



HOUSE BILL 171: Burden of Proof-Challenge to Candidacy.

2021-2022 General Assembly

Committee:	House Election Law and Campaign Finance Reform. If favorable, re-refer to Rules, Calendar, and Operations of the House	Date:	April 19, 2021
Introduced by:	Reps. Clampitt, C. Smith, Miller, Moffitt	Prepared by:	Erika Churchill
Analysis of:	First Edition		Staff Attorney

OVERVIEW: *For challenges to a candidates' qualifications for office, such as residency, House Bill 171 would change the burden of proof from the candidate to the qualified voter challenging that candidate's candidacy, effective when it becomes law.*

CURRENT LAW: Article 11B of Chapter 163 of the General Statutes sets forth the process for a registered voter of a district to challenge that a candidate does not meet the constitutional or statutory qualifications for the office, including residency.

A challenge must be made in a verified affidavit by a challenger based on a reasonable suspicion or belief of the facts stated. The grounds for a candidate challenge are that the candidate does not meet the constitutional or statutory requirements for office, including residency. A challenge must be filed no later than 10 business days after the close of the applicable filing period. A protest petition can be filed if the ground(s) for the challenge are discovered after the time period for filing a candidate challenge has passed.

Once a challenge has been filed, the challenge to candidacy is heard by a panel, as follows:

- **Single county Districts.** – If the district for the office subject to the challenge covers all or part of only one county, the panel is the county board of elections of that county.
- **Multi-county but Less than Entire State.** – If the district for the office subject to the challenge covers territory in more than one county but is less than the entire State, then the panel is appointed by the State Board of Elections, with all of the following applying:
 - If the district for the office subject to the challenge contains territory in more than one county but is less than the entire State, the State Board appoints a panel within two business days after the challenge is filed. The panel is to consist of at least one member of the county board of elections in each county in the district of the office, with a resulting panel having an odd number of members, between three and five persons.
 - In appointing members to the panel, the State Board is to appoint members from each county in proportion to the relative total number of registered voters of the counties in the district for the office. The State Board, to the extent possible, is to appoint members affiliated with different political parties in proportion to the representation of those parties on the county boards of elections in the district for the office.
 - If the district for the office subject to the challenge covers more than five counties, the panel consists of five members with at least one member from the

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county receiving the notice of candidacy or petition and at least one member from the county of residency of the challenger.

- The State Board designates a chair for the multi-county panel.
- Entire State. – If the district for the office subject to the challenge covers the entire State, the panel is the State Board of Elections.

Panels must do all of the following:

- Announce the time and location of the hearing within 5 business days after the challenge is filed. The preference of location is the county in which the candidate filed his or her notice or petition of candidacy.
- Allow for depositions prior to the hearing upon the request of either the challenger or candidate.
- Issue subpoenas upon its own motion or allow subpoenas by the parties.
- Give notice of the hearing and a copy of the challenge or summary of the allegations to the challenger, the candidate, certain county political party chairs, and other persons likely to have a significant interest in the challenge. Failure to comply with the notice requirements does not delay the holding of the hearing or invalidate the results if it appears reasonably likely that all interested persons were aware of the hearing and had an opportunity to be heard.
- Render a written decision within 20 business days after the challenge is filed and serve that notice on the parties.

Panels may subpoena witnesses and receive evidence from any person with information concerning the subject of the challenge.

The challenger is not required to testify unless subpoenaed by a party.

The burden of proof is on the candidate, who must show by a preponderance of the evidence based on the whole record, that he or she is a qualified candidate. If the challenge is based on residency, the candidate must show all of the following:

- Actual abandonment of the first domicile and intent not to return to the first domicile.
- Acquisition of a new domicile by actual residence at another place.
- Intent of making the newer domicile a permanent domicile.

BILL ANALYSIS: The bill would place the burden of proof to the challenger, instead of the candidate. The challenger must show by a preponderance of the evidence of the record as a whole that the candidate is not qualified to be a candidate for the office. If the residency of the candidate is at issue, the bill would allow the panel conducting the hearing to require the candidate to show, or the challenger to present evidence as to, where the candidate resides.

The bill would also clarify that the challenger is to present evidence at the hearing.

EFFECTIVE DATE: Effective when it becomes law, applying to challenges to candidacy filed on or after that date.