

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 858

Short Title: Open Primaries.

(Public)

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Sponsors: Representatives Miner; Daughtry, Grady, Hayes, Morgan, Nichols, and Russell.

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Referred to: Rules, Calendar and Operations of the House.

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April 12, 1995

A BILL TO BE ENTITLED

AN ACT TO ALLOW REGISTERED VOTERS TO CHOOSE ON PRIMARY DAY  
THE PARTY IN WHOSE PRIMARY THEY WILL VOTE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-119 is repealed.

Sec. 2. Article 10 of Chapter 163 of the General Statutes is amended by adding  
a new section to read:

**"§ 163-120. Voting in party primary.**

Any registered voter, regardless of party affiliation, may vote in the primary of any party by announcing the intention to vote in that party's primary under G.S. 163-150(a) or G.S. 163-226.1A. The voter's choice of a party in the first primary shall not restrict that voter's choice of a party in the second primary. The choice of the voter as to which party primary in which to vote shall be confidential. Neither the county board of elections nor the State Board of Elections shall reveal to any person or maintain a record of the party in whose primary any voter chose to vote."

Sec. 3. G.S. 163-82.4(c) reads as rewritten:

"(c) Party Affiliation or Unaffiliated Status. – The application form described in G.S. 163-82.3(a) shall provide a place for the applicant to state a preference to be affiliated with one of the political parties in G.S. 163-96, or a preference to be an

1 'unaffiliated' voter. Every person who applies to register shall state his preference. If the  
2 applicant fails to declare a preference for a party or for unaffiliated status, that person  
3 shall be listed as 'unaffiliated', except that if the person is already registered to vote in the  
4 county and that person's registration already contains a party affiliation, the county board  
5 shall not change the registrant's status to 'unaffiliated' unless the registrant clearly  
6 indicates a desire in accordance with G.S. 163-82.17 for such a change. An unaffiliated  
7 registrant shall ~~not be eligible to vote in any political party primary, except as provided in~~  
8 ~~G.S. 163-116, but may vote in any other primary or general election.~~ primary, and a registrant  
9 of one party shall be eligible to vote in the primary of another party. The application form  
10 shall so state."

11 Sec. 4. G.S. 163-82.10 reads as rewritten:

12 **"§ 163-82.10. Official record of voter registration.**

13 (a) Application Form Becomes Official Record. – A completed and signed  
14 registration application form described in G.S. 163-82.3, once approved by the county  
15 board of elections, becomes the official registration record of the voter. The county board  
16 of elections shall maintain custody of the official registration records of all voters in the  
17 county and shall keep them in a place where they are secure.

18 (b) Access to Registration Records. – Upon request by that person, the county  
19 board of elections shall provide to any person a list of the registered voters of the county  
20 or of any precinct or precincts in the county. The county board may furnish selective lists  
21 according to party affiliation, gender, race, date of registration, or any other reasonable  
22 ~~category.~~ category, except that no list shall reveal the party in whose primary any voter  
23 chose to vote. The county board shall require each person to whom a list is furnished to  
24 reimburse the board for the actual cost incurred in preparing it, except as provided in  
25 subsection (c) of this section.

26 (c) Free Lists. – Free lists of all registered voters in the county shall be provided in  
27 the following cases:

28 (1) A county board that maintains voter records on computer shall provide,  
29 upon written request, one free list to:

30 a. The State chair of each political party; and

31 b. The county chair of each political party

32 once in every odd-numbered year, once during the first six calendar  
33 months of every even-numbered year, and once during the latter six  
34 calendar months of every even-numbered year.

35 (2) A county board that does not maintain voter records on computer shall  
36 provide one free paper list every two years to the county chair of each  
37 political party.

38 Each free list shall include the name, address, gender, date of birth, race, political  
39 affiliation, voting history, and precinct of each registered ~~voter.~~ voter, except that no list  
40 shall reveal the party in whose primary any voter chose to vote. The free paper list to the  
41 county party chairs shall group voters by precinct. All free lists shall be provided as soon  
42 as practicable but no later than 30 days after written request. Each State party chair shall  
43 provide the discs or tapes received from the county boards to candidates of that party who

1 request the discs or tapes in writing. Each State party chair shall return discs and tapes to  
2 the county boards within 30 days after receiving them. As used in this section, 'political  
3 party' means a political party as defined in G.S. 163-96."

