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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.

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

30 (3) Entire State. – If the district for the office subject to the challenge
31 consists of the entire State, the panel shall be the Board.

32 **"§ 163-127.4. Conduct of hearing by panel.**

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

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

- 1 (2) Allow for depositions prior to the hearing, if requested by the
2 challenger or candidate before the time of the hearing is designated
3 and announced.
- 4 (3) Issue subpoenas for witnesses or documents, or both, upon request of
5 the parties or upon its own motion.
- 6 (4) Render a written decision within 20 business days after the challenge
7 is filed and serve that written decision on the parties.

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

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

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

- 18 (1) The panel may allow evidence to be presented at the hearing in the
19 form of affidavits supporting documents, or it may examine witnesses.
20 The chair or any two members of the panel may subpoena witnesses or
21 documents. The parties shall be allowed to issue subpoenas for
22 witnesses or documents, or both, including a subpoena of the
23 candidate. Each witness must be placed under oath before testifying.
24 The Board shall provide the wording of the oath to the panel.
- 25 (2) The panel may receive evidence at the hearing from any person with
26 information concerning the subject of the challenge, and such
27 presentation of evidence shall be subject to Chapter 8C of the General
28 Statutes. The challenger shall be permitted to present evidence at the
29 hearing, but the challenger shall not be required to testify unless
30 subpoenaed by a party. The panel may allow evidence to be presented
31 by a person who is present.
- 32 (3) The hearing shall be recorded by a reporter or by mechanical means,
33 and the full record of the hearing shall be preserved by the panel until
34 directed otherwise by the Board.

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

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

41 "**§ 163-127.5. Burden of proof.**

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

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

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

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

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

7 **"§ 163-127.6. Appeals.**

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

11 (1) The challenger.

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

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

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

25 (1) The challenger.

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

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

31 **SECTION 1.1.** G.S. 7A-29 reads as rewritten:

32 **"§ 7A-29. Appeals of right from certain administrative agencies.**

33 (a) From any final order or decision of the North Carolina Utilities Commission
34 not governed by subsection (b) of this section, the Department of Health and Human
35 Services under G.S. 131E-188(b), the North Carolina Industrial Commission, the North
36 Carolina State Bar under G.S. 84-28, the Property Tax Commission under G.S. 105-290
37 and G.S. 105-342, the Commissioner of Insurance under G.S. 58-2-80, the State Board
38 of Elections under G.S. 163-127.6, or the Secretary of Environment and Natural
39 Resources under G.S. 104E-6.2 or G.S. 130A-293, appeal as of right lies directly to the
40 Court of Appeals.

41 (b) From any final order or decision of the Utilities Commission in a general rate
42 case, appeal as of right lies directly to the Supreme Court."

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

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

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

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

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

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

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

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

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

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

40 "**§ 163-295. Municipal and special district elections; application of Chapter 163.**

41 To the extent that the laws, rules and procedures applicable to the conduct of
42 primary, general or special elections by county boards of elections under Articles 3, 4,
43 5, 6, 7A, 8, 9, 10, 11, 11B, 12, 13, 14, 15, 19 and 22 of this Chapter are not inconsistent
44 with the provisions of this Article, those laws, rules and procedures shall apply to

1 municipal and special district elections and their conduct by the board of elections
2 conducting those elections. The State Board of Elections shall have the same authority
3 over all such elections as it has over county and State elections under those Articles."

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

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

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