

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 72
Constitution Committee Substitute Adopted 3/14/91

Short Title: Appointed Judges Statute.

(Public)

Sponsors:

Referred to:

February 13, 1991

1 **A BILL TO BE ENTITLED**

2 AN ACT TO PROVIDE FOR APPOINTMENT OF APPELLATE JUDGES BY THE
3 GOVERNOR SUBJECT TO THE ADVICE AND CONSENT OF THE GENERAL
4 ASSEMBLY, TO PROVIDE FOR THE RECONFIRMATION OF SITTING
5 JUDGES BY THE GENERAL ASSEMBLY, AND TO PROVIDE FOR
6 TRANSITIONAL AND OTHER PROVISIONS NECESSARY TO MOVE FROM
7 AN ELECTIVE TO AN APPOINTIVE SYSTEM.

8 The General Assembly of North Carolina enacts:

9 Section 1. Chapter 7A of the General Statutes is amended by adding a new
10 Article to read:

11 **"ARTICLE 1A.**

12 **"APPOINTMENT, CONFIRMATION, AND RECONFIRMATION**
13 **OF JUSTICES AND JUDGES.**

14 **"§ 7A-4.1. Appointment of justices and judges by Governor and confirmation by**
15 **General Assembly.**

16 (a) When a new judgeship on the Supreme Court or Court of Appeals is created,
17 the Governor shall within 120 days after the act creating the judgeship becomes law
18 nominate a person from the list of nominees provided pursuant to G.S. 7A-4.2 to serve
19 in the judgeship. Unless otherwise provided, the nominee shall be subject to
20 confirmation by the Senate and the House of Representatives in the first regular session
21 held in an odd-numbered year convening after the judgeship is created.

22 (b) When a vacancy occurs in the office of Chief Justice of the Supreme Court,
23 Associate Justice of the Supreme Court, or Judge of the Court of Appeals, the Governor

1 shall nominate a person to fill the vacancy from the list of nominees provided pursuant
2 to G.S. 7A-4.2. If the vacancy occurs because the holder of the office indicates that he
3 will not seek reconfirmation at the end of his term, the Governor shall submit his
4 nomination to the General Assembly by March 1 of the year after that intention is made
5 known. If the vacancy occurs for any other reason, the Governor shall submit his
6 nomination to the General Assembly no later than 120 days after the vacancy is created.

7 (c) Nominees nominated pursuant to subsections (a) or (b) of this section are
8 subject to confirmation as provided in this subsection. If the nomination is for a vacancy
9 to be created at the end of a term and the nomination is the first such nomination for that
10 office, the nomination shall be considered during the regular session held in the odd-
11 numbered year in which the term of office of the judge vacating the office expires. All
12 other nominations may be considered for confirmation at any regular or extra session of
13 the General Assembly, but the nomination shall be considered no later than the first
14 regular session conducted in an odd-numbered year after the nomination is submitted,
15 unless it is submitted after April 1 during such a session. Nominations submitted during
16 such a session and after April 1 may be considered by the General Assembly for
17 confirmation in that session or any regular or extra session conducted thereafter, but the
18 nomination shall be considered for confirmation no later than the first regular session in
19 an odd-numbered year convening after the nomination is submitted. To be confirmed, a
20 nominee shall receive a majority vote of those present and voting in the Senate and
21 House of Representatives during the session in which the nomination is considered.
22 Failure to receive a majority vote of those present and voting in both houses in a session
23 in which a nomination is considered constitutes a failure to confirm and creates a
24 vacancy in the office to be filled as provided by this section. A nominee confirmed by
25 both the Senate and the House of Representatives shall be appointed by the Governor
26 for a four-year term to begin on the next September 1 in an odd-numbered year. A
27 person confirmed may begin service immediately upon being appointed, even though
28 his term of office has not begun. For purposes of this subsection, a nomination is
29 'considered' if either house of the General Assembly votes on the nomination. For
30 purposes of this subsection, a session ends when it adjourns or recesses for more than 30
31 days, or adjourns **sine die**, whichever comes first.

32 (d) In addition to any other lawful requirement for service as a justice or judge, a
33 nominee, to be eligible to be nominated for Chief Justice, Associate Justice of the
34 Supreme Court, or Judge of the Court of Appeals, shall be a registered voter in this
35 State.

36 (e) The Governor, in making nominations, shall make reasonable efforts to
37 ensure that his nominees are broadly representative of the people of this State.

38 "**§ 7A-4.2. Nomination procedure.**

39 (a) The Governor, in making a nomination to the office of Chief Justice, shall
40 make the nomination from among a list of nominees as follows:

- 41 (1) All active trial judges in the General Court of Justice;
42 (2) All active associate justices and Court of Appeals judges in the
43 General Court of Justice;

1 (3) Not more than three nominees from each district bar, as defined by
2 G.S. 84-19, who are residents of the district and who are members of
3 that district bar; and

4 (4) Former justices and judges in the General Court of Justice, except
5 those who (i) have been impeached, (ii) have been removed from
6 office, or (iii) have failed to be confirmed or reconfirmed pursuant to
7 Article 1A of Chapter 7A of the General Statutes.

8 (b) The Governor, in making a nomination to the office of Associate Justice,
9 shall make the nomination from among a list of nominees as follows:

10 (1) All active trial judges in the General Court of Justice;

11 (2) All active Court of Appeals judges in the General Court of Justice;

12 (3) Not more than three nominees from each district bar, as defined by
13 G.S. 84-19, who are residents of the district and who are members of
14 that district bar; and

15 (4) Former justices and judges in the General Court of Justice, except
16 those who (i) have been impeached, (ii) have been removed from
17 office, or (iii) have failed to be confirmed or reconfirmed pursuant to
18 Article 1A of Chapter 7A of the General Statutes.

