

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

5

HOUSE BILL 1024
Committee Substitute Favorable 5/12/05
Third Edition Engrossed 5/18/05
Senate Judiciary I Committee Substitute Adopted 7/11/06
Fifth Edition Engrossed 7/19/06

Short Title: Runoff Changes.

(Public)

Sponsors:

Referred to:

March 31, 2005

A BILL TO BE ENTITLED

1
2 AN ACT TO AUTHORIZE THE STATE BOARD OF ELECTIONS TO CONDUCT A
3 PILOT PROGRAM IN WHICH THE INSTANT RUNOFF METHOD OF VOTING
4 WOULD BE USED IN LOCAL ELECTIONS; TO SET THE DATE OF FUTURE
5 SECOND PRIMARIES AT SEVEN WEEKS AFTER THE FIRST PRIMARY; TO
6 REVISE THE MUNICIPAL ELECTION SCHEDULE TO PROVIDE MORE
7 TIME FOR ABSENTEE VOTING AND ELECTION ADMINISTRATION; TO
8 CONFORM NORTH CAROLINA ABSENTEE VOTING LAW TO THE U.S.
9 UNIFORMED AND OVERSEAS CITIZENS ABSENTEE VOTING ACT; TO
10 REVISE THE PROCEDURE FOR SELECTION OF PRECINCTS AND OTHER
11 VOTING UNITS FOR SAMPLE COUNTS; TO PROVIDE FOR FILLING
12 MID-ELECTION-YEAR JUDICIAL VACANCIES; AND TO FURTHER AMEND
13 THE LAW CONCERNING JUDICIAL CANDIDACIES.

14 The General Assembly of North Carolina enacts:

15 **SECTION 1.(a)** The State Board of Elections shall select local jurisdictions
16 in which to conduct a pilot program during the 2007 and 2008 elections for local offices
17 using instant runoff voting. The State Board shall select:

- 18 (1) Up to 10 cities for the 2007 elections.
19 (2) Up to 10 counties for the 2008 elections.

20 In selecting those local jurisdictions, the State Board shall seek diversity of
21 population size, regional location, and demographic composition. The pilot shall be
22 conducted only with the concurrence of the county board of elections that conducts
23 elections for the local jurisdiction. If a city is selected that has voters in more than one
24 county, the concurrence of all the county boards of elections that conduct that city's
25 elections is required. The pilot program shall consist of using instant runoff voting as
26 the method for determining the winner or winners of a partisan primary or a nonpartisan

1 election that normally uses nonpartisan election and runoff or nonpartisan primary and
2 election. Instant runoff voting may also be used to determine results in an election
3 where nonpartisan plurality elections are normally used, but only if the governing board
4 of the local jurisdiction concurs.

5 As used in this section, "instant runoff voting" means a system in which
6 voters rank up to three of the candidates by order of preference, first, second, or third. If
7 the candidate with the most first-choice votes receives the threshold of victory of the
8 first-choice votes, that candidate wins. If no candidate receives the threshold of victory
9 of first-choice votes, the two candidates with the greatest number of first-choice votes
10 advance to a second round of counting. In this round, each ballot counts as a vote for
11 whichever of the two final candidates is ranked highest by the voter. The candidate with
12 the most votes in the second round wins the election.

13 The threshold of victory of first-choice votes for a partisan primary shall be
14 forty percent (40%) plus one vote. The threshold of victory for a nonpartisan election
15 and runoff or nonpartisan primary and election shall be a majority of the vote. The
16 threshold of victory in a contest that normally uses nonpartisan plurality shall be
17 determined by the State Board with the concurrence of the county board of elections and
18 the local governing board.

19 If more than one seat is to be filled in the same race, the voter votes the same
20 way as if one seat were to be filled. The counting is the same as when one seat is to be
21 filled, with one or two rounds as needed, except that counting is done separately for
22 each seat to be filled. The first counting results in the first winner. Then the second
23 count proceeds without the name of the first winner. This process results in the second
24 winner. For each additional seat to be filled, an additional count is done without the
25 names of the candidates who have already won.

26 Other details of instant runoff voting are as described in House Bill 1024
27 (First Edition) of the 2005 Regular Session of the General Assembly, with
28 modifications the State Board deems necessary, in primaries and/or elections for city
29 offices, for county offices, or for both. Those modifications may include giving the
30 voter more than three choices in case of multi-seat contests. The State Board shall not
31 use instant runoff voting in a primary or election for an office unless the entire
32 electorate for the office uses the same method.

33 **SECTION 1.(b)** The State Board of Elections shall closely monitor the pilot
34 program established in this section and report its findings and recommendations to the
35 2007 General Assembly.

36 **SECTION 2.** G.S. 163-111(e) reads as rewritten:

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

40 There shall be no registration of voters between the dates of the first and second
41 primaries. Persons whose qualifications to register and vote mature after the day of the
42 first primary and before the day of the second primary may register on the day of the
43 second primary and, when thus registered, shall be entitled to vote in the second
44 primary. The second primary is a continuation of the first primary and any voter who

1 files a proper and timely ~~affidavit~~ written affirmation of ~~transfer of precinct, change of~~
2 address within the county under the provisions of G.S. 163-82.15, ~~before~~ in the first
3 primary may vote in the second primary without having to refile ~~the affidavit of transfer~~
4 that written affirmation if he is otherwise qualified to vote in the second primary.
5 Subject to this provision for registration, the second primary shall be held under the
6 laws, rules, and regulations provided for the first primary."

7 **SECTION 3.** G.S. 163-279 reads as rewritten:

8 **"§ 163-279. Time of municipal primaries and elections.**

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

12 (1) If the election is nonpartisan and decided by simple plurality, the
13 election shall be held on Tuesday after the first Monday in November.

