

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 71

Short Title: Appointed Judges.

(Public)

Sponsors: Senators Winner, Hyde; Ballance, Basnight, Bryan, Carpenter, Cochrane, Daniel, Daughtry, Hartsell, Hunt, Lee, Martin of Pitt, Martin of Guilford, Marvin, Parnell, Plexico, Royall, Sands, Shaw, Sherron, Smith, Speed, and Ward..

Referred to: Constitution.

February 13, 1991

A BILL TO BE ENTITLED

1
2 AN ACT TO AMEND THE NORTH CAROLINA CONSTITUTION TO PROVIDE
3 FOR THE APPOINTMENT OF APPELLATE JUDGES BY THE GOVERNOR,
4 WITH THE ADVICE AND CONSENT OF THE GENERAL ASSEMBLY, AND
5 TO AUTHORIZE THE GENERAL ASSEMBLY TO PROVIDE A PROCEDURE
6 TO DETERMINE IF JUDGES SO APPOINTED SHOULD BE RETAINED IN
7 OFFICE.

8 The General Assembly of North Carolina enacts:

9 Section 1. Section 6(1) of Article IV of the North Carolina Constitution reads
10 as rewritten:

11 "(1) Membership. The Supreme Court shall consist of a Chief Justice and six
12 Associate Justices, but the General Assembly may increase the number of Associate
13 Justices to not more than eight. The Governor shall nominate, and with the advice and
14 consent of a majority of the Senate and of the House of Representatives, appoint the
15 Chief Justice and the Associate Justices as provided by law. The General Assembly
16 may require the Governor to make his nominations from names of persons submitted
17 pursuant to procedures and in a manner prescribed by law. The General Assembly may
18 by law permit persons nominated to serve pending appointment, and it may permit
19 persons appointed to serve pending the beginning of their initial term. Justices
20 appointed shall serve an initial term as provided by this Article and shall be eligible for
21 subsequent terms pursuant to procedures and in a manner as shall be established by the
22 General Assembly. In the event the Chief Justice is unable, on account of absence or

1 temporary incapacity, to perform any of the duties placed upon him, the senior
2 Associate Justice available may discharge these duties."

3 Sec. 2. Section 7 of Article IV of the North Carolina Constitution reads as
4 rewritten:

5 **"Sec. 7. Court of Appeals.**

6 The structure, organization, and composition of the Court of Appeals shall be
7 determined by the General Assembly. The Governor shall nominate, and with the
8 advice and consent of a majority of the Senate and of the House of Representatives,
9 appoint the Judges of the Court of Appeals as provided by law. The General Assembly
10 may require the Governor to make his nominations from names of persons submitted
11 pursuant to procedures and in a manner prescribed by law. The General Assembly may
12 by law permit persons nominated to serve pending appointment, and it may permit
13 persons appointed to serve pending the beginning of their initial term. Judges appointed
14 shall serve an initial term as provided in this Article and shall be eligible for subsequent
15 terms pursuant to procedures and in a manner as shall be established by the General
16 Assembly. The Court shall have not less than five members, and may be authorized to
17 sit in divisions, or other than **en banc**. Sessions of the Court shall be held at such times
18 and places as the General Assembly may prescribe."

19 Sec. 3. Section 9(1) of Article IV of the North Carolina Constitution reads as
20 rewritten:

21 "(1) Superior Court Judges and districts. The General Assembly shall, from time
22 to time, divide the State into a convenient number of Superior Court judicial districts
23 and shall provide for the election of one or more Superior Court Judges for each district.
24 Judges of the Superior Court shall be elected by the qualified voters and shall hold
25 office for terms of eight years and until their successors are elected and qualified.
26 Regular Judges of the Superior Court may be elected by the qualified voters of the State
27 or by the voters of their respective districts, as the General Assembly may prescribe.
28 Each regular Superior Court Judge shall reside in the district for which he is elected.
29 The General Assembly may provide by general law for the selection or appointment of
30 special or emergency Superior Court Judges not selected for a particular judicial
31 district."

