

February 9, 2005

S 82. ELECTION CONTESTS (=H 147). *TO PROVIDE PROCEDURES FOR RESOLVING ELECTION CONTESTS FOR MEMBERS OF THE GENERAL ASSEMBLY AND COUNCIL OF STATE.* Amends GS 120-10 to make comprehensive changes to the manner of contesting the seat of a General Assembly member (contestee) as follows. Provides that contest may be initiated only by an unsuccessful candidate for the seat in question (contestant). Requires that contestant file a written notice of intent to contest election with the clerk of the applicable house and the contestee, and that notice be filed within a specified period after election. Notice must challenge either contestee's eligibility for election, the conduct or the results of the election, or both, and be supported by specific allegations in support of notice. Requires that contestee file written answer to notice within 10 days and that contestant file written petition during same time period. Establishes procedures allowing for depositions and witness subpoenas in General Assembly election contests, and eliminates special penalty for witness failing to serve deposition. Requires that information collected in course of election contest be referred to the Committee on Rules to conduct further proceedings and make recommendations to the appropriate house of the newly elected General Assembly, which shall decide the contest and, if two-thirds of the house finds that contest was brought in bad faith, may order that contestant pay costs and attorney's fees of contestee.

Enacts new GS 163-182.13A, which establishes similar procedure for contesting elections for Governor, Lt. Governor, Sec'y of State, Auditor, Treasurer, Superintendent of Public Instruction, Attorney General, Comm'r of Agriculture, Comm'r of Labor, and Comm'r of Insurance, but requires that the notice of intent and subsequent filings be submitted to the Principal Clerk of the House of Representatives. Establishes a select committee of five Senators, appointed by the Pres. Pro Tem., and five Representatives, appointed by the Speaker, committee to conduct further proceedings in the election contest and make recommendations to both houses of the General Assembly, which shall make a final determination on contest. Contestant shall prevail upon a majority vote of the General Assembly.

Enacts new GS 163-182.14(c), which states that there will be no review in the General Court of Justice of General Assembly or Executive Branch Office election contests. Requires that contests of 2004 elections be filed within 10 days of act becoming law and that act shall prevail over any other procedure for protest or contest of the election.

Intro. by Clodfelter.

Ref. to Judiciary I

GS 120, 163

February 15, 2005

S 82. ELECTION CONTESTS. Intro. 2/9/05. Senate committee substitute makes the following changes to 1st edition. Amends GS 120-10(b) to provide that one of the grounds for filing a notice of intent is the eligibility or qualifications of the contestee (was, eligibility only). Amends GS 120-10(d) to delete requirement that witness subpoenas shall be issued by Clerk of the Superior Court of Wake County and to provide that subpoenas may be issued upon motion of the committee to which the contest has been referred. Amends GS 120-10(e) to extend deadline for filing written petition to 40 days (was, 10) following filing of notice of intent. Amends GS 120-10(h) to provide that costs of contest may be recovered by the prevailing party in a civil action, upon a showing that proceeding was maintained in bad faith and without substantial justification (was, only contestee may seek costs and costs will be awarded after a finding of bad faith by a 2/3rds vote of the house in which contest is pending). Amends Sec. 3.(b) of act to authorize any candidate for a 2004 office subject to act to initiate a contest in the event no certificate of election has been issued within five days after act becomes law. Enacts new GS 163-182.15(b)(3) and (4), requiring that State Board of Elections issue certificate of nomination or election immediately upon the filing of a copy of General Assembly's judgment in contested elections involving offices established by Art. III of the Constitution, and providing that no such certificate is required for members of General Assembly following an election contest. Makes technical changes.

February 16, 2005

S 82. ELECTION CONTESTS. Intro. 2/9/05. Senate amendment makes the following changes to 2nd edition. Amends the contest provisions of GS 120-10 and GS 163-182.13A to provide that they apply only to general or special elections and not to primaries. Deletes the language stating that in the case of any election in 2004 subject to the act, when as of the 5th day after the act becomes law no certificate of election has been issued, any candidate for that office may initiate a contest under the act. Amends proposed GS 120-10(b) to provide that if at the time of convening of the Regular Session of the General Assembly after the election, no candidate has received a certificate of election for a particular seat or office, a contest may be initiated by any candidate in the election for that seat or office.