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

19 (3) If the election is nonpartisan and the nonpartisan primary method of
20 election is used, the election shall be held on Tuesday after the first
21 Monday in November and the nonpartisan primary shall be held on the
22 fourth Tuesday before the election.

23 (4) If the election is nonpartisan and the election and runoff election
24 method of election is used, the election shall be held on the fourth
25 Tuesday before the Tuesday after the first Monday in November, and
26 the runoff election, if required, shall be held on Tuesday after the first
27 Monday in November.

28 (b) Notwithstanding the provisions of subsection (a), the next regular municipal
29 primary and election in Winston-Salem shall be held at the time of the primary and
30 election for county officers in 1974, officers elected at that time shall serve terms of
31 office expiring on the first Monday in December, 1977. Beginning in 1977, municipal
32 primaries and elections in Winston-Salem shall be held at the time provided in this
33 section.

34 (c) Officers of sanitary districts elected in 1970 shall hold office until the first
35 Monday in December, 1973, notwithstanding G.S. 130-126. Beginning in 1973, sanitary
36 district elections shall be held at the times provided in this section or in
37 G.S. 130A-50(b1)."

38 **SECTION 4.** G.S. 163-291 reads as rewritten:

39 **"§ 163-291. Partisan primaries and elections.**

40 The nomination of candidates for office in cities, towns, villages, and special
41 districts whose elections are conducted on a partisan basis shall be governed by the
42 provisions of this Chapter applicable to the nomination of county officers, and the terms
43 "county board of elections," "chairman of the county board of elections," "county

1 officers," and similar terms shall be construed with respect to municipal elections to
2 mean the appropriate municipal officers and candidates, except that:

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

5 (2) A candidate seeking party nomination for municipal or district office
6 shall file ~~his~~ notice of candidacy with the board of elections no earlier
7 than 12:00 noon on the first Friday in July and no later than 12:00
8 noon on the ~~first~~ third Friday in ~~August~~ July preceding the election,
9 except:

10 a. In 2001 a candidate seeking party nomination for municipal or
11 district office in any city which elects members of its governing
12 board on a district basis, or requires that candidates reside in a
13 district in order to run, shall file his notice of candidacy with the
14 board of elections no earlier than 12:00 noon on the fourth
15 Monday in July and no later than 12:00 noon on the second
16 Friday in August preceding the election; and

17 b. In 2002 if the election is held then under G.S. 160A-23.1, a
18 candidate seeking party nomination for municipal or district
19 office shall file his notice of candidacy with the board of
20 elections at the same time as notices of candidacy for county
21 officers are required to be filed under G.S. 163-106.

22 No person may file a notice of candidacy for more than one
23 municipal office at the same election. If a person has filed a notice of
24 candidacy for one office with the county board of elections under this
25 section, then a notice of candidacy may not later be filed for any other
26 municipal office for that election unless the notice of candidacy for the
27 first office is withdrawn first.

28 (3) The filing fee for municipal and district primaries shall be fixed by the
29 governing board not later than the day before candidates are permitted
30 to begin filing notices of candidacy. There shall be a minimum filing
31 fee of five dollars (\$5.00). The governing board shall have the
32 authority to set the filing fee at not less than five dollars (\$5.00) nor
33 more than one percent (1%) of the annual salary of the office sought
34 unless one percent (1%) of the annual salary of the office sought is less
35 than five dollars (\$5.00), in which case the minimum filing fee of five
36 dollars (\$5.00) will be charged. The fee shall be paid to the board of
37 elections at the time notice of candidacy is filed.

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

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

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

4 **SECTION 5.** G.S. 163-294.2 reads as rewritten:

5 **"§ 163-294.2. Notice of candidacy and filing fee in nonpartisan municipal elections.**

6 (a) Each person offering himself as a candidate for election to any municipal
7 office in municipalities whose elections are nonpartisan shall do so by filing a notice of
8 candidacy with the board of elections in the following form, inserting the words in
9 parentheses when appropriate:

10 "Date _____;

11 I hereby file notice that I am a candidate for election to the office
12 of _____(at large) (for the _____ Ward) in the
13 regular municipal election to be held in _____ on _____,
14 _____ (municipality)

15 Signed _____
16 (Name of Candidate)

17 Witness: _____

18 **FOR THE BOARD OF ELECTIONS"**

19 The notice of candidacy shall be either signed in the presence of the chairman or
20 secretary of the board of elections or the director of elections of that county, or signed
21 and acknowledged before an officer authorized to take acknowledgments who shall
22 certify the notice under seal. An acknowledged and certified notice may be mailed to
23 the board of elections. The candidate shall sign the notice of candidacy with his legal
24 name and, in his discretion, any nickname by which he is commonly known, in the form
25 that he wishes it to appear upon the ballot but substantially as follows: "Richard D.
26 (Dick) Roc." A candidate may also, in lieu of his legal first name and legal middle
27 initial or middle name (if any) sign his nickname, provided that he appends to the notice
28 of candidacy an affidavit that he has been commonly known by that nickname for at
29 least five years prior to the date of making the affidavit, and notwithstanding the
30 previous sentence, if the candidate has used his nickname in lieu of first and middle
31 names as permitted by this sentence, unless another candidate for the same office who
32 files a notice of candidacy has the same last name, the nickname shall be printed on the
33 ballot immediately before the candidate's surname but shall not be enclosed by
34 parentheses. If another candidate for the same office who filed a notice of candidacy has
35 the same last name, then the candidate's name shall be printed on the ballot in
36 accordance with the next sentence of this subsection. The candidate shall also include
37 with the affidavit the way his name (as permitted by law) should be listed on the ballot
38 if another candidate with the same last name files a notice of candidacy for that office.

