

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

H

2

HOUSE BILL 1158*
Second Edition Engrossed 6/3/96

Short Title: Friday Canvass.

(Public)

Sponsors: Representatives Cansler; Arnold, Linney, Mercer, Rayfield, Weatherly, and W. Brown.

Referred to: Judiciary II.

May 15, 1996

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR HOLDING THE CANVASS FOR PRIMARIES AND
3 ELECTIONS ON THE THIRD RATHER THAN THE SECOND DAY AFTER
4 ELECTION DAY.

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 163-175 reads as rewritten:

7 "**§ 163-175. County board of elections to canvass returns.**

8 On the ~~second~~third day (Sunday excepted) next after every primary and election, the
9 county board of elections shall meet at 11:00 A.M. at the county courthouse or at the
10 office of the county board of elections (the choice of location to be at the option of the
11 county board of elections) to canvass the votes cast in the county and prepare the county
12 abstracts. If the returns from any precinct have not been received by the county board by
13 12:00 noon on that day, or if the returns of any precinct are incomplete or defective, the
14 board shall have authority to dispatch a peace officer to the residences of the election
15 officials of the delinquent precinct for the purpose of securing proper returns for that
16 precinct.

1 In the presence of such persons as choose to attend, the members of the county board
2 of elections shall open the precinct returns, canvass and judicially determine the results of
3 the voting in the county, and prepare and sign duplicate abstracts showing:

4 (1) In a primary, the total number of votes cast in each precinct and in the
5 county for each candidate of each political party for each office.

6 (2) In an election, the number of legal votes cast in [each] precinct for each
7 candidate, the name of each person voted for, the political party with
8 which he is affiliated, and the total number of votes cast in the county
9 for each person for each different office.

10 In complying with the provisions of this section, the county board of elections shall
11 have power and authority to pass judicially upon all facts relative to the primary or
12 election, to make or order such recounts as it deems necessary, and to determine
13 judicially the result of the primary or election. Provided, however, that where a petitioner
14 has been denied a recount upon a verbal or written order of the State Board of Elections
15 pursuant to regulations of the State Board, the county board of elections shall not make or
16 order a further recount. The board shall also have power to send for papers and persons
17 and to examine them and to pass upon the legality of any disputed ballots transmitted to it
18 by any precinct election official. In accepting the filing of complaints concerning the
19 conduct of an election, a board of elections shall be subject to the rules concerning
20 Sundays and holidays set forth in G.S. 103-5.

21 When, on account of errors in tabulating returns and filling out abstracts, the result of
22 a primary or election in any one or more precincts cannot be accurately known, the
23 county board of elections shall be allowed access to the ballot boxes in such precincts to
24 make or order a recount and to declare the result."

25 Sec. 2. G.S. 163-291 reads as rewritten:

26 **"§ 163-291. Partisan primaries and elections.**

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

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

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

38 a. ~~In 1991 a candidate seeking party nomination for municipal or~~
39 ~~district office in any city which elects members of its governing~~
40 ~~board on a district basis, or requires that candidates reside in a~~
41 ~~district in order to run, shall file his notice of candidacy with the~~
42 ~~board of elections no earlier than 12:00 noon on the fourth~~

Monday in July and no later than 12:00 noon on the second Friday in August preceding the election; and

- b. ~~In 1992 if the election is held then under G.S. 160A-23.1, a candidate seeking party nomination for municipal or district office shall file his notice of candidacy with the board of elections at the same time as notices of candidacy for county officers are required to be filed under G.S. 163-106. election.~~

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

- (3) The filing fee for municipal and district primaries shall be fixed by the governing board not later than the day before candidates are permitted to begin filing notices of candidacy. There shall be a minimum filing fee of five dollars (\$5.00). The governing board shall have the authority to set the filing fee at not less than five dollars (\$5.00) nor more than one percent (1%) of the annual salary of the office sought unless one percent (1%) of the annual salary of the office sought is less than five dollars (\$5.00), in which case the minimum filing fee of five dollars (\$5.00) will be charged. The fee shall be paid to the board of elections at the time notice of candidacy is filed.
- (4) The municipal ballot may not be combined with any other ballot.
- (5) The canvass of the primary and second primary shall be held on the ~~Thursday~~ third day (Sunday excepted) following the primary or second primary. In accepting the filing of complaints concerning the conduct of an election, a board of elections shall be subject to the rules concerning Sundays and holidays set forth in G.S. 103-5.
- (6) Candidates having the right to demand a second primary shall do so not later than 12:00 noon on the Monday following the canvass of the first primary."

Sec. 3. G.S. 163-293 reads as rewritten:

"§ 163-293. Determination of election results in cities using the election and runoff election method.

(a) Except as otherwise provided in this section, nonpartisan municipal elections in cities using the election and runoff election method shall be determined by a majority of the votes cast. A majority within the meaning of this section shall be determined as follows:

- (1) When more than one person is seeking election to a single office, the majority shall be ascertained by dividing the total vote cast for all candidates by two. Any excess of the sum so ascertained shall be a

1 majority, and the candidate who obtains a majority shall be declared
2 elected.

