

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

H

2

HOUSE BILL 128  
Senate Judiciary I Committee Substitute Adopted 8/12/05

Short Title: Election Changes.

(Public)

---

Sponsors:

---

Referred to:

---

February 9, 2005

A BILL TO BE ENTITLED

1  
2 AN ACT TO AUTHORIZE COUNTY BOARDS OF ELECTIONS TO TAKE STEPS  
3 EARLIER TO COUNT MAILED ABSENTEE VOTES; TO CLARIFY HOW A  
4 VOTER SHALL REPORT A MOVE; TO CLARIFY THE RESIDENCE FOR  
5 VOTING PURPOSES OF CERTAIN PERSONS; TO AMEND THE STATUTES  
6 RELATING TO CHALLENGES; TO PROVIDE THAT EXCEPT FOR THEIR  
7 ENVELOPE, PROVISIONAL BALLOTS SHALL NOT BE MARKED TO BE  
8 IDENTIFIABLE TO A VOTER; AND TO MAKE CHANGES TO THE PUBLIC  
9 CAMPAIGN FUND.

10 The General Assembly of North Carolina enacts:

11 **SECTION 1.** G.S. 163-234 is amended by adding a new subdivision to read:

12 "(2a) Notwithstanding the provisions of subdivision (2) of this section, a  
13 county board of elections may, at each meeting at which it approves  
14 absentee ballot applications pursuant to G.S. 163-230.1(c) and (c1),  
15 remove those ballots from their envelopes and have them read by an  
16 optical scanning machine, without printing the totals on the scanner.  
17 The board shall complete the counting of these ballots at the times  
18 provided in subdivision (2) of this section. The State Board of  
19 Elections shall provide instructions to county boards of elections for  
20 executing this procedure, and the instructions shall be designed to  
21 ensure the accuracy of the count, the participation of board members  
22 of both parties, and the secrecy of the results before election day. This  
23 subdivision applies only in counties that use optical scan devices to  
24 count absentee ballots."

25 **SECTION 2.** G.S. 163-82.15(a) reads as rewritten:

26 "(a) Registrant's Duty to Report. – No registered voter shall be required to  
27 re-register upon moving from one precinct to another within the same county. Instead, a  
28 registrant shall notify the county board of the change of address by the close of  
29 registration for an election as set out in G.S. 163-82.6(c). In addition to any other

1 method allowed by G.S. 163-82.6, the form may be submitted by electronic facsimile,  
2 under the same deadlines as if it had been submitted in person. The registrant shall make  
3 the notification by means of a voter registration form as described in G.S. 163-82.3, or  
4 by another written notice, signed by the registrant, that includes the registrant's full  
5 name, former residence address, new residence address, and ~~date of moving the~~  
6 registrant's attestation that the registrant moved at least 30 days before the next primary  
7 or election from the old to the new address."

8 **SECTION 2.1.** G.S. 163-57(1) is amended by adding a sentence at the end  
9 of that subsection to read:

10 "If a person's residence is not a traditional residence such as a house or apartment, then  
11 the location of the person's usual sleeping area shall be controlling as to the residence of  
12 that person. Residence requirements shall be broadly construed to provide all persons  
13 with the opportunity to register and to vote. As with other voters, voters with  
14 nontraditional residences may report a mailing address that is different from their  
15 residence address."

16 **SECTION 3.** Article 8 of Chapter 163 of the General Statutes reads as  
17 rewritten:

18 "Article 8.

19 "Challenges.

20 "**§ 163-84. Time for challenge other than on day of primary or election.**

21 ~~The registration records of each county shall be open to inspection by any registered~~  
22 ~~voter of the county, including any chief judge or judge of elections, during the normal~~  
23 ~~business hours of the county board of elections on the days when the board's office is~~  
24 ~~open. At those times the right of any person to register, remain registered, or vote shall~~  
25 ~~be subject to objection and challenge. The right of voters to register, remain registered,~~  
26 and vote may be challenged as provided in this Article.

27 "**§ 163-85. Challenge procedure other than on day of primary or election.**

28 (a) Right to Challenge; When Challenge May Be Made. – Any registered voter  
29 of the county may challenge the right of any person to register, remain registered or vote  
30 in ~~such that~~ county. No such challenge with regard to a particular primary, general, or  
31 special election may be made after the twenty-fifth day before each that primary,  
32 general, or special election.

33 (b) Challenges Shall Be Made to the County Board of Elections. – Each  
34 challenge to a person shall be made separately, in writing, under oath and on forms  
35 prescribed by the State Board of Elections, and shall specify the reasons why the  
36 challenged voter is not entitled to register, remain registered, or vote. ~~When a challenge~~  
37 ~~is made, the board of elections shall cause the word "challenged" to be written in pencil~~  
38 ~~on the registration records of the voter challenged.~~ The challenge shall be signed by the  
39 challenger and shall set forth the challenger's address.

