

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

H

1

HOUSE BILL 840

Short Title: Candidates' Qualifications.

(Public)

---

Sponsors: Representatives Adams; W. Brown, Cunningham, Fitch, H. Hunter, Luebke, Michaux, Oldham, Sharpe, Shaw, and Wright.

---

Referred to: Judiciary II.

---

April 12, 1995

A BILL TO BE ENTITLED

1 AN ACT TO REQUIRE CANDIDATES FOR ELECTIVE OFFICE TO CERTIFY  
2 THAT THEY MEET THE QUALIFICATIONS FOR OFFICE AND TO ALLOW  
3 CHALLENGES TO CANDIDATES' QUALIFICATIONS.  
4

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 163-106 is amended by adding a new subsection to read:

7 "(a1) In order to be accepted, attached to the notice of candidacy under subsection  
8 (a) of this section shall be an affidavit, signed by the candidate, listing the place of  
9 residence of the candidate, including a street address."

10 Sec. 2. Article 10 of Chapter 163 of the General Statutes is amended by  
11 adding a new section to read:

12 "**§ 163-114.1. Place of residency.**

13 In order to be accepted, attached to the certification of the name of a candidate under  
14 G.S. 163-114 shall be an affidavit, signed by the candidate, listing the place of residence  
15 of the candidate, including a street address."

16 Sec. 3. G.S. 163-122 is amended by adding the following new subsection:

17 "(c) In order to be accepted, the petition must have attached to it an affidavit,  
18 signed by the candidate, listing the place of residence of the candidate, including a street  
19 address."

1           Sec. 4. Article 9 of Chapter 163 of the General Statutes is amended by adding  
2 a new section to read:

3 **"§ 163-98.1. Place of residency.**

4           In order to be accepted, attached to the certification of the name of a candidate under  
5 G.S. 163-98 shall be an affidavit, signed by the candidate, listing the place of residence of  
6 the candidate, including a street address."

7           Sec. 5. G.S. 163-294.2 is amended by adding a new subsection to read:

8           "(a1) In order to be accepted, attached to the notice of candidacy under subsection  
9 (a) of this section shall be an affidavit, signed by the candidate, listing the place of  
10 residence of the candidate, including a street address."

11           Sec. 6. Chapter 163 of the General Statutes is amended by adding a new  
12 Article to read:

13   **"ARTICLE 8A.**

14   **"CHALLENGE TO CANDIDATE.**

15 **"§ 163-92. Time for challenge other than on day of primary or election.**

16           The right of any person to be a candidate shall be subject to objection and challenge.  
17 This Article does not apply to candidates for United States Senate or member of the  
18 United States House of Representatives.

19 **"§ 163-92.1. Challenge procedure.**

20           (a) Any registered voter who is eligible to vote for an office may challenge the  
21 right of any person to appear on the ballot as a candidate of any party or as an unaffiliated  
22 candidate for that office. No such challenge may be made later than 10 days after  
23 deadline for filing notices of candidacy under G.S. 163-106 for the primary if the  
24 challenge is to a candidate who has filed a notice of candidacy, and no such challenge  
25 may be made later than 80 days prior to the general or special election if the person  
26 becomes a candidate in that general or special election under G.S. 163-114, 163-122,  
27 163-294.2 or Article 9 of Chapter 163 of the General Statutes except that a challenge as  
28 to the residency of the candidate may be made up until four days before the primary in  
29 the case of a contested primary and up until four days before the general election.

30           (b) Each challenge shall be made separately, in writing, under oath and on forms  
31 prescribed by the State Board of Elections, and shall specify the reasons why the  
32 challenged candidate will not be eligible to hold office on the date that candidate's term  
33 commences. The challenge shall be filed with the:

34           (1) Board of elections conducting the elections for a municipality in the  
35 case of a municipal election;

36           (2) State Board of Elections in the case of any:

37                   a. Judicial candidate;

38                   b. Statewide candidate;

39                   c. Candidate for member of either house of the General Assembly;  
40 and

41           (3) County board of elections conducting the election in the case of any  
42 other office.

1 The challenge shall be signed by the challenger and shall set forth the challenger's  
2 address.

3 (c) The challenge may be made only for one or more of the following reasons:

4 (1) That the person is not registered to vote at a location that will allow the  
5 person to vote for the office for which the person is a candidate; or

6 (2) That the candidate is not eligible under the Constitution on account of  
7 residency, citizenship, conviction of a felony, or age to hold the office  
8 for which that person is a candidate. Any calculation of age or  
9 durational residency shall be made as of the date the term is to  
10 commence.

11 (d) When a challenge is made, the board of elections having jurisdiction under this  
12 Article shall schedule a preliminary hearing on the challenge, and shall take such  
13 testimony under oath and receive such other evidence proffered by the challenger as may  
14 be offered. If the challenger presents evidence and if the board finds that probable cause  
15 exists that the person challenged is not qualified to vote, then the board shall schedule a  
16 hearing on the challenge.

