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HOUSE DRH10065-LU-21 (12/16)

Short Title: Eliminate Second Primaries. (Public)

Sponsors: Representative Floyd.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ELIMINATE SECOND PRIMARIES AND MAKE OTHER CONFORMING
3 STATUTORY CHANGES.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 160A-23.1(d) reads as rewritten:

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

12 (1) Partisan primary and election method under G.S. 163-291, the primary shall
13 be held on the primary election date for county officers in the second year
14 following a federal decennial census, ~~the second primary, if necessary, shall~~
15 ~~be held on the second primary election date for county officers in that~~
16 ~~year, census~~ and the general election shall be held on the general election
17 date for county officers in that year.

18 (2) Nonpartisan primary and election method under G.S. 163-294, the primary
19 shall be held on the primary election date for county officers in the second
20 year following a federal decennial census, and the election shall be held on
21 the general election date for the second primary for county officers in that
22 year.

23 (3) Nonpartisan plurality election method under G.S. 163-292, the election shall
24 be held on the primary election date for county officers in the second year
25 following a federal decennial census.

26 (4) Election and runoff method under G.S. 163-293, the election shall be held on
27 the primary election date for county officers in the second year following a
28 federal decennial census, ~~and the runoffs, if necessary, shall be held on the~~
29 ~~date for the second primary for county officers in that year, but the results~~
30 shall instead be determined by the nonpartisan plurality election method
31 under G.S. 163-292.

32 The organizational meeting of the new council may be held at any time after the results of
33 the election have been officially determined and published, but not later than the time and date
34 of the first regular meeting of the council in November of the second year following a federal
35 decennial census, except in the case of partisan municipal elections, when the organizational



1 meeting shall be held not later than the time and date of the first regular meeting of the council
2 in December of the second year following a federal decennial census."

3 **SECTION 2.** G.S. 163-55(c) reads as rewritten:

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

7 **SECTION 3.** G.S. 163-82.6(d) reads as rewritten:

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

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

13 (2) The county director of elections; or

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

16 and, if the application is approved, that person may vote the same day. The official in
17 subdivisions (1) through (3) of this subsection to whom the application is submitted shall
18 decide whether the applicant is eligible to vote. The applicant shall present to the official
19 written or documentary evidence that the applicant is the person he represents himself to be.
20 The official, if in doubt as to the right of the applicant to register, may require other evidence
21 satisfactory to that official as to the applicant's qualifications. If the official determines that the
22 person is eligible, the person shall be permitted to vote in the primary or election and the
23 county board shall add the person's name to the list of registered voters. If the official denies
24 the application, the person shall be permitted to vote a challenged ballot under the provisions of
25 G.S. 163-88.1, and may appeal the denial to the full county board of elections. The State Board
26 of Elections shall promulgate rules for the county boards of elections to follow in hearing
27 appeals for denial of primary or election day applications to register. ~~No person shall be~~
28 ~~permitted to register on the day of a second primary unless he shall have become qualified to~~
29 ~~register and vote between the date of the first primary and the date of the succeeding second~~
30 ~~primary."~~

31 **SECTION 4.** G.S. 163-82.17(a) reads as rewritten:

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

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

40 "**§ 163-111. Determination of primary results; second primaries, results.**

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

45 (1) If a nominee for a single office is to be selected, and there is more than one
46 person seeking nomination, ~~the substantial plurality shall be ascertained by~~
47 ~~multiplying the total vote cast for all aspirants by forty percent (40%). Any~~
48 ~~excess of the sum so ascertained shall be a substantial plurality, and the~~
49 ~~aspirant who obtains a substantial plurality shall be declared the nominee. If~~
50 ~~two candidates receive a substantial plurality, the candidate receiving the~~
51 ~~highest vote number of votes~~ shall be declared the nominee.

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

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

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

19 (a3) This section prevails over any local act.

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

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

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

43 (c) Procedure for Requesting Second Primary.—

44 (1) ~~A candidate who is apparently entitled to demand a second primary,~~
45 ~~according to the unofficial results, for one of the offices listed below, and~~
46 ~~desiring to do so, shall file a request for a second primary in writing with the~~
47 ~~Executive Director of the State Board of Elections no later than 12:00 noon~~
48 ~~on the ninth day (including Saturdays and Sundays) following the date on~~
49 ~~which the primary was conducted, and such request shall be subject to the~~
50 ~~certification of the official results by the State Board of Elections. If the vote~~
51 ~~certification by the State Board of Elections determines that a candidate who~~

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

6 Governor,
7 Lieutenant Governor,
8 All State executive officers,
9 District Attorneys of the General Court of Justice,
10 United States Senators,
11 Members of the United States House of Representatives,
12 State Senators in multi-county senatorial districts, and
13 Members of the State House of Representatives in multi-county
14 representative districts.

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

22 State Senators in single-county senatorial districts,
23 Members of the State House of Representatives in single-county
24 representative districts, and
25 All county officers.

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

31 (d) Tie Votes; How Determined.—

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

- 46 (2) In the event of a tie for the highest number of votes in a first primary
47 between two candidates for a State office, for United States Senator, or for
48 any district office (including State Senator in a multi-county senatorial
49 district and member of the State House of Representatives in a multi-county
50 representative district), no recount shall be held solely by reason of the tie,
51 but the two candidates having an equal vote shall be entered in a second

primary to be held on the date prescribed in subsection (e) of this section, unless one of the two candidates files a written notice of withdrawal with the State Board of Elections within three days after the result of the first primary has been officially declared and published. Should that be done, the remaining aspirant shall be declared the nominee. In the event of a tie for the highest number of votes in a first primary among more than two candidates for party nomination for one of the offices mentioned in this subdivision, no recount shall be held, but all of the tied candidates shall be entered in a second primary.

