

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 2188
Committee Substitute Favorable 6/21/06

Short Title: Candidate Challenge Procedure.

(Public)

Sponsors:

Referred to:

May 18, 2006

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR A PROCEDURE FOR CHALLENGING THE
3 QUALIFICATIONS OF A CANDIDATE.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Subchapter V of Chapter 163 of the General Statutes is
6 amended by adding a new Article to read:

7 "Article 11B.

8 "Challenge to a Candidacy.

9 **"§ 163-127.1. Definitions.**

10 As used in this Article, the following terms mean:

11 (1) Board. – State Board of Elections.

12 (2) Candidate. – A person having filed a notice of candidacy under Article
13 10 of Chapter 163 of the General Statutes or having filed a petition
14 under Article 11 of Chapter 163 of the General Statutes.

15 (3) Challenger. – Any qualified voter registered in the same district as the
16 office for which the candidate has filed or petitioned.

17 (4) Office. – The elected office for which the candidate has filed or
18 petitioned.

19 **"§ 163-127.2. When and how a challenge to a candidate may be made.**

20 (a) When. – A challenge to a candidate may be filed under this Article with the
21 board of elections receiving the notice of the candidacy or petition no later than 10
22 business days after the close of the filing period for notice of candidacy or petition.

23 (b) How. – The challenge must be made in a verified affidavit by a challenger,
24 based on reasonable suspicion or belief of the facts stated. Grounds for filing a
25 challenge are that the candidate does not meet the constitutional or statutory
26 qualifications for the office, including residency.

27 (c) If Defect Discovered After Deadline, Protest Available. – If a challenger
28 discovers one or more grounds for challenging a candidate after the deadline in

1 subsection (a) of this section, the grounds may be the basis for a protest under
2 G.S. 163-182.9.

3 **"§ 163-127.3. Panel to conduct the hearing on a challenge.**

4 (a) Upon filing of a challenge, a panel shall hear the challenge, as follows:

5 (1) Single county. – If the district for the office subject to the challenge
6 covers all or part of only one county, the panel shall be the county
7 board of elections of that county.

8 (2) Multicounty but less than entire State. – If the district for the office
9 subject to the challenge covers more than one county but less than the
10 entire State, the Board shall appoint a panel within two business days
11 after the challenge is filed. The panel shall consist of at least one
12 member of the county board of elections in each county in the district
13 of the office. The panel shall have an odd number of members, no
14 fewer than three and no more than five. In appointing members to the
15 panel, the Board shall appoint members from each county in
16 proportion to the relative total number of registered voters of the
17 counties in the district for the office. If the district for the office
18 subject to the challenge covers more than five counties, the panel shall
19 consist of five members with at least one member from the county
20 receiving the notice of candidacy or petition and at least one member
21 from the county of residency of the challenger. The Board shall, to the
22 extent possible, appoint members affiliated with different political
23 parties in proportion to the representation of those parties on the
24 county boards of elections in the district for the office. The Board shall
25 designate a chair for the panel. A meeting of the Board to appoint a
26 panel under this subdivision shall be treated as an emergency meeting
27 for purposes of G.S. 143-318.12.

28 (3) Entire State. – If the district for the office subject to the challenge
29 covers the entire State, the panel shall be the Board.

30 **"§ 163-127.4. Conduct of hearing by panel.**

31 (a) The panel conducting a hearing under this Article shall do all of the
32 following:

33 (1) Within five business days after the challenge is filed, designate and
34 announce the time of the hearing and the facility where the hearing
35 will be held. The hearing shall be held at a location in the district
36 reasonably convenient to the public, and shall preferably be held in the
37 county receiving the notice of the candidacy or petition. If the district
38 for the office covers only part of a county, the hearing shall be at a
39 location in the county convenient to residents of the district, but need
40 not be in the district.

41 (2) Allow for depositions prior to the hearing, if requested by the
42 challenger or candidate before the time of the hearing is designated
43 and announced.

1 (3) Issue subpoenas for witnesses or documents, or both, upon request of
2 the parties or upon its own motion.

