

May 17, 2006

**H 2188. CANDIDATE CHALLENGE PROCEDURE.** Filed 5/17/06. *TO PROVIDE FOR A PROCEDURE FOR CHALLENGING THE QUALIFICATIONS OF A CANDIDATE.* Section 1 of the bill amends G.S. Chapter 163, Subchapter V by adding new Article 11B, "Challenge to a Candidacy." The proposed new Article provides that a challenge to a candidacy may be made on grounds including that the candidate does not meet the constitutional or statutory qualifications for the office, including residency, and that the challenge must be made by verified affidavit filed with the board of elections receiving the notice of the candidacy or petition no later than 10 business days after the candidate has filed the notice of candidacy or petition. Where grounds for challenge are discovered more than 10 business days after the candidate's filing, the grounds may be the basis for a protest under GS 163-182.9. Challenges filed under the proposed new Article are heard by the county board of elections, a panel appointed by the state board of elections, or the state board of elections itself, depending on the size of the district for the office subject to the challenge. The hearing panel is authorized to set a time and place for the hearing, allow for depositions, and issue subpoenas, and is directed to render a decision within 20 business days after the challenge is filed. The proposed new Article also provides instructions as to how a hearing is to be conducted. The candidate bears the burden of proof. The act also provides for appeals from the decision of a hearing panel. Appeals from a single or multi-county panel are decided by the State Board of Elections, while decisions of the State Board of elections may be appealed to the Superior Court of Wake County.

Section 2 of the bill amends GS 163-106(g) to provide that the county board of elections must immediately upon receipt of a notice of candidacy inspect the registration records of the county and cancel the notice of candidacy of anyone not meeting the constitutional or statutory qualifications for office, including residency. The proposed amendment to GS 163-106(g) further provides that the board of elections must give notice of a cancellation to any other candidate filing for the same office as the person whose candidacy has been cancelled, and that a candidate who has been adversely affected by a cancellation may request a hearing on the cancellation.

Section 3 makes the same provisions for inspection of county records and notice of cancellation for unaffiliated candidates nominated by petition by adding a new subsection (d) to G.S. 163-22, and for persons having filed a declaration of intent and petition for write-in candidacy, by adding a new subsection (f1) to GS 163-123.

Effective January 1, 2007.

**Intro. by Hackney, Howard.**

GS 163

June 21, 2006

**H 2188. CANDIDATE CHALLENGE PROCEDURE.** Filed 5/17/06. House committee substitute makes the following changes to 1st edition. Modifies proposed GS 163-127.2(a) to require that a candidate challenge be filed no later than 10 business days after the close of the filing period for the notice of candidacy or petition (was, 10 business days after the candidate has filed a notice of candidacy or petitioned). Revises GS 163-127.3(a)(2) to establish the membership of the panel considering an election challenge in a district with more than five counties and to require that a meeting of the State Board of Elections (SBE) to appoint a panel be considered an emergency meeting under GS 143-318.12 (public notice of official meetings). Modifies GS 163-127.4 (conduct of hearing by panel) to require that (1) the hearing of the panel be held at a location reasonably convenient to the public (was, reasonably convenient to residents in all parts of the district for the office), and preferably in the county receiving the notice of the candidacy or petition, (2) a written decision be issued and that the SBE serve that decision on the parties, and (3) a notice of the hearing also be given to those persons who requested a notice (was, those persons likely to have a significant interest in the resolution of the challenge) and other candidates filing or petitioning to be elected to the same office. Also authorizes the panel to allow evidence to be presented in the form of "affidavits supporting documents" (was, affidavits), requires that the panel follow the NC Rules of Evidence, and makes stylistic changes. Revises GS 163-127.5(a) to provide that the burden of proof in a candidate challenge is by a preponderance of the evidence (was, clear and convincing evidence). Deletes provision in GS 163-127.6 that gave any person who participated in a hearing with a significant interest adversely

affected by the panel's decision standing to appeal a panel decision. Also revises section to require that appeals from a single or multicounty panel decision be submitted to the SBE for consideration. Appeals from the SBE decision may be filed in the Court of Appeals (was, required that appeals be submitted to the SBE and then to the Supreme Court) and appeals from a statewide panel be submitted directly to the Court of Appeals (was, to the Wake County Superior Court and then to the Supreme Court) and to reorganize provisions. Amends GS 163-295 to refer to new Article 11B. Adds provision respectfully requesting that the NC Supreme Court (was, Chief Justice) adopt those rules necessary to implement appeals provisions in GS 163-127.6. Clarifies that act applies to actions filed on or after January 1, 2007.

June 30, 2006

**H 2188. CANDIDATE CHALLENGE PROCEDURE.** Filed 5/17/06. Senate committee substitute makes the following changes to 2nd edition. Clarifies the circumstances in which single-county versus multi-county panels are required to hear candidacy challenges.

July 5, 2006

**H 2188. CANDIDATE CHALLENGE PROCEDURE.** Filed 5/17/06. Senate amendment makes the following changes to 3rd edition. Revises proposed GS 163-127.6(a) and (b) to delete requirement that appeals from a single, multicounty, and statewide panel be in the nature of certiorari. Makes conforming change to GS 7A-29(b) (appeals of right from certain administrative agencies) to refer to appeals pursuant to GS 163-127.6.

July 24, 2006

**SL 2006-155 (H 2188). CANDIDATE CHALLENGE PROCEDURE. AN ACT TO PROVIDE FOR A PROCEDURE FOR CHALLENGING THE QUALIFICATIONS OF A CANDIDATE.** Summarized in *Daily Bulletin* 5/17/06, 6/21/06, 6/30/06, and 7/5/06. Enacted July 23, 2006. Effective January 1, 2007.