4 Sec. 5. G.S. 163-82.13 reads as rewritten:

5 **"§ 163-82.13. Access to statewide voter registration file.**

6 (a) Free Copy for Political Parties. – Beginning January 1, 1996, the State Board  
7 of Elections shall make available free of charge, upon written request, one magnetic copy  
8 of the statewide computerized voter registration file to the chairman of each political  
9 party as defined in G.S. 163-96 as soon as practicable after the close of registration  
10 before every statewide primary and election. The file made available to the political party  
11 chairmen shall contain the name, address, gender, date of birth, race, voting history,  
12 political affiliation, and precinct of every registered voter in the ~~State~~ State, except that  
13 no list shall reveal the party in whose primary any voter chose to vote. If a county board  
14 enters telephone numbers into its computer lists of registered voters, then the free list  
15 provided under this subsection shall include telephone numbers.

16 (b) Copies for Sale to Others. – Beginning January 1, 1996, the State Board of  
17 Elections shall sell, upon written request, to other public and private organizations and  
18 persons magnetic copies of the statewide computerized voter registration file. The State  
19 Board of Elections may sell selective lists of registered voters according to county,  
20 congressional or legislative district, party affiliation, gender, date of birth, race, date of  
21 registration, or any other reasonable category, or a combination of ~~categories~~ categories,  
22 except that no list shall reveal the party in whose primary any voter chose to vote. The  
23 State Board of Elections shall require all persons to whom any list is furnished under this  
24 subsection to reimburse the board for the actual cost incurred in preparing it."

25 Sec. 6. G.S. 163-82.17 reads as rewritten:

26 **"§ 163-82.17. Change of party affiliation.**

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

34 (b) Verification of Affiliation Change by Mail. – When a county board of elections  
35 receives a notice of change of party affiliation or unaffiliated status from a registrant in  
36 that county, the county board shall send a notice, by nonforwardable mail, to the  
37 registrant's residence address. The notice shall state that the registrant's records will be  
38 changed to reflect the change of status if the registrant does not respond by stating that he  
39 does not desire a change in status. The notice shall also inform the registrant of the time  
40 that the change of affiliation status will occur, and shall explain the provisions of  
41 subsection (d) of this section. If the Postal Service returns the county board's notice to the  
42 registrant as undeliverable, the county board shall send to the registrant's residence  
43 address a confirmation notice as described in G.S. 163-82.14(d)(2). If the registrant does

1 not respond to the confirmation notice as described in G.S. 163-82.14(d)(2), then the  
2 county board shall proceed with the removal of the registrant from the list of voters in  
3 accordance with G.S. 163-82.14(d).

4 (c) Board's Duty to Make Change. – If the county board confirms the registrant's  
5 address in accordance with subsection (b) of this section and the registrant does not deny  
6 making the application to change affiliated or unaffiliated status, the county board of  
7 elections shall as soon as practical change the record of the registrant's party affiliation,  
8 or unaffiliated status, to conform to that stated in the application. ~~Thereafter the voter shall~~  
9 ~~be considered registered and qualified to vote in accordance with the change, except as provided~~  
10 ~~in subsection (d) of this section.~~

11 (d) ~~Deadline to Change Status Before Primary. — If a registrant applies to change~~  
12 ~~party affiliation or unaffiliated status later than the last day for applying to register under~~  
13 ~~G.S. 163-82.6 before a primary, the registrant shall not be entitled to vote in the primary~~  
14 ~~of a party in which the registrant's status on that last day did not entitle the registrant to~~  
15 ~~vote.~~

16 (e) Authority of County Board or Supervisor to Make Correction. – If at any time  
17 the chairman or supervisor of elections of the county board of elections is satisfied that an  
18 error has been made in designating the party affiliation of any voter on the registration  
19 records, then the chairman or supervisor of elections of the county board of elections  
20 shall make the necessary correction after receiving from the voter a sworn statement as to  
21 the error and the correct status."

22 Sec. 7. G.S. 163-87 reads as rewritten:

23 **"§ 163-87. Challenges allowed on day of primary or election.**

24 On the day of a primary or election, at the time a registered voter offers to vote, any  
25 other registered voter of the precinct may exercise the right of challenge, and when he  
26 does so may enter the voting enclosure to make the challenge, but he shall retire  
27 therefrom as soon as the challenge is heard.

