

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

1

HOUSE BILL 2188

Short Title: Candidate Challenge Procedure. (Public)

Sponsors: Representatives Hackney, Howard (Primary Sponsors); Barnhart, Bell, Brubaker, Coates, Earle, Eddins, Fisher, Gibson, Justice, Harrison, Lucas, Luebke, McLawhorn, Martin, Nye, Ross, Sauls, Sherrill, Steen, and West.

Referred to: Judiciary I.

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 candidate has filed a notice of candidacy or petitioned.

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 include the candidate does not meet the constitutional or statutory
26 qualifications for the office, including residency.

1 (c) If Defect Discovered After Deadline, Protest Available. – If a challenger
2 discovers one or more grounds for challenging a candidate after the deadline in
3 subsection (a) of this section, the grounds may be the basis for a protest under
4 G.S. 163-182.9.

5 **"§ 163-127.3. Panel to conduct the hearing on a challenge.**

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

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

10 (2) Multicounty but less than entire state. – If the district for the office
11 subject to the challenge covers more than one county but less than the
12 entire State, the Board shall appoint a panel within two business days
13 after the challenge is filed. The panel shall consist of at least one
14 member of the county board of elections in each county in the district
15 of the office. The panel shall have an odd number of members, no
16 fewer than three and no more than five. In appointing members to the
17 panel, the Board shall appoint members from each county in
18 proportion to the relative total number of registered voters of the
19 counties in the district for the office. The Board shall, to the extent
20 possible, appoint members affiliated with different political parties in
21 proportion to the representation of those parties on the county boards
22 of elections in the district for the office. The Board shall designate a
23 chair for the panel.

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

26 **"§ 163-127.4. Conduct of hearing by panel.**

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

29 (1) Within five business days after the challenge is filed, designate and
30 announce the time of the hearing and the facility where the hearing
31 will be held. The hearing shall be held at a location in the district
32 reasonably convenient to residents in all parts of the district for the
33 office. If the district for the office covers only part of a county, the
34 hearing shall be at a location in the county convenient to residents of
35 the district, but need not be in the district.

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

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

41 (4) Render a decision within 20 business days after the challenge is filed.

42 (b) Notice of Hearing. – The panel shall give notice of the hearing to the
43 challenger, to the candidate, to the county chair of each political party in every county
44 in the district for the office, and to those persons likely to have a significant interest in

1 the resolution of the challenge. Each person given notice shall also be given a copy of
2 the challenge or a summary of its allegations.

3 Failure to comply with the notice requirements in this subsection shall not delay the
4 holding of a hearing nor invalidate the results if it appears reasonably likely that all
5 interested persons were aware of the hearing and had an opportunity to be heard.

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

8 (1) The panel may allow evidence to be presented at the hearing in the
9 form of affidavits, or it may examine witnesses. The chair or any two
10 members of the panel may subpoena witnesses or documents. The
11 parties shall be allowed to issue subpoenas for witnesses or documents,
12 or both, including a subpoena of the candidate. Each witness must be
13 placed under oath before testifying. The Board shall provide the
14 wording of the oath to every panel.

15 (2) The panel may receive evidence at the hearing from any person with
16 information concerning the subject of the challenge. The challenger
17 shall be permitted to present evidence at the hearing, but the challenger
18 shall not be required to testify unless subpoenaed by a party. The panel
19 may allow evidence by affidavit. The panel may allow evidence to be
20 presented by a person who has received notice of the hearing, if
21 present.

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

25 (d) Findings of Fact and Conclusions of Law by Panel. – The panel shall make a
26 written decision on each challenge by separately stating findings of facts, conclusions of
27 law, and an order based upon the findings of fact and conclusions of law.

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

31 **"§ 163-127.5. Burden of proof.**

32 (a) No challenge may be sustained by the panel absent clear and convincing
33 evidence of the record as a whole. The burden of proof shall be upon the candidate.

34 (b) If the challenge is based upon a question of residency, the candidate must
35 show, by clear and convincing evidence, all of the following:

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

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

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

40 **"§ 163-127.6. Appeals.**

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

44 (1) The challenger.

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

2 (3) Any other person who participated in the hearing and has a significant
3 interest adversely affected by the panel's decision.

4 (b) Notice of Appeal. – Appeal must be taken within two business days after the
5 panel files the written decision with the county board of elections in which the candidate
6 filed notice of candidacy or petitioned. The written appeal must be delivered or
7 deposited in the mail to the Board by the end of the second business day after the
8 written decision was filed by the panel. The Board shall prescribe forms for filing
9 appeals from a panel's decision in a challenge. The Board shall base its appellate
10 decision on the whole record of the hearing conducted by the panel and render its
11 opinion on an expedited basis. From the final order or decision by the Board under this
12 subsection, appeal as of right lies directly to the Supreme Court. Appeal shall be filed
13 no later than two business days after the Board files its final order or decision in its
14 office. The appeal shall be in the nature of certiorari. The Supreme Court shall hear the
15 appeal and render a decision on an expedited basis.

16 (c) Appeals to Superior Court from Statewide Panel. – The decision of a panel
17 created under G.S. 163-127.3(a)(3) may be appealed as of right to the Superior Court of
18 Wake County by any of the following:

19 (1) The challenger.

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

21 (3) Any other person who participated in the hearing and has a significant
22 interest adversely affected by the panel's decision.

23 Appeal must be taken within two business days after the panel files the written
24 decision. The written appeal must be delivered or deposited in the mail to the Superior
25 Court of Wake County by the end of the second business day after the written decision
26 was filed by the panel. The superior court shall base its appellate decision on the whole
27 record of the hearing conducted by the panel and hear the appeal on an expedited basis.
28 From the final order or decision by the superior court under this subsection, appeal as of
29 right lies directly to the Supreme Court. Appeal shall be filed no later than two business
30 days after the superior court files its final order or decision. The appeal shall be in the
31 nature of certiorari. The Supreme Court shall hear the appeal and render a decision on
32 an expedited basis."

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

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

40 The ~~Board~~ board shall give notice of cancellation to any candidate whose notice of
41 candidacy has been cancelled under this subsection by mail or by having the notice
42 served on him by the ~~sheriff~~.sheriff, and to any other candidate filing for the same
43 office. A candidate who has been adversely affected by a cancellation or another
44 candidate for the same office affected by a substantiation under this subsection may

1 request a hearing on the cancellation. If the candidate requests a hearing, the hearing
2 shall be conducted in accordance with Article 11B of Chapter 163 of the General
3 Statutes."

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

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

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

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

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

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

28 **SECTION 5.** If any section or provision of this act is declared
29 unconstitutional or invalid by the courts, it does not affect the validity of this act as a
30 whole or any part other than the part so declared to be unconstitutional or invalid.

31 **SECTION 6.** This act becomes effective January 1, 2007.