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

(e) ~~Date of Second Primary; Procedures. — If a second primary is required under the provisions of this section, the appropriate board of elections, State or county, shall order that it be held 10 weeks after the first primary if any of the offices for which a second primary is required are for a candidate for the office of United States Senate or member of the United States House of Representatives. Otherwise, the second primary shall be held seven weeks after the first primary.~~

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

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

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

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

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

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

SECTION 9. G.S. 163-258.9(a) reads as rewritten:

"(a) Not later than 60 days before the statewide general election in even-numbered years and not later than 50 days before any other election, the county board of elections shall transmit

1 a ballot and balloting materials to all covered voters who by that date submit a valid
2 military-overseas ballot application, ~~except for a second primary application.~~ Provided, in a
3 presidential election year, the board of elections shall provide general election ballots no later
4 than three days after nomination of the presidential and vice presidential candidates if that
5 nomination occurs later than 63 days prior to the statewide general election and makes
6 compliance with the 60-day deadline impossible. However, in the case of municipal elections,
7 absentee ballots shall be made available no later than 30 days before an election. ~~For a second
8 primary which includes a candidate for federal office, the county board of elections shall
9 transmit a ballot and balloting material to all covered voters who by that date submit a valid
10 military-overseas ballot application no later than 45 days before the second primary. For a
11 second primary which does not include a candidate for federal office, the transmission of the
12 ballot and ballot materials shall be as soon as practicable and shall be transmitted electronically
13 no later than three business days and by mail no later than 15 days from the date the appropriate
14 board of elections orders that the second primary be held pursuant to G.S. 163-111. If
15 additional offices are added to the ballot to fill a vacancy occurring after the deadline provided
16 by this subsection, those ballots shall be transmitted as soon as practicable."~~

17 **SECTION 10.** G.S. 163-258.16(a) reads as rewritten:

18 "(a) Not later than 100 days before a regularly scheduled election to which this Article
19 applies, and as soon as practicable in the case of an election or vacancy election not regularly
20 scheduled, each county board of elections shall prepare an election notice for that jurisdiction
21 to be used in conjunction with the federal write-in absentee ballot described in
22 G.S. 163-258.11. ~~For a second primary required by G.S. 163-111, the county board of elections
23 shall prepare, no later than the day following the date the appropriate board of elections orders
24 that a second primary be held, an election notice for that jurisdiction to be used in conjunction
25 with the federal write-in absentee ballot.~~ The election notice shall contain a list of all of the
26 ballot measures and federal, State, and local offices that, as of that date, the official expects to
27 be on the ballot on the date of the election. The notice also shall contain specific instructions
28 for how a voter is to indicate on the federal write-in absentee ballot the voter's choice for each
29 office to be filled and for each ballot measure to be contested."

30 **SECTION 11.** G.S. 163-258.29 reads as rewritten:

31 **"§ 163-258.29. Absentee voting at office of board of elections.**

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

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

41 **SECTION 12.** G.S. 163-278.6(8) reads as rewritten:

42 **"§ 163-278.6. Definitions.**

43 When used in this Article:

44 ...

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

48 **SECTION 13.** G.S. 163-278.13(d) reads as rewritten:

49 "(d) For the purposes of this section, the term "an election" means the period of time
50 from January 1 of an odd-numbered year through the day of the ~~primary, the day after the
51 primary through the day of the second primary,~~ primary or the day after the primary through

1 December 31 of the next even-numbered year, without regard to whether the candidate is
2 opposed or unopposed in the election, ~~except that where a candidate is not on the ballot in a~~
3 ~~second primary, that second primary is not "an election" with respect to that~~
4 ~~candidate election."~~

5 **SECTION 14.** G.S. 163-278.13B(d) is repealed.

6 **SECTION 15.** G.S. 163-278.40B(2) reads as rewritten:

7 **"§ 163-278.40B. Campaign report; partisan election.**

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

10 ...

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

15 **SECTION 16.** G.S. 163-279(a)(2) reads as rewritten:

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

19 ...

20 (2) If the election is partisan, the election shall be held on Tuesday after the first
21 Monday in ~~November, the first~~ November and the primary shall be held on
22 the second Tuesday after Labor Day, ~~and the second primary, if required,~~
23 ~~shall be held on the fourth Tuesday before the election.~~ Day."

24 **SECTION 17.** G.S. 163-291 reads as rewritten:

25 **"§ 163-291. Partisan primaries and elections.**

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

32 ...

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

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

40 **SECTION 18.** G.S. 163-329(b1) reads as rewritten:

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

47 (1) ~~When the vacancy described in this section occurs more than 63 days before~~
48 ~~the date of the second primary for members of the General Assembly, a~~
49 ~~special primary shall be held on the same day as the second primary. The~~
50 ~~two candidates with the most votes in the special primary shall have their~~

- 1 names placed on the ballot for the general election held on the same day as
2 the general election for members of the General Assembly.
3 (2) ~~When the vacancy described in this section occurs less than 64 days before~~
4 ~~the date of the second primary,~~ a general election for all the candidates shall
5 be held on the same day as the general election for members of the General
6 Assembly and the results shall be determined on a plurality basis as provided
7 by G.S. 163-292.
8 (3) ~~Repealed by Session Laws 2013-381, s. 51.1, effective January 1, 2014."~~
9 **SECTION 19.** This act is effective when it becomes law.