28 On the day of a primary or election, any other registered voter of the precinct may  
29 challenge a person for one or more of the following reasons:

- 30 (1) One or more of the reasons listed in G.S. 163-85(c), or
- 31 (2) That the person has already voted in that primary or election, or
- 32 (3) That the person presenting himself to vote is not who he represents  
33 himself to be.

34 ~~On the day of a party primary, any voter of the precinct who is registered as a member~~  
35 ~~of the political party conducting the primary may, at the time any registrant proposes to~~  
36 ~~vote, challenge his right to vote upon the ground that he does not affiliate with the party~~  
37 ~~conducting the primary or does not in good faith intend to support the candidates~~  
38 ~~nominated in that party's primary, and it shall be the duty of the chief judge and judges of~~  
39 ~~election to determine whether or not the challenged registrant has a right to vote in that~~  
40 ~~primary according to the procedures prescribed in G.S. 163-88; provided that no~~  
41 ~~challenge may be made on the grounds specified in the paragraph against an unaffiliated~~  
42 ~~voter voting in the primary under G.S. 163-74(a1).~~

1 If a person is challenged under this ~~subsection, section,~~ and the challenge is sustained  
2 under G.S. 163-85(c)(3), the voter may still transfer his registration under G.S. 163-  
3 82.15(e) if eligible under that section, and the registration shall not be cancelled under  
4 G.S. 163-90.2(a) if the transfer is made. A person who has transferred his registration  
5 under G.S. 163-82.15(e) may be challenged at the precinct to which the registration is  
6 being transferred."

7 Sec. 8. G.S. 163-90.2 reads as rewritten:

8 **"§ 163-90.2. Action when challenge sustained, overruled, or dismissed.**

9 (a) When any challenge is sustained for any cause listed under G.S. 163-85(c), the  
10 board shall cancel the voter registration of the voter and shall remove his card from the  
11 book, but shall maintain such record for at least six months and during the pendency of  
12 any appeal.

13 ~~(b) When any challenge heard under G.S. 163-88 or 163-89 is sustained on the~~  
14 ~~ground that the voter is not affiliated with the political party shown on his registration~~  
15 ~~record, the board shall change the voter's party affiliation to "unaffiliated."~~

16 (c) When any challenge made under G.S. 163-85 is overruled or dismissed, the board  
17 shall erase the word 'challenged' which appears on the person's registration records.

18 (d) A decision by a county board of elections on any challenge made under the  
19 provisions of this Article shall be appealable to the Superior Court of the county in which  
20 the offices of that board are located within 10 days. Only those persons against whom a  
21 challenge is sustained or persons who have made a challenge which is overruled shall  
22 have standing to file such appeal."

23 Sec. 9. G.S. 163-150 reads as rewritten:

24 **"§ 163-150. Voting procedures.**

25 (a) Checking Registration. – A person seeking to vote shall enter the voting  
26 enclosure at the voting place through the appropriate entrance and shall at once state his  
27 name and place of residence to one of the judges of election. In a primary election, the  
28 voter shall also ~~state the political party with which he affiliates and in whose primary he desires~~  
29 ~~to vote, or if the voter is an unaffiliated voter permitted to vote in the primary of a particular~~  
30 ~~party under G.S. 163-116, the voter shall state the name of the authorizing political party in~~  
31 ~~whose primary he wishes to vote. The judge to whom the voter gives this information~~  
32 ~~shall announce the name and residence of the voter in a distinct tone of voice. After~~  
33 ~~examining the precinct registration records, the chief judge shall state whether the person~~  
34 ~~seeking to vote is duly registered.~~

35 (b) Distribution of Ballots; Information. – If the voter is found to be registered and  
36 is not challenged, or, if challenged and the challenge is overruled as provided in G.S.  
37 163-88, the responsible judge of election shall hand him an official ballot of each kind he  
38 is entitled to vote. In a primary election the voter shall be furnished ballots of the political  
39 party ~~with which he affiliates and no others, except that unaffiliated voters who are permitted to~~  
40 ~~vote in a party primary under G.S. 163-116 shall be furnished ballots for that primary. in whose~~  
41 primary he wishes to vote. No such ~~unaffiliated~~ voter shall vote in the primary of more  
42 than one party on the same day. It shall be the duty of the chief judge and judges holding  
43 the primary or election to give any voter any information he desires in regard to the kinds

1 of ballots he is entitled to vote and the names of the candidates on the ballots. In response  
2 to questions asked by the voter, the chief judge and judges shall communicate to him any  
3 information necessary to enable him to mark his ballot as he desires.