February 23, 2005

S 82. ELECTION CONTESTS. Intro. 2/9/05. House committee substitute makes the following changes to 3rd edition. *General Assembly Elections.* Amends GS 120-10(a) to provide that the notice of intent may not be submitted earlier than the date provided in GS 163-182.5 for the canvass by the appropriate board of elections. Also amends subsection to allow initiation of a contest no later than 30 days after next convening of Regular Session of General Assembly after election in the event none of the circumstances outlined in subsection has occurred at the time of convening. Further amends subsection to define "to contest" as a challenge to the apparent election of a member of the General Assembly or a request that undecided General Assembly election be decided in accordance with section. Amends GS 120-10(d) to require that written petition include facts and arguments supporting contestant's case and GS 120-10(e) to authorize committee considering election protest to order the filing of briefs. Adopts new subsection GS 120-10(f) establishing following standards for election contest proceedings: (1) Where contestee's eligibility or qualifications are challenged and house considering matter decides that contestee is either ineligible or not qualified, requires that new election be ordered; (2) Where conduct or results of election are challenged, and house can determine which candidate received greatest number of votes, requires that candidate be seated. If this cannot be determined, authorizes house to order a new election or other necessary and proper relief, except that if it is determined that two or more candidates have an equal number of votes, GS 163-182.8 is applicable. *Elections for Executive Branch Offices.* Amends GS 163-182.13A to incorporate same definition of "to contest" as is contained in GS 120-10(a), but with reference to executive branch offices. Amends GS 163-182.13A to adopt standards nearly identical to GS 120-10(f) but with modifications reflecting that General Assembly makes required determinations in executive branch office election contests. Amends GS 163-182.13A(c) to provide that no more than three members of the same political party shall be appointed to select committee by President Pro Tem. and Speaker. *Misc.* Deletes provision in Section 3.(b) that stated that act's provisions prevailed over any other procedure for protest or contest of the election of members of General Assembly or for executive branch offices. Amends GS 163-182.14(c) to provide that unsuccessful candidate (was, aggrieved party) may appeal election to General Assembly. Further amends subsection to provide that certification of nomination or election under GS 163-182.15 shall issue unless election contest is initiated under GS 120-10 or 163-182.13A. Makes technical changes.

S 82. ELECTION CONTESTS. Intro. 2/9/05. House amendment makes the following changes to 4th edition. Makes technical change only.

March 9, 2005

S 82. ELECTION CONTESTS. Intro. 2/9/05. Conference report recommends the following changes to 5th edition to reconcile matters in controversy.

General Assembly Contests. Repeals GS 120-10 and GS 120-11 and transfers reorganized provisions of GS 120-10 into new GS 120-10.1 with following changes. Clarifies that the contest of the qualifications of a candidate or election of a member of the House or Senate under Article II, Section 20 of the Constitution must be conducted in accordance with GS 120-10.1. Requires that a notice of intent and answer be verified in accordance with Rule 11(b) of the Rules of Civil Procedure (NCRCP), and provides that the failure to file an answer shall be deemed to be a general denial of the allegations. Requires that the notice of intent be served in accordance with NCRCP Rule 4(j)(1) and that proof of service be filed with the clerk. Further requires that copies

of subsequent pleadings be filed as required by Rule 5. Requires that five-days notice be given before taking depositions. Written answer to notice of intent may state additional issues the contestee wants considered. Adopts new provision providing that no witness in a contest shall be excused from discovering whether the witness voted in the election that is the subject of the contest or the witness's qualification to vote, except as to a conviction which would disqualify witness from voting. Requires that if witness is not a qualified voter, witness shall be compelled to discover for whom the witness voted; but that witness shall not be subject to criminal or penal prosecution for having voted in election. Requires that the newly elected house consider election contests held during same time as members of General Assembly are elected, but any other contest be heard by the house sitting at the time of the election. Provides that upon initiation of a contest in election to General Assembly or Council of State, any pending judicial proceedings involving the same parties and issues shall abate.

Council of State. Clarifies that contested elections for Council of State contests must be determined by a joint ballot of both houses of the General Assembly. Requires that when contest arises out of the general election, the contest must be considered by General Assembly elected at the same time, but that other contests be heard by the General Assembly sitting at the time of the election. Requires that final determination be filed with the Secretary of State (was, Clerk of Wake County Superior Court).

Provides that for 2004 elections, pleadings or other papers submitted by a person who could be eligible as a contestant or contestee and received by the House or Senate Principal Clerk prior to act becoming law shall be deemed a notice of intent, and may be refiled within 10 days of act becoming law. Makes technical changes.

March 15, 2005

**SL 2005-3 (S 82). ELECTION CONTESTS. AN ACT TO PROVIDE
PROCEDURES FOR RESOLVING ELECTION CONTESTS FOR MEMBERS OF THE
GENERAL ASSEMBLY AND COUNCIL OF STATE.**