40 (c) Grounds for Challenge. – Such challenge may be made only for one or more  
41 of the following reasons:

- 42 (1) ~~That a person is will not have been a resident of the State of North~~  
43 ~~Carolina, or at the address where the person claims residence for 30~~  
44 days or more at the time of the next election.

- 1           (2) ~~That a person is not a resident of the county in which the person is~~  
2           ~~registered, provided that no such challenge may be made if the person~~  
3           ~~removed his residency and the period of removal has been less than 30~~  
4           ~~days, or~~  
5           (3) ~~That a person is not a resident of the precinct in which the person is~~  
6           ~~registered, provided that no such challenge may be made if the person~~  
7           ~~removed his residency and the period of removal has been less than 30~~  
8           ~~days, or~~  
9           (4) That a person is not 18 years of age, or if the challenge is made within  
10           60 days before a primary, that the person will not be 18 years of age by  
11           the next general election, ~~or election.~~  
12           (5) That a person has been adjudged guilty of a felony and is ineligible to  
13           vote under ~~G.S. 163-55(2), or~~ G.S. 163-55(2).  
14           (6), (7) Repealed by Session Laws 1985, c. 563, ss. 11.1, 11.2.  
15           (7a) That a person is ~~dead,~~ dead.  
16           (8) That a person is not a citizen of the United States, ~~or States.~~  
17           (9) ~~With respect to municipal registration only, that a person is not a~~  
18           ~~resident of the municipality in which the person is registered.~~

19           (d) Preliminary Hearing. – When a challenge is made, the county board of  
20 ~~election elections~~ shall schedule a preliminary hearing on the challenge, and shall take  
21 ~~such that~~ testimony under oath and receive such other evidence proffered by the  
22 challenger as may be offered. The burden of proof shall be on the challenger, and if no  
23 testimony is presented, the board shall dismiss the challenge. If the challenger presents  
24 evidence and if the board finds that probable cause exists that the person challenged is  
25 not qualified to vote, then the board shall schedule a hearing on the challenge. If the  
26 challenge is made for the reason stated in subdivision (1) of subsection (c) of this  
27 section and the registrant acknowledges that the address on the registration records is  
28 incorrect but the board finds that the registration records can be corrected so that the  
29 voter can vote the proper ballot in the coming election, the board shall not schedule a  
30 hearing on the challenge but shall correct the records, and the voter shall be allowed to  
31 vote the proper ballot.

32           (e) Prima Facie Evidence That Voter No Longer Resides ~~in Precinct~~ at an  
33 Address. – The presentation of a letter mailed by returnable first-class mail to the voter  
34 at the address listed on the voter registration card and returned because the person does  
35 not live at the address shall constitute prima facie evidence that the person no longer  
36 resides ~~in the precinct at that address.~~

37 **"§ 163-86. Hearing on challenge.**

38           (a) A challenge made under G.S. 163-85 shall be heard and decided before the  
39 date of the next primary or election, except that if the board finds that because of the  
40 number of challenges, it cannot hold all hearings before the date of the election, it may  
41 order the challenges to be heard and decided at the next time the challenged person  
42 appears and seeks to vote, as if the challenge had been filed under G.S. 163-87. Unless  
43 the hearing is ordered held under G.S. 163-87, it shall be heard and decided by the  
44 board of elections.

1 (b) At least 10 days prior to the hearing scheduled under G.S. 163-86(c), the  
2 board of elections shall mail by first-class mail, a written notice of the challenge to the  
3 challenged voter, to the address of the voter listed in the registration records of the  
4 county. The notice shall state succinctly the grounds asserted, and shall state the time  
5 and place of the hearing. ~~If the hearing is to be held at the polls, the notice shall state~~  
6 ~~that fact and shall list the date of the next scheduled election, the location of the voter's~~  
7 ~~polling place, and the time the polls will be open.~~ A copy of the notice shall be sent to  
8 the person making the challenge and to the ~~chairman~~ chair of each political party in the  
9 county.

10 (c) At the time and place set for the hearing on a challenge entered prior to the  
11 date of a primary or election, the county board of elections shall explain to the  
12 challenged registrant the qualifications for registration and voting in this State. The  
13 board chairman, or in his absence the board secretary, shall then administer the  
14 following oath to the challenged registrant:

15 "You swear (or affirm) that the statements and information you shall give in this  
16 hearing with respect to your identity and qualifications to be registered and to vote shall  
17 be the truth, the whole truth, and nothing but the truth, so help you, God."

