

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 971

Short Title: Judicial Appt./Voter Retention.

(Public)

Sponsors: Senator Odom.

Referred to: Judiciary I/Constitution

May 3, 1995

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CONSTITUTION OF NORTH CAROLINA TO PROVIDE FOR GUBERNATORIAL APPOINTMENT OF JUSTICES AND JUDGES OF THE GENERAL COURT OF JUSTICE AND RETENTION BY VOTE OF THE PEOPLE.

The General Assembly of North Carolina enacts:

Section 1. Section 16 of Article IV of the North Carolina Constitution reads as rewritten:

"Sec. 16. ~~Terms of office and election of Justices of the Supreme Court, Judges of the Court of Appeals, and Judges of the Superior Court. Appointment and tenure of justices and judges of the General Court of Justice.~~

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

(1) General principles. Justices and Judges of the General Court of Justice should be selected for and continue to hold office solely upon the basis of personal and professional

1 fitness to administer right and justice wisely, according to law, and without favor, denial,
2 or delay, to all persons who come into the courts. While their continuation in office
3 should be periodically subject to approval by the people, both their initial selection and
4 continuation in office should be free, so far as may be, from the influences and
5 necessities of partisan political activity.

6 (2) Appointment, retention, and terms of justices and judges. On and after January
7 1, 1996, when a vacancy occurs in the office of Chief Justice, the Governor shall fill the
8 vacancy by appointing to the office an incumbent Associate Justice of the Supreme
9 Court. On and after January 1, 1996, when a vacancy occurs in the office of Associate
10 Justice or Judge of the General Court of Justice, the Governor shall fill the vacancy by
11 appointment.

12 The term of office by appointment as Chief Justice, Associate Justice, or Judge
13 extends to January 1 after the next statewide election for members of the General
14 Assembly that is held more than one year after the appointment is made. At that election,
15 a person holding by appointment the office of Chief Justice, Associate Justice, or Judge
16 who desires to continue in office shall be subject to approval by nonpartisan ballot, by a
17 majority of the votes cast on the issue of the Justice's or Judge's retention. A Chief
18 Justice, Associate Justice, or Judge then approved for retention serves a regular term.

19 The regular term of office of the Chief Justice, Associate Justices and Judges of the
20 Appellate Division, Judges of the Superior Court Division, and Judges of the District
21 Court Division is eight years.

22 At the last statewide election for members of the General Assembly held before the
23 expiration of a regular term of office, a Chief Justice, Associate Justice, or Judge who
24 desires to continue in office shall be subject to approval by nonpartisan ballot, by a
25 majority of the votes cast on the issue of the Justice's or Judge's retention.

26 If the voters fail to approve the retention in office of a Chief Justice, Associate
27 Justice, or Judge serving an appointed or regular term, his office shall become vacant at
28 the end of the term, and it shall be filled by appointment as prescribed in this section.

29 Voting on retention of the Chief Justice, Associate Justices, and Judges of the
30 Appellate Division shall be by the qualified voters of the whole State; voting on retention
31 of regular Superior Court Judges and District Court Judges shall be by the qualified
32 voters of their respective districts.

33 (3) Transition provisions. The term of office of a person who has been elected
34 before January 1, 1996, to the office of Chief Justice, Associate Justice or Judge of the
35 General Court of Justice for a term which extends beyond January 1, 1996, and who is in
36 office on January 1, 1996, shall not be affected by the provisions of this section. If the
37 person so elected continues to serve for the remainder of the term, that person may stand
38 for retention in the office for a succeeding regular term as provided in this section. If the
39 person continues to serve for the remainder of the term but does not stand for retention, a
40 vacancy is created in the office upon expiration of the term, and this vacancy shall be
41 filled by appointment as provided in this section.

42 The term of office of a person who has been appointed before January 1, 1996, to the
43 Office of Chief Justice, Associate Justice, Judge of the Court of Appeals, regular Superior

1 Court Judge, or District Court Judge for a term which extends beyond January 1, 1996,
2 and who is in office on January 1, 1996, shall end on the first day of January 1, 1998. If
3 the person continues to serve until the end of that term, a vacancy is created in the office
4 upon expiration of the term, and this vacancy shall be filled by appointment as provided
5 in this section.