19 (c) The Governor, in making a nomination to the office of Judge of the Court of
20 Appeals, shall make the nomination from among a list of nominees as follows:

21 (1) All active trial judges in the General Court of Justice;

22 (2) Not more than three nominees from each district bar, as defined by
23 G.S. 84-19, who are residents of the district and who are members of
24 that district bar; and

25 (3) Former justices and judges in the General Court of Justice, except
26 those who (i) have been impeached, (ii) have been removed from
27 office, or (iii) have failed to be confirmed or reconfirmed pursuant to
28 Article 1A of Chapter 7A of the General Statutes.

29 (d) The nominees of the district bars shall be submitted within 30 days of the date
30 the bar is notified of the occurrence of the vacancy. If any district bar fails to submit a
31 nomination within the 30-day period, the Governor shall make the nomination and
32 appointment from among the nominations received before the expiration of the 30-day
33 period. The Governor shall notify each district bar in writing of the occurrence of a
34 vacancy in the office of Chief Justice, Associate Justice, or Court of Appeals Judge. If
35 the Governor is informed of the creation of a vacancy to become effective on a future
36 date certain, he may notify the district bars before the effective date of the vacancy, and
37 the 30-day period shall begin to run from the date of the notice.

38 **"§ 7A-4.3. Screening of potential nominees by Judicial Selection and Retention
39 Commission.**

40 (a) Before submitting a nomination to the General Assembly to fill a new
41 judgeship or a vacancy in an existing judgeship, the Governor shall first submit to the
42 Judicial Selection and Retention Commission the names of at least three but not more
43 than five persons he is considering for the nomination. The Commission shall
44 investigate the candidates' fitness for nomination and shall report its findings to the

1 Governor before the Governor may submit a nomination. If after receiving the findings
2 of the Commission, the Governor decides not to nominate any of the candidates
3 submitted, he must submit the name of any additional person or persons he proposes to
4 nominate to the Commission and receive the Commission's evaluation of those persons,
5 including the person to be nominated, before submitting a nomination to the General
6 Assembly. The Commission shall personally meet with each candidate and provide the
7 candidate with an opportunity to address any concerns that the Commission's
8 investigation has revealed. The Commission shall also determine that each candidate:

- 9 (1) Is in good standing with the State Bar and in good standing with any
10 other state bars of which the nominee is a member;
- 11 (2) Has a reputation for and possesses integrity and good character;
- 12 (3) Is of sound health;
- 13 (4) Has demonstrated and possesses outstanding legal ability and
14 commitment to equal justice under the law; and
- 15 (5) Is of such demeanor, character, and personality that would indicate
16 judicial temperament.

17 The Commission shall indicate in its report that it finds the candidate 'Not Qualified,'
18 'Qualified,' or 'Well Qualified' to assume the judgeship for which he is a candidate.
19 The finding of the Commission shall be by majority vote of those present and voting,
20 and the number of commissioners voting in favor of and against the ultimate finding
21 shall be included when the finding is submitted to the Governor. The Governor shall
22 include the Commission's finding when submitting any nomination to the General
23 Assembly.

24 (b) As used in subsection (a) of this section:

- 25 (1) 'Well Qualified' means the Commission believes the person is one of
26 the best persons available to serve in the judgeship from the standpoint
27 of integrity, competency, and temperament.
- 28 (2) 'Qualified' means that the Commission believes that the person would
29 perform satisfactorily in the judgeship from the standpoint of integrity,
30 competency, and temperament.
- 31 (3) 'Not Qualified' means that the Commission believes that the person
32 would not perform satisfactorily in the judgeship from the standpoint
33 of integrity, competency, or temperament.

34 (c) The Commission shall report its finding to the Governor within 30 days of the
35 receipt of the names from the Governor. If the Commission fails to report to the
36 Governor within 30 days, the Governor may submit a nomination without the
37 evaluation, and no evaluation of the Commission shall be disseminated by the
38 Commission with respect to the person nominated.

39 (d) Information received in the course of the investigation is confidential and
40 shall not be disclosed unless specifically required by law or the candidate consents in
41 writing to the disclosure. Except for the report of the Commission's ultimate finding
42 with respect to a person nominated and the number of commissioners voting for and
43 against the finding, documents prepared or received by the Commission in the course of

1 its investigation are confidential and not open to public inspection without the consent
2 of the candidate, notwithstanding the provisions of Chapter 132 of the General Statutes.

3 **"§ 7A-4.4. Reconfirmation procedure."**

4 (a) Any Chief Justice, Associate Justice, or Judge of the Court of Appeals, to be
5 eligible to be reconfirmed, shall by November 1 in the year immediately preceding the
6 year in which his term expires, file a written declaration of his intent to seek
7 reconfirmation. The declaration shall be filed with the Governor. The Governor shall
8 promptly notify the General Assembly and the Judicial Selection and Retention
9 Commission of his receipt of the declaration. Failure to file the declaration in a timely
10 manner results in the creation of a vacancy in the office at the expiration of the term. A
11 justice or judge may indicate in writing to the Governor that he does not intend to seek
12 reconfirmation, and the filing of that intention creates a vacancy in the office at the
13 expiration of the term, unless the justice or judge leaves office at an earlier date.

