

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2019

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HOUSE BILL 500

Short Title: Eliminate Second Primaries. (Public)

Sponsors: Representatives Floyd and Alexander (Primary Sponsors).

*For a complete list of sponsors, refer to the North Carolina General Assembly web site.*

Referred to: Elections and Ethics Law, if favorable, Rules, Calendar, and Operations of the House

March 28, 2019

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE SECOND PRIMARIES.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 163A-984 reads as rewritten:

**"§ 163A-984. Determination of primary results; ~~second primaries results.~~**

~~(a) Nomination Determined by Substantial Plurality; Definition of Substantial Plurality. Except as otherwise provided in this section, nominations in primary elections shall be determined by a substantial plurality of the votes cast. A substantial plurality within the meaning of this section~~ Nominations in primary shall be determined as follows:

(1) If a nominee for a single office is to be selected, and there is more than one person seeking nomination, ~~the substantial plurality shall be ascertained by multiplying the total vote cast for all aspirants by thirty percent (30%). Any excess of the sum so ascertained shall be a substantial plurality, and the aspirant who obtains a substantial plurality shall be declared the nominee. If two candidates receive a substantial plurality, the candidate receiving the highest~~ vote number of votes shall be declared the nominee.

(2) If nominees for two or more offices (constituting a group) are to be selected, and there are more persons seeking nomination than there are offices, ~~the substantial plurality shall be ascertained by dividing the total vote cast for all aspirants by the number of positions to be filled, and by multiplying the result by thirty percent (30%). Any excess of the sum so ascertained shall be a substantial plurality, and the aspirants who obtain a substantial plurality shall be declared the nominees. If more candidates obtain a substantial plurality than there are positions to be filled, those having the highest~~ vote number of votes (equal to the number of positions to be filled) shall be declared the nominees.

(a1) When more than one person is seeking election to a single office and two or more candidates receiving the highest numbers of votes each receive the same number of votes, the board of elections shall determine the nominee by lot.

(a2) When there are more persons seeking nomination to two or more offices (constituting a group) than there are offices to be filled, and two or more candidates receiving the lowest numbers of votes necessary for nomination each receive the same number of votes, the board of elections shall, from among those candidates receiving the same number of votes, determine the nominee by lot.



1       (a3) This section prevails over any local act.

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

5           (1) ~~If a nominee for a single office is to be selected and no aspirant receives a~~  
6 ~~substantial plurality of the votes cast, the aspirant receiving the highest~~  
7 ~~number of votes shall be declared nominated by the appropriate board of~~  
8 ~~elections unless the aspirant receiving the second highest number of votes~~  
9 ~~shall request a second primary in accordance with the provisions of subsection~~  
10 ~~(c) of this section. In the second primary only the two aspirants who received~~  
11 ~~the highest and next highest number of votes shall be voted for.~~

12           (2) ~~If nominees for two or more offices (constituting a group) are to be selected~~  
13 ~~and aspirants for some or all of the positions within the group do not receive~~  
14 ~~a substantial plurality of the votes, those candidates equal in number to the~~  
15 ~~positions remaining to be filled and having the highest number of votes shall~~  
16 ~~be declared the nominees unless some one or all of the aspirants equal in~~  
17 ~~number to the positions remaining to be filled and having the second highest~~  
18 ~~number of votes shall request a second primary in accordance with the~~  
19 ~~provisions of subsection (c) of this section. In the second primary to select~~  
20 ~~nominees for the positions in the group remaining to be filled, the names of~~  
21 ~~all those candidates receiving the highest number of votes and all those~~  
22 ~~receiving the second highest number of votes and demanding a second~~  
23 ~~primary shall be printed on the ballot.~~

24       (e) ~~Procedure for Requesting Second Primary. —~~

25           (1) ~~A candidate who is apparently entitled to demand a second primary, according~~  
26 ~~to the unofficial results, for one of the offices listed below, and desiring to do~~  
27 ~~so, shall file a request for a second primary in writing with the Executive~~  
28 ~~Director of the State Board no later than 12:00 noon on the ninth day~~  
29 ~~(including Saturdays and Sundays) following the date on which the primary~~  
30 ~~was conducted, and such request shall be subject to the certification of the~~  
31 ~~official results by the State Board. If the vote certification by the State Board~~  
32 ~~determines that a candidate who was not originally thought to be eligible to~~  
33 ~~call for a second primary is in fact eligible to call for a second primary, the~~  
34 ~~Executive Director of the State Board shall immediately notify such candidate~~  
35 ~~and permit the candidate to exercise any options available to the candidate~~  
36 ~~within a 48-hour period following the notification:~~

