

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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HOUSE BILL 171

Short Title: Burden of Proof-Challenge to Candidacy. (Public)

Sponsors: Representatives Clampitt, C. Smith, Miller, and Moffitt (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Election Law and Campaign Finance Reform, if favorable, Rules, Calendar, and Operations of the House

March 1, 2021

1 A BILL TO BE ENTITLED
2 AN ACT TO PLACE THE BURDEN OF PROOF ON THE CHALLENGER WHEN A
3 CHALLENGE TO A CANDIDATE IS FILED.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 163-127.5 reads as rewritten:

6 "**§ 163-127.5. Burden of proof.**

7 (a) The burden of proof shall be upon the ~~candidate, challenger,~~ who must show by a
8 preponderance of the evidence of the record as a whole that ~~he or she~~ the candidate is not qualified
9 ~~to be a candidate~~ for the office.

10 (b) If the challenge is based upon a question of residency, the panel conducting the
11 hearing may require the candidate ~~must show or the challenger~~ to present evidence as to where
12 the candidate resides. This evidence may include testimony of the candidate, or otherwise be
13 presented, and should address all of the following:

- 14 (1) An actual abandonment of ~~the~~ a first domicile, coupled with an intent not to
15 return to the first domicile.
16 (2) The acquisition of a new domicile by actual residence at another place.
17 (3) The intent of making ~~the~~ a newer domicile a permanent domicile."

18 **SECTION 2.** G.S. 163-127.4 reads as rewritten:

19 "**§ 163-127.4. Conduct of hearing by panel.**

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

- 21 (1) Within five business days after the challenge is filed, designate and announce
22 the time of the hearing and the facility where the hearing will be held. The
23 hearing shall be held at a location in the district reasonably convenient to the
24 public, and shall preferably be held in the county receiving the notice of the
25 candidacy or petition. If the district for the office covers only part of a county,
26 the hearing shall be at a location in the county convenient to residents of the
27 district, but need not be in the district.
28 (2) Allow for depositions prior to the hearing, if requested by the challenger or
29 candidate before the time of the hearing is designated and announced.
30 (3) Issue subpoenas for witnesses or documents, or both, upon request of the
31 parties or upon its own motion.
32 (4) Render a written decision within 20 business days after the challenge is filed
33 and serve that written decision on the parties.



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

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

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

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

17 (2) The panel may receive evidence at the hearing from any person with
18 information concerning the subject of the challenge, and such presentation of
19 evidence shall be subject to Chapter 8C of the General Statutes. The
20 challenger shall ~~be permitted to~~ present evidence at the hearing, but the
21 challenger shall not be required to testify unless subpoenaed by a party. The
22 panel may allow evidence to be presented by a person who is present.

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

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

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

32 **SECTION 3.** This act is effective when it becomes law and applies to any challenges
33 that arise on or after that date.