14 (b) The Judicial Selection and Retention Commission, upon receipt of a justice's
15 or judge's written declaration of his intent to seek reconfirmation, shall investigate the
16 judge's performance as a justice or judge to determine if it should recommend that he be
17 reconfirmed. The Commission shall conduct a public hearing to allow comment from
18 interested persons on the justice's or judge's fitness to continue in office. Information
19 received in the course of the investigation is confidential and shall not be disclosed
20 unless specifically required by law or unless the justice or judge consents to the
21 disclosure. Documents prepared or received by the Commission in the course of its
22 investigation are confidential and not subject to public inspection without the consent of
23 the justice or judge, notwithstanding the provisions of Chapter 132 of the General
24 Statutes. The investigation shall include an evaluation of the justice's or judge's ethical
25 conduct, his knowledge of and application of the law, his management of the courts
26 over which he has presided, his work habits, his health, his judicial demeanor, and any
27 other matter that the Commission determines to be relevant to its inquiry. The justice or
28 judge shall be given an opportunity to present to the Commission any information he
29 determines to be appropriate. The Commission's recommendation shall be by majority
30 vote of those present and voting.

31 (c) No later than 30 days after the convening of the General Assembly in the year
32 following the filing of a justice's or judge's intent to seek reconfirmation, the
33 Commission shall report to the General Assembly as to whether it recommends that the
34 justice or judge be reconfirmed. A vote of sixty percent (60%) of those present and
35 voting of both the Senate and the House of Representatives shall be necessary to reject
36 the recommendation of the Commission. If either house fails to vote on the report of
37 the Commission during the session in which it is submitted, the recommendation of the
38 Commission shall be deemed to have been approved by the General Assembly. For the
39 purpose of this subsection, a session ends when it adjourns or recesses for more than 30
40 days, or adjourns **sine die**, whichever comes first.

41 (d) A justice or judge reconfirmed by the General Assembly serves an eight-year
42 term, to begin at the expiration of the term he is serving at the time of reconfirmation. If
43 the General Assembly does not reconfirm a justice or judge, either by a negative vote or
44 by failing to vote on a negative recommendation of the Commission, a vacancy in that

1 office is created at the expiration of the term. The provisions of Article VI, Section 10
2 of the North Carolina Constitution are not applicable to justices or judges who are not
3 reconfirmed by the General Assembly.

4 **"§ 7A-4.5. Judicial Selection and Retention Commission."**

5 (a) The Judicial Selection and Retention Commission consists of:

- 6 (1) Four members appointed by the Governor, none of whom may be
7 licensed attorneys, with one member from each judicial division as
8 those divisions were constituted on January 1, 1991;
- 9 (2) Four members appointed by the President of the State Bar from its
10 membership with one member from each judicial division as those
11 divisions were constituted on January 1, 1991;
- 12 (3) Two members, one of whom shall not be a licensed attorney,
13 appointed by the General Assembly on recommendation of the
14 Speaker of the House of Representatives, as provided by G.S. 120-121;
- 15 (4) Two members, one of whom shall not be a licensed attorney,
16 appointed by the General Assembly on recommendation of the
17 President Pro Tempore of the Senate, as provided by G.S. 120-121;
- 18 (5) One member appointed by the President of the North Carolina Bar
19 Association from its membership;
- 20 (6) One member appointed by the President of the North Carolina
21 Association of Women Attorneys from its membership;
- 22 (7) One member appointed by the President of the North Carolina
23 Academy of Trial Lawyers from its membership;
- 24 (8) One member appointed by the President of the North Carolina
25 Association of Black Lawyers from its membership;
- 26 (9) One member appointed by the President of the North Carolina
27 Association of Defense Attorneys from its membership;
- 28 (10) One member appointed by the President of the Conference of District
29 Attorneys from its membership; and
- 30 (11) One member appointed by the President of the North Carolina
31 Association of Public Defenders from its membership.

32 The Governor and the President of the State Bar shall consider the racial and gender
33 composition of the State's population in making their appointments. No member of the
34 Commission shall be an active judge or justice of the General Court of Justice or an
35 active member of the General Assembly.

36 (b) The Director of the Administrative Office of the Courts shall convene the
37 initial meeting of the Commission as soon as feasible after the initial appointments are
38 made. At that meeting the Commission shall select a chairman from among its
39 members.

40 (c) All the members appointed by the Governor and by the President of the State
41 Bar shall serve four-year terms of office, except that two of the initial appointees of the
42 Governor and two of the initial appointees of the State Bar President shall serve terms
43 expiring June 30, 1995, and the remaining two appointees of the Governor and the State
44 Bar President shall serve initial terms expiring June 30, 1997. The members appointed

1 by the Presidents of the Bar Association, the Conference of District Attorneys, the
2 Association of Women Attorneys, and the Academy of Trial Lawyers shall serve four-
3 year terms, except that the term of office for the initial appointees from those
4 organizations shall expire June 30, 1995. The members appointed by the Presidents of
5 the Association of Black Lawyers, the Association of Public Defenders, and the
6 Association of Defense Attorneys shall serve four-year terms, except that the term of
7 office for these initial appointees shall expire June 30, 1997. The appointees of the
8 General Assembly shall serve an initial term expiring June 30, 1995, and thereafter
9 appointees shall serve a two-year term. Members who have served a full term may be
10 reappointed to one additional full term. The members shall be appointed within 30 days
11 of the date this act becomes effective.

12 (d) The Commission shall be allowed to inspect the files of the Judicial Standards
13 Commission by request of the chairman of the Commission. Notwithstanding the
14 provisions of G.S. 7A-377, the files of the Judicial Standards Commission shall be made
15 available to the Commission. Meetings of the Commission shall not be subject to the
16 provisions of Article 33C of Chapter 143 of the General Statutes. Testimony and other
17 evidence presented to the Commission is privileged in any action for defamation.

18 (e) The Commission may employ an executive secretary to assist it in performing
19 its duties.