37                   ~~Governor,~~

38                   ~~Lieutenant Governor,~~

39                   ~~All State executive officers,~~

40                   ~~Justices, Judges, or District Attorneys of the General Court of Justice,~~

41                   ~~United States Senators,~~

42                   ~~Members of the United States House of Representatives,~~

43                   ~~State Senators in multi-county senatorial districts, and~~

44                   ~~Members of the State House of Representatives in multi-county~~  
45 ~~representative districts.~~

46           (2) ~~A candidate who is apparently entitled to demand a second primary, according~~  
47 ~~to the unofficial results, for one of the offices listed below and desiring to do~~  
48 ~~so, shall file a request for a second primary in writing with the chairman or~~  
49 ~~director of the county board of elections no later than 12:00 noon on the ninth~~  
50 ~~day (including Saturdays and Sundays) following the date on which the~~

primary was conducted, and such request shall be subject to the certification of the official results by the county board of elections:

State Senators in single county senatorial districts,

Members of the State House of Representatives in single county representative districts, and

All county officers.

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

(d) Tie Votes; How Determined.—

(1) In the event of a tie for the highest number of votes in a first primary between two candidates for party nomination for a single county, or single county legislative district office, the board of elections of the county in which the two candidates were voted for shall conduct a recount and declare the results. If the recount shows a tie vote, a second primary shall be held on the date prescribed in subsection (e) of this section between the two candidates having an equal vote, unless one of the aspirants, within three days after the result of the recount has been officially declared, files a written notice of withdrawal with the board of elections with which he filed notice of candidacy. Should that be done, the remaining aspirant shall be declared the nominee. In the event of a tie for the highest number of votes in a first primary among more than two candidates for party nomination for one of the offices mentioned in this subdivision, no recount shall be held, but all of the tied candidates shall be entered in a second primary.

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

(3) In the event one candidate receives the highest number of votes cast in a first primary, but short of a substantial plurality, and two or more of the other candidates receive the second highest number of votes cast in an equal number, the proper board of elections shall declare the candidate having the highest vote to be the party nominee, unless all but one of the tied candidates give written notice of withdrawal to the proper board of elections within three days after the result of the first primary has been officially declared. If all but one of the tied candidates withdraw within the prescribed three day period, and the remaining candidate demands a second primary in accordance with the provisions of subsection (e) of this section, a second primary shall be held

1           ~~between the candidate who received the highest vote and the remaining~~  
2           ~~candidate who received the second highest vote.~~

3           ~~(e) Date of Second Primary; Procedures.— If a second primary is required under the~~  
4 ~~provisions of this section, the appropriate board of elections, State or county, shall order that it~~  
5 ~~be held 10 weeks after the first primary if any of the offices for which a second primary is required~~  
6 ~~are for a candidate for the office of United States Senate or member of the United States House~~  
7 ~~of Representatives. Otherwise, the second primary shall be held seven weeks after the first~~  
8 ~~primary.~~

9           ~~There shall be no registration of voters between the dates of the first and second primaries.~~  
10 ~~Persons whose qualifications to register and vote mature after the day of the first primary and~~  
11 ~~before the day of the second primary may register on the day of the second primary and, when~~  
12 ~~thus registered, shall be entitled to vote in the second primary. The second primary is a~~  
13 ~~continuation of the first primary and any voter who files a proper and timely written affirmation~~  
14 ~~of change of address within the county under the provisions of G.S. 163A-878, in the first~~  
15 ~~primary may vote in the second primary without having to refile that written affirmation if the~~  
16 ~~voter is otherwise qualified to vote in the second primary. Subject to this provision for~~  
17 ~~registration, the second primary shall be held under the laws, rules, and regulations provided for~~  
18 ~~the first primary.~~

19           ~~(f) No Third Primary Permitted.— In no case shall there be a third primary. The~~  
20 ~~candidates receiving the highest number of votes in the second primary shall be nominated. If in~~  
21 ~~a second primary there is a tie for the highest number of votes between two candidates, the proper~~  
22 ~~party executive committee shall select the party nominee for the office in accordance with the~~  
23 ~~provisions of G.S. 163A-987."~~

24           **SECTION 2.** G.S. 160A-23.1(d) reads as rewritten:

25           "(d) If the council adopts the resolution provided for in subsection (a) of this section and  
26 does not adopt the changes, or does adopt the changes, but approval under the Voting Rights Act  
27 of 1965, as amended, is required, and notice of such approval is not received, by the end of the  
28 third day before the opening of the filing period, the municipal election shall be rescheduled as  
29 provided in this subsection and current officeholders shall hold over until their successors are  
30 elected and qualified. For cities using the:

