

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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SENATE BILL 82\*  
Judiciary I Committee Substitute Adopted 2/15/05

Short Title: Election Contests.

(Public)

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Sponsors:

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Referred to:

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February 9, 2005

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE PROCEDURES FOR RESOLVING ELECTION CONTESTS  
3 FOR MEMBERS OF THE GENERAL ASSEMBLY AND COUNCIL OF STATE.

4 Whereas, Article II, Section 20 of the Constitution provides that each house  
5 shall be the judge of the qualifications and elections of its members; and

6 Whereas, the current statutory procedures for handling contested legislative  
7 elections were enacted in 1796, amended slightly in 1893, and are antiquated; and

8 Whereas, Article VI, Section 5 of the Constitution provides that a contested  
9 election for Governor or Council of State member shall be determined by joint ballot of  
10 both houses of the General Assembly in the manner described by law; and

11 Whereas, the constitutional provision on contested executive branch elections  
12 was originally enacted in 1835, with the statutory implementing language enacted in  
13 1836; and

14 Whereas, at the time of their repeal in 1971, those statutory procedures  
15 merely referred to the antiquated procedure for contested legislative elections; and

16 Whereas, it is necessary to revise the antiquated legislative election contest  
17 procedure and enact an executive election contest procedure as required by the  
18 Constitution; Now, therefore,

19 The General Assembly of North Carolina enacts:

20 **SECTION 1.** G.S. 120-10 reads as rewritten:

21 **"§ 120-10. Notice of contest.**

22 (a) Eligibility to Contest a Seat. – No person shall be allowed to may contest the  
23 seat of any member of the General Assembly except as provided in this section. ~~unless~~  
24 ~~he shall have given to the member 30 days' notice thereof in writing, prior to the~~  
25 ~~meeting of the General Assembly, which must state the particular grounds of such~~  
26 ~~contest. If the seat is contested on account of the reception of illegal votes, the notice~~  
27 ~~must set forth the number of such votes, by whom given, and the supposed~~  
28 ~~disqualifications; and if the same is contested on account of the rejection of legal votes,~~  
29 ~~the notice must give the names of the persons whose votes were rejected. No evidence~~

1 ~~shall be admitted to show that the contestant received illegal votes, unless he shall also~~  
2 ~~have been notified the same number of days, and in the same manner. The same notice~~  
3 ~~of time and place required in taking depositions shall be required and proved on the~~  
4 ~~investigation.~~

5 (b) Initiating a Contest. – A contest of the election of any member to the General  
6 Assembly may only be initiated by an unsuccessful candidate in the election, referred to  
7 hereafter as the contestant. To initiate a contest, the contestant shall give written notice,  
8 in the manner provided in subsection (d) of this section, of the intent to contest the  
9 election. The written notice shall be provided to the person or persons apparently  
10 elected, hereinafter referred to as the contestee, and to the Principal Clerk of the house  
11 to which that person seeks election. The notice of intent shall be provided no later than  
12 the latter of: (i) 30 days following the date of the election; (ii) 10 days after a certificate  
13 of election has been issued, or (iii) 10 days after the conclusion of the election protest  
14 procedure under Article 15A of Chapter 163 of the General Statutes.

15 The notice of intent shall state the grounds on which the contestant intends to contest  
16 the election. The grounds shall include (i) objections to the eligibility or qualifications  
17 of the contestee based on specific allegations, (ii) objections to the conduct or results of  
18 the election accompanied by specific allegations which, if proven true, would have a  
19 probable impact on the outcome of the election, or (iii) both.

20 The notice shall state that an answer by the contestee must be filed with the clerk of  
21 the appropriate house within 10 days following service of the notice. The contestant  
22 shall sign and verify the notice by his oath or affirmation.

23 (c) Answering a Contest. – Within 10 days after service of the contestant's notice  
24 on the contestee, the contestee shall file with the clerk of the appropriate house a written  
25 answer. The contestee's answer shall admit or deny the allegations on which the  
26 contestant relies, or state that the contestee has no knowledge or information concerning  
27 an allegation which shall be deemed denial, and state any other defenses, in law or fact,  
28 on which the contestee relies. The contestee shall sign and verify his answer by his oath  
29 or affirmation.

30 (d) Filings. – The notice of intent to contest shall be filed by the contestant with  
31 the clerk of the appropriate house and copies thereof served by the contestant as  
32 provided under the Rules of Civil Procedure on each contestee. The answer, petition,  
33 and any reply and copies thereof shall be filed with the appropriate Principal Clerk, and  
34 copies shall be served on the opposing party or the opposing party's counsel, if any, in  
35 the manner prescribed by the Rules of Civil Procedure.