20 "**§ 7A-4.6. Governor to issue commissions to justices and judges.**

21 Every person duly appointed by the Governor as Chief Justice, Associate Justice, or
22 Judge of the Court of Appeals, and every justice or judge duly reconfirmed by the
23 General Assembly shall procure from the Governor a commission attesting that fact,
24 which the Governor shall issue upon receipt of a certification by the Principal Clerks of
25 the Senate and House of Representatives that the person has been confirmed or
26 reconfirmed by the house in which the Clerk serves. The Principal Clerk of the Senate
27 and the Principal Clerk of the House of Representatives shall promptly certify the
28 results to the Governor of any judicial confirmation and reconfirmation votes taken in
29 their respective houses. The Secretary of State shall inform the Governor whenever the
30 General Assembly adjourns or recesses for more than 30 days or adjourns *sine die*.

31 "**§ 7A-4.7. Transitional provisions for judges in office on effective date of Article.**

32 (a) Any Chief Justice, Associate Justice, or Judge of the Court of Appeals
33 holding a judgeship on January 15, 1993, that on January 14, 1993, is required by law to
34 be filled by election shall be subject to the reconfirmation procedures in G.S. 7A-4.4
35 and to the provisions of subsections (b) and (c) of this section to retain his office.

36 (b) A justice or judge covered by the provisions of subsection (a) of this section
37 who, at the end of his term of office has at least four years of service in the office he is
38 holding on January 15, 1993, shall be subject to the reconfirmation process during the
39 first regular session convening in an odd-numbered year after the term expires. Terms
40 of such justices and judges are extended until August 31 of the year following the year
41 in which the term would have normally expired.

42 (c) A justice or judge covered by the provisions of subsection (a) of this section
43 who, at the end of his term of office has less than four years in the office he is holding
44 on January 15, 1993, shall be subject to the reconfirmation process in the first regular

1 session convening in an odd-numbered year after he would have four years in service in
2 that office, if continued in office past the expiration of his term. Terms of office of such
3 justices and judges shall be extended until August 31 of the year in which a
4 reconfirmation decision is made by the General Assembly."

5 Sec. 2. G.S. 7A-10(a) reads as rewritten:

6 "(a) The Supreme Court shall consist of a Chief Justice and six associate justices,
7 ~~elected by the qualified voters of the State for terms of eight years selected as provided~~
8 ~~by Article 1A of this Chapter.~~ Before entering upon the duties of his office, each justice
9 shall take an oath of office. Four justices shall constitute a quorum for the transaction of
10 the business of the court. Sessions of the court shall be held in the city of Raleigh, and
11 scheduled by rule of court so as to discharge expeditiously the court's business."

12 Sec. 3. G.S. 7A-16 reads as rewritten:

13 "**§ 7A-16. Creation and organization.**

14 ~~The Court of Appeals is created effective January 1, 1967. It shall consist initially of~~
15 ~~six judges, elected by the qualified voters of the State for terms of eight years. The~~
16 ~~Chief Justice of the Supreme Court shall designate one of the judges as Chief Judge, to~~
17 ~~serve in such capacity at the pleasure of the Chief Justice. Before entering upon the~~
18 ~~duties of his office, a judge of the Court of Appeals shall take the oath of office~~
19 ~~prescribed for a judge of the General Court of Justice.~~

20 ~~The Governor on or after July 1, 1967, shall make temporary appointments to the six~~
21 ~~initial judgeships. The appointees shall serve until January 1, 1969. Their successors~~
22 ~~shall be elected at the general election for members of the General Assembly in~~
23 ~~November, 1968, and shall take office on January 1, 1969, to serve for the remainder of~~
24 ~~the unexpired term which began on January 1, 1967.~~

25 Upon the appointment of at least five judges, and the designation of a Chief Judge,
26 the court is authorized to convene, organize, and promulgate, subject to the approval of
27 the Supreme Court, such supplementary rules as it deems necessary and appropriate for
28 the discharge of the judicial business lawfully assigned to it.

29 Effective January 1, 1969, the number of judges is increased to nine, and the
30 Governor, on or after March 1, 1969, shall make temporary appointments to the
31 additional judgeships thus created. The appointees shall serve until January 1, 1971.
32 Their successors shall be elected at the general election for members of the General
33 Assembly in November, 1970, and shall take office on January 1, 1971, to serve for the
34 remainder of the unexpired term which began on January 1, 1969.

35 Effective January 1, 1977, the number of judges is increased to 12; and the
36 Governor, on or after July 1, 1977, shall make temporary appointments to the additional
37 judgeships thus created. The appointees shall serve until January 1, 1979. Their
38 successors shall be elected at the general election for members of the General Assembly
39 in November, 1978, and shall take office on January 1, 1979, to serve the remainder of
40 the unexpired term which began on January 1, 1977.

41 The Court of Appeals shall consist of 12 judges, selected as provided in Article 1A
42 of this Chapter. The Chief Justice of the Supreme Court shall designate one of the
43 judges as Chief Judge to serve in such capacity at the pleasure of the Chief Justice.

1 Before entering upon the duties of his office, a judge of the Court of Appeals shall take
2 the oath of office prescribed for a judge of the General Court of Justice.

The Court of Appeals shall sit in panels of three judges each. The Chief Judge insofar as practicable shall assign the members to panels in such fashion that each member sits a substantially equal number of times with each other member. He shall preside over the panel of which he is a member, and shall designate the presiding judge of the other panel or panels.

8 Three judges shall constitute a quorum for the transaction of the business of the
9 court, except as may be provided in G.S. 7A-32.

10 In the event the Chief Judge is unable, on account of absence or temporary
11 incapacity, to perform the duties placed upon him as Chief Judge, the Chief Justice shall
12 appoint an acting Chief Judge from the other judges of the Court, to temporarily
13 discharge the duties of Chief Judge."

14 Sec. 3.1. G.S. 120-123 is amended by adding a new subdivision to read:
15 "(3b) The Judicial Selection and Retention Commission as established by
16 G.S. 7A-4.5."

