

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 971

Judiciary I/Constitution Committee Substitute Adopted 5/9/95

Third Edition Engrossed 5/11/95

Short Title: Judicial Appt./Voter Retention.

(Public)

Sponsors:

Referred to: Appropriations

May 3, 1995

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CONSTITUTION OF NORTH CAROLINA TO PROVIDE FOR GUBERNATORIAL APPOINTMENT OF JUSTICES OF THE SUPREME COURT AND JUDGES OF THE COURT OF APPEALS 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 of the Supreme Court and judges of the Court of Appeals; election of judges of the Superior Court.~~

~~Justices of the Supreme Court, Judges of the Court of Appeals, and regular (1)~~ 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~~

1 State.—Regular Judges of the Superior Court may be elected by the qualified voters of the  
2 State or by the voters of their respective districts, as the General Assembly may prescribe.

3 (2) General principles. Justices and judges of the Appellate Division should be  
4 selected for and continue to hold office solely upon the basis of personal and professional  
5 fitness to administer right and justice wisely, according to law, and without favor, denial,  
6 or delay, to all persons who come into the courts. While their continuation in office  
7 should be periodically subject to approval by the people, both their initial selection and  
8 continuation in office should be free, so far as may be, from the influences and  
9 necessities of partisan political activity.

10 (3) Appointment, retention, and terms of justices and judges. On and after January  
11 1, 1996, when a vacancy occurs in the office of Chief Justice, the Governor shall fill the  
12 vacancy by appointing to the office an incumbent Associate Justice of the Supreme  
13 Court. On and after January 1, 1996, when a vacancy occurs in the office of Associate  
14 Justice or Judge of the Appellate Division, the Governor shall fill the vacancy by  
15 appointment. Such appointment by the Governor shall be subject to confirmation of the  
16 General Assembly by a majority vote of each chamber.

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

25 The regular term of office of the Chief Justice, Associate Justices, and Judges of the  
26 Appellate Division is eight years.

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

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

36 Voting on retention of the Chief Justice, Associate Justices, and Judges of the  
37 Appellate Division shall be by the qualified voters of the whole State.

38 (4) Transition provisions. The term of office of a person who has been elected  
39 before January 1, 1996, to the office of Chief Justice, Associate Justice or Judge of the  
40 Appellate Division for a term which extends beyond January 1, 1996, and who is in  
41 office on January 1, 1996, shall not be affected by the provisions of this section. If the  
42 person so elected continues to serve for the remainder of the term, that person may stand  
43 for retention in the office for a succeeding regular term as provided in this section. If the

1 person continues to serve for the remainder of the term but does not stand for retention, a  
2 vacancy is created in the office upon expiration of the term, and this vacancy shall be  
3 filled by appointment as provided in this section.

4 The term of office of a person who has been appointed before January 1, 1996, to the  
5 Office of Chief Justice, Associate Justice, Judge of the Appellate Division for a term  
6 which extends beyond January 1, 1996, and who is in office on January 1, 1996, shall end  
7 on the first day of January 1999. If the person continues to serve until the end of that  
8 term, a vacancy is created in the office upon expiration of the term, and this vacancy shall  
9 be filled by appointment as provided in this section.

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

13 Vacancies in judicial offices occurring before January 1, 1996, and not filled by that  
14 date, shall be filled by appointment as provided in this section.

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

19 Sec. 2. The amendment set out in Section 1 of this act shall be submitted to the  
20 qualified voters of the State at a statewide election on November 7, 1995, which election  
21 shall be conducted under the laws then governing elections in the State. Ballots, voting  
22 systems, or both may be used in accordance with Chapter 163 of the General Statutes.  
23 The question to be used in the voting systems and ballots shall be:

24 **"[ ] FOR [ ] AGAINST**

25 Constitutional amendment to replace the present method of selecting justices  
26 and judges of the Appellate Division by gubernatorial appointment, followed by partisan  
27 elections, with a method by which justices and judges of the Appellate Division will be  
28 appointed by the Governor and then serve for limited terms after which the question of  
29 the justice's or judge's retention in office is regularly submitted for approval or  
30 disapproval by nonpartisan vote of the people at general elections."

31 Sec. 3. If a majority of votes cast on the question are in favor of the  
32 amendment set out in Section 1 of this act, the State Board of Elections shall certify the  
33 amendment to the Secretary of State. The amendment becomes effective upon this  
34 certification. The Secretary of State shall enroll the amendment so certified among the  
35 permanent records of that office.

36 Sec. 4. Notwithstanding G.S. 163-107(c), in 1996 only, if at the time filing of  
37 notices for candidacy for the offices of Chief Justice of the Supreme Court, Justice of the  
38 Supreme Court, or Judge of the Court of Appeals, is to open under G.S. 163-106(c), the  
39 provisions of this act that provide that those offices are no longer elective have not been  
40 approved under section 5 of the Voting Rights Act of 1965, then notices of candidacy for  
41 that office shall not be filed with the State Board of Elections earlier than the third  
42 Monday in January.

1           Sec. 4.1. There is appropriated from the General Fund to the State Board of  
2 Elections for fiscal year 1995-96 the sum of one million three hundred thousand dollars  
3 (\$1,300,000) to reimburse the counties for the reasonable additional costs of conducting  
4 the election provided by Section 