

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S

2

SENATE BILL 106
Second Edition Engrossed 4/27/89

Short Title: Second Primaries Abolished.

(Public)

Sponsors: Senators Hunt of Durham; Johnson of Cabarrus, Bryan, Hunt of Moore, and Allran.

Referred to: Election Laws.

February 2, 1989

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON MAY BECOME THE NOMINEE OF A POLITICAL PARTY BY RECEIVING A SUBSTANTIAL PLURALITY OF THE VOTES CAST IN THE PRIMARY ELECTION.

The General Assembly of North Carolina enacts:

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

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

(a) Nomination Determined by ~~Majority~~Substantial Plurality; Definition of ~~Majority~~Substantial Plurality. – Except as otherwise provided in this section, nominations in primary elections shall be determined by a ~~majority-substantial plurality~~ of the votes cast. A ~~majority-substantial plurality~~ within the meaning of this section 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 ~~majority-substantial plurality~~ shall be ascertained by ~~dividing~~multiplying the total vote cast for all aspirants by ~~twoforty percent~~ (40%). Any excess of the sum so ascertained shall be a ~~majority-substantial plurality~~, and the aspirant who obtains a ~~majority-substantial plurality~~ shall be declared the nominee. If two candidates receive a substantial plurality, the candidate receiving the highest vote 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

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

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

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

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

35 (c) Procedure for Requesting Second Primary. –

36 (1) A candidate who is apparently entitled to demand a second primary,
37 according to the unofficial results, for one of the offices listed below,
38 and desiring to do so, shall file a request for a second primary in
39 writing or by telegram with the Executive Secretary-Director of the
40 State Board of Elections no later than 12:00 noon on the seventh day
41 (including Saturdays and Sundays) following the date on which the
42 primary was conducted, and such request shall be subject to the
43 certification of the official results by the State Board of Elections. If
44 the vote certification by the State Board of Elections determines that a

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

7 Governor,

8 Lieutenant Governor,

9 All State executive officers,

10 Justices, Judges, or District Attorneys of the General Court of
11 Justice,

12 United States Senators,

13 Members of the United States House of Representatives, State
14 Senators in multi-county senatorial districts, and Members of
15 the State House of Representatives in multi-county
16 representative districts.

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

25 State Senators in single-county senatorial districts, Members of
26 the State House of Representatives in single-county
27 representative districts, and

28 All county officers.

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

- 34 (d) Tie Votes; How Determined. –

- 35 (1) In the event of a tie for the highest number of votes in a first primary
36 between two candidates for party nomination for a single county, or
37 single-county legislative district office, the board of elections of the
38 county in which the two candidates were voted for shall conduct a
39 recount and declare the results. If the recount shows a tie vote, a
40 second primary shall be held on the date prescribed in subsection (e) of
41 this section between the two candidates having an equal vote, unless
42 one of the aspirants, within three days after the result of the recount
43 has been officially declared, files a written notice of withdrawal with
44 the board of elections with which he filed notice of candidacy. Should

1 that be done, the remaining aspirant shall be declared the nominee. In
2 the event of a tie for the highest number of votes in a first primary
3 among more than two candidates for party nomination for one of the
4 offices mentioned in this subdivision, no recount shall be held, but all
5 of the tied candidates shall be entered in a second primary.

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

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

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

38 There shall be no registration of voters between the dates of the first and second
39 primaries. Persons whose qualifications to register and vote mature after the day of the
40 first primary and before the day of the second primary may register on the day of the
41 second primary and, when thus registered, shall be entitled to vote in the second
42 primary. The second primary is a continuation of the first primary and any voter who
43 files a proper and timely affidavit of transfer of precinct, under the provisions of G.S.
44 163-72(c), before the first primary may vote in the second primary without having to

1 refile the affidavit of transfer if he is otherwise qualified to vote in the second primary.
2 Subject to this provision for registration, the second primary shall be held under the
3 laws, rules, and regulations provided for the first primary.

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

9 Sec. 2. This act shall become effective with respect to all primary elections
10 held on or after January 1, 1990.