39 (b) Only persons who are registered to vote in the municipality shall be permitted
40 to file notice of candidacy for election to municipal office. The board of elections shall
41 inspect the voter registration lists immediately upon receipt of the notice of candidacy
42 and shall cancel the notice of candidacy of any candidate who is not eligible to vote in
43 the election. The board shall give notice of cancellation to any candidate whose notice

1 of candidacy has been cancelled under this subsection by mail or by having the notice
2 served on him by the county sheriff.

3 (c) Candidates seeking municipal office shall file their notices of candidacy with
4 the board of elections no earlier than 12:00 noon on the first Friday in July and no later
5 than 12:00 noon on the ~~first~~ third Friday in ~~August~~ July preceding the election, except:

6 (1) In 2001 candidates seeking municipal office in any city which elects
7 members of its governing board on a district basis, or requires that
8 candidates reside in a district in order to run, shall file their notices of
9 candidacy with the board of elections no earlier than 12:00 noon on the
10 fourth Monday in July and no later than 12:00 noon on the second
11 Friday in August preceding the election; and

12 (2) In 2002 if the election is held then under G.S. 160A-23.1, candidates
13 seeking municipal office shall file their notices of candidacy with the
14 board of elections at the same time as notices of candidacy for county
15 officers are required to be filed under G.S. 163-106.

16 Notices of candidacy which are mailed must be received by the board of elections
17 before the filing deadline regardless of the time they were deposited in the mails.

18 (d) Any person may withdraw his notice of candidacy at any time prior to the
19 filing deadline prescribed in subsection (c), and shall be entitled to a refund of his filing
20 fee if he does so.

21 (e) The filing fee for the primary or election shall be fixed by the governing
22 board not later than the day before candidates are permitted to begin filing notices of
23 candidacy. There shall be a minimum filing fee of five dollars (\$5.00). The governing
24 board shall have the authority to set the filing fee at not less than five dollars (\$5.00) nor
25 more than one percent (1%) of the annual salary of the office sought unless one percent
26 (1%) of the annual salary of the office sought is less than five dollars (\$5.00), in which
27 case the minimum filing fee of five dollars (\$5.00) will be charged. The fee shall be
28 paid to the board of elections at the time notice of candidacy is filed.

29 (f) No person may file a notice of candidacy for more than one municipal office
30 at the same election. If a person has filed a notice of candidacy for one office with the
31 board of elections under this section, then a notice of candidacy may not later be filed
32 for any other municipal office for the election unless the notice of candidacy for the first
33 office is withdrawn first."

34 **SECTION 6.** G.S. 163-245 reads as rewritten:

35 "**§ 163-245. Persons in armed forces, their spouses, certain veterans, civilians**
36 **working with armed forces, and members of Peace Corps may register**
37 **and vote by mail.**

38 (a) Any individual who is eligible to register and who is qualified to vote in any
39 statewide primary or election held under the laws of this State, and who is absent from
40 the county of his residence in any of the capacities specified in subsection (b) of this
41 section, shall be entitled to register by mail ~~and~~ or to vote by ~~military~~ absentee ballot or
42 both in the manner provided in this Article.

43 (b) The provisions of this Article shall apply to the following persons:

- 1 (1) Individuals serving in the armed forces of the United States, including,
2 but not limited to, the army, the navy, the air force, the marine corps,
3 the coast guard, the Merchant Marine, the National Oceanic and
4 Atmospheric Administration, the commissioned corps of the Public
5 Health Service, and members of the national guard and military
6 reserve.
- 7 (2) Spouses of persons serving in the armed forces of the United States
8 residing outside the counties of their spouses' voting residence.
- 9 (3) Disabled war veterans in United States government hospitals.
- 10 (4) Civilians attached to and serving outside the United States with the
11 armed forces of the United States.
- 12 (5) Members of the Peace Corps.
- 13 (6) Other individuals meeting the definitions of "absent uniformed
14 services voter" and "overseas voter" in the federal Uniformed and
15 Overseas Citizens Absentee Voting Act.

16 (c) An otherwise valid voter registration or absentee ballot application submitted
17 by an absent uniformed services voter during a year shall not be refused or prohibited
18 on the grounds that the voter submitted the application before the first date on which the
19 county board of elections otherwise accepts those applications submitted by absentee
20 voters who are not members of the uniformed services for that year.

21 (d) If any absent uniformed services or overseas voter submits a voter
22 registration application or absentee ballot request, and the request is rejected, the board
23 of elections that makes the rejection shall notify the voter of the reasons for the
24 rejection.

25 (e) The requirement for any oath or affirmation to accompany any document as
26 to voter registration or absentee ballots under this Article may be met by use of the
27 standard oath prescribed by the Presidential designee under section 101(b)(7) of the
28 Uniformed and Overseas Citizens Absentee Voting Act."