32 Sec. 4. Section 16 of Article IV of the North Carolina Constitution reads as
33 rewritten:

34 "~~Sec. 16. Terms of office and election of Justices of the Supreme Court, and Judges~~
35 ~~of the Court of Appeals, and Judges of the Superior Court.~~

36 ~~Justices of the Supreme Court, Judges of the Court of Appeals, and regular Judges of~~
37 ~~the Superior court shall be elected by the qualified voters and shall hold office for terms~~
38 ~~of eight years and until their successors are elected and qualified. Justices of the~~
39 ~~Supreme Court and Judges of the Court of Appeals shall be elected by the qualified~~
40 ~~voters of the State. Regular Judges of the Superior Court may be elected by the~~
41 ~~qualified voters of the State or by the voters of their respective districts, as the General~~
42 ~~Assembly may prescribe.~~

43 The initial term of office for each person holding the office of Chief Justice of the
44 Supreme Court, Associate Justice of the Supreme Court, and Judge of the Court of

1 Appeals shall be four years, and each subsequent term for that person in that office shall
2 be eight years."

3 Sec. 5. Section 19 of Article IV of the North Carolina Constitution reads as
4 rewritten:

5 "Sec. 19. Vacancies.

6 (1) Vacancies generally. Unless otherwise provided in this Article, all vacancies
7 occurring in the offices provided for by this Article shall be filled by appointment of the
8 Governor, and the appointees shall hold their places until the next election for members
9 of the General Assembly that is held more than 60 days after the vacancy occurs, when
10 elections shall be held to fill the offices. When the unexpired term of any of the offices
11 named in this Article of the Constitution in which a vacancy has occurred, and in which
12 it is herein provided that the governor shall fill the vacancy, expires on the first day of
13 January succeeding the next election for members of the General Assembly, the
14 governor shall appoint to fill that vacancy for the unexpired term of the office. If any
15 person elected or appointed to any of these offices shall fail to qualify, the office shall
16 be appointed to, held and filled as provided in case of vacancies occurring therein. All
17 incumbents of these offices shall hold until their successors are qualified.

18 (2) Vacancies on appellate courts. Vacancies in the office of Chief Justice,
19 Associate Justice, or Judge of the Court of Appeals shall be filled according to Sections
20 6 and 7 of this Article. The General Assembly may by general law specify provisions
21 contrary to those in Article VI, Section 10 to be applicable to Justices and Judges."

22 Sec. 6. Article IV of the North Carolina Constitution is amended by adding a
23 new section at the end to read:

24 "Sec. 23. Transition to appointment system.

25 The Chief Justice, Associate Justices, and Judges of the Court of Appeals holding
26 office on the effective date of amendments to this Article deleting provisions requiring
27 elections to those offices, and inserting in their place provisions requiring appointment
28 to those offices, shall continue in office until the expiration of their terms. Those
29 Justices and Judges, to remain in office beyond the expiration of their terms, shall be
30 subject to the reconfirmation or retention procedures established by the General
31 Assembly. The General Assembly may also provide by general law for the extension of
32 terms of those Justices and Judges if necessary to an orderly transition to an appointive
33 system of initial selection."

34 Sec. 7. The amendments set out in Sections 1 through 6 of this act shall be
35 submitted to the qualified voters of the State at the general election to be held in
36 November of 1992, which election shall be conducted under the laws then governing
37 elections in the State. At that election, each qualified voter desiring to vote shall be
38 provided a ballot on which shall be printed the following:

39 "[] FOR Constitutional amendments to provide for appointment of
40 appellate judges by the Governor, subject to the advice and consent of
41 the General Assembly for initial terms of four years, followed by
42 subsequent terms of eight years pursuant to a reconfirmation procedure
43 to be determined by the General Assembly.

1 AGAINST Constitutional amendments to provide for appointment of
2 appellate judges by the Governor, subject to the advice and consent of
3 the General Assembly for initial terms of four years, followed by
4 subsequent terms of eight years pursuant to a reconfirmation procedure
5 to be determined by the General Assembly."

6 Those qualified voters favoring the amendments set out in Sections 1 through
7 6 of this act shall vote by making an "X" or check mark in the square beside the
8 statement beginning "FOR", and those qualified voters opposed to that amendment shall
9 vote by marking an "X" or check mark in the square beside the statement beginning
10 "AGAINST".

11 Notwithstanding the foregoing provisions of this section, voting machines
12 may be used in accordance with rules and regulations prescribed by the State Board of
13 Elections.

14 Sec. 8. If a majority of votes cast thereon are in favor of the amendments set
15 out in Sections 1 through 6 of this act, the State Board of Elections shall certify the
16 amendments to the Secretary of State, who shall enroll the amendments so certified
17 among the permanent records of his office, and the amendments shall become effective
18 January 15, 1993.

19 Sec. 9. This act is effective upon ratification.