18 After swearing the challenged registrant, the board shall examine ~~him~~ that person as to  
19 ~~his~~ that person's qualifications to be registered and to vote. If the challenged registrant  
20 insists ~~that he is on being~~ qualified, the board shall tender to ~~him~~ the challenged  
21 registrant the following oath or affirmation:

22 "You do solemnly swear (or affirm) that you are a citizen of the United States; that  
23 you are at least 18 years of age or will become 18 by the date of the next general  
24 election; that you have or will have resided ~~in this State and in the precinct for which~~  
25 ~~registered~~ at the residence listed on your registration record for 30 days by the date of  
26 the next general election; that you are not disqualified from voting by the Constitution  
27 or the laws of this State; that your name is \_\_\_\_\_, and that in such name you  
28 were duly registered as a voter of \_\_\_\_\_ ~~precinct;~~ at the address listed on the voter  
29 registration records; and that you are the person you represent yourself to be, so help  
30 you, God."

31 If the challenged registrant refuses to take the tendered oath, or submit to the board the  
32 affidavit required by subsection (d), below, the challenge shall be sustained. If the  
33 challenged registrant takes the tendered oath, the board may, nevertheless, sustain the  
34 challenge if it finds the challenged registrant is not a legal voter.

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

39 (d) Appearance by Challenged Registrant. – The challenged registrant shall  
40 appear in person at the challenge hearing. If ~~he~~ the challenged registrant is unable to  
41 appear in person, ~~he~~ that person may be represented by another person and must tender  
42 to the county board of elections an affidavit that ~~he~~ the challenged registrant is a citizen  
43 of the United States, is at least 18 years of age or will become 18 by the date of the next  
44 general election, has or will have resided ~~in this State and in the precinct for which~~

1 ~~registered at the address listed on the registration record for 30 days by the date of the~~  
2 ~~next general election, is not disqualified from voting by the Constitution or laws of this~~  
3 ~~State, is named \_\_\_\_\_ and was duly registered as a voter of \_\_\_\_\_ precinct~~  
4 ~~in such name, and is the person represented to be by the affidavit.~~

5 **"§ 163-87. Challenges allowed on day of primary or election.**

6 On the day of a primary or election, at the time a registered voter offers to vote, any  
7 other registered voter of the precinct may exercise the right of challenge, and when he  
8 does so may enter the voting enclosure to make the challenge, but he shall retire  
9 therefrom as soon as the challenge is heard.

10 On the day of a primary or election, any other registered voter of the precinct may  
11 challenge a person for one or more of the following reasons:

- 12 (1) One or more of the reasons listed in G.S. 163-85(c), or
- 13 (2) That the person has already voted in that primary or election, or
- 14 (3) That the person ~~presenting himself to vote is not who he represents~~  
15 ~~himself is not who the person claims to be.~~

16 ~~On the day of a party primary, any voter of the precinct who is registered as a~~  
17 ~~member of the political party conducting the primary may, at the time any registrant~~  
18 ~~proposes to vote, challenge his right to vote upon the ground that he does not affiliate~~  
19 ~~with the party conducting the primary or does not in good faith intend to support the~~  
20 ~~candidates nominated in that party's primary, and it shall be the duty of the chief judge~~  
21 ~~and judges of election to determine whether or not the challenged registrant has a right~~  
22 ~~to vote in that primary according to the procedures prescribed in G.S. 163-88; provided~~  
23 ~~that no challenge may be made on the grounds specified in the paragraph against an~~  
24 ~~unaffiliated voter voting in the primary under G.S. 163-74(a1).~~

25 The chief judge, judge, or assistant appointed under G.S. 163-41 or 163-42 may  
26 enter challenges under this section against voters in the precinct for which appointed  
27 regardless of the place of residence of the chief judge, judge, or assistant.

28 If a person is challenged under this subsection, and the challenge is sustained under  
29 ~~G.S. 163-85(e)(3), 163-85(c)(1),~~ the voter may still transfer his registration under  
30 G.S. 163-82.15(e) if eligible under that section, and the registration shall not be  
31 cancelled under G.S. 163-90.2(a) if the transfer is made. A person who has transferred  
32 his registration under G.S. 163-82.15(e) may be challenged at the precinct to which the  
33 registration is being transferred.

34 **"§ 163-88. Hearing on challenge made on day of primary or election.**

35 A challenge entered on the day of a primary or election shall be heard and decided  
36 ~~by the chief judge and judges of election of the precinct in which the challenged~~  
37 ~~registrant is registered before the polls are closed on the day the challenge is made.~~  
38 ~~When the challenge is heard the precinct officials conducting the hearing shall explain~~  
39 ~~to the challenged registrant the qualifications for registration and voting in this State,~~  
40 ~~and shall examine him as to his qualifications to be registered and to vote. If the~~  
41 ~~challenged registrant insists that he is qualified, and if, by sworn testimony, he shall~~  
42 ~~prove his identity with the person in whose name he offers to vote and his continued~~  
43 ~~residence in the precinct since he was registered, one of the judges of election or the~~

1 chief judge shall tender to him the following oath or affirmation, omitting the portions  
2 in brackets if the challenge is heard on the day of an election other than a primary:

3 "You do solemnly swear (or affirm) that you are a citizen of the United States; that  
4 you are at least 18 years of age [or will become 18 by the date of the next general  
5 election]; that you have [or will have] resided in this State and in the precinct for which  
6 registered for 30 days [by the date of the next general election]; that you are not  
7 disqualified from voting by the Constitution and laws of this State; that your name  
8 is \_\_\_\_\_, and that in such name you were duly registered as a voter of this  
9 precinct; that you are the person you represent yourself to be; [that you are affiliated  
10 with the \_\_\_\_\_ party]; and that you have not voted in this [primary] election at  
11 this or any other voting place. So help you, God."