36 After service of the notice of intent, any party, after reasonable notice to the other  
37 party or parties, may take depositions to sustain or invalidate the election. The  
38 contestant shall complete the taking of depositions to submit with his petition at any  
39 time within 20 days following the date of the notice of intent to contest the election, and  
40 the contestee shall complete the taking of his depositions within 30 days following the  
41 date of the notice of intent to contest the election. By written stipulation of the parties,  
42 the testimony of any witness may be filed in the form of an affidavit by the witness  
43 within the same time limitations prescribed for the taking of depositions.

1        Subpoenas for witnesses shall be issued upon the application of either party or upon  
2 motion of the committee under the same procedures as under Article 5A of this Chapter  
3 and shall be enforced as provided under G.S. 120-19.4. Witnesses shall be entitled to the  
4 same allowances and privileges, and be subject to the same penalties, as witnesses  
5 summoned to attend the courts. Every deposition shall be taken before a person  
6 authorized by law to administer oaths, who shall certify and seal the deposition in the  
7 same manner as in judicial civil proceedings and file the same with the Principal Clerk  
8 of the appropriate house.

9        (e) Petitions. – A written petition shall be filed by the contestant with the  
10 Principal Clerk of the appropriate house within 40 days following the filing of the notice  
11 of intent to contest the election. The contestee may file a written reply to the petition  
12 within five days following its service on the contestee.

13        No affidavit may be made a part of, or filed in support of, a petition or reply thereto  
14 unless the affidavit has previously been filed with the Principal Clerk of the appropriate  
15 house, pursuant to the written stipulation of the parties or their counsel, on or before the  
16 date established by subsection (d) of this section for the completion of the taking of  
17 depositions by the proponent of the affidavit.

18        (f) Referral to Committee. – The Principal Clerk shall refer the notice, answer,  
19 petition, reply, depositions, and affidavits to the Committee on Rules, which documents  
20 shall constitute part of the record in the contest. Unless another committee has been  
21 designated by the rules of the house to hear contest matters, the Committee on Rules  
22 shall hear the contest and conduct such investigation as has been directed by resolution  
23 of its house.

24        The committee handling the protest shall set a schedule for taking depositions and  
25 receiving affidavits. The committee may consider the contestant's and contestee's  
26 recommendations for the procedural schedule. The committee may hold hearings and  
27 may compel the attendance of witnesses and the production of documents in its inquiry.  
28 The committee may order the recount of the ballots in the election.

29        The committee shall report its findings as to the law and the facts and make  
30 recommendations to the house for its action.

31        (g) New House to Hear. – The contest shall be heard and decided by the newly  
32 elected house.

33        (h) Bad Faith. – The prevailing party in any contest may in a civil action recover  
34 that party's costs of the legislative proceeding, upon a showing that the contestor filed,  
35 prosecuted, or maintained the contest in bad faith and without substantial justification."

36        **SECTION 2.** G.S. 120-11 reads as rewritten:

37        **"§ 120-11. Depositions taken; ~~penalty and privilege of witnesses.~~**

38        Any person duly authorized to take depositions to be read before courts, may take  
39 depositions to be used ~~on in the investigation, and may issue subpoenas for witnesses,~~  
40 ~~which shall be executed by any officer authorized to execute process.~~ investigation. And  
41 ~~if any witness shall fail to appear and give his deposition according to the subpoena, he~~  
42 ~~shall forfeit and pay to the party causing him to be summoned forty dollars (\$40.00).~~  
43 And on such investigation no witness in this or in the case of any other contested  
44 election shall be excused from discovering whether he voted at such election, or his

1 qualification to vote, except as to his conviction for any offense which would disqualify  
2 him. And if he was not a qualified voter, he shall be compelled to discover for whom he  
3 voted; but any witness making such discovery shall not be subject to criminal or penal  
4 prosecution for having voted at such election."

5 **SECTION 3.(a)** Article 15A of Chapter 163 of the General Statutes is  
6 amended by adding a new section to read:

7 "**§ 163-182.13A. Contested elections for Executive Branch offices.**

8 (a) Notice. – Except as provided by this section, in any election for any elective  
9 office established by Article III of the Constitution, notice of the intent to contest the  
10 election shall be filed with the Principal Clerk of the House of Representatives as if it  
11 were a contested election for the House of Representatives as prescribed in G.S. 120-10.

12 (b) Applicability. – The provisions of G.S. 120-10 and G.S. 120-11 shall apply to  
13 contested elections for any elective office established by Article III of the Constitution  
14 and shall govern standing, notice of intent to contest, answers, service of process,  
15 evidence, the petition, procedures, and relief except as provided in this section. All  
16 filings shall be with the Principal Clerk of the House of Representatives.

17 (c) Jurisdiction of Select Committee. – The matter shall be heard before a select  
18 committee consisting of five Senators appointed by the President Pro Tempore and five  
19 Representatives appointed by the Speaker of the House of Representatives. That  
20 committee shall have the same power as a committee under G.S. 120-10. The committee  
21 shall report its findings as to the law and the facts and make recommendations to the  
22 General Assembly for its action.

