

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 678

Short Title: Elect District Judges at Primary. (Public)

Sponsors: Senators Berger of Franklin; and Snow.

Referred to: Judiciary II (Criminal).

March 13, 2007

1 A BILL TO BE ENTITLED
2 AN ACT TO ELECT DISTRICT COURT JUDGES AT THE TIME OF THE
3 PRIMARY ELECTION, WITH A RUNOFF IF NEEDED AT THE TIME OF THE
4 SECOND PRIMARY, SO AS TO REDUCE THE LENGTH OF THE GENERAL
5 ELECTION BALLOT.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** In G.S. 163-1, the entry for "Judges of the District Court" in
8 the column "DATE OF ELECTION" reads as rewritten "At the ~~regular~~-primary election
9 ~~for General Assembly~~ set by subsection (b) of this section immediately preceding the
10 termination of each regular term".

11 **SECTION 2.** Article 25 of Chapter 163 of the General Statutes is amended
12 by adding a new section to read:

13 "**§ 163-322.1. Nonpartisan election and runoff election method for district court**
14 **judges.**

15 (a) The election of district court judges shall be determined by the nonpartisan
16 election and runoff election method prescribed by this section.

17 (b) Except as otherwise provided in this section, the election shall be determined
18 by a majority of the votes cast. When more than one person is seeking election to a
19 single office, the majority shall be ascertained by dividing the total vote cast for all
20 candidates by two. Any excess of the sum so ascertained shall be a majority, and the
21 candidate who obtains a majority shall be declared elected.

22 (c) If no candidate for a single office receives a majority of the votes cast, the
23 candidate receiving the highest number of votes shall be declared elected unless the
24 candidate receiving the second highest number of votes requests a runoff election in
25 accordance with subsection (d) of this section. In the runoff election only the names of
26 the two candidates who received the highest and next highest number of votes shall be
27 printed on the ballot.

1 (d) The canvass of the first election shall be held on the same day as the canvas
2 for the primary election. The timetable for requesting a runoff shall be the same as
3 requesting a second primary under G.S. 163-111(c).

4 (e) Tie votes; how determined:

5 (1) If there is a tie for the highest number of votes in a first election, the
6 board of elections shall conduct a recount and declare the results. If the
7 recount shows a tie vote, a runoff election between the two shall be
8 held unless one of the candidates, within three days after the result of
9 the recount has been officially declared, files a written notice of
10 withdrawal with the board of elections. Should that be done, the
11 remaining candidate shall be declared elected.

12 (2) If one candidate receives the highest number of votes cast in a first
13 election, but short of a majority, and there is a tie between two or more
14 of the other candidates receiving the second highest number of votes,
15 the board of elections shall declare the candidate having the highest
16 number of votes to be elected, unless all but one of the tied candidates
17 give written notice of withdrawal to the board of elections within three
18 days after the result of the first election has been officially declared. If
19 all but one of the tied candidates withdraw within the prescribed
20 three-day period, and the remaining candidate demands a runoff
21 election in accordance with subsection (c) of this section, a runoff
22 election shall be held between the candidate who received the highest
23 vote and the remaining candidate who received the second highest
24 vote.

25 (f) Runoff elections shall be held on the date fixed in G.S. 163-111(e). Persons
26 whose registrations become valid between the date of the first election and the runoff
27 election shall be entitled to vote in the runoff election, but in all other respects the
28 runoff election shall be held under the laws, rules, and regulations provided for the first
29 election.

30 (g) A second runoff election shall not be held. The candidates receiving the
31 highest number of votes in a runoff election shall be elected. If in a runoff election there
32 is a tie for the highest number of votes between two candidates, the board of elections
33 shall determine the winner by lot."

34 **SECTION 3.** G.S. 163-322 is amended by adding a new subsection to read:

35 "(d) This section applies only to the nomination and election of justices of the
36 Supreme Court, judges of the Court of Appeals, and superior court judges."

37 **SECTION 4.** G.S. 163-328 reads as rewritten:

38 "**§ 163-328. Failure of candidates to file; death or other disqualification of a**
39 **candidate; no withdrawal from candidacy.**

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

43 (a1) **Death or Disqualification of Candidate Before Primary.** – If a candidate for
44 nomination for justice of the Supreme Court, judge of the Court of Appeals, and

1 superior court judge in a primary dies or becomes disqualified before the primary but
2 after the ballots have been printed, the State Board of Elections shall determine whether
3 or not there is time to reprint the ballots. If the Board determines that there is not
4 enough time to reprint the ballots, the deceased or disqualified candidate's name shall
5 remain on the ballots. If that candidate receives enough votes for nomination, such votes
6 shall be disregarded and the candidate receiving the next highest number of votes below
7 the number necessary for nomination shall be declared nominated. If the death or
8 disqualification of the candidate leaves only two candidates for each office to be filled,
9 the nonpartisan primary shall not be held and all candidates shall be declared nominees.

10 (a2) Death of Disqualification of Candidate for District Court Judge Before
11 Election. – If a candidate for election for district court judge dies or becomes
12 disqualified before the election but after the ballots have been printed, the State Board
13 of Elections shall determine whether or not there is time to reprint the ballots. If the
14 Board determines that there is not enough time to reprint the ballots, the deceased or
15 disqualified candidate's name shall remain on the ballots. If a deceased candidate should
16 poll the highest number of votes in the election, even though short of a majority, the
17 board of elections shall declare the office vacant and it shall be filled in the manner
18 provided by law. If no candidate in an election receives a majority of the votes cast and
19 the second highest vote is cast for a deceased candidate, no runoff election shall be held,
20 but the board of elections shall declare the candidate receiving the highest vote to be
21 elected.

22 (b) Earlier Non-Primary Vacancies; Reopening Filing. – If there is no primary
23 because only one or two candidates have filed for a single office, or the number of
24 candidates filed for a group of offices does not exceed twice the number of positions to
25 be filled, or if a primary has occurred and eliminated candidates, and thereafter a
26 remaining candidate dies or otherwise becomes disqualified before the election and
27 before the ballots are printed, the State Board of Elections shall, upon notification of the
28 death or other disqualification, immediately reopen the filing period for an additional
29 five days during which time additional candidates shall be permitted to file for election.
30 If the ballots have been printed at the time the State Board of Elections receives notice
31 of the candidate's death or other disqualification, the Board shall determine whether
32 there will be sufficient time to reprint them before the election if the filing period is
33 reopened for three days. If the Board determines that there will be sufficient time to
34 reprint the ballots, it shall reopen the filing period for three days to allow other
35 candidates to file for election, and that election shall be conducted as provided in
36 G.S. 163-329(b1). This subsection does not apply to district court judges.

37 (c) Later Vacancies; Ballots Not Reprinted. – If the ballots have been printed at
38 the time the State Board of Elections receives notice of a candidate's death or other
39 disqualification, and if the Board determines that there is not enough time to reprint the
40 ballots before the election if the filing period is reopened for three days, then regardless
41 of the number of candidates remaining for the office or group of offices, the ballots shall
42 not be reprinted and the name of the vacated candidate shall remain on the ballots. If a
43 vacated candidate should poll the highest number of votes in the election for a single
44 office or enough votes to be elected to one of a group of offices, the State Board of

1 Elections shall declare the office vacant and it shall be filled in the manner provided by
2 law. This subsection does not apply to district court judges.

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

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

17 **SECTION 5.** This act is effective when it becomes law.