12 If the challenged registrant refuses to take the tendered oath, the challenge shall be  
13 sustained, and the precinct officials conducting the hearing shall mark the registration  
14 records to reflect their decision, and they shall erase the challenged registrant's name  
15 from the pollbook if it has been entered therein. If the challenged registrant takes the  
16 tendered oath, the precinct officials conducting the hearing may, nevertheless, sustain  
17 the challenge unless they are satisfied that the challenged registrant is a legal voter. If  
18 they are satisfied that he is a legal voter, they shall overrule the challenge and permit  
19 him to vote. Whenever any person's vote is received after having taken the oath  
20 prescribed in this section, the chief judge or one of the judges of election shall write on  
21 the registration record and on the pollbook opposite the registrant's name the word  
22 "sworn."

23 Precinct election officials conducting hearings on challenges on the day of a primary  
24 or election shall have authority to administer the necessary oaths or affirmations to all  
25 witnesses brought before them to testify to the qualifications of the person challenged.  
26 by the county board of elections on the day set for the county canvass. When the  
27 challenge is made at the voting place, the chief judge shall, in a manner that minimizes  
28 disruption to the voting place, explain to the challenged registrant and to the challenger  
29 the process by which the county board of elections will decide the challenge. The chief  
30 judge shall allow the voter to complete a challenged ballot as provided in G.S. 163-88.1.  
31 The chief judge shall transmit the documentation of the challenge, including the  
32 challenged ballot, to the county board of elections according to procedures that shall be  
33 prescribed by the State Board of Elections. On the day of the canvass, the county board  
34 shall conduct a hearing on the challenge according to procedures set forth in subsections  
35 (c) and (d) of G.S. 163-86.

36 A letter or postal card mailed by returnable mail and returned by the United States  
37 Postal Service purportedly because the person no longer lives at that address or because  
38 a forwarding order has expired shall not be admissible evidence in a challenge heard  
39 under this section which was made under G.S. 163-87.

40 **"§ 163-88.1. Request for challenged ballot.**

41 (a) ~~If the decision of the chief judge and judges pursuant to G.S. 163-88 is to~~  
42 ~~sustain the challenge, the challenged voter~~ A voter challenged under G.S. 163-88 may  
43 request a challenged ballot by submitting an application to the chief judge, such judge.  
44 The application shall include as part thereof an affidavit that such the person possesses

1 all the qualifications for voting and is entitled to vote at the election. The form of ~~such~~  
2 the affidavit shall be prescribed by the State Board of Elections and shall be available at  
3 the polls.

4 ~~(b) Any person requesting a challenged ballot shall have the letter "C" entered at~~  
5 ~~the appropriate place on the voter's permanent registration record. The voter's name~~  
6 ~~shall be entered on a separate page in the pollbook entitled "Challenged Ballot," and~~  
7 ~~serially numbered. The challenged ballot shall be the same type of ballot used for~~  
8 ~~absentee voters, and the chief judge shall write across the top of the ballot "Challenged~~  
9 ~~Ballot # \_\_\_\_\_," and shall insert the same serial number as entered in the pollbook. The~~  
10 ~~chief judge shall deliver to such voter a challenged ballot together with an envelope~~  
11 ~~marked "Challenged Ballot" and serially numbered. The challenged voter shall~~  
12 ~~forthwith mark the ballot in the presence of the chief judge in such manner that the chief~~  
13 ~~judge shall not know how the ballot is marked. He shall then fold the ballot in the~~  
14 ~~presence of the chief judge so as to conceal the markings and deposit and seal it in the~~  
15 ~~serially numbered envelope. He shall then deliver such envelope to the chief judge. The~~  
16 ~~chief judge shall retain all such envelopes in an envelope provided by the county board~~  
17 ~~of elections, which he shall seal immediately after the polls close, and deliver to the~~  
18 ~~board chairman at the canvass.~~The State Board of Elections shall adopt rules for the  
19 recording, transmission, and security of challenged ballots, to which the county boards  
20 of elections shall adhere.