6 Upon the death, resignation, removal, or retirement of any incumbent justice or judge
7 on or after January 1, 1996, and before the expiration of his term of office, the resulting
8 vacancy shall be filled by appointment as provided in this section.

9 Vacancies in judicial office occurring before January 1, 1996, and not filled by that
10 date, shall be filled by appointment as provided in this section.

11 From the date any incumbent described in this subsection is continued in office by
12 retention vote for a term next succeeding the term in progress on January 1, 1996, or is
13 succeeded in office by another person, the office is held subject to the provisions of this
14 section."

15 Sec. 2. Section 9(1) of Article IV of the Constitution of North Carolina reads
16 as rewritten:

17 "(1) Superior Court districts. The General Assembly shall, from time to time,
18 divide the State into a convenient number of Superior Court judicial districts and shall
19 provide for the ~~election~~-selection of one or more Superior Court Judges for each district.
20 Each regular Superior Court Judge shall reside in the district for which he is ~~elected~~-
21 selected. The General Assembly may provide by general law for the selection or
22 appointment of special or emergency Superior Court Judges not selected for a particular
23 judicial district."

24 Sec. 3. Section 10 of Article IV of the Constitution of North Carolina reads as
25 rewritten:

26 "**Sec. 10.** District Courts.

27 The General Assembly shall, from time to time, divide the State into a convenient
28 number of local court districts and shall prescribe where the District Courts shall sit, but a
29 District Court must sit in at least one place in each county. ~~District Judges shall be elected~~
30 ~~for each district for a term of four years, in a manner prescribed by law.~~ When more than one
31 District Judge is authorized and ~~elected~~-selected for a district, the Chief Justice of the
32 Supreme Court shall designate one of the judges as Chief District Judge. Every District
33 Judge shall reside in the district for which he is ~~elected~~-selected. For each county, the
34 senior regular resident Judge of the Superior Court serving the county shall appoint for a
35 term of two years, from nominations submitted by the Clerk of the Superior Court of the
36 county, one or more Magistrates who shall be officers of the District Court. The number
37 of District Judges and Magistrates shall, from time to time, be determined by the General
38 Assembly. ~~Vacancies in the office of District Judge shall be filled for the unexpired term in a~~
39 ~~manner prescribed by law.~~ Vacancies in the office of Magistrate shall be filled for the
40 unexpired term in the manner provided for original appointment to the office."

41 Sec. 4. Section 19 of Article IV of the North Carolina Constitution is repealed.

42 Sec. 5. The amendments set out in Sections 1 through 4 of this act shall be
43 submitted to the qualified voters of the State at a statewide election on November 7,

1 1995, which election shall be conducted under the laws then governing elections in the
2 State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of
3 the General Statutes. The question to be used in the voting systems and ballots shall be:

4 **"[] FOR [] AGAINST**

5 Constitutional amendments to replace the present method of selecting justices
6 and judges by gubernatorial appointment, followed by partisan elections, with a method
7 by which justices and judges will be appointed by the Governor and then serve for
8 limited terms after which the question of the justice's or judge's retention in office is
9 regularly submitted for approval or disapproval by nonpartisan vote of the people at
10 general elections."

11 Sec. 6. If a majority of votes cast on the question are in favor of the
12 amendments set out in Sections 1 through 4 of this act, the State Board of Elections shall
13 certify the amendments to the Secretary of State. The amendments become effective
14 upon this certification. The Secretary of State shall enroll the amendments so certified
15 among the permanent records of that office.

16 Sec. 7. Notwithstanding G.S. 163-107(c), in 1996 only, if at the time filing of
17 notices for candidacy for the offices of Chief Justice of the Supreme Court, Justice of the
18 Supreme Court, Judge of the Court of Appeals, judge of superior court, or judge of
19 district court is to open under G.S. 163-106(c), the provisions of this act that provide that
20 those offices are no longer elective have not been approved under section 5 of the Voting
21 Rights Act of 1965, then notices of candidacy for that office shall not be filed with the
22 State Board of Elections earlier than the third Monday in January.

23 Sec. 8. This act is effective upon ratification.