

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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Short Title: Election Contests.

(Public)

Sponsors:

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February 9, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE PROCEDURES FOR RESOLVING ELECTION CONTESTS
3 FOR MEMBERS OF THE GENERAL ASSEMBLY AND COUNCIL OF STATE.

4 Whereas, Article II, Section 20 of the Constitution provides that each house
5 shall be the judge of the qualifications and elections of its members; and

6 Whereas, the current statutory procedures for handling contested legislative
7 elections were enacted in 1796, amended slightly in 1893, and are antiquated; and

8 Whereas, Article VI, Section 5 of the Constitution provides that a contested
9 election for Governor, Lieutenant Governor, or other Council of State member shall be
10 determined by joint ballot of both houses of the General Assembly in the manner
11 prescribed by law; and

12 Whereas, the constitutional provision on contested executive branch elections
13 was originally enacted in 1835, with the statutory implementing language enacted in
14 1836; and

15 Whereas, at the time of their repeal in 1971, those statutory procedures
16 merely referred to the antiquated procedure for contested legislative elections; and

17 Whereas, it is necessary to revise the antiquated legislative election contest
18 procedure and enact an executive election contest procedure as required by the
19 Constitution; Now, therefore,

20 The General Assembly of North Carolina enacts:

21 **SECTION 1.** G.S. 120-10 reads as rewritten:

22 "**§ 120-10. Notice of contest. Contesting a seat.**

23 ~~No person shall be allowed to contest the seat of any member of the General~~
24 ~~Assembly unless he shall have given to the member 30 days' notice thereof in writing,~~
25 ~~prior to the meeting of the General Assembly, which must state the particular grounds~~
26 ~~of such contest. If the seat is contested on account of the reception of illegal votes, the~~

1 ~~notice must set forth the number of such votes, by whom given, and the supposed~~
2 ~~disqualifications; and if the same is contested on account of the rejection of legal votes,~~
3 ~~the notice must give the names of the persons whose votes were rejected. No evidence~~
4 ~~shall be admitted to show that the contestant received illegal votes, unless he shall also~~
5 ~~have been notified the same number of days, and in the same manner. The same notice~~
6 ~~of time and place required in taking depositions shall be required and proved on the~~
7 ~~investigation.~~

8 (a) Initiating a Contest. – A contest of the election of any member to the General
9 Assembly may only be initiated by an unsuccessful candidate in the election, referred to
10 hereafter as the contestant. In addition, if at the time of convening of the Regular
11 Session of the General Assembly next after the election, no candidate has received a
12 certificate of election for a particular seat or office, the contest may be initiated by any
13 candidate in the election for that seat or office.

14 To initiate a contest, the contestant shall give written notice, in the manner provided
15 in subsection (c) of this section, of the intent to contest the election. The written notice
16 shall be provided to the person or persons apparently elected, hereinafter referred to as
17 the contestee, and to the Principal Clerk of the house to which that person seeks
18 election.

19 The notice of intent shall be provided no earlier than the date provided in
20 G.S. 163-182.5 for the canvass by the board of elections with jurisdiction for the office
21 under G.S. 163-182.4 and no later than the last of: (i) 30 days following the date of the
22 election, (ii) 10 days after a certificate of election has been issued, or (iii) 10 days after
23 the conclusion of the election protest procedure under Article 15A of Chapter 163 of the
24 General Statutes. If none of those events has occurred at the time of the convening of
25 the Regular Session of the General Assembly next after the election, a contestant may
26 initiate a contest no later than 30 days after the convening of that session.

27 As used in this section, 'to contest' means to challenge the apparent election of a
28 member of the General Assembly or to request the decision of an undecided election to
29 a seat in the General Assembly, where the challenge or the request is filed in accordance
30 with the timing and procedures of this section and states as grounds: (i) objections to the
31 eligibility or qualifications of the contestee based on specific allegations, (ii) objections
32 to the conduct or results of the election accompanied by specific allegations which, if
33 proven true, would have a probable impact on the outcome of the election, or (iii) both.
34 The grounds for the contest shall be stated in the notice of intent.

35 The notice shall state that an answer by the contestee must be filed with the clerk of
36 the appropriate house within 10 days following service of the notice. The contestant
37 shall sign and verify the notice by his oath or affirmation.

38 (b) Answering a Contest. – Within 10 days after service of the contestant's notice
39 on the contestee, the contestee shall file with the clerk of the appropriate house a written
40 answer. The contestee's answer shall admit or deny the allegations on which the
41 contestant relies, or state that the contestee has no knowledge or information concerning
42 an allegation which shall be deemed denial, and state any other defenses, in law or fact,
43 on which the contestee relies. The contestee shall sign and verify his answer by his oath
44 or affirmation.