- 31           (1) Partisan primary and election method under G.S. 163-291, the primary shall  
32 be held on the primary election date for county officers in the second year  
33 following a federal decennial ~~census, the second primary, if necessary, shall~~  
34 ~~be held on the second primary election date for county officers in that year,~~  
35 census and the general election shall be held on the general election date for  
36 county officers in that year.
- 37           (2) Nonpartisan primary and election method under G.S. 163-294, the primary  
38 shall be held on the primary election date for county officers in the second  
39 year following a federal decennial census, and the election shall be held ~~on~~  
40 ~~the date for the second primary at the same time as the election~~ for county  
41 officers in that year.
- 42           (3) Nonpartisan plurality election method under G.S. 163-292, the election shall  
43 be held on the primary election date for county officers in the second year  
44 following a federal decennial census.
- 45           (4) Election and runoff method under G.S. 163-293, the election shall be held on  
46 the primary election date for county officers in the second year following a  
47 federal decennial census, ~~and the runoffs, if necessary, shall be held on the~~  
48 ~~date for the second primary for county officers in that year.~~but the results shall  
49 instead be determined by the nonpartisan plurality election method under  
50 G.S. 163-292.

1 The organizational meeting of the new council may be held at any time after the results of  
2 the election have been officially determined and published, but not later than the time and date  
3 of the first regular meeting of the council in November of the second year following a federal  
4 decennial census, except in the case of partisan municipal elections, when the organizational  
5 meeting shall be held not later than the time and date of the first regular meeting of the council  
6 in December of the second year following a federal decennial census."

7 **SECTION 3.** G.S. 163A-721(b) reads as rewritten:

8 "(b) Nominating Procedures. – If a congressional vacancy occurs beginning on the tenth  
9 day before the filing period ends under G.S. 163A-974 preceding the next succeeding general  
10 election, candidates for the special election to fill the vacancy shall not be nominated in primaries.  
11 Instead, nominations may be made by the political party congressional district executive  
12 committees in the district in which the vacancy occurs. The chairman and secretary of each  
13 political party congressional district executive committee nominating a candidate shall  
14 immediately certify his name and party affiliation to the State Board so that it may be printed on  
15 the special election ballots.

16 If the congressional vacancy occurs before the tenth day before the filing period ends under  
17 G.S. 163A-974 prior to the next succeeding general election, the Governor shall call a special  
18 primary for the purpose of nominating candidates to be voted on in a special election called by  
19 the Governor in accordance with the provisions of subsection (a) of this section. Such a primary  
20 election shall be conducted in accordance with the general laws governing primaries, except that  
21 the opening and closing dates for filing notices of candidacy with the State Board shall be fixed  
22 by the Governor in his call for the special primary. The Governor may also fix the absentee voting  
23 period for the special election and for the special ~~first~~ primary, but such period shall not be less  
24 than 30 days."

25 **SECTION 4.** G.S. 163A-841(c) reads as rewritten:

26 "(c) Elections. – For purposes of the 30-day residence requirement to vote in an election  
27 in subsection (a) of this section, the term "election" means the day of the primary, ~~second primary,~~  
28 general election, special election, or referendum."

29 **SECTION 5.** G.S. 163A-865(f) reads as rewritten:

30 "(f) Instances When Person May Register and Vote on Primary or Election Day. – If a  
31 person has become qualified to register and vote between the twenty-fifth day before a primary  
32 or election and primary or election day, then that person may apply to register on primary or  
33 election day by submitting an application form described in G.S. 163A-862(a) or (b) to:

- 34 (1) A member of the county board of elections;
- 35 (2) The county director of elections; or
- 36 (3) The chief judge or a judge of the precinct in which the person is eligible to  
37 vote,

38 and, if the application is approved, that person may vote the same day. The official in  
39 subdivisions (1) through (3) of this subsection to whom the application is submitted shall decide  
40 whether the applicant is eligible to vote. The applicant shall present to the official written or  
41 documentary evidence that the applicant is the person he represents himself to be. The official,  
42 if in doubt as to the right of the applicant to register, may require other evidence satisfactory to  
43 that official as to the applicant's qualifications. If the official determines that the person is  
44 eligible, the person shall be permitted to vote in the primary or election and the county board  
45 shall add the person's name to the list of registered voters. If the official denies the application,  
46 the person shall be permitted to vote a challenged ballot under the provisions of G.S. 163A-915,  
47 and may appeal the denial to the full county board of elections. The State Board shall promulgate  
48 rules for the county boards of elections to follow in hearing appeals for denial of primary or  
49 election day applications to register. ~~No person shall be permitted to register on the day of a  
50 second primary unless he shall have become qualified to register and vote between the date of  
51 the first primary and the date of the succeeding second primary."~~