29 **SECTION 7.(a)** G.S. 163-182.1(b) reads as rewritten:

30 "(b) Procedures and Standards. – The State Board of Elections shall adopt uniform
31 and nondiscriminatory procedures and standards for voting systems. The standards shall
32 define what constitutes a vote and what will be counted as a vote for each category of
33 voting system used in the State. The State Board shall adopt those procedures and
34 standards at a meeting occurring not earlier than 15 days after the State Board gives
35 notice of the meeting. The procedures and standards adopted shall apply to all elections
36 occurring in the State and shall be subject to amendment or repeal by the State Board
37 acting at any meeting where notice that the action has been proposed has been given at
38 least 15 days before the meeting. These procedures and standards shall not be
39 considered to be rules subject to Article 2A of Chapter 150B of the General Statutes.
40 However, the State Board shall publish in the North Carolina Register the procedures
41 and standards and any changes to them after adoption, with that publication noted as
42 information helpful to the public under G.S. 150B-21.17(a)(6). Copies of those
43 procedures and standards shall be made available to the public upon request or
44 otherwise by the State Board. For optical scan and direct record electronic voting

1 systems, and for any other voting systems in which ballots are counted other than on
2 paper by hand and eye, those procedures and standards shall do both of the following:

3 (1) Provide for a sample hand-to-eye count of the paper ballots or paper
4 records of a statewide ballot item in every county. The presidential
5 ballot item shall be the subject of the sampling in a presidential
6 election. If there is no statewide ballot item, the State Board shall
7 provide a process for selecting district or local ballot items to
8 adequately sample the electorate. The State Board shall approve in an
9 open meeting the procedure for randomly selecting the sample
10 precincts for each election. The random selection of precincts for any
11 county shall be done publicly after the initial count of election returns
12 for that county is publicly released or 24 hours after the polls close on
13 election day, whichever is earlier. The sample chosen by the State
14 Board shall be of full precincts, full counts of absentee ballots, and full
15 counts of one-stop early voting sites. The size of the sample of each
16 category shall be chosen to produce a statistically significant result and
17 shall be chosen after consultation with a statistician. The actual units
18 shall be chosen at random. In the event of a material discrepancy
19 between the electronic or mechanical count and a hand-to-eye count,
20 the hand-to-eye count shall control, except where paper ballots or
21 records have been lost or destroyed or where there is another
22 reasonable basis to conclude that the hand-to-eye count is not the true
23 count. If the discrepancy between the hand-to-eye count and the
24 mechanical or electronic count is significant, a complete hand-to-eye
25 count shall be conducted.

26 (2) Provide that if the voter selects votes for more than the number of
27 candidates to be elected or proposals to be approved in a ballot item,
28 the voting system shall do all the following:

- 29 a. Notify the voter that the voter has selected more than the correct
30 number of candidates or proposals in the ballot item.
31 b. Notify the voter before the vote is accepted and counted of the
32 effect of casting overvotes in the ballot item.
33 c. Provide the voter with the opportunity to correct the official
34 ballot before it is accepted and counted."

35 **SECTION 7.(b)** G.S. 163-182.2(b) reads as rewritten:

36 "(b) The State Board of Elections shall promulgate rules for the initial counting of
37 official ballots. All election officials shall be governed by those rules. In promulgating
38 those rules, the State Board shall adhere to the following guidelines:

39 (1) For each voting system used, the rules shall specify the role of precinct
40 officials and of the county board of elections in the initial counting of
41 official ballots.

42 (1a) For optical scan and direct record electronic voting systems, and for
43 any other voting systems in which ballots are counted other than on
44 paper by hand and eye, those rules shall provide for a sample

1 hand-to-eye count of the paper ballots or paper records of a sampling
 2 of a statewide ballot item in every county. The presidential ballot item
 3 shall be the subject of the sampling in a presidential election. If there is
 4 no statewide ballot item, the State Board shall provide a process for
 5 selecting district or local ballot items to adequately sample the
 6 electorate. The State Board shall approve in an open meeting the
 7 procedure for randomly selecting the sample precincts for each
 8 election. The random selection of precincts for any county shall be
 9 done publicly after the initial count of election returns for that county
 10 is publicly released or 24 hours after the polls close on election day,
 11 whichever is earlier. The sample chosen by the State Board shall be of
 12 full precincts, full counts of absentee ballots, and full counts of
 13 one-stop early voting sites. The size of the sample of each category
 14 shall be chosen to produce a statistically significant result and shall be
 15 chosen after consultation with a statistician. The actual units shall be
 16 chosen at random. In the event of a material discrepancy between the
 17 electronic or mechanical count and a hand-to-eye count, the
 18 hand-to-eye count shall control, except where paper ballots or records
 19 have been lost or destroyed or where there is another reasonable basis
 20 to conclude that the hand-to-eye count is not the true count. If the
 21 discrepancy between the hand-to-eye count and the mechanical or
 22 electronic count is significant, a complete hand-to-eye count shall be
 23 conducted.

- 24 (2) The rules shall provide for accurate unofficial reporting of the results
- 25 from the precinct to the county board of elections with reasonable
- 26 speed on the night of the election.
- 27 (3) The rules shall provide for the prompt and secure transmission of
- 28 official ballots from the voting place to the county board of elections.

29 The State Board shall direct the county boards of elections in the application of the
 30 principles and rules in individual circumstances."

31 **SECTION 8.(a)** G.S. 163-329 reads as rewritten:

32 "**§ 163-329. Elections to fill vacancy in office created after primary filing period to**
 33 **use plurality method. period opens.**

34 (a) General. – If a vacancy is created in the office of justice of the Supreme
 35 Court, judge of the Court of Appeals, or judge of superior court after the filing period
 36 for the primary opens but more than 60 days before the general election, and under the
 37 Constitution of North Carolina an election is to be held for that position, such that the
 38 office shall be filled in the general election as provided in G.S. 163-9, the election to fill
 39 the office for the remainder of the term shall be conducted without a primary using the
 40 ~~plurality~~ method as provided in subsection ~~(b)~~(b1) of this section. If a vacancy is created
 41 in the office of justice of the Supreme Court, judge of the Court of Appeals, or judge of
 42 superior court before the filing period for the primary opens, and under the Constitution
 43 of North Carolina an election is to be held for that position, such that the office shall be

1 filled in the general election as provided in G.S. 163-9, the election to fill the office for
2 the remainder of the term shall be conducted in accordance with G.S. 163-322.

