

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 1097

Short Title: Candidate Residency Challenges.

(Public)

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Sponsors: Representative Lemmond.

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Referred to: Judiciary I.

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April 19, 1993

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A PROCEDURE TO HANDLE CHALLENGES TO  
RESIDENCE OF CANDIDATES FOR ELECTIVE OFFICE, AND TO PUT THE  
BURDEN OF PROOF ON THE CANDIDATE.

The General Assembly of North Carolina enacts:

Section 1. Chapter 163 of the General Statutes is amended by adding a new  
Article to read:

**"ARTICLE 8A.**

**"CHALLENGE TO CANDIDATE.**

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

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

**"§ 163-92.1. Challenge procedure.**

(a) Any registered voter who is eligible to vote for an office may challenge the  
right of any person to appear on the ballot as a candidate of any party or as an  
unaffiliated candidate for that office. No such challenge may be made later than 80  
days prior to the primary if the challenge is to a candidate on the ballot for the primary,  
and no such challenge may be made later than 80 days prior to the general or special  
election if the person is a candidate in that general or special election.

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

- 1           (1) Board of elections conducting the elections for a municipality in the  
2 case of a municipal election;  
3           (2) State Board of Elections in the case of any:  
4           a. Judicial candidate;  
5           b. Statewide candidate;  
6           c. Candidate for member of either house of the General Assembly;  
7           and  
8           (3) County board of elections conducting the election in the case of any  
9           other office.

10 The challenge shall be signed by the challenger and shall set forth the challenger's  
11 address.

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

- 13           (1) That the person is not registered to vote at a location that will allow the  
14 person to vote for the office for which the person is a candidate;  
15           (2) That the candidate is not eligible under the Constitution on account of  
16 residency, conviction of a felony, or age to hold the office for which  
17 that person is a candidate. Any calculation of age or durational  
18 residency shall be made as of the date the term is to commence; or  
19           (3) That the candidate is not a citizen of the United States.

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

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

30 **"§ 163-92.2. Hearing on challenge.**

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

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

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

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

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

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

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

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

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

21 **"§ 163-92.3. Burden of proof.**

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

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

27 **"§ 163-92.4. Action when challenge sustained, overruled, or dismissed.**

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

30 (1) If the candidate was nominated by a party, the party may name a  
31 replacement candidate as provided by G.S. 163-114, whose name shall  
32 either appear on the ballot, or for whom votes for the removed  
33 candidate shall be counted, depending on whether the ballots can be  
34 reprinted or not;

35 (2) If the candidate is a candidate in a primary which has not yet been  
36 held, and the disqualification would have resulted in no primary being  
37 held if the person had not been a candidate, then the primary election  
38 shall not be held;

39 (3) If the candidate is removed from the ballot, but it is too late to reprint  
40 the ballots, then no votes for that candidate shall be counted for any  
41 purpose, unless a party has named a replacement candidate under G.S.  
42 163-114.

43 (b) A decision by a county board of elections on any challenge made under the  
44 provisions of this Article shall be appealable to the superior court of the county in which

1 the offices of that board are located within 10 days. A decision by the State Board of  
2 Elections on any challenge made under the provisions of this Article shall be appealable  
3 to the Superior Court of Wake County within 10 days. Only a political party entitled to  
4 nominate candidates under this Chapter, the person against whom a challenge is  
5 sustained, and the person who made a challenge which is overruled shall have standing  
6 to file an appeal.

7 **§ 163-92.5. Making false affidavit perjury.**

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

11 **§ 163-92.6. Applicability to general election for member of the General Assembly.**

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

15 Sec. 2. G.S. 163-106 is amended by adding a new subsection to read:

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

19 Sec. 3. Article 10 of Chapter 163 of the General Statutes is amended by  
20 adding a new section to read:

21 **§ 163-114.1. Place of residency.**

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

25 Sec. 4. G.S. 163-122 is amended by adding the following new subsection:

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

29 Sec. 5. Article 9 of Chapter 163 of the General Statutes is amended by  
30 adding a new section to read:

31 **§ 163-98.1. Place of residency.**

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

35 Sec. 6. G.S. 163-294.2 is amended by adding a new subsection to read:

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

39 Sec. 7. This act becomes effective with respect to elections held on or after  
40 January 1, 1994.