17 Sec. 4. G.S. 163-106 reads as rewritten:

18 "§ 163-106. Notices of candidacy; pledge; with whom filed; date for filing;
19 withdrawal.

20 (a) Notice and Pledge. – No one shall be voted for in a primary election unless he
21 shall have filed a notice of candidacy with the appropriate board of elections, State or
22 county, as required by this section. To this end every candidate for selection as the
23 nominee of a political party shall file with and place in the possession of the board of
24 elections specified in subsection (c) of this section, a notice and pledge in the following
25 form:

‘Date

27 I hereby file notice as a candidate for nomination as in the party
28 primary election to be held on, 19.... I affiliate with the party, (and I certify
29 that I am now registered on the registration records of the precinct in which I reside as
30 an affiliate of the party.)

31 I pledge that if I am defeated in the primary, I will not run for any office as a write-
32 in candidate in the next general election.

Signed

Name of candidate

Witness:

.....

.....
(Title of witness)'

38 (Title of witness)
39 Each candidate shall sign his notice of candidacy in the presence of the chairman or
40 secretary of the board of elections, State or county, with which he files. In the
41 alternative, a candidate may have his signature on the notice of candidacy
42 acknowledged and certified to by an officer authorized to take acknowledgments and
43 administer oaths, in which case the candidate may mail his notice of candidacy to the
44 appropriate board of elections.

1 In signing his notice of candidacy the candidate shall use only his legal name and, in
2 his discretion, any nickname by which he is commonly known. A candidate may also, in
3 lieu of his legal first name and legal middle initial or middle name (if any) sign his
4 nickname, provided that he appends to the notice of candidacy an affidavit that he has
5 been commonly known by that nickname for at least five years prior to the date of
6 making the affidavit. The candidate shall also include with the affidavit the way his
7 name (as permitted by law) should be listed on the ballot if another candidate with the
8 same last name files a notice of candidacy for that office.

9 A notice of candidacy signed by an agent or any person other than the candidate
10 himself shall be invalid.

11 Prior to the date on which candidates may commence filing, the State Board of
12 Elections shall print and furnish, at State expense, to each county board of elections a
13 sufficient number of the notice of candidacy forms prescribed by this subsection for use
14 by candidates required to file with county boards of elections.

15 (b) Eligibility to File. – No person shall be permitted to file as a candidate in a
16 primary if, at the time he offers to file notice of candidacy, he is registered on the
17 appropriate registration book or record as an affiliate of a political party other than that
18 in whose primary he is attempting to file. No person who has changed his political party
19 affiliation or who has changed from unaffiliated status to party affiliation as permitted
20 in G.S. 163-74(b), shall be permitted to file as a candidate in the primary of the party to
21 which he changed unless he has been affiliated with the political party in which he
22 seeks to be a candidate for at least 90 days prior to the filing date for the office for
23 which he desires to file his notice of candidacy.

24 A person registered as ‘unaffiliated’ shall be ineligible to file as a candidate in a
25 party primary election.

26 (c) Time for Filing Notice of Candidacy. – Candidates seeking party primary
27 nominations for the following offices shall file their notice of candidacy with the State
28 Board of Elections no earlier than 12:00 noon on the first Monday in January and no
29 later than 12:00 noon on the first Monday in February preceding the primary:

30 Governor

31 Lieutenant Governor

32 All State executive officers

33 ~~Justices of the Supreme Court, Judges of the Court of Appeals~~

34 Judges of the superior courts

35 Judges of the district courts

36 United States Senators

37 Members of the House of Representatives of the United States

38 District attorneys

39 Candidates seeking party primary nominations for the following offices shall file
40 their notice of candidacy with the county board of elections no earlier than 12:00 noon
41 on the first Monday in January and no later than 12:00 noon on the first Monday in
42 February preceding the primary:

43 State Senators

44 Members of the State House of Representatives

1 All county offices.

2 (d) Notice of Candidacy for Certain Offices to Indicate Vacancy. – In any
3 primary in which there are ~~two or more vacancies for Chief Justice and associate~~
4 ~~justices of the Supreme Court, two or more vacancies for judge of the Court of Appeals,~~
5 ~~or~~ two vacancies for United States Senator from North Carolina or two or more
6 vacancies for the office of district court judge to be filled by nominations, each
7 candidate shall, at the time of filing notice of candidacy, file with the State Board of
8 Elections a written statement designating the vacancy to which he seeks nomination.
9 Votes cast for a candidate shall be effective only for his nomination to the vacancy for
10 which he has given notice of candidacy as provided in this subsection.

11 A person seeking party nomination for a specialized district judgeship established
12 under G.S. 7A-147 shall, at the time of filing notice of candidacy, file with the State
13 Board of Elections a written statement designating the specialized judgeship to which he
14 seeks nomination.

15 (e) Withdrawal of Notice of Candidacy. – Any person who has filed notice of
16 candidacy for an office shall have the right to withdraw it at any time prior to the date
17 on which the right to file for that office expires under the terms of subsection (c) of this
18 section. If a candidate does not withdraw before the filing deadline, except as provided
19 in G.S. 163-112, his name shall be printed on the primary ballot, any votes for him shall
20 be counted, and he shall not be refunded his filing fee.