3 ~~(b) Plurality Election Rules.—Elections under this section shall be conducted~~
4 ~~using the following rules:~~

5 ~~(1) The filing period shall be prescribed by the State Board of Elections,~~
6 ~~but in no event may it be less than five working days. If a vacancy~~
7 ~~occurs in a second office in the same superior court district after the~~
8 ~~first filing period established under the section has closed, the State~~
9 ~~Board of Elections shall reopen filing for a period of not less than five~~
10 ~~working days for the office of justice of the Supreme Court, judge of~~
11 ~~the Court of Appeals, or superior court judge. All persons filing in~~
12 ~~either filing period shall run as a group and the election results shall be~~
13 ~~determined by subdivision (3) of this subsection.~~

14 ~~(2) When more than one person is seeking election to a single office, the~~
15 ~~candidate who receives the highest number of votes shall be declared~~
16 ~~elected.~~

17 ~~(3) When more persons are seeking election to two or more offices~~
18 ~~(constituting a group) than there are offices to be filled, those~~
19 ~~candidates receiving the highest number of votes, equal in number to~~
20 ~~the number of offices to be filled, shall be declared elected.~~

21 ~~(4) If two or more candidates receiving the highest number of votes each~~
22 ~~receive the same number of votes, the board of elections shall resolve~~
23 ~~the tie in accordance with G.S. 163-182.8.~~

24 ~~(5) Except as provided in this section, the provisions of this Article apply~~
25 ~~to elections conducted under this section.~~

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

33 (1) When the vacancy described in this section occurs more than 63 days
34 before the date of the second primary for members of the General
35 Assembly, a special primary shall be held on the same day as the
36 second primary. The two candidates with the most votes in the special
37 primary shall have their names placed on the ballot for the general
38 election held on the same day as the general election for members of
39 the General Assembly.

40 (2) When the vacancy described in this section occurs less than 64 days
41 before the date of the second primary, a general election for all the
42 candidates shall be held on the same day as the general election for
43 members of the General Assembly and the 'instant runoff voting'
44 method shall be used to determine the winner. Under 'instant runoff

1 voting,' voters rank up to three of the candidates by order of
2 preference, first, second, or third. If the candidate with the greatest
3 number of first-choice votes receives more than fifty percent (50%) of
4 the first-choice votes, that candidate wins. If no candidate receives that
5 minimum number, the two candidates with the greatest number of
6 first-choice votes advance to a second round of counting. In this round,
7 each ballot counts as a vote for whichever of the two final candidates
8 is ranked highest by the voter. The candidate with the most votes in the
9 second round wins the election. If more than one seat is to be filled in
10 the same race, the voter votes the same way as if one seat were to be
11 filled. The counting is the same as when one seat is to be filled, with
12 one or two rounds as needed, except that counting is done separately
13 for each seat to be filled. The first count results in the first winner.
14 Then the second count proceeds without the name of the first winner.
15 This process results in the second winner. For each additional seat to
16 be filled, an additional count is done without the names of the
17 candidates who have already won. In multi-seat contests, the State
18 Board of Elections may give the voter more than three choices.

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

22 (c) Applicable Provisions. – Except as provided in this section, the provisions of
23 this Article apply to elections conducted under this section.

24 (d) Rules. – The State Board of Elections shall adopt rules for the
25 implementation of this section. The rules are not subject to Article 2A of Chapter 150B
26 of the General Statutes. The rules shall include the following:

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

30 (2) The fact that the voter does not designate a second or third choice does
31 not invalidate the voter's higher choice or choices.

32 (3) The fact that the voter gives more than one ranking to the same
33 candidate shall not invalidate the vote. The highest ranking given a
34 particular candidate shall count as long as the candidate is not
35 eliminated.

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

40 **SECTION 8.(b)** G.S. 163-327.1 reads as rewritten:

41 **"§ 163-327.1. Rules when vacancies for superior court judge are to be voted on.**

42 If a vacancy occurs in a judicial district for any offices of superior court judge, and
43 on account of the occurrence of such vacancy, there is to be an election for one or more
44 terms in that district to fill the vacancy or vacancies, at that same election in accordance

1 with G.S. 163-9 and Article IV, Section 19 of the North Carolina Constitution, the
2 nomination and election shall be determined by the following special rules in addition to
3 any other provisions of law:

- 4 (1) If the vacancy occurs prior to the opening of the filing period under
5 G.S. 163-323(b), nominations shall be made by primary election as
6 provided by this Article, without designation as to the vacancy.
- 7 (2) If the vacancy occurs beginning on opening of the filing period under
8 G.S. 163-323(b), and ending on the sixtieth day before the general
9 election, candidate filing shall be as provided by G.S. 163-329 without
10 designation as to the vacancy.
- 11 (3) The general election ballot shall contain, without designation as to
12 vacancy, spaces for the election to fill the vacancy where nominations
13 were made or candidates filed under subdivision (1) or (2) of this
14 section. ~~The~~ Except as provided in G.S. 163-329, the persons receiving
15 the highest numbers of votes equal to the term or terms to be filled
16 shall be elected to the term or terms. "

17 **SECTION 9.(a)** G.S. 163-327 is repealed.

18 **SECTION 9.(b)** G.S. 163-328 reads as rewritten:

19 **"§ 163-328. Failure of candidates to file; death or other disqualification of a**
20 **candidate before election. candidate; no withdrawal from candidacy.**

21 (a) Insufficient Number of Candidates. – If when the filing period expires,
22 candidates have not filed for an office to be filled under this Article, the State Board of
23 Elections shall extend the filing period for five days for any such offices.