17 (e) The presentation of a letter mailed by returnable first-class mail to the voter at  
18 the address listed on the voter registration card and returned because the person does not  
19 live at the address shall constitute prima facie evidence that the person does not reside at  
20 that address.

21 **"§ 163-92.2. Hearing on challenge.**

22 (a) A challenge made under this Article shall be heard and decided at least 60 days  
23 before the date of the next primary or election.

24 (b) At least 10 days prior to the hearing the board of elections shall mail by first-  
25 class mail, a written notice of the challenge to the challenged candidate to the address of  
26 the voter listed on the notice of candidacy, or in the case of a candidate nominated by  
27 petition, party convention, or party executive committee, to the address on the petition or  
28 notice of nomination. The notice shall state succinctly the grounds asserted, and shall  
29 state the time and place of the hearing. A copy of the notice shall be sent to the person  
30 making the challenge and to the chairman of each political party in the State eligible to  
31 nominate candidates under this Chapter.

32 (c) At the time and place set for the hearing, the board of elections shall explain to  
33 the challenged candidate the qualifications for candidacy for that office. The board  
34 chairman, or in the chairman's absence the board secretary, shall then administer the  
35 following oath to the challenged candidate:

36 'You swear (or affirm) that the statements and information you shall give in this  
37 hearing with respect to your identity and qualifications to be a candidate shall be the  
38 truth, the whole truth, and nothing but the truth, so help you, God.'

39 After swearing the challenged candidate, the board shall examine the candidate as to  
40 his qualifications to be a candidate. If the challenged candidate insists that he is qualified,  
41 the board shall tender to the candidate the following oath or affirmation:

42 'You do solemnly swear (or affirm) that you are qualified to hold the office for which  
43 you are a candidate, so help you, God.'

1 If the challenged candidate refuses to take the tendered oath, or submit to the board  
2 the affidavit required by subsection (d), below, the challenge shall be sustained. If the  
3 challenged candidate takes the tendered oath, the board may, nevertheless, sustain the  
4 challenge if it finds the challenged candidate is not a legal voter.

5 The board, in conducting hearings on challenges, shall have authority to subpoena any  
6 witnesses it may deem appropriate, and administer the necessary oaths or affirmations to  
7 all witnesses brought before it to testify to the qualifications of the persons challenged.

8 (d) The challenged candidate shall appear in person at the challenge hearing. If the  
9 candidate is unable to appear in person, the candidate may be represented by another  
10 person and must tender to the county board of elections an affidavit that the candidate is  
11 qualified to hold the office.

12 **"§ 163-92.3. Burden of proof.**

13 (a) Challenges shall not be made indiscriminately and may only be made if the  
14 challenger knows, suspects, or reasonably believes such a person not to be qualified and  
15 entitled to vote.

16 (b) The burden of proof at the hearing shall be on the candidate to prove that the  
17 candidate is qualified to hold the office.

18 **"§ 163-92.4. Action when challenge sustained, overruled, or dismissed.**

19 (a) When any challenge is sustained the board shall order the candidate's name  
20 removed from the ballot, and:

21 (1) If the candidate was nominated by a party, the party may name a  
22 replacement candidate as provided by G.S. 163-114, whose name shall  
23 either appear on the ballot, or for whom votes for the removed candidate  
24 shall be counted, depending on whether the ballots can be reprinted or  
25 not; except if the challenge was as to residency, the party may not name  
26 a replacement candidate;

27 (2) If the candidate is a candidate in a primary which has not yet been held,  
28 and the disqualification would have resulted in no primary being held if  
29 the person had not been a candidate, then the primary election shall not  
30 be held and the appropriate board of elections shall declare the nominee;

31 (3) If the candidate is removed from the ballot, but it is too late to reprint  
32 the ballots, then no votes for that candidate shall be counted for any  
33 purpose.

34 (b) A decision by a county board of elections on any challenge made under the  
35 provisions of this Article shall be appealable to the superior court of the county in which  
36 the offices of that board are located within 10 days. A decision by the State Board of  
37 Elections on any challenge made under the provisions of this Article shall be appealable  
38 to the Superior Court of Wake County within 10 days. Only a political party entitled to  
39 nominate candidates under this Chapter, the person against whom a challenge is  
40 sustained, and the person who made a challenge which is overruled shall have standing to  
41 file an appeal.

42 **"§ 163-92.5. Making false affidavit perjury.**

1        Any person who shall knowingly make any false affidavit or shall knowingly swear or  
2 affirm falsely to any matter or thing required by the terms of this Article to be sworn or  
3 affirmed shall be guilty of a Class I felony.

4        **"§ 163-92.6. Applicability to general election for member of the General Assembly.**

5        If any court of competent jurisdiction holds that the provisions of this Article cannot  
6 apply to the election for members of each house of the General Assembly, such action  
7 does not invalidate the remainder of this Article."

8                Sec. 7. This act becomes effective with respect to elections held on or after  
9 January 1, 1996.