1 (c) Filings. – The notice of intent to contest shall be filed by the contestant with
2 the clerk of the appropriate house and copies thereof served by the contestant as
3 provided under the Rules of Civil Procedure on each contestee. The answer, petition,
4 and any reply and copies thereof shall be filed with the appropriate Principal Clerk, and
5 copies shall be served on the opposing party or the opposing party's counsel, if any, in
6 the manner prescribed by the Rules of Civil Procedure.

7 After service of the notice of intent, any party, after reasonable notice to the other
8 party or parties, may take depositions to sustain or invalidate the election. The
9 contestant shall complete the taking of depositions to submit with his petition at any
10 time within 20 days following the date of the notice of intent to contest the election, and
11 the contestee shall complete the taking of his depositions within 30 days following the
12 date of the notice of intent to contest the election. By written stipulation of the parties,
13 the testimony of any witness may be filed in the form of an affidavit by the witness
14 within the same time limitations prescribed for the taking of depositions.

15 Subpoenas for witnesses shall be issued upon the application of either party or upon
16 motion of the committee under the same procedures as under Article 5A of this Chapter
17 and shall be enforced as provided under G.S. 120-19.4. Witnesses shall be entitled to the
18 same allowances and privileges, and be subject to the same penalties, as witnesses
19 summoned to attend the courts. Every deposition shall be taken before a person
20 authorized by law to administer oaths, who shall certify and seal the deposition in the
21 same manner as in judicial civil proceedings and file the same with the Principal Clerk
22 of the appropriate house.

23 (d) Petitions. – A written petition shall be filed by the contestant with the
24 Principal Clerk of the appropriate house within 40 days following the filing of the notice
25 of intent to contest the election. The petition shall set forth the facts and arguments
26 supporting the case of the contestant. The contestee may file a written reply to the
27 petition within five days following its service on the contestee.

28 No affidavit may be made a part of, or filed in support of, a petition or reply thereto
29 unless the affidavit has previously been filed with the Principal Clerk of the appropriate
30 house, pursuant to the written stipulation of the parties or their counsel, on or before the
31 date established by subsection (c) of this section for the completion of the taking of
32 depositions by the proponent of the affidavit.

33 (e) Referral to Committee. – The Principal Clerk shall refer the notice, answer,
34 petition, reply, depositions, and affidavits to the Committee on Rules, which documents
35 shall constitute part of the record in the contest. Unless another committee has been
36 designated by the rules of the house to hear contest matters, the Committee on Rules
37 shall hear the contest and conduct such investigation as has been directed by resolution
38 of its house.

39 The committee handling the protest shall set a schedule for taking depositions and
40 receiving affidavits. The committee may consider the contestant's and contestee's
41 recommendations for the procedural schedule. The committee may hold hearings and
42 may compel the attendance of witnesses and the production of documents in its inquiry.
43 The committee may order the filing of briefs. The committee may order the recount of
44 the ballots in the election.

1 The committee shall report its findings as to the law and the facts and make
2 recommendations to the house for its action.

3 (f) Standards. – If the contest is as to the eligibility or qualifications of the
4 contestee, the house shall determine if the contestee is eligible and qualified. If it
5 determines that the contestee is not eligible or not qualified, it shall order a new
6 election. If the contest is as to the conduct or results of the election, the house shall
7 determine which candidate received the greatest number of votes. If it can determine
8 which candidate received the greatest number of votes, it shall order that candidate
9 seated. If it cannot determine which candidate received the greatest number of votes, it
10 may order a new election, or may order such other relief as may be necessary and
11 proper, except that if it determines that two or more candidates shall be equal and
12 highest in votes, the provisions of G.S. 163-182.8 shall apply.

13 (g) New House to Hear. – The contest shall be heard and decided by the newly
14 elected house.

15 (h) Bad Faith. – The prevailing party in any contest may in a civil action recover
16 that party's costs of the legislative proceeding, upon a showing that the contestor filed,
17 prosecuted, or maintained the contest in bad faith and without substantial justification.

18 (i) Applicability. – This section applies only to a general or special election and
19 does not apply to the primary or any other part of the nominating process."

20 **SECTION 2.** G.S. 120-11 reads as rewritten:

21 **"§ 120-11. Depositions taken; ~~penalty and privilege of witnesses.~~**

22 Any person duly authorized to take depositions to be read before courts, may take
23 depositions to be used ~~on in the investigation, and may issue subpoenas for witnesses,~~
24 ~~which shall be executed by any officer authorized to execute process.~~ investigation. And
25 ~~if any witness shall fail to appear and give his deposition according to the subpoena, he~~
26 ~~shall forfeit and pay to the party causing him to be summoned forty dollars (\$40.00).~~
27 And on such investigation no witness in this or in the case of any other contested
28 election shall be excused from discovering whether he voted at such election, or his
29 qualification to vote, except as to his conviction for any offense which would disqualify
30 him. And if he was not a qualified voter, he shall be compelled to discover for whom he
31 voted; but any witness making such discovery shall not be subject to criminal or penal
32 prosecution for having voted at such election."