21 (f) Candidates required to file their notice of candidacy with the State Board of
22 Elections under subsection (c) of this section shall file along with their notice a
23 certificate signed by the chairman of the board of elections or the supervisor of elections
24 of the county in which they are registered to vote, stating that the person is registered to
25 vote in that county, stating the party with which the person is affiliated, and that the
26 person has not changed his affiliation from another party or from unaffiliated within
27 three months prior to the filing deadline under subsection (c) of this section. In issuing
28 such certificate, the chairman or supervisor shall check the registration records of the
29 county to verify such information. During the period commencing 36 hours immediately
30 preceding the filing deadline the State Board of Elections shall accept, on a conditional
31 basis, the notice of candidacy of a candidate who has failed to secure the verification
32 ordered herein subject to receipt of verification no later than three days following the
33 filing deadline. The State Board of Elections shall prescribe the form for such
34 certificate, and distribute it to each county board of elections no later than the last
35 Monday in December of each odd-numbered year.

36 (g) When any candidate files a notice of candidacy with a county board of
37 elections under subsection (c) of this section or under G.S. 163-291(2), the chairman or
38 supervisor of elections shall, immediately upon receipt of the notice of candidacy,
39 inspect the registration records of the county, and cancel the notice of candidacy of any
40 person who is not eligible under subsection (c) of this section. The Board shall give
41 notice of cancellation to any candidate whose notice of candidacy has been cancelled
42 under this subsection by mail or by having the notice served on him by the sheriff.

43 (h) No person may file a notice of candidacy for more than one office described
44 in subsection (c) of this section for any one election. If a person has filed a notice of

1 candidacy with a board of elections under this section for one office, then a notice of
2 candidacy may not later be filed for any other office under this section when the
3 election is on the same date unless the notice of candidacy for the first office is
4 withdrawn under subsection (e) of this section; provided that this subsection shall not
5 apply unless the deadline for filing notices of candidacy for both offices is the same.
6 Notwithstanding this subsection, a person may file a notice of candidacy for a full term
7 as United States Senator, and also file a notice of candidacy for the remainder of the
8 unexpired term of that same seat in an election held under G.S. 163-12, and may file a
9 notice of candidacy for a full term as a member of the United States House of
10 Representatives, and also file a notice of candidacy for the remainder of the unexpired
11 term in an election held under G.S. 163-13.

12 (i) No person may file a notice of candidacy for superior court judge unless that
13 person is at the time of filing the notice of candidacy a resident of the judicial district as
14 it will exist at the time the person would take office if elected. No person may be
15 nominated as a superior court judge under G.S. 163-114 unless that person is at the time
16 of nomination a resident of the judicial district as it will exist at the time the person
17 would take office if elected. This subsection implements Article IV Section 9(1) of the
18 North Carolina Constitution which requires regular Superior Court Judges to reside in
19 the district for which elected."

20 Sec. 5. G.S. 163-107(a) reads as rewritten:

21 "(a) Fee Schedule. – At the time of filing a notice of candidacy, each candidate
22 shall pay to the board of elections with which he files under the provisions of G.S. 163-
23 106 a filing fee for the office he seeks in the amount specified in the following
24 tabulation:

25

26

27	Office Sought	Amount of Filing Fee
----	---------------	----------------------

28

29

30 Governor One percent (1%) of the annual
31 salary of the office

32 Lieutenant Governor sought

33 One percent (1%) of the annual
34 All State executive offices salary of the office
35 sought

36 One percent (1%) of the annual

37 The percent (1983) salary of the office

38 sought

39

40

41

42

43

44

All Justices, Judges, and
Superior and District One percent (1%) of the
Court Judges and District annual salary of the

1 Attorneys of the General office sought
2 Court of Justice
3 United States Senator
4 One percent (1%) of the annual
5 Members of the United States salary of the office
6 House of Representatives sought
7 State Senator One percent (1%) of the annual
8 salary of the office
9 Member of the State House of sought
10 Representatives One percent (1%) of the annual
11 All county offices not salary of the office
12 compensated by fees sought
13 County commissioners, if One percent (1%) of the annual
14 compensated entirely by salary of the office
15 fees sought
16 Members of county board of One percent (1%) of the annual
17 education, if compensated salary of the office
18 entirely by fees sought
19 Sheriff, if compensated Ten dollars (\$10.00)
20 entirely by fees
21 Five dollars (\$5.00)
22
23 Clerk of superior court, if
24 compensated entirely by Forty dollars (\$40.00), plus
25 fees one percent (1%) of the
26 income of the office above
27 four thousand dollars
28 Register of deeds, if (\$4,000)
29 compensated entirely by Forty dollars (\$40.00), plus
30 fees one percent (1%) of the
31 income of the office above
32 four thousand dollars
33 Any other county office, if (\$4,000)
34 compensated entirely by Forty dollars (\$40.00), plus
35 fees one percent (1%) of the
36 income of the office above
37 four thousand dollars
38 All county offices (\$4,000)
39 compensated partly by Twenty dollars (\$20.00), plus
40 salary and partly by fees one percent (1%) of the
41 income of the office above
42 two thousand dollars
43 (\$2,000)
44 One percent (1%) of the first

1 annual salary to be
2 received (exclusive of
3 fees)".
4
5

6 Sec. 6. G.S. 163-107.1(b) reads as rewritten:

7 "(b) If the candidate is seeking the office of United States Senator, Governor,
8 Lieutenant Governor, or any State executive officer, ~~Justice of the Supreme Court or~~
~~Judge of the Court of Appeals,~~ the petition must be signed by 10,000 registered voters
10 who are members of the political party in whose primary the candidate desires to run,
11 except that in the case of a political party as defined by G.S. 163-96(a)(2) which will be
12 making nominations by primary election, the petition must be signed by ten percent
13 (10%) of the registered voters of the State who are affiliated with the same political
14 party in whose primary the candidate desires to run, or in the alternative, the petition
15 shall be signed by no less than 10,000 registered voters regardless of the voter's political
16 party affiliation, whichever requirement is greater. The petition must be filed with the
17 State Board of Elections not later than 12:00 noon on Monday preceding the filing
18 deadline before the primary in which he seeks to run. The names on the petition shall be
19 verified by the board of elections of the county where the signer is registered, and the
20 petition must be presented to the county board of elections at least 15 days before the
21 petition is due to be filed with the State Board of Elections. When a proper petition has
22 been filed, the candidate's name shall be printed on the primary ballot."