21 ~~(c) The chairman of the county board of elections shall preserve such challenged~~  
22 ~~ballots in the sealed envelopes for a period of six months after the election. However, in~~  
23 ~~the case of a contested election, an election protest, either party to such action may~~  
24 ~~request the court to order that the sealed envelopes containing challenged ballots be~~  
25 ~~delivered to the board of elections by the chairman. If so ordered, the board of elections~~  
26 ~~shall then to convene and consider each challenged ballot and rule as to which ballots~~  
27 ~~shall be counted. In such that consideration, the board may take such further evidence as~~  
28 ~~it deems necessary, and shall have the power of subpoena. If any ballots are ordered to~~  
29 ~~be counted, they shall be added to the vote totals.~~

30 **"§ 163-89. Procedures for challenging absentee ballots.**

31 (a) Time for Challenge. – The absentee ballot of any voter may be challenged on  
32 the day of any ~~statewide primary or general election or county bond election~~ beginning  
33 no earlier than noon and ending no later than 5:00 P.M., or by the chief judge at the time  
34 of closing of the polls as provided in G.S. 163-232 and G.S. 163-251(b).

35 (b) Who May Challenge. – Any registered voter of the same precinct as the  
36 address the absentee voter claims on the affidavit may challenge that voter's absentee  
37 ballot.

38 (c) Form and Nature of Challenge. – Each challenged absentee ballot shall be  
39 challenged separately. The burden of proof shall be on the challenger. Each challenge  
40 shall be made in writing and, if they are available, shall be made on forms prescribed by  
41 the State Board of Elections. Each challenge shall specify the reasons why the ballot  
42 does not comply with the provisions of this ~~Article Chapter~~ or why the absentee voter is  
43 not legally entitled to vote in the particular primary or election. The challenge shall be  
44 signed by the challenger.

1 (d) To Whom Challenge Addressed; to Whom Challenge Delivered. – Each  
2 challenge shall be addressed to the county board of elections. It may be filed with the  
3 board at its offices or with the chief judge of the precinct in which the challenger and  
4 absentee voter are registered. If it is delivered to the chief judge, the chief judge shall  
5 personally deliver the challenge to the ~~chairman of the~~ county board of elections on the  
6 day of the county canvass.

7 (e) Hearing Procedure. – All challenges filed under this section shall be heard by  
8 the county board of elections on the day set for the canvass of the returns. All members  
9 of the board shall attend the canvass and all members shall be present for the hearing of  
10 challenges to absentee ballots.

11 Before the board hears a challenge to an absentee ballot, the chairman shall mark the  
12 word "challenged" after the voter's name in the register of absentee ballot applications  
13 and ballots issued and in the pollbook of absentee voters.

14 The board then shall hear the challenger's reasons for the challenge, and it shall  
15 make its decision without opening the container-return envelope or removing the ballots  
16 from it.

17 The board shall have authority to administer the necessary oaths or affirmations to  
18 all witnesses brought before it to testify to the qualifications of the voter challenged or  
19 to the validity or invalidity of the ballot.

20 If the challenge is sustained, the chairman shall mark the word "sustained" after the  
21 word "challenged" following the voter's name in the register of absentee ballot  
22 applications and ballots issued and in the pollbook of absentee voters; the voter's ballots  
23 shall not be counted; and the container-return envelope shall not be opened but shall be  
24 marked "Challenge Sustained." All envelopes so marked shall be preserved intact by the  
25 chairman for a period of six months from canvass day or longer if any contest then is  
26 pending concerning the validity of any absentee ballot.

27 If the challenge is overruled, the absentee ballots shall be removed from the  
28 container-return envelopes and counted by the board of elections, and the board shall  
29 adjust the appropriate abstracts of returns to show that the ballots have been counted and  
30 tallied in the manner provided for unchallenged absentee ballots.

31 If the challenge was delivered to the board by the chief judge of the precinct and was  
32 sustained, the board shall reopen the appropriate ballot boxes, remove such ballots,  
33 determine how those ballots were voted, deduct such ballots from the returns, and adjust  
34 the appropriate abstracts of returns.

35 If the board determines that the challenged voter was eligible to vote part of the  
36 challenged ballot but not all of it, the board shall count the part that the voter was  
37 eligible to vote and not count the part that the voter was not eligible to vote.

38 Any voter whose ballots have been challenged may, either personally or through an  
39 authorized representative, appear before the board at the hearing on the challenge and  
40 present evidence as to the validity of the ballot.

41 **"§ 163-90. Challenge as felon; answer not to be used on prosecution.**

42 If any registered voter is challenged as having been convicted of any crime which  
43 excludes him from the right of suffrage, he shall be required to answer any question in



1 relation to the alleged conviction, but his answers to such questions shall not be used  
2 against him in any criminal prosecution.

3 **"§ 163-90.1. Burden of proof.**

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

7 (b) No challenge shall be sustained unless the challenge is substantiated by  
8 affirmative proof. In the absence of such proof, the presumption shall be that the voter is  
9 properly registered or affiliated.