33 **SECTION 3.(a)** Article 15A of Chapter 163 of the General Statutes is
34 amended by adding a new section to read:

35 **"§ 163-182.13A. Contested elections for Executive Branch offices.**

36 (a) Notice. – Except as provided by this section, in any election for any elective
37 office established by Article III of the Constitution, notice of the intent to contest the
38 election shall be filed with the Principal Clerk of the House of Representatives as if it
39 were a contested election for the House of Representatives as prescribed in G.S. 120-10.

40 (b) Applicability. – The provisions of G.S. 120-10 and G.S. 120-11 shall apply to
41 contested elections for any elective office established by Article III of the Constitution
42 and shall govern standing, notice of intent to contest, answers, service of process,
43 evidence, the petition, procedures, and relief except as provided in this section. All
44 filings shall be with the Principal Clerk of the House of Representatives.

1 As used in this section, 'to contest' means to challenge the apparent election for any
2 elective office established by Article III of the Constitution or to request the decision of
3 an undecided election to any elective office established by Article III of the
4 Constitution, where the challenge or the request is filed in accordance with the timing
5 and procedures of this section and states as grounds: (i) objections to the eligibility or
6 qualifications of the contestee based on specific allegations, (ii) objections to the
7 conduct or results of the election accompanied by specific allegations which, if proven
8 true, would have a probable impact on the outcome of the election, or (iii) both. The
9 grounds for the contest shall be stated in the notice of intent.

10 (b1) New General Assembly to Hear. – When a contest arises out of the general
11 election, the General Assembly elected at the same time shall hear and decide it.

12 (c) Jurisdiction of Select Committee. – The matter shall be heard before a select
13 committee consisting of five Senators appointed by the President Pro Tempore and five
14 Representatives appointed by the Speaker of the House of Representatives. Not more
15 than three members of the Senate appointed by the President Pro Tempore shall be
16 members of the same political party. Not more than three members of the House of
17 Representatives appointed by the Speaker shall be members of the same political party.
18 That committee shall have the same power as a committee under G.S. 120-10. The
19 committee shall report its findings as to the law and the facts and make
20 recommendations to the General Assembly for its action.

21 (d) Final Determination. – The final determination on the recommendations of
22 the committee shall be made by the General Assembly, both houses sitting in joint
23 session in the Hall of the House of Representatives, with the Speaker of the House of
24 Representatives presiding. The vote shall be taken as provided by Article VI, Section 5
25 of the Constitution. In order to find for the contestant and order the contestant elected,
26 the vote on the joint ballot must include the affirmative vote of a majority of the
27 members of the General Assembly voting on the issue. The ballots shall be considered
28 written ballots rather than secret ballots and are subject to the provisions of
29 G.S. 143-318.13(b).

30 (d1) Standards. – If the contest is as to the eligibility or qualifications of the
31 contestee, the General Assembly shall determine if the contestee is eligible and
32 qualified. If it determines that the contestee is not eligible or not qualified, it shall order
33 a new election. If the contest is as to the conduct or results of the election, the General
34 Assembly shall determine which candidate received the greatest number of votes. If it
35 can determine which candidate received the greatest number of votes, it shall order that
36 candidate to be elected. If it cannot determine which candidate received the greatest
37 number of votes, it may order a new election, or may order such other relief as may be
38 necessary and proper, except that if it determines that two or more candidates shall be
39 equal and highest in votes, the provisions of G.S. 147-4 shall apply.

40 (e) Filing of Determination. – A copy of the determination of the General
41 Assembly under this section shall be filed with the Clerk of Superior Court of Wake
42 County and with the State Board of Elections.

1 (f) Copies to Senate Principal Clerk. – The Principal Clerk of the House of
2 Representatives shall make copies of any filings and transmit them to the Principal
3 Clerk for the Senate.

4 (g) Applicability. – This section applies only to a general or special election and
5 does not apply to the primary or any other part of the nominating process."

6 **SECTION 3.(b)** For any election in 2004, notice of the intent to contest the
7 election shall be filed within 10 days of this act becoming law, notwithstanding the
8 deadlines established under subsection (a) of this section. Any election contest petition
9 received prior to this act becoming law may be amended, if necessary, to comply with
10 the provisions of this act.

11 **SECTION 4.** G.S. 163-182.14 reads as rewritten:

12 **"§ 163-182.14. Appeal of a final decision to superior court.**

13 (a) Final Decision. – A copy of the final decision of the State Board of Elections
14 on an election protest shall be served on the parties personally or by certified mail. A
15 decision to order a new election is considered a final decision for purposes of seeking
16 review of the decision.