23 Sec. 7. G.S. 163-111(c) reads as rewritten:

24 "(c) Procedure for Requesting Second Primary. –

25 (1) A candidate who is apparently entitled to demand a second primary,
26 according to the unofficial results, for one of the offices listed below,
27 and desiring to do so, shall file a request for a second primary in
28 writing or by telegram with the Executive Secretary-Director of the
29 State Board of Elections no later than 12:00 noon on the seventh day
30 (including Saturdays and Sundays) following the date on which the
31 primary was conducted, and such request shall be subject to the
32 certification of the official results by the State Board of Elections. If
33 the vote certification by the State Board of Elections determines that a
34 candidate who was not originally thought to be eligible to call for a
35 second primary is in fact eligible to call for a second primary, the
36 Executive Secretary-Director of the State Board of Elections shall
37 immediately notify such candidate and permit him to exercise any
38 options available to him within a 48-hour period following the
39 notification:

40 Governor,
41 Lieutenant Governor,
42 All State executive officers,
43 ~~Justices, Judges, or Superior and District Court Judges, or~~
44 District Attorneys of the General Court of Justice,

United States Senators,
Members of the United States House of Representatives,
State Senators in multi-county senatorial districts, and
Members of the State House of Representatives in multi-county
representative districts.

- (2) A candidate who is apparently entitled to demand a second primary, according to the unofficial results, for one of the offices listed below and desiring to do so, shall file a request for a second primary in writing or by telegram with the chairman or supervisor of the county board of elections no later than 12:00 noon on the seventh day (including Saturdays and Sundays) following the date on which the primary was conducted, and such request shall be subject to the certification of the official results by the county board of elections:

State Senators in single-county senatorial districts,
Members of the State House of Representatives in single-
county representative districts, and
All county officers

All county officers.

- (3) Immediately upon receipt of a request for a second primary the appropriate board of elections, State or county, shall notify all candidates entitled to participate in the second primary, by telephone followed by written notice, that a second primary has been requested and of the date of the second primary."

Sec. 8. G.S. 163-140(a) reads as rewritten:

- 24 "(a) Kinds of General Election Ballots; Right to Combine. – For purposes of
25 general elections, there shall be ~~seven~~ six kinds of official ballots entitled:

- (1) Ballot for presidential electors
 - (2) Ballot for United States Senator
 - (3) Ballot for member of the United States House of Representatives
 - (4) State ballot
 - (5) County ballot
 - (7) Ballot for constitutional amendments and other propositions submitted to the people.

33 Use of official ballots shall be limited to the purposes indicated by their titles. The
34 printing on all ballots shall be plain and legible but, unless large type is specified by this
35 section, type larger than 10-point shall not be used in printing ballots. All general
36 election ballots shall be prepared in such a way as to leave sufficient blank space
37 beneath each name printed thereon in which a voter may conveniently write the name of
38 any person for whom he may desire to vote.

Unless prohibited by this section, the board of elections, State or county, charged by law with printing ballots may, in its discretion, combine any two or more official ballots. Whenever two or more ballots are combined, the voting instructions for the State ballot set out in subsection (b)(4) of this section shall be used, except that if the two ballots being combined do not contain a multi-seat race, then the second sentence of instruction b. shall not appear on the ballot.

1 If the State Board of Elections divides the State ballot into two or more ballots, all
2 candidates for superior court shall appear on the same ballot except that the State Board
3 of Elections may divide the election of superior court judges into two ballots either
4 because of length of the ballot or to provide a separate ballot for multi-seat races but
5 only superior court judges shall be on those ballots, ~~and all candidates for the Appellate~~
6 ~~Division shall appear on the same ballot.~~"

7 Sec. 9. G.S. 163-177 reads as rewritten:

8 **"§ 163-177. Disposition of duplicate abstracts.**

9 Within six hours after the returns of a primary or election have been canvassed and
10 the results judicially determined, the chairman of the county board of elections shall
11 mail, or otherwise deliver, to the State Board of Elections the duplicate-original
12 abstracts prepared in accordance with G.S. 163-176 for all offices and referenda for
13 which the State Board of Elections is required to canvass the votes and declare the
14 results including:

15 President and Vice-President of the United States

16 Governor, Lieutenant Governor, and all other State executive officers

17 United States Senators

18 Members of the House of Representatives of the United States Congress

19 ~~Justices, Judges, and Superior and District Court Judges and District~~
20 Attorneys of the General Court of Justice

21 State Senators in multi-county senatorial districts

22 Members of the State House of Representatives in multi-county
23 representative districts

24 Constitutional amendments and propositions submitted to the voters of the
25 State.

26 One duplicate abstract prepared in accordance with G.S. 163-176 for all offices and
27 referenda for which the county board of elections is required to canvass the votes and
28 declare the results (and which are listed below) shall be retained by the county board,
29 which shall forthwith publish and declare the results; the second duplicate abstract shall
30 be mailed to the chairman of the State Board of Elections, to the end that there be one
31 set of all primary and election returns available at the seat of government.

32 All county offices

33 State Senators in single-county senatorial districts

34 Members of the State House of Representatives in single-county
35 representative districts

36 Propositions submitted to the voters of one county.

37 If the chairman of the county board of elections fails or neglects to transmit
38 duplicate abstracts to the chairman of the State Board of Elections within the time
39 prescribed in this section, he shall be guilty of a misdemeanor. Provided, that the
40 penalty shall not apply if the chairman was prevented from performing the prescribed
41 duty because of sickness or other unavoidable delay, but the burden of proof shall be on
42 the chairman to show that his failure to perform was due to sickness or unavoidable
43 delay."