23 (d) Final Determination. – The final determination on the recommendations of  
24 the committee shall be made by the General Assembly, both houses sitting in joint  
25 session in the Hall of the House of Representatives, with the Speaker of the House of  
26 Representatives presiding. The vote shall be taken as provided by Article VI, Section 5  
27 of the Constitution. In order to find for the contestant and order the contestant elected,  
28 the vote on the joint ballot must include the affirmative vote of a majority of the  
29 members of the General Assembly voting on the issue. The ballots shall be considered  
30 written ballots rather than secret ballots and are subject to the provisions of  
31 G.S. 143-318.13(b).

32 (e) Filing of Judgment. – A copy of the judgment of the General Assembly under  
33 this section shall be filed with the Clerk of Superior Court of Wake County and with the  
34 State Board of Elections.

35 (f) Copies to Senate Principal Clerk. – The Principal Clerk of the House of  
36 Representatives shall make copies of any filings and transmit them to the Principal  
37 Clerk for the Senate."

38 **SECTION 3.(b)** For any election in 2004, notice of the intent to contest the  
39 election shall be filed within 10 days of this act becoming law, notwithstanding the  
40 deadlines established under subsection (a) of this section. In the case of any election in  
41 2004 subject to this act, when as of the fifth day after this act becomes law no certificate  
42 of election has been issued, any candidate for that office may initiate a contest under  
43 this act. The provisions of this act prevail over any other procedure for protest or contest  
44 of the election of any member of the General Assembly or any office created by Article

1 III of the Constitution. Any election contest petition received prior to this act becoming  
2 law may be amended, if necessary, to comply with the provisions of this act.

3 **SECTION 4.** G.S. 163-182.14 reads as rewritten:

4 "**§ 163-182.14. Appeal of a final decision to superior court.**

5 (a) Final Decision. – A copy of the final decision of the State Board of Elections  
6 on an election protest shall be served on the parties personally or by certified mail. A  
7 decision to order a new election is considered a final decision for purposes of seeking  
8 review of the decision.

9 (b) Timing of Right of Appeal. – Except in the case of an election to either house  
10 of the General Assembly or to an office established by Article III of the Constitution, an  
11 ~~An~~ aggrieved party has the right to appeal the final decision to the Superior Court of  
12 Wake County within 10 days of the date of service.

13 After the decision by the State Board of Elections has been served on the parties, the  
14 certification of nomination or election or the results of the referendum shall issue  
15 pursuant to G.S. 163-182.15 unless an appealing party obtains a stay of the certification  
16 from the Superior Court of Wake County within 10 days after the date of service. The  
17 court shall not issue a stay of certification unless the petitioner shows the court that the  
18 petitioner has appealed the decision of the State Board of Elections, that the petitioner is  
19 an aggrieved party, and that the petitioner is likely to prevail in the appeal.

20 (c) Contests for General Assembly and Executive Branch Offices. – In the case  
21 of an election to either house of the General Assembly or to an office established by  
22 Article III of the Constitution, an aggrieved party may file an election contest as  
23 provided by G.S. 120-10 or G.S. 163-182.13A, as appropriate. There is no review in the  
24 General Court of Justice."

25 **SECTION 5.** G.S. 163-182.15(b) reads as rewritten:

26 "(b) Issued by State Board of Elections. – In ballot items within the jurisdiction of  
27 the State Board of Elections, the State Board of Elections shall issue a certificate of  
28 nomination or election, or a certificate of the results of the referendum, as appropriate.  
29 The certificate shall be issued by the State Board six days after the completion of the  
30 canvass pursuant to G.S. 163-182.5, unless there is an election protest pending. If there  
31 is an election protest, the certificate of nomination or election or the certificate of the  
32 result of the referendum shall be issued in one of the following ways, as appropriate:

33 (1) The certificate shall be issued 10 days after the final decision of the  
34 State Board on the election protest, unless the State Board has ordered  
35 a new election or the issuance of the certificate is stayed by the  
36 Superior Court of Wake County pursuant to G.S. 163-14.

37 (2) If the decision of the State Board has been appealed to the Superior  
38 Court of Wake County and the court has stayed the certification, the  
39 certificate shall be issued five days after the entry of a final order in  
40 the case in the Superior Court of Wake County, unless that court or an  
41 appellate court orders otherwise.

42 (3) The certificate shall be issued immediately upon the filing of a copy of  
43 the judgment of the General Assembly with the State Board of

1                    Elections in contested elections involving any elective office  
2                    established by Article III of the Constitution.  
3                    (4) No certificate of election need be issued for any member of the  
4                    General Assembly following an election contest decided pursuant to  
5                    G.S. 120-10 and G.S. 120-11."

6                    **SECTION 6.** This act is effective when it becomes law.