- 3 (2) When more persons are seeking election to two or more offices
4 (constituting a group) than there are offices to be filled, the majority
5 shall be ascertained by dividing the total vote cast for all candidates by
6 the number of offices to be filled, and by dividing the result by two.
7 Any excess of the sum so ascertained shall be a majority, and the
8 candidates who obtain a majority shall be declared elected. If more
9 candidates obtain a majority than there are offices to be filled, those
10 having the highest vote (equal to the number of offices to be filled) shall
11 be declared elected.

12 (b) If no candidate for a single office receives a majority of the votes cast, or if an
13 insufficient number of candidates receives a majority of the votes cast for a group of
14 offices, a runoff election shall be held as herein provided:

- 15 (1) If no candidate for a single office receives a majority of the votes cast,
16 the candidate receiving the highest number of votes shall be declared
17 elected unless the candidate receiving the second highest number of
18 votes requests a runoff election in accordance with subsection (c) of this
19 section. In the runoff election only the names of the two candidates who
20 received the highest and next highest number of votes shall be printed
21 on the ballot.

- 22 (2) If candidates 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 of the votes, those candidates equal in number
25 to the positions remaining to be filled and having the highest number of
26 votes shall be declared elected unless some one or all of the candidates
27 equal in number to the positions remaining to be filled and having the
28 second highest number of votes shall request a runoff election in
29 accordance with subsection (c) of this section. In the runoff election to
30 elect candidates for the positions in the group remaining to be filled, the
31 names of all those candidates receiving the highest number of votes and
32 demanding a runoff election shall be printed on the ballot.

33 (c) The canvass of the first election shall be held on the ~~Thursday~~ third day
34 (Sunday excepted) after the election. A candidate entitled to a runoff election may do so
35 by filing a written request for a runoff election with the board of elections no later than
36 12:00 noon on the Monday after the result of the first election has been officially
37 declared. In accepting the filing of complaints concerning the conduct of an election, a
38 board of elections shall be subject to the rules concerning Sundays and holidays set forth
39 in G.S. 103-5.

40 (d) Tie votes; how determined:

- 41 (1) If there is a tie for the highest number of votes in a first election, the
42 board of elections shall conduct a recount and declare the results. If the
43 recount shows a tie vote, a runoff election between the two shall be held

1 unless one of the candidates, within three days after the result of the
2 recount has been officially declared, files a written notice of withdrawal
3 with the board of elections. Should that be done, the remaining
4 candidate shall be declared elected.

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

17 (e) Runoff elections shall be held on the date fixed in G.S. 163-279(a)(4). Persons
18 whose registrations become valid between the date of the first election and the runoff
19 election shall be entitled to vote in the runoff election, but in all other respects the runoff
20 election shall be held under the laws, rules, and regulations provided for the first election.

21 (f) A second runoff election shall not be held. The candidates receiving the
22 highest number of votes in a runoff election shall be elected. If in a runoff election there
23 is a tie for the highest number of votes between two candidates, the board of elections
24 shall determine the winner by lot."

25 Sec. 4. G.S. 163-294 reads as rewritten:

26 **"§ 163-294. Determination of election results in cities using nonpartisan primaries.**

27 (a) In cities whose elections are nonpartisan and who use the nonpartisan primary
28 and election method, there shall be a primary to narrow the field of candidates to two
29 candidates for each position to be filled if, when the filing period closes, there are more
30 than two candidates for a single office or the number of candidates for a group of offices
31 exceeds twice the number of positions to be filled. If only one or two candidates file for
32 a single office, no primary shall be held for that office and the candidates shall be
33 declared nominated. If the number of candidates for a group of offices does not exceed
34 twice the number of positions to be filled, no primary shall be held for those offices and
35 the candidates shall be declared nominated.

36 (b) In the primary, the two candidates for a single office receiving the highest
37 number of votes, and those candidates for a group of offices receiving the highest number
38 of votes, equal to twice the number of positions to be filled, shall be declared nominated.
39 In both the primary and election, a voter should not mark more names for any office than
40 there are positions to be filled by election, as provided in G.S. 163-135(e) and G.S. 163-
41 151(2). If two or more candidates receiving the highest number of votes each received
42 the same number of votes, the board of elections shall determine their relative ranking by
43 lot, and shall declare the nominees accordingly. The canvass of the primary shall be held

1 on the ~~Thursday~~ third day (Sunday excepted) following the primary. In accepting the
2 filing of complaints concerning the conduct of an election, a board of elections shall be
3 subject to the rules concerning Sundays and holidays set forth in G.S. 103-5.

4 (c) In the election, the names of those candidates declared nominated without a
5 primary and those candidates nominated in the primary shall be placed on the ballot. The
6 candidate for a single office receiving the highest number of votes shall be elected.
7 Those candidates for a group of offices receiving the highest number of votes, equal in
8 number to the number of positions to be filled, shall be elected. If two candidates
9 receiving the highest number of votes each received the same number of votes, the board
10 of elections shall determine the winner by lot."

11 Sec. 5. This act is effective upon ratification.