3 (4) Render a written decision within 20 business days after the challenge
4 is filed and serve that written decision on the parties.

5 (b) Notice of Hearing. – The panel shall give notice of the hearing to the
6 challenger, to the candidate, other candidates filing or petitioning to be elected to the
7 same office, to the county chair of each political party in every county in the district for
8 the office, and to those persons who have requested to be notified. Each person given
9 notice shall also be given a copy of the challenge or a summary of its allegations.

10 Failure to comply with the notice requirements in this subsection shall not delay the
11 holding of a hearing nor invalidate the results if the individuals required by this section
12 to be notified have been notified.

13 (c) Conduct of Hearing. – The hearing under this Article shall be conducted as
14 follows:

15 (1) The panel may allow evidence to be presented at the hearing in the
16 form of affidavits supporting documents or it may examine witnesses.
17 The chair or any two members of the panel may subpoena witnesses or
18 documents. The parties shall be allowed to issue subpoenas for
19 witnesses or documents, or both, including a subpoena of the
20 candidate. Each witness must be placed under oath before testifying.
21 The Board shall provide the wording of the oath to the panel.

22 (2) The panel may receive evidence at the hearing from any person with
23 information concerning the subject of the challenge, and such
24 presentation of evidence shall be subject to Chapter 8C of the General
25 Statutes. The challenger shall be permitted to present evidence at the
26 hearing, but the challenger shall not be required to testify unless
27 subpoenaed by a party. The panel may allow evidence to be presented
28 by a person who is present.

29 (3) The hearing shall be recorded by a reporter or by mechanical means,
30 and the full record of the hearing shall be preserved by the panel until
31 directed otherwise by the Board.

32 (d) Findings of Fact and Conclusions of Law by Panel. – The panel shall make a
33 written decision on each challenge by separately stating findings of facts, conclusions of
34 law, and an order.

35 (e) Rules by Board. – The Board shall adopt rules providing for adequate notice
36 to parties, scheduling of hearings, and the timing of deliberations and issuance of
37 decisions.

38 **"§ 163-127.5. Burden of proof.**

39 (a) The burden of proof shall be upon the candidate, who must show by a
40 preponderance of the evidence of the record as a whole that he or she is qualified to be a
41 candidate for the office.

42 (b) If the challenge is based upon a question of residency, the candidate must
43 show all of the following:

1 (1) An actual abandonment of the first domicile, coupled with an intent
2 not to return to the first domicile.

3 (2) The acquisition of a new domicile by actual residence at another place.

4 (3) The intent of making the newer domicile a permanent domicile.

5 **"§ 163-127.6. Appeals.**

6 (a) Appeals from Single or Multicounty Panel. – The decision of a panel created
7 under G.S. 163-127.3(a)(1) or G.S. 163-127.3(a)(2) may be appealed as of right to the
8 Board by any of the following:

9 (1) The challenger.

10 (2) A candidate adversely affected by the panel's decision.

11 Appeal must be taken within two business days after the panel serves the written
12 decision on the parties. The written appeal must be delivered or deposited in the mail to
13 the Board by the end of the second business day after the written decision was filed by
14 the panel. The Board shall prescribe forms for filing appeals from a panel's decision in a
15 challenge. The Board shall base its appellate decision on the whole record of the hearing
16 conducted by the panel and render its opinion on an expedited basis. From the final
17 order or decision by the Board under this subsection, appeal as of right lies directly to
18 the Court of Appeals. Appeal shall be filed no later than two business days after the
19 Board files its final order or decision in its office. The appeal shall be in the nature of
20 certiorari.

21 (b) Appeals from Statewide Panel. – The decision of a panel created under
22 G.S. 163-127.3(a)(3) may be appealed as of right to the Court of Appeals by any of the
23 following:

24 (1) The challenger.

25 (2) A candidate adversely affected by the panel's decision.