24 (a1) Death or Disqualification of Candidate Before Primary. – If a candidate for
25 nomination in a primary dies or becomes disqualified before the primary but after the
26 ballots have been printed, the State Board of Elections shall determine whether or not
27 there is time to reprint the ballots. If the Board determines that there is not enough time
28 to reprint the ballots, the deceased or disqualified candidate's name shall remain on the
29 ballots. If that candidate receives enough votes for nomination, such votes shall be
30 disregarded and the candidate receiving the next highest number of votes below the
31 number necessary for nomination shall be declared nominated. If the death or
32 disqualification of the candidate leaves only two candidates for each office to be filled,
33 the nonpartisan primary shall not be held and all candidates shall be declared nominees.

34 (b) ~~Death or Other Disqualification of Candidate; Earlier Non-Primary~~
35 Vacancies; Reopening Filing. – If there is no primary because only one or two
36 candidates have filed for a single office, or the number of candidates filed for a group of
37 offices does not exceed twice the number of positions to be filled, or if a primary has
38 occurred and eliminated candidates, and thereafter a remaining candidate dies or
39 otherwise becomes disqualified before the election and before the ballots are printed,
40 the State Board of Elections shall, upon notification of the death or other
41 disqualification, immediately reopen the filing period for an additional five days during
42 which time additional candidates shall be permitted to file for election. If the ballots
43 have been printed at the time the State Board of Elections receives notice of the
44 candidate's death or other disqualification, the Board shall determine whether there will

1 be sufficient time to reprint them before the election if the filing period is reopened for
2 three days. If the Board determines that there will be sufficient time to reprint the
3 ballots, it shall reopen the filing period for three days to allow other candidates to file
4 for election, and ~~such that~~ election shall be conducted ~~on the plurality basis~~ as provided
5 in G.S. 163-329(b1).

6 ~~(c) Vacancy Caused by Nominated Candidate; Later Vacancies; Ballots Not~~
7 ~~Reprinted. – If the ballots have been printed at the time the State Board of Elections~~
8 ~~receives notice of a candidate's death, death or other disqualification, or resignation, and~~
9 ~~if the Board determines that there is not enough time to reprint the ballots before the~~
10 ~~election if the filing period is reopened for three days, then regardless of the number of~~
11 ~~candidates remaining for the office or group of offices, the ballots shall not be reprinted~~
12 ~~and the name of the vacated candidate shall remain on the ballots. If a vacated candidate~~
13 ~~should poll the highest number of votes in the election for a single office or enough~~
14 ~~votes to be elected to one of a group of offices, the State Board of Elections shall~~
15 ~~declare the office vacant and it shall be filled in the manner provided by law.~~

16 (d) No Withdrawal Permitted of Living, Qualified Candidate After Close of
17 Filing. – After the close of the candidate filing period, a candidate who has filed a notice
18 of candidacy for the office, who has not withdrawn notice before the close of filing as
19 permitted by G.S. 163-323(b), who remains alive, and has not become disqualified for
20 the office may not withdraw his or her candidacy. That candidate's name shall remain
21 on the ballot, any votes cast for the candidacy shall be counted in primary or election,
22 and if the candidate wins, the candidate may fail to qualify by refusing to take the oath
23 of office.

24 (e) Death, Disqualification, or Failure to Qualify After Election. – If a person
25 elected to the office of justice of the Supreme Court, judge of the Court of Appeals, or
26 superior or district court judge dies or becomes disqualified on or after election day and
27 before he has qualified by taking the oath of office, or fails to qualify by refusing to take
28 the oath of office, the office shall be deemed vacant and shall be filled as provided by
29 law."

30 **SECTION 10.** Article 22E of Chapter 163 of the General Statutes reads as
31 rewritten:

32 **"§ 163-278.64A. Special participation provisions for candidates in vacancy**
33 **elections.**

34 (a) Participation Provisions Modified. – Candidates involved in elections
35 described in G.S. 163-329 may participate in the Fund subject to the provisions of
36 G.S. 163-278.64 as modified by this section. The Board shall adapt other provisions of
37 this Article, including G.S. 163-278.67, to those elections.

38 (b) Qualifying. – The State Board of Elections shall designate a special
39 qualifying period of no less than four weeks for these candidates, beginning at the close
40 of the notice-of-candidacy filing period. To receive certification, a participating
41 candidate shall raise at least 225 qualifying contributions, totaling at least 20 times the
42 amount of the filing fee for the office, for a four-week qualifying period. If the State
43 Board of Elections sets a longer qualifying period, then for each additional week that
44 the qualifying period extends beyond four weeks, the minimum number of qualifying

1 contributions required for certification shall increase by 25, and the minimum amount of
2 the qualifying contributions shall increase by two times the filing fee. The minimum
3 qualifying contributions shall not exceed the limit set by G.S. 163-278.64(b).

4 (c) Allocations. – Certified candidates shall receive one percent (1%) of the
5 funding to which they would be eligible under G.S. 163-278.65 times the number of
6 calendar days between the end of the special qualifying period and the day of the
7 general election. That amount shall not exceed one hundred percent (100%) of the
8 funding to which they would be eligible under G.S. 163-278.65."

9 **SECTION 11.** G.S. 163-278.65(c) reads as rewritten:

10 "(c) Method of Fund Distribution. – The Board, in consultation with the State
11 Treasurer and the State Controller, shall develop a rapid, reliable method of conveying
12 funds to certified candidates. In all cases, the Board shall distribute funds to certified
13 candidates in a manner that is expeditious, ensures accountability, and safeguards the
14 integrity of the Fund. If the money in the Fund is insufficient to fully fund all certified
15 candidates, then the available money shall be distributed proportionally, according to
16 each candidate's eligible ~~funding.~~ funding, and the candidate may raise additional
17 money in the same manner as a noncertified candidate for the same office up to the
18 unfunded amount of the candidate's eligible funding."