1           **SECTION 6.** G.S. 163A-881(a) reads as rewritten:

2           "(a) Registrant's Duty to Report. – Any registrant who desires to have the record of his  
3 party affiliation or unaffiliated status changed on the registration list shall, no later than the last  
4 day for making application to register under G.S. 163A-865 before the election, indicate the  
5 change on an application form as described in G.S. 163A-862 or on a voter registration card  
6 described in G.S. 163A-869. No registrant shall be permitted to change party affiliation or  
7 unaffiliated status for a ~~primary, second primary, primary~~ or special or general election after the  
8 deadline for registration applications for that election as set out in G.S. 163A-865."

9           **SECTION 7.** G.S. 163A-1179(a) reads as rewritten:

10          "(a) Notice and Perfection of Appeal. – The decision by the county board of elections on  
11 an election protest may be appealed to the State Board by any of the following:

- 12           (1) The person who filed the protest.  
13           (2) A candidate or elected official adversely affected by the county board's  
14 decision.  
15           (3) Any other person who participated in the hearing and has a significant interest  
16 adversely affected by the county board's decision.

17          Written notice of the appeal must be given to the county board within 24 hours after the  
18 county board files the written decision at its office. The appeal to the State Board must be in  
19 writing. The appeal must be delivered or deposited in the mail, addressed to the State Board, by  
20 the appropriate one of the following: (i) the end of the second day after the day the decision was  
21 filed by the county board in its office, if the decision concerns a ~~first~~ primary; or (ii) the end of  
22 the fifth day after the day the decision was filed in the county board office, if the decision  
23 concerns an election other than a ~~first~~ primary.

24          The State Board shall prescribe forms for filing appeals from the county board."

25          **SECTION 8.** G.S. 163A-1295(d) reads as rewritten:

26          "(d) The Term "Election". – As used in this Article, unless the context clearly requires  
27 otherwise, the term "election" includes a general, primary, ~~second primary~~, runoff election, bond  
28 election, referendum, or special election."

29          **SECTION 9.** G.S. 163A-1299 is repealed.

30          **SECTION 10.** G.S. 163A-1305(b) is repealed.

31          **SECTION 11.** G.S. 163A-1343(a) reads as rewritten:

32          "(a) Not later than 60 days before the statewide general election in even-numbered years  
33 and not later than 50 days before any other election, the county board of elections shall transmit  
34 a ballot and balloting materials to all covered voters who by that date submit a valid  
35 military-overseas ballot ~~application, except for a second primary application.~~ application. Provided, in a  
36 presidential election year, the board of elections shall provide general election ballots no later  
37 than three days after nomination of the presidential and vice presidential candidates if that  
38 nomination occurs later than 63 days prior to the statewide general election and makes  
39 compliance with the 60-day deadline impossible. However, in the case of municipal elections,  
40 absentee ballots shall be made available no later than 30 days before an election. ~~For a second  
41 primary which includes a candidate for federal office, the county board of elections shall transmit  
42 a ballot and balloting material to all covered voters who by that date submit a valid  
43 military-overseas ballot application no later than 45 days before the second primary. For a second  
44 primary which does not include a candidate for federal office, the transmission of the ballot and  
45 ballot materials shall be as soon as practicable and shall be transmitted electronically no later  
46 than three business days and by mail no later than 15 days from the date the appropriate board of  
47 elections orders that the second primary be held pursuant to G.S. 163A-984. If additional offices  
48 are added to the ballot to fill a vacancy occurring after the deadline provided by this subsection,  
49 those ballots shall be transmitted as soon as practicable."~~

50          **SECTION 12.** G.S. 163A-1350(a) reads as rewritten:

51          "**§ 163A-1350. Publication of election notice.**

1 (a) Not later than 100 days before a regularly scheduled election to which this Part  
2 applies, and as soon as practicable in the case of an election or vacancy election not regularly  
3 scheduled, each county board of elections shall prepare an election notice for that jurisdiction to  
4 be used in conjunction with the federal write-in absentee ballot described in G.S. 163A-1345.  
5 ~~For a second primary required by G.S. 163A-984, the county board of elections shall prepare, no~~  
6 ~~later than the day following the date the appropriate board of elections orders that a second~~  
7 ~~primary be held, an election notice for that jurisdiction to be used in conjunction with the federal~~  
8 ~~write-in absentee ballot.~~ The election notice shall contain a list of all of the ballot measures and  
9 federal, State, and local offices that, as of that date, the official expects to be on the ballot on the  
10 date of the election. The notice also shall contain specific instructions for how a voter is to  
11 indicate on the federal write-in absentee ballot the voter's choice for each office to be filled and  
12 for each ballot measure to be contested."