26 Appeal must be taken within two business days after the panel files the written
27 decision. The written appeal must be delivered or deposited in the mail to the Court of
28 Appeals by the end of the second business day after the written decision was filed by the
29 panel. The appeal shall be in the nature of certiorari."

30 **SECTION 2.** G.S. 163-106(g) reads as rewritten:

31 "(g) When any candidate files a notice of candidacy with a ~~county~~ board of
32 elections under subsection (c) of this section or under G.S. 163-291(2), the ~~chairman or~~
33 ~~director~~ board of elections shall, immediately upon receipt of the notice of candidacy,
34 inspect the registration records of the county, and cancel the notice of candidacy of any
35 person who ~~is not eligible under subsection (c) of this section,~~ does not meet the
36 constitutional or statutory qualifications for the office, including residency.

37 The ~~Board~~ board shall give notice of cancellation to any candidate whose notice of
38 candidacy has been cancelled under this subsection by mail or by having the notice
39 served on him by the ~~sheriff~~ sheriff, and to any other candidate filing for the same
40 office. A candidate who has been adversely affected by a cancellation or another
41 candidate for the same office affected by a substantiation under this subsection may
42 request a hearing on the cancellation. If the candidate requests a hearing, the hearing
43 shall be conducted in accordance with Article 11B of Chapter 163 of the General
44 Statutes."

1 **SECTION 3.** G.S. 163-122 is amended by adding a new subsection to read:

2 "(d) When any person files a petition with a board of elections under this section,
3 the board of elections shall, immediately upon receipt of the petition, inspect the
4 registration records of the county and cancel the petition of any person who does not
5 meet the constitutional or statutory qualifications for the office, including residency.

6 The board shall give notice of cancellation to any person whose petition has been
7 cancelled under this subsection by mail or by having the notice served on that person by
8 the sheriff and to any other candidate filing for the same office. A person whose petition
9 has been cancelled or another candidate for the same office affected by a substantiation
10 under this subsection may request a hearing on the issue of constitutional or statutory
11 qualifications for the office. If the person requests a hearing, the hearing shall be
12 conducted in accordance with Article 11B of Chapter 163 of the General Statutes."

13 **SECTION 4.** G.S. 163-123 is amended by adding a new subsection to read:

14 "(f1) When any person files a petition with a board of elections under this section,
15 the board of elections shall, immediately upon receipt of the petition, inspect the
16 registration records of the county and cancel the petition of any person who does not
17 meet the constitutional or statutory qualifications for the office, including residency.

18 The board shall give notice of cancellation to any person whose petition has been
19 cancelled under this subsection by mail or by having the notice served on that person by
20 the sheriff. A person whose petition has been cancelled or another candidate for the
21 same office affected by a substantiation under this subsection may request a hearing on
22 the issue of constitutional or statutory qualifications for the office. If the person requests
23 a hearing, the hearing shall be conducted in accordance with Article 11B of Chapter 163
24 of the General Statutes."

25 **SECTION 5.** G.S. 163-295 reads as rewritten:

26 "**§ 163-295. Municipal and special district elections; application of Chapter 163.**

27 To the extent that the laws, rules and procedures applicable to the conduct of
28 primary, general or special elections by county boards of elections under Articles 3, 4,
29 5, 6, 7A, 8, 9, 10, 11, 11B, 12, 13, 14, 15, 19 and 22 of this Chapter are not inconsistent
30 with the provisions of this Article, those laws, rules and procedures shall apply to
31 municipal and special district elections and their conduct by the board of elections
32 conducting those elections. The State Board of Elections shall have the same authority
33 over all such elections as it has over county and State elections under those Articles."

34 **SECTION 6.** The North Carolina Supreme Court is respectfully requested
35 to adopt rules necessary to implement the provisions as to appeal in G.S. 163-127.6.

36 **SECTION 7.** If any section or provision of this act is declared
37 unconstitutional or invalid by the courts, it does not affect the validity of this act as a
38 whole or any part other than the part so declared to be unconstitutional or invalid.

39 **SECTION 8.** This act becomes effective January 1, 2007, and applies to
40 actions filed on or after that date.