10 **"§ 163-90.2. Action when challenge sustained, overruled, or dismissed.**

11 (a) When any challenge is sustained for any cause listed under G.S. 163-85(c),  
12 the board shall cancel the voter registration of the voter and shall remove his card from  
13 the book, but shall maintain such record for at least six months and during the pendency  
14 of any appeal.

15 ~~(b) When any challenge heard under G.S. 163-88 or 163-89 is sustained on the~~  
16 ~~ground that the voter is not affiliated with the political party shown on his registration~~  
17 ~~record, the board shall change the voter's party affiliation to "unaffiliated".~~

18 ~~(c) When any challenge made under G.S. 163-85 is overruled or dismissed, the~~  
19 ~~board shall erase the word "challenged" which appears on the person's registration~~  
20 ~~records.~~

21 (d) A decision by a county board of elections on any challenge made under the  
22 provisions of this Article shall be appealable to the Superior Court of the county in  
23 which the offices of that board are located within 10 days. Only those persons against  
24 whom a challenge is sustained or persons who have made a challenge which is  
25 overruled shall have standing to file such appeal.

26 **"§ 163-90.3. Making false affidavit perjury.**

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

30 **SECTION 4.** G.S. 163-165(6) reads as rewritten:

31 "(6) "Provisional official ballot" means an official ballot that is voted and  
32 then placed in an envelope that contains an affidavit signed by the  
33 voter certifying identity and eligibility to vote. Except for its envelope,  
34 a provisional official ballot shall not be marked to make it identifiable  
35 to the voter."

36 **SECTION 5.** Article 22D of Chapter 163 of the General Statutes is amended  
37 by adding a new section to read:

38 **"§ 163-278.64A. Special participation provisions for candidates in plurality**  
39 **elections.**

40 (a) Participation Provisions Modified. – Candidates in plurality elections as  
41 provided in G.S. 163-329 may participate in the Fund subject to the provisions of  
42 G.S. 163-278.64 as modified by this section.

43 (b) Qualifying. – The State Board of Elections shall designate a special  
44 qualifying period for a plurality election of no less than four weeks. That qualifying

1 period shall begin at the close of the notice-of-candidacy filing period for the plurality  
2 election. To receive certification, a participating candidate shall raise at least 225  
3 qualifying contributions, totaling at least 20 times the amount of the filing fee for the  
4 office, for a four-week qualifying period. If the State Board of Elections sets a longer  
5 qualifying period, then for each additional week that the qualifying period extends  
6 beyond four weeks, the minimum number of qualifying contributions required for  
7 certification shall increase by 25, and the minimum amount of the qualifying  
8 contributions shall increase by two times the filing fee. The minimum qualifying  
9 contributions shall not exceed the limit set by G.S. 163-278.64(b).

10 (c) Allocations. – Certified candidates in plurality elections shall receive one  
11 percent (1%) of the funding to which they would be eligible under G.S. 163-278.65  
12 times the number of calendar days between the end of the special qualifying period and  
13 the day of the general elections. That amount shall not exceed one hundred percent  
14 (100%) of the funding to which they would be eligible under G.S. 163-278.65."

15 **SECTION 6.** G.S. 163-278.65(c) reads as rewritten:

16 "(c) Method of Fund Distribution. – The Board, in consultation with the State  
17 Treasurer and the State Controller, shall develop a rapid, reliable method of conveying  
18 funds to certified candidates. In all cases, the Board shall distribute funds to certified  
19 candidates in a manner that is expeditious, ensures accountability, and safeguards the  
20 integrity of the Fund. If the money in the Fund is insufficient to fully fund all certified  
21 candidates, then the available money shall be distributed proportionally, according to  
22 each candidate's eligible ~~funding~~, funding, and the candidate may raise additional  
23 money in the same manner as a noncertified candidate for the same office up to the  
24 unfunded amount of the candidate's eligible funding."

25 **SECTION 7.** G.S. 163-278.66(a) reads as rewritten:

26 "(a) Reporting by Noncertified Candidates and Independent Expenditure Entities.  
27 – Any noncertified candidate with a certified opponent shall report total income,  
28 expenses, and obligations to the Board by facsimile machine or electronically within 24  
29 hours after the total amount of campaign expenditures or obligations made, or funds  
30 raised or borrowed, exceeds eighty percent (80%) of the trigger for rescue funds as  
31 defined in G.S. 163-278.62(18). Any entity making independent expenditures ~~in excess~~  
32 ~~of three thousand dollars (\$3,000)~~ in support of or opposition to a certified candidate or  
33 in support of a candidate opposing a certified candidate shall report the total funds  
34 received, spent, or obligated for those expenditures to the Board by facsimile machine  
35 or electronically within 24 hours after the total amount of expenditures or obligations  
36 made, or funds raised or borrowed, for the purpose of making the independent  
37 expenditures, exceeds ~~fifty percent (50%) of the trigger for rescue funds.~~ five thousand  
38 dollars (\$5,000). After this 24-hour filing, the noncertified candidate or independent  
39 expenditure entity shall comply with an expedited reporting schedule by filing  
40 additional reports after receiving each additional amount in excess of one thousand  
41 dollars (\$1,000) or after making or obligating to make each additional expenditure(s) in  
42 excess of one thousand dollars (\$1,000). The schedule and forms for reports required by  
43 this subsection shall be made according to procedures developed by the Board."