19 **SECTION 12.** G.S. 163-278.66(a) reads as rewritten:

20 "(a) Reporting by Noncertified Candidates and Independent Expenditure Entities.
21 – Any noncertified candidate with a certified opponent shall report total income,
22 expenses, and obligations to the Board by facsimile machine or electronically within 24
23 hours after the total amount of campaign expenditures or obligations made, or funds
24 raised or borrowed, exceeds eighty percent (80%) of the trigger for rescue funds as
25 defined in G.S. 163-278.62(18). Any entity making independent expenditures ~~in excess~~
26 ~~of three thousand dollars (\$3,000)~~ in support of or opposition to a certified candidate or
27 in support of a candidate opposing a certified candidate shall report the total funds
28 received, spent, or obligated for those expenditures to the Board by facsimile machine
29 or electronically within 24 hours after the total amount of expenditures or obligations
30 made, or funds raised or borrowed, for the purpose of making the independent
31 expenditures, exceeds ~~fifty percent (50%) of the trigger for rescue funds.~~ five thousand
32 dollars (\$5,000). After this 24-hour filing, the noncertified candidate or independent
33 expenditure entity shall comply with an expedited reporting schedule by filing
34 additional reports after receiving each additional amount in excess of one thousand
35 dollars (\$1,000) or after making or obligating to make each additional expenditure(s) in
36 excess of one thousand dollars (\$1,000). The schedule and forms for reports required by
37 this subsection shall be made according to procedures developed by the Board."

38 **SECTION 13.** G.S. 163-278.68(b) reads as rewritten:

39 "(b) Advisory Council for the Public Campaign Fund. – There is established under
40 the Board the Advisory Council for the Public Campaign Fund to advise the Board on
41 the rules, procedures, and opinions it adopts for the enforcement and administration of
42 this Article and on the funding needs and operation of the Public Campaign Fund. The
43 Advisory Council shall consist of five members to be appointed as follows:

- 1 (1) The Governor shall name two members from a list of individuals
2 nominated by the State Chair of the political party with which the
3 greatest number of registered voters is affiliated. The State Chair of
4 that party shall submit to the Governor the names of five nominees.
- 5 (2) The Governor shall name two members from a list of individuals
6 nominated by the State Chair of the political party with which the
7 second greatest number of registered voters is affiliated. The State
8 Chair of that party shall submit to the Governor the names of five
9 nominees.
- 10 (3) The Board shall name one member by unanimous vote of all members
11 of the Board. If the Board cannot reach unanimity on the appointment
12 of that member, the Advisory Council shall consist of the remaining
13 members.

14 No individual shall be eligible to be a member of the Advisory Council who would
15 be ineligible to serve on a county board of elections in accordance with G.S. 163-30.
16 The initial members shall be appointed by December 1, 2002. Of the initial appointees,
17 two are appointed for one-year terms, two are appointed for two-year terms, and one is
18 appointed for a three-year term according to random lot. Thereafter, appointees are
19 appointed to serve four-year terms. An individual may not serve more than two full
20 ~~terms~~terms, except that regardless of the time of appointment each term shall end on
21 December 31. A member shall continue on the Advisory Council beyond the expired
22 term until a successor is appointed. The appointed members receive the legislative per
23 diem pursuant to G.S. 120-3.1. One of the Advisory Council members shall be elected
24 by the members as Chair. A vacancy during an unexpired term shall be filled in the
25 same manner as the regular appointment for that term, but a vacancy appointment is
26 only for the unexpired portion of the term."

27 **SECTION 14.** G.S. 163-278.69(c) reads as rewritten:

28 "(c) Disclaimer. – The Judicial Voter Guide shall contain the following statement:
29 ~~"The above statements~~Statements by candidates do not express or reflect the opinions of
30 the State Board of Elections."

31 **SECTION 14.1.** G.S. 163-278.63(a) reads as rewritten:

32 "(a) Establishment of Fund. – The North Carolina Public Campaign Fund is
33 established to finance the election campaigns of certified candidates for office and to
34 pay administrative and enforcement costs of the Board related to this Article. The Fund
35 is a special, dedicated, nonlapsing, nonreverting fund. All expenses of administering
36 this Article, including production and distribution of the Voter Guide required by G.S.
37 163-278.69 and personnel and other costs incurred by the Board, including public
38 education about the Fund, shall be paid from the Fund and not from the General Fund.
39 Any interest generated by the Fund is credited to the Fund. The Board shall administer
40 the Fund.

41 **SECTION 15.** G.S. 163-278.13(e) reads as rewritten:

42 "(e) ~~This~~Except as provided in subsections (e2) and (e3) of this section, this
43 section shall not apply to any national, State, district or county executive committee of

1 any political party. For the purposes of this section only, the term "political party"
2 means only those political parties officially recognized under G.S. 163-96."

3 **SECTION 16.** G.S. 163-278.13(e2) reads as rewritten:

4 "(e2) In order to make meaningful the provisions of Article 22D of this Chapter,
5 the following provisions shall apply with respect to candidates for justice of the
6 Supreme Court and judge of the Court of Appeals:

7 (1) No candidate shall accept, and no contributor shall make to that
8 candidate, a contribution in any election exceeding one thousand
9 dollars (\$1,000) except as provided for elsewhere in this subsection.