4 (c) Act of Voting. – When a person is given official ballots by the judge, he shall  
5 be deemed to have begun the act of voting, and he shall not leave the voting enclosure  
6 until he has deposited his ballots in the ballot boxes or returned them to the precinct  
7 officials. When he leaves the voting enclosure, whether or not he has deposited his ballots  
8 in the ballot boxes, he shall not be entitled to enter the voting enclosure again for the  
9 purpose of voting. On receiving his ballots, the voter shall immediately retire alone to one  
10 of the voting booths unless he is entitled to assistance under the provisions of G.S. 163-  
11 152, and without undue delay he shall mark his ballots in accordance with the provisions  
12 of G.S. 163-151.

13 (d) Spoiled and Damaged Ballots. – If a voter spoils or damages a ballot, he may  
14 obtain another upon returning the spoiled or damaged ballot to the chief judge. A voter  
15 shall not be given a replacement ballot until he has returned the spoiled or damaged  
16 ballot, and he shall not be given more than three replacement ballots in all. The chief  
17 judge shall deposit each spoiled or damaged ballot in the box provided for that purpose.

18 (e) Depositing Ballots and Leaving Enclosure. – When the voter has marked his  
19 ballots he shall leave the voting booth and deposit them in the appropriate boxes or hand  
20 them to the chief judge or a judge who shall deposit them for him. If he does not mark a  
21 ballot he shall return it to one of the precinct officials before leaving the voting enclosure.  
22 If the voter has been challenged and the challenge has been overruled, before depositing  
23 his ballots in the boxes he shall write his name on each of his ballots so they may be  
24 identified in the event his right to vote is again questioned. After depositing his ballots in  
25 the ballot boxes, the voter shall immediately leave the voting enclosure unless he is one  
26 of the persons authorized by law to remain within the enclosure for purposes other than  
27 voting.

28 (f) Maintenance of Pollbook or Other Record of Voting. – At each primary,  
29 general or special election, the precinct chief judge shall appoint two precinct assistants  
30 (one from each political party as recommended by the county chairman thereof), one to  
31 be assigned to keep the pollbook or other voting record used in the county as approved by  
32 the State Board of Elections, and the other to keep the registration books under the  
33 supervision of the precinct officials. The names of all persons voting shall be checked on  
34 the registration records and entered on the pollbook or other voting record. In an election  
35 where observers may be appointed under G.S. 163-45 each voter's party affiliation shall  
36 be entered in the proper column of the book or other approved record opposite his name.  
37 The precinct assistant shall make each entry at the time the ballots are handed to the  
38 voter. As soon as the polls are closed, the chief judge and judges of election shall sign the  
39 pollbook or other approved record immediately beneath the last voter's name entered  
40 therein. The chief judge or the judge appointed to attend the county canvass shall deliver  
41 the pollbook or other approved record to the chairman of the county board of elections at  
42 the time of the county canvass, and the chairman shall remain responsible for its  
43 safekeeping.

1       (f1) No Record of Voter's Choice of Primary. – No entry shall be made on the  
2 pollbook or other voting record revealing the party in whose primary a voter chose to  
3 vote.

4       (g) Occupation of Voting Booth. – Subject to the provisions of G.S. 163-152 and  
5 G.S. 163-152.1, no voter shall be allowed to occupy a voting booth or voting machine  
6 already occupied by another voter, provided, however, husbands and wives may occupy  
7 the same voting booth if both wish to do so. No voter shall be allowed to occupy a voting  
8 booth or voting machine more than five minutes if all the booths or machines are in use  
9 and other voters are waiting to obtain booths or machines."

10       Sec. 10. G.S. 163-226.1 reads as rewritten:

11 **"§ 163-226.1. Absentee voting in primary.**

12       A qualified voter may vote by absentee ballot in a statewide or countywide primary  
13 ~~provided he is affiliated, at the time he makes application for absentee ballots, with the~~  
14 ~~political party in whose primary he wishes to vote. The official registration records of the~~  
15 ~~county in which the voter is registered shall be proof of whether he is affiliated with a~~  
16 ~~political party and of the party, if any, with which he is affiliated. of any party, provided~~  
17 that:

18       (1) That voter, or a person authorized to make a request for that voter,  
19 indicates in the required request for an application for an absentee ballot  
20 the intention to vote in that party's primary; or

21       (2) That voter announces the intention to vote in that party's primary at the  
22 time of appearing to vote under G.S. 163-227.2.