13 **SECTION 13.** G.S. 163A-1368 reads as rewritten:

14 **"§ 163A-1368. Absentee voting at office of board of elections.**

15 Notwithstanding any other provisions of this Subchapter, any covered voter under this Part  
16 shall be permitted to vote an absentee ballot pursuant to G.S. 163A-1300, 163A-1301,  
17 163A-1302, 163A-1303, and 163A-1304 if the covered voter has not already voted an absentee  
18 ballot which has been returned to the board of elections, and if the covered voter will not be in  
19 the county on the day of the primary or election.

20 In the event an absentee application or ballot has already been mailed to the covered voter  
21 applying to vote pursuant to G.S. 163A-1300, 163A-1301, 163A-1302, 163A-1303, and  
22 163A-1304, the board of elections shall void the application and ballot unless the voted absentee  
23 ballot has been received by the board of elections. The covered voter shall be eligible to vote  
24 pursuant to G.S. 163A-1300, 163A-1301, 163A-1302, 163A-1303, and 163A-1304 no later than  
25 5:00 P.M. on the day next preceding the ~~primary, second primary~~ or election."

26 **SECTION 14.** G.S. 163A-1411(30) reads as rewritten:

27 "(30) The term "election" means any general or special election, a ~~first or second~~  
28 primary, a run-off election, or an election to fill a vacancy. The term "election" shall not include  
29 any local or statewide referendum."

30 **SECTION 15.** G.S. 163A-1425(e) reads as rewritten:

31 "(e) For the purposes of this section, the term "an election" means the period of time from  
32 January 1 of an odd-numbered year through the day of the ~~primary, the day after the primary~~  
33 ~~through the day of the second primary, primary~~ or the day after the primary through December  
34 31 of the next even-numbered year, without regard to whether the candidate is opposed or  
35 unopposed in the election, ~~except that where a candidate is not on the ballot in a second primary,~~  
36 ~~that second primary is not "an election" with respect to that candidate election."~~

37 **SECTION 16.** G.S. 163A-1426(d) is repealed.

38 **SECTION 17.** G.S. 163A-1497 reads as rewritten:

39 **"§ 163A-1497. Campaign report; partisan election.**

40 In any city election conducted on a partisan basis in accordance with G.S. 163A-1585(a)(2)  
41 and G.S. 163A-1615, the following reports shall be filed in addition to the organizational report:

- 42 (1) Thirty-five-day Report. – The treasurer shall file a report with the board 35  
43 days before the primary.
- 44 (2) Pre-primary Report. – The treasurer shall file a report with the board no later  
45 than the tenth day preceding each primary election.
- 46 (3) Pre-election Report. – The treasurer shall file a report 10 days before the  
47 election, ~~unless a second primary is held and the candidate appeared on the~~  
48 ~~ballot in the second primary, in which case the report shall be filed 10 days~~  
49 ~~before the second primary election.~~
- 50 (4) Semiannual Reports. – If contributions are received or expenditures made  
51 during any part of a calendar year, for which no reports are otherwise required

1 by this section, any and all those contributions and expenditures shall be  
2 reported on semiannual reports due on the last Friday in July, covering the  
3 period through June 30, and due on the last Friday in January, covering the  
4 period through December 31 of the previous year."

5 **SECTION 18.** G.S. 163A-1585(a)(2) reads as rewritten:

6 "(2) If the election is partisan, the election shall be held on Tuesday after the first  
7 Monday in November, the first primary shall be held on the second Tuesday  
8 after Labor Day, and the second primary, if required, shall be held on the  
9 fourth Tuesday before the election Day."

10 **SECTION 19.** G.S. 163A-1615 reads as rewritten:

11 **"§ 163A-1615. Partisan primaries and elections.**

12 The nomination of candidates for office in cities, towns, villages, and special districts whose  
13 elections are conducted on a partisan basis shall be governed by the provisions of this Subchapter  
14 applicable to the nomination of county officers, and the terms "county board of elections,"  
15 "chairman of the county board of elections," "county officers," and similar terms shall be  
16 construed with respect to municipal elections to mean the appropriate municipal officers and  
17 candidates, except that:

18 ...

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

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

26 **SECTION 20.** This act is effective when it becomes law and applies to primaries  
27 held on or after that date.