44 Sec. 10. G.S. 163-192 reads as rewritten:

1 **"§ 163-192. State Board of Elections to prepare abstracts and declare results of**
2 **primaries and elections.**

3 (a) After Primary. – At the conclusion of its canvass of the primary election, the
4 State Board of Elections shall prepare separate abstracts of the votes cast:

- 5 (1) For Governor and all State officers, ~~justices of the Supreme Court,~~
6 ~~judges of the Court of Appeals,~~ judges of the superior court, and
7 United States Senators.
- 8 (2) For members of the United States House of Representatives for the
9 several congressional districts in the State.
- 10 (3) For district court judges for the several district court districts in the
11 State.
- 12 (4) For district attorney in the several prosecutorial districts in the State.
- 13 (5) For State Senators in the several senatorial districts in the State
14 composed of more than one county.
- 15 (6) For members of the State House of Representatives in the several
16 representative districts in the State composed of more than one county.

17 Abstracts prepared by the State Board of Elections under this subsection shall state
18 the total number of votes cast for each candidate of each political party for each of the
19 various offices canvassed by the State Board of Elections. They shall also state the
20 name or names of the person or persons whom the State Board of Elections shall
21 ascertain and judicially determine by the count to be nominated for each office.

22 Abstracts prepared under this subsection shall be signed by the members of the State
23 Board of Elections in their official capacity and shall have the great seal of the State
24 affixed thereto.

25 (b) After General Election. – At the conclusion of its canvass of the general
26 election, the State Board of Elections shall prepare abstracts of the votes cast:

- 27 (1) For President and Vice-President of the United States, when an
28 election is held for those offices.
- 29 (2) For Governor and all State officers, ~~justices of the Supreme Court,~~
30 ~~judges of the Court of Appeals,~~ judges of the superior court, and
31 United States Senators.
- 32 (3) For members of the United States House of Representatives for the
33 several congressional districts in the State.
- 34 (4) For district court judges for the several district court districts as
35 defined in G.S. 7A-133 in the State.
- 36 (5) For district attorney in the several prosecutorial districts in the State.
- 37 (6) For State Senators in the several senatorial districts in the State
38 composed of more than one county.
- 39 (7) For members of the State House of Representatives in the several
40 representative districts in the State composed of more than one county.
- 41 (8) For and against any constitutional amendments or propositions
42 submitted to the people.

43 Abstracts prepared by the State Board of Elections under this subsection shall state
44 the names of all persons voted for, the office for which each received votes, and the

1 number of legal ballots cast for each candidate for each office canvassed by the State
2 Board of Elections. They shall also state the name or names of the person or persons
3 whom the State Board of Elections shall ascertain and judicially determine by the count
4 to be elected to each office.

5 Abstracts prepared under this subsection shall be signed by the members of the State
6 Board of Elections in their official capacity and shall have the great seal of the State
7 affixed thereto.

8 (c) Disposition of Abstracts of Returns. – The State Board of Elections shall file
9 with the Secretary of State the original abstracts of returns prepared by it under the
10 provisions of subsections (a) and (b) of this section, and also the duplicate county
11 abstracts transmitted to the State Board of Elections under the provisions of G.S. 163-
12 177."

13 Sec. 11. G.S. 163-194 reads as rewritten:

14 "**§ 163-194. Governor to issue commissions to certain elected officials.**

15 Every person duly elected to one of the offices listed below, upon obtaining a
16 certificate of his election from the Secretary of State under the provisions of G.S. 163-
17 193, shall procure from the Governor a commission attesting his election to the
18 specified office, which the Governor shall issue upon production of the Secretary of
19 State's certificate:

20 Members of the United States House of Representatives,
21 Justices, Judges, and Superior and District Court Judges and District
22 Attorneys of the General Court of Justice."

23 Sec. 12. G.S. 163-1 is amended in the table by deleting the entries for
24 "Justices and Judges of the Appellate Division".

25 Sec. 13. G.S. 163-9 reads as rewritten:

26 "**§ 163-9. Filling vacancies in State and district judicial offices.**

27 Vacancies occurring in the offices of ~~Justice of the Supreme Court, judge of the~~
28 ~~Court of Appeals, and~~ judge of the superior court for causes other than expiration of
29 term shall be filled by appointment of the Governor. An appointee shall hold his place
30 until the next election for members of the General Assembly that is held more than 60
31 days after the vacancy occurs, at which time an election shall be held to fill the
32 unexpired term of the office: Provided, that when the unexpired term of the office in
33 which the vacancy has occurred expires on the first day of January succeeding the next
34 election for members of the General Assembly, the Governor shall appoint to fill that
35 vacancy for the unexpired term of the office.

36 Vacancies in the office of district judge which occur before the expiration of a term
37 shall not be filled by election. Vacancies in the office of district judge shall be filled in
38 accordance with G.S. 7A-142."

39 Sec. 14. This act shall become effective only if the amendments to the
40 Constitution of North Carolina proposed by "AN ACT TO AMEND THE NORTH
41 CAROLINA CONSTITUTION TO PROVIDE FOR THE APPOINTMENT OF
42 APPELLATE JUDGES BY THE GOVERNOR, WITH THE ADVICE AND
43 CONSENT OF THE GENERAL ASSEMBLY, AND TO AUTHORIZE THE
44 GENERAL ASSEMBLY TO PROVIDE A PROCEDURE TO DETERMINE IF

- 1 JUDGES SO APPOINTED SHOULD BE RETAINED IN OFFICE"are approved by
- 2 the voters, and if so approved, this act becomes effective January 15, 1993.