44 **SECTION 8.** G.S. 163-278.68(b) reads as rewritten:

1       "(b) Advisory Council for the Public Campaign ~~Financing~~ Fund. – There is  
2 established under the Board the Advisory Council for the Public Campaign ~~Financing~~  
3 Fund to advise the Board on the rules, procedures, and opinions it adopts for the  
4 enforcement and administration of this Article and on the funding needs and operation  
5 of the Public Campaign ~~Financing~~ Fund. The Advisory Council shall consist of five  
6 members to be appointed as follows:

7           (1) The Governor shall name two members from a list of individuals  
8 nominated by the State Chair of the political party with which the  
9 greatest number of registered voters is affiliated. The State Chair of  
10 that party shall submit to the Governor the names of five nominees.

11           (2) The Governor shall name two members from a list of individuals  
12 nominated by the State Chair of the political party with which the  
13 second greatest number of registered voters is affiliated. The State  
14 Chair of that party shall submit to the Governor the names of five  
15 nominees.

16           (3) The Board shall name one member by unanimous vote of all members  
17 of the Board. If the Board cannot reach unanimity on the appointment  
18 of that member, the Advisory Council shall consist of the remaining  
19 members.

20       No individual shall be eligible to be a member of the Advisory Council who would  
21 be ineligible to serve on a county board of elections in accordance with G.S. 163-30.  
22 The initial members shall be appointed by December 1, 2002. Of the initial appointees,  
23 two are appointed for one-year terms, two are appointed for two-year terms, and one is  
24 appointed for a three-year term according to random lot. Thereafter, appointees are  
25 appointed to serve four-year terms. An individual may not serve more than two full  
26 ~~terms.~~ terms, except that regardless of the time of appointment each term shall end on  
27 December 31. A member shall continue on the Advisory Council beyond the expired  
28 term until a successor is appointed. The appointed members receive the legislative per  
29 diem pursuant to G.S. 120-3.1. One of the Advisory Council members shall be elected  
30 by the members as Chair. A vacancy during an unexpired term shall be filled in the  
31 same manner as the regular appointment for that term, but a vacancy appointment is  
32 only for the unexpired portion of the term."

33       **SECTION 9.** G.S. 163-278.69(c) reads as rewritten:

34       "(c) Disclaimer. – The Judicial Voter Guide shall contain the following statement:  
35 ~~"The above statements~~ Statements by candidates do not express or reflect the opinions of  
36 the State Board of Elections."

37       **SECTION 10.(a)** G.S. 163-278.13(e) reads as rewritten:

38       "(e) ~~This~~ Except as provided in subsections (e2) and (e3) of this section, this  
39 section shall not apply to any national, State, district or county executive committee of  
40 any political party. For the purposes of this section only, the term "political party"  
41 means only those political parties officially recognized under G.S. 163-96."

42       **SECTION 10.(b)** G.S. 163-278.13(e2) reads as rewritten:

1       "(e2) In order to make meaningful the provisions of Article 22D of this Chapter,  
2 the following provisions shall apply with respect to candidates for justice of the  
3 Supreme Court and judge of the Court of Appeals:

- 4           (1) No candidate shall accept, and no contributor shall make to that  
5 candidate, a contribution in any election exceeding one thousand  
6 dollars (\$1,000) except as provided for elsewhere in this subsection.  
7           (2) A candidate may accept, and a family contributor may make to that  
8 candidate, a contribution not exceeding two thousand dollars (\$2,000)  
9 in an election if the contributor is that candidate's parent, child,  
10 brother, or sister.  
11           (3) No candidate shall accept, and no contributor shall make to that  
12 candidate, a contribution during the period beginning 21 days before  
13 the day of the general election and ending the day after the general  
14 ~~election.~~ election if that contribution causes the candidate to exceed the  
15 "trigger for rescue funds" defined in G.S. 163-278.62(18). This  
16 subdivision applies with respect to a candidate opposed in the general  
17 election by a certified candidate as defined in Article 22D of this  
18 Chapter who has not received the maximum rescue funds available  
19 under G.S. 163-278.67. The recipient of a contribution that apparently  
20 violates this subdivision has three days to return the contribution or file  
21 a detailed statement with the State Board of Elections explaining why  
22 the contribution does not violate this subdivision.

