (1) A member of the county board of elections;

- 1 (2) The county director of elections; or  
2 (3) The chief judge or a judge of the precinct in which the person is eligible to  
3 vote, and, if the application is approved, that person may vote the same day.  
4 The official in subdivisions (1) through (3) of this subsection to whom the  
5 application is submitted shall decide whether the applicant is eligible to vote.  
6 The applicant shall present to the official written or documentary evidence  
7 that the applicant is the person he represents himself to be. The official, if in  
8 doubt as to the right of the applicant to register, may require other evidence  
9 satisfactory to that official as to the applicant's qualifications. If the official  
10 determines that the person is eligible, the person shall be permitted to vote in  
11 the primary or election and the county board shall add the person's name to  
12 the list of registered voters. If the official denies the application, the person  
13 shall be permitted to vote a challenged ballot under the provisions of  
14 G.S. 163-88.1, and may appeal the denial to the full county board of  
15 elections. The State Board of Elections shall promulgate rules for the county  
16 boards of elections to follow in hearing appeals for denial of primary or  
17 election day applications to register. ~~No person shall be permitted to register  
18 on the day of a second primary unless he shall have become qualified to  
19 register and vote between the date of the first primary and the date of the  
20 succeeding second primary."~~

21 **SECTION 5.** G.S. 163-82.17(a) reads as rewritten:

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

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

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

33 **SECTION 7.** G.S. 163-227.1 is repealed.

34 **SECTION 8.** G.S. 163-227.3(b) is repealed.

35 **SECTION 9.** G.S. 163-255 reads as rewritten:

36 **"§ 163-255. Absentee voting at office of board of elections.**

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

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

47 **SECTION 10.** G.S. 163-278.6(8) reads as rewritten:

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

51 **SECTION 11.** G.S. 163-278.13(d) reads as rewritten:

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

6       **SECTION 12.** G.S. 163-278.13B(d) is repealed.

7       **SECTION 13.** G.S. 163-278.40B(2) reads as rewritten:

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

12       **SECTION 14.** G.S. 163-279(a)(2) reads as rewritten:

13       "(2) If the election is partisan, the election shall be held on Tuesday after the first  
14 Monday in November, the first primary shall be held on the second Tuesday  
15 after Labor Day, ~~and the second primary, if required, shall be held on the~~  
16 ~~fourth Tuesday before the election.Day."~~

17       **SECTION 15.** 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 districts  
20 whose elections are conducted on a partisan basis shall be governed by the provisions of this  
21 Chapter applicable to the nomination of county officers, and the terms "county board of  
22 elections," "chairman of the county board of elections," "county officers," and similar terms  
23 shall be construed with respect to municipal elections to mean the appropriate municipal  
24 officers and candidates, except that:

25       (1) The dates of primary and election shall be as provided in G.S. 163-279.

26       (2) A candidate seeking party nomination for municipal or district office shall  
27 file notice of candidacy with the board of elections no earlier than 12:00  
28 noon on the first Friday in July and no later than 12:00 noon on the third  
29 Friday in July preceding the election, except:

30       a. In the year following a federal decennial census, a candidate seeking  
31 party nomination for municipal or district office in any city which  
32 elects members of its governing board on a district basis, or requires  
33 that candidates reside in a district in order to run, shall file his notice  
34 of candidacy with the board of elections no earlier than 12:00 noon  
35 on the fourth Monday in July and no later than 12:00 noon on the  
36 second Friday in August preceding the election; and

37       b. In the second year following a federal decennial census, if the  
38 election is held then under G.S. 160A-23.1, a candidate seeking party  
39 nomination for municipal or district office shall file his notice of  
40 candidacy with the board of elections at the same time as notices of  
41 candidacy for county officers are required to be filed under  
42 G.S. 163-106.

43       No person may file a notice of candidacy for more than one municipal  
44 office at the same election. If a person has filed a notice of candidacy for one  
45 office with the county board of elections under this section, then a notice of  
46 candidacy may not later be filed for any other municipal office for that  
47 election unless the notice of candidacy for the first office is withdrawn first.

48       (3) The filing fee for municipal and district primaries shall be fixed by the  
49 governing board not later than the day before candidates are permitted to  
50 begin filing notices of candidacy. There shall be a minimum filing fee of five  
51 dollars (\$5.00). The governing board shall have the authority to set the filing

1 fee at not less than five dollars (\$5.00) nor more than one percent (1%) of  
2 the annual salary of the office sought unless one percent (1%) of the annual  
3 salary of the office sought is less than five dollars (\$5.00), in which case the  
4 minimum filing fee of five dollars (\$5.00) will be charged. The fee shall be  
5 paid to the board of elections at the time notice of candidacy is filed.

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

7 (5) The canvass of the primary ~~and second primary~~ shall be held on the seventh  
8 day following the ~~primary or second primary~~. In accepting the filing of  
9 complaints concerning the conduct of an election, a board of elections shall  
10 be subject to the rules concerning Sundays and holidays set forth in  
11 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 16.** 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  
18 State Board of Elections shall designate a special filing period of one week for candidates for  
19 the office. If more than two candidates file and qualify for the office in accordance with  
20 G.S. 163-323, then 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~~  
22 ~~the date of the second primary for members of the General Assembly, a~~  
23 ~~special primary shall be held on the same day as the second primary. The~~  
24 ~~two candidates with the most votes in the special primary shall have their~~  
25 ~~names placed on the ballot for the general election held on the same day as~~  
26 ~~the general election for members of the General Assembly.~~

27 (2) ~~When the vacancy described in this section occurs less than 64 days before~~  
28 ~~the date of the second primary, a general election for all the candidates shall~~  
29 ~~be held on the same day as the general election for members of the General~~  
30 ~~Assembly and the "instant runoff voting" method shall be used to determine~~  
31 ~~the winner. Under "instant runoff voting," voters rank up to three of the~~  
32 ~~candidates by order of preference, first, second, or third. If the candidate~~  
33 ~~with the greatest number of first-choice votes receives more than fifty~~  
34 ~~percent (50%) of the first-choice votes, that candidate wins. If no candidate~~  
35 ~~receives that minimum number, the two candidates with the greatest number~~  
36 ~~of first-choice votes advance to a second round of counting. In this round,~~  
37 ~~each ballot counts as a vote for whichever of the two final candidates is~~  
38 ~~ranked highest by the voter. The candidate with the most votes in the second~~  
39 ~~round wins the election. If more than one seat is to be filled in the same race,~~  
40 ~~the voter votes the same way as if one seat were to be filled. The counting is~~  
41 ~~the same as when one seat is to be filled, with one or two rounds as needed,~~  
42 ~~except that counting is done separately for each seat to be filled. The first~~  
43 ~~count results in the first winner. Then the second count proceeds without the~~  
44 ~~name of the first winner. This process results in the second winner. For each~~  
45 ~~additional seat to be filled, an additional count is done without the names of~~  
46 ~~the candidates who have already won. In multi-seat contests, the State Board~~  
47 ~~of Elections may give the voter more than three choices.~~

48 (3) If two or more candidates receiving the highest number of votes each receive  
49 the same number of votes, the board of elections shall resolve the tie in  
50 accordance with G.S. 163-182.8."

51 **SECTION 17.** This act is effective when it becomes law.