10 (2) A candidate may accept, and a family contributor may make to that
11 candidate, a contribution not exceeding two thousand dollars (\$2,000)
12 in an election if the contributor is that candidate's parent, child,
13 brother, or sister.

14 (3) No candidate shall accept, and no contributor shall make to that
15 candidate, a contribution during the period beginning 21 days before
16 the day of the general election and ending the day after the general
17 ~~election.~~ election if that contribution causes the candidate to exceed the
18 "trigger for rescue funds" defined in G.S. 163-278.62(18). This
19 subdivision applies with respect to a candidate opposed in the general
20 election by a certified candidate as defined in Article 22D of this
21 Chapter who has not received the maximum rescue funds available
22 under G.S. 163-278.67. The recipient of a contribution that apparently
23 violates this subdivision has three days to return the contribution or file
24 a detailed statement with the State Board of Elections explaining why
25 the contribution does not violate this subdivision.

26 As used in this subsection, "candidate" is also a political committee authorized by
27 the candidate for that candidate's election. Nothing in this subsection shall prohibit a
28 candidate or the spouse of that candidate from making a contribution or loan secured
29 entirely by that individual's assets to that candidate's own campaign."

30 **SECTION 17.** G.S. 163-278.13 is amended by adding a new subsection to
31 read:

32 "(e3) Notwithstanding the provisions of subsections (a) and (b) of this section, no
33 candidate for superior court judge or district court judge shall accept, and no contributor
34 shall make to that candidate, a contribution in any election exceeding one thousand
35 dollars (\$1,000), except as provided in subsection (c) of this section. As used in this
36 subsection, "candidate" is also a political committee authorized by the candidate for that
37 candidate's election. Nothing in this subsection shall prohibit a candidate or the spouse
38 of that candidate from making a contribution or loan secured entirely by that
39 individual's assets to that candidate's own campaign."

40 **SECTION 18.** G.S. 105-159.2 reads as rewritten:

41 **"§ 105-159.2. Designation of tax to North Carolina Public Campaign Financing**
42 **Fund.**

43 (a) Allocation to the North Carolina Public Campaign Fund. – To ensure the
44 financial viability of the North Carolina Public Campaign Fund established in Article

1 22D of Chapter 163 of the General Statutes, the Department must allocate to that Fund
2 three dollars (\$3.00) from the income taxes paid each year by each individual with an
3 income tax liability of at least that amount, if the individual agrees. A taxpayer must be
4 given the opportunity to indicate an agreement or objection to that allocation in the
5 manner described in subsection (b) of this section. In the case of a married couple filing
6 a joint return, each individual must have the option of agreeing or objecting to the
7 allocation. The amounts allocated under this subsection to the Fund must be credited to
8 it on a quarterly-monthly basis.

9 (b) Returns. – Individual income tax returns must give an individual an
10 opportunity to agree to the allocation of three dollars (\$3.00) of the individual's tax
11 liability to the North Carolina Public Campaign Fund. The Department must make it
12 clear to the taxpayer that the dollars will support a nonpartisan court system, that the
13 dollars will go to the Fund if the taxpayer marks an agreement, and that allocation of the
14 dollars neither increases nor decreases the individual's tax liability. The following
15 statement ~~satisfies the intent of~~ must be used to meet this requirement: "~~Three dollars~~
16 ~~(\$3.00) will go to the North Carolina Public Campaign Fund to support a nonpartisan~~
17 ~~court system, if you agree. Your tax remains the same whether or not you agree.~~" 'Mark
18 'Yes' if you want to designate \$3 of taxes to this special Fund for voter education
19 materials and for candidates who accept spending limits. Marking 'Yes' does not change
20 your tax or refund.' The Department must consult with the State Board of Elections to
21 ensure that the information given to taxpayers complies with the intent of this section.

22 The Department must inform the entities it approves to reproduce the return ~~of that~~
23 they must comply with the requirements of this section and that a return may not reflect
24 an agreement or objection unless the individual completing the return decided to agree
25 or object after being presented with the statement required by subsection (b) of this
26 section and, as available background information or instructions, the information
27 required by subsection (c) of this section. No software package used in preparing North
28 Carolina income tax returns may default to an agreement or objection. A paid preparer
29 of tax returns may not mark an agreement or objection for a taxpayer without the
30 taxpayer's consent.

31 (c) Instructions. – The instruction for individual income tax returns must include
32 the following explanatory statement: "~~The North Carolina N.C. Public Campaign Fund~~
33 ~~provides an alternative source of campaign money to nonpartisan-qualified candidates~~
34 ~~for the North Carolina Supreme Court and Court of Appeals who voluntarily accept~~
35 ~~strict campaign spending and fund-raising limits. The Fund also helps finance a~~ Voter
36 Guide with educational materials about voter registration, the role of the appellate
37 courts, and the candidates seeking election as appellate judges in North Carolina. Three
38 dollars ~~(\$3.00)~~ from the taxes you pay will go to the Fund if you mark an agreement.
39 Regardless of what choice you make, your tax will not increase, nor will any refund ~~you~~
40 ~~are entitled to be reduced.~~"

41 **SECTION 19.** Sections 2 through 5 of this act are effective January 1, 2007,
42 and apply to all primaries and elections conducted on or after that date. Sections 8 and 9
43 of this act are effective when this act becomes law and apply to vacancies occurring on
44 or after that date. Section 17 of this act and the portion of Section 15 of this act that

1 affects G.S. 163-278.13(e3) become effective January 1, 2007, and apply to
2 contributions made or accepted on or after that date. Section 18 of this act becomes
3 effective for taxable years beginning on or after January 1, 2006. The remainder of this
4 act is effective when it becomes law.
5