23       As used in this subsection, "candidate" is also a political committee authorized by  
24 the candidate for that candidate's election. Nothing in this subsection shall prohibit a  
25 candidate or the spouse of that candidate from making a contribution or loan secured  
26 entirely by that individual's assets to that candidate's own campaign."

27       **SECTION 10.(c)** G.S. 163-278.13 is amended by adding a new subsection  
28 to read:

29       "(e3) Notwithstanding the provisions of subsections (a) and (b) of this section, no  
30 candidate for superior court judge or district court judge shall accept, and no contributor  
31 shall make to that candidate, a contribution in any election exceeding one thousand  
32 dollars (\$1,000), except as provided in subsection (c) of this section. As used in this  
33 subsection, "candidate" is also a political committee authorized by the candidate for that  
34 candidate's election. Nothing in this subsection shall prohibit a candidate or the spouse  
35 of that candidate from making a contribution or loan secured entirely by that  
36 individual's assets to that candidate's own campaign."

37       **SECTION 11.** G.S. 105-159.2 reads as rewritten:

38       **"§ 105-159.2. Designation of tax to North Carolina Public Campaign Financing**  
39 **Fund.**

40       (a) Allocation to the North Carolina Public Campaign ~~Financing~~ Fund. – To  
41 ensure the financial viability of the North Carolina Public Campaign ~~Financing~~ Fund  
42 established in Article 22D of Chapter 163 of the General Statutes, the Department must  
43 allocate to that Fund three dollars (\$3.00) from the income taxes paid each year by each  
44 individual with an income tax liability of at least that amount, if the individual agrees. A

1 taxpayer must be given the opportunity to indicate an agreement or objection to that  
2 allocation in the manner described in subsection (b) of this section. In the case of a  
3 married couple filing a joint return, each individual must have the option of agreeing or  
4 objecting to the allocation. The amounts allocated under this subsection to the Fund  
5 must be credited to it on a ~~quarterly~~ monthly basis.

6 (b) Returns. – Individual income tax returns must give an individual an  
7 opportunity to agree to the allocation of three dollars (\$3.00) of the individual's tax  
8 liability to the North Carolina Public Campaign ~~Financing~~ Fund. The Department must  
9 make it clear to the taxpayer that the dollars will support a nonpartisan court system,  
10 that the dollars will go to the Fund if the taxpayer marks an agreement, and that  
11 allocation of the dollars neither increases nor decreases the individual's tax liability. The  
12 following statement ~~satisfies the intent of~~ must be used to meet this requirement: "~~Three~~  
13 ~~dollars (\$3.00) will go to the North Carolina Public Campaign Financing Fund to~~  
14 ~~support a nonpartisan court system, if you agree. Your tax remains the same whether or~~  
15 ~~not you agree.~~" 'This Fund pays for a nonpartisan voter guide and helps judicial  
16 candidates who accept strict fund-raising limits. Do you agree to direct \$3.00 to this  
17 Fund from the taxes you pay anyway? Marking Yes will not increase your tax or reduce  
18 your refund.' The Department must consult with the State Board of Elections to ensure  
19 that the information given to taxpayers complies with the intent of this section.

20 The Department must inform the entities it approves to reproduce the return ~~of that~~  
21 they must comply with the requirements of this section and that a return may not reflect  
22 an agreement or objection unless the individual completing the return decided to agree  
23 or object after being presented with the statement required by subsection (b) of this  
24 section and, as available background information or instructions, the information  
25 required by subsection (c) of this section. No software package used in preparing North  
26 Carolina income tax returns may default to an agreement or objection. A paid preparer  
27 of tax returns may not mark an agreement or objection for a taxpayer without the  
28 taxpayer's consent.

29 (c) Instructions. – The instruction for individual income tax returns must include  
30 the following explanatory statement: 'The North Carolina Public Campaign ~~Financing~~  
31 Fund provides campaign money to nonpartisan candidates for the ~~North Carolina N.C.~~  
32 Supreme Court and Court of Appeals who voluntarily accept strict campaign spending  
33 and fund-raising limits. The Fund also helps finance a Voter Guide with educational  
34 materials about voter registration, the role of the appellate courts, and the candidates  
35 seeking election as appellate judges in North Carolina. Three dollars (~~\$3.00~~) from the  
36 taxes you pay will go to the Fund if you mark an agreement. Regardless of what choice  
37 you make, your tax will not increase, nor will any refund you are entitled to be  
38 reduced.'"

39 **SECTION 12.** Sections 3 and 4 of this act becomes effective January 1,  
40 2006. Section 10(c) of this act become effective January 1, 2006, and applies to  
41 contributions made or accepted on or after that date. Contributions made or accepted  
42 prior to that date shall count toward the cumulative limit after that date. The remainder  
43 of this act is effective when it becomes law.