17 (b) Timing of Right of Appeal. – Except in the case of a general or special
18 election to either house of the General Assembly or to an office established by Article
19 III of the Constitution, Anan aggrieved party has the right to appeal the final decision to
20 the Superior Court of Wake County within 10 days of the date of service.

21 After the decision by the State Board of Elections has been served on the parties, the
22 certification of nomination or election or the results of the referendum shall issue
23 pursuant to G.S. 163-182.15 unless an appealing party obtains a stay of the certification
24 from the Superior Court of Wake County within 10 days after the date of service. The
25 court shall not issue a stay of certification unless the petitioner shows the court that the
26 petitioner has appealed the decision of the State Board of Elections, that the petitioner is
27 an aggrieved party, and that the petitioner is likely to prevail in the appeal.

28 (c) Contests for General Assembly and Executive Branch Offices. – In the case
29 of a general or special election to either house of the General Assembly or to an office
30 established by Article III of the Constitution, an unsuccessful candidate has the right to
31 appeal the final decision to the General Assembly in accordance with G.S. 120-10 and
32 G.S. 163-182.13A, as appropriate.

33 After the decision by the State Board of Elections has been served on the parties, the
34 certification of nomination or election shall issue pursuant to G.S. 163-182.15 unless a
35 contest of the election is initiated pursuant to G.S. 120-10 or G.S. 163-182.13A, as
36 appropriate. The decision of the General Assembly in determining the contest of the
37 election pursuant to G.S. 163-182.13A, or the decision of one of its houses in
38 determining a contest pursuant to G.S. 120-10, as appropriate, may not be reviewed by
39 the General Court of Justice."

40 **SECTION 5.** G.S. 163-182.15 reads as rewritten:

41 **"§ 163-182.15. Certificate of nomination or election, or certificate of the results of**
42 **a referendum.**

43 (a) Issued by County Board of Elections. – In ballot items within the jurisdiction
44 of the county board of elections, the county board shall issue a certificate of nomination

1 or election, or a certificate of the results of the referendum, as appropriate. The
2 certificate shall be issued by the county board six days after the completion of the
3 canvass pursuant to G.S. 163-182.5, unless there is an election protest pending. If there
4 is an election protest, the certificate of nomination or election or the certificate of the
5 result of the referendum shall be issued in one of the following ways, as appropriate:

- 6 (1) The certificate shall be issued five days after the protest is dismissed or
7 denied by the county board of elections, unless that decision has been
8 appealed to the State Board of Elections.
- 9 (2) The certificate shall be issued 10 days after the final decision of the
10 State Board, unless the State Board has ordered a new election or the
11 issuance of the certificate is stayed by the Superior Court of Wake
12 County pursuant to G.S. 163-182.14.
- 13 (3) If the decision of the State Board has been appealed to the Superior
14 Court of Wake County and the court has stayed the certification, the
15 certificate shall be issued five days after the entry of a final order in
16 the case in the Superior Court of Wake County, unless that court or an
17 appellate court orders otherwise.
- 18 (4) No certificate of election need be issued for any member of the
19 General Assembly following a contest of the election pursuant to
20 G.S. 120-10.

21 (b) Issued by State Board of Elections. – In ballot items within the jurisdiction of
22 the State Board of Elections, the State Board of Elections shall issue a certificate of
23 nomination or election, or a certificate of the results of the referendum, as appropriate.
24 The certificate shall be issued by the State Board six days after the completion of the
25 canvass pursuant to G.S. 163-182.5, unless there is an election protest pending. If there
26 is an election protest, the certificate of nomination or election or the certificate of the
27 result of the referendum shall be issued in one of the following ways, as appropriate:

- 28 (1) The certificate shall be issued 10 days after the final decision of the
29 State Board on the election protest, unless the State Board has ordered
30 a new election or the issuance of the certificate is stayed by the
31 Superior Court of Wake County pursuant to G.S. 163-14.
- 32 (2) If the decision of the State Board has been appealed to the Superior
33 Court of Wake County and the court has stayed the certification, the
34 certificate shall be issued five days after the entry of a final order in
35 the case in the Superior Court of Wake County, unless that court or an
36 appellate court orders otherwise.
- 37 (3) The certificate shall be issued immediately upon the filing of a copy of
38 the determination of the General Assembly with the State Board of
39 Elections in contested elections involving any elective office
40 established by Article III of the Constitution.
- 41 (4) No certificate of election need be issued for any member of the
42 General Assembly following a contest of the election pursuant to
43 G.S. 120-10.

1 (c) Copy to Secretary of State. – The State Board of Elections shall provide to
2 the Secretary of State a copy of each certificate of nomination or election, or certificate
3 of the results of a referendum, issued by it. The Secretary shall keep the certificates in a
4 form readily accessible and useful to the public."

5 **SECTION 6.** This act is effective when it becomes law.

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