23 The voter's choice of a party in the first primary shall not restrict that voter's choice of a  
24 party in the second primary. Neither the county board of elections nor the State Board of  
25 Elections shall maintain a record of the party in whose primary any voter chose to vote.  
26 The State Board of Elections shall promulgate rules and prescribe forms and procedures  
27 to carry out the requirements of this section."

28       Sec. 11. G.S. 163-247 reads as rewritten:

29 **"§ 163-247. Methods of applying for absentee ballots.**

30       An individual entitled to exercise the rights conferred by this Article and who is  
31 absent from the county of his residence may apply for absentee ballots in either of the  
32 ways provided in this section.

33       (1) Federal Postcard Application Form. – At any time prior to the statewide  
34 primary or general election in which he seeks to vote, the applicant may  
35 make and sign a written application to the County Board of Election[s]  
36 in County of Voter's Residence for absentee ballots on the postcard  
37 form specified in or promulgated by regulation under 42 U.S.C.  
38 1973cc-14.

39       (2) Application to Chairman of County Board of Elections. – In lieu of  
40 applying on the federal post card as provided in the preceding  
41 subdivision, at any time prior to the statewide primary or general  
42 election in which he seeks to vote the applicant may make and sign a  
43 written application to the chairman of the board of elections of the

1 county of his residence upon a form prepared and furnished him upon  
2 request by the county board of elections. This form shall require the  
3 applicant's signature and shall elicit from him:

- 4 a. A request for absentee ballots to be voted in a specified statewide  
5 primary or general election.  
6 b. A statement of ~~his~~ the political party ~~affiliation if he~~ in whose  
7 primary the applicant seeks to vote by absentee ballot in a  
8 primary election.  
9 c. A statement of his membership in the armed forces of the United  
10 States, or his membership in one of the other categories to which  
11 this Article is made applicable in G.S. 163-245.  
12 d. A statement of the precinct in which he is registered to vote, or, if  
13 the applicant is not registered, a statement of his address before  
14 entering military or other qualifying service and the period of  
15 time he resided at that address.  
16 e. A statement of the address to which the absentee ballots should  
17 be mailed.

18 In lieu of using a form prepared and furnished by the county board  
19 of elections, the voter may apply in an informal writing. If the written  
20 application is signed by the voter and if it contains all the information  
21 required by this subdivision, it shall be regarded as sufficient to permit  
22 the chairman of the county board of elections to act upon it.

- 23 (3) Notwithstanding subdivisions (1) or (2) of this section, if the application  
24 under either of those subdivisions so requests, it shall constitute an  
25 application for more than one or for all of the primaries and elections  
26 held during the calendar year when the application is received."

27 Sec. 12. G.S. 163-249(1) reads as rewritten:

28 "(1) Record of Applications Received and Ballots Issued. – Upon receipt of  
29 a voter's written application for absentee ballots in either of the forms  
30 permitted by G.S. 163-247, the chairman of the county board of  
31 elections shall promptly enter in the register of military absentee ballot  
32 applications and ballots issued:

- 33 a. Name of voter applying for absentee ballots.  
34 b. ~~Applicant's~~ The political party ~~affiliation in whose primary the~~  
35 applicant seeks to vote as stated in an application for ballots in a  
36 primary in a primary election.  
37 c. Number assigned voter's application. (Numbers assigned  
38 applications received under the provisions of this Article shall be  
39 chosen so as not to be identical with numbers assigned  
40 applications received under the provisions of Article 20.)  
41 d. Precinct in which applicant is registered if he is already  
42 registered, or precinct in which applicant is registered by the



- 1 chairman of the county board of elections under the provisions of  
2 subdivisions (2) and (3) of this section.
- 3 e. Address to which ballots are to be mailed.
  - 4 f. Statement of basis on which applicant asserts his qualifications  
5 for obtaining absentee ballots under the provisions of this Article.
  - 6 g. Date application for ballots is received by chairman."
- 7 Sec. 13. This act becomes effective January 1, 1996, and applies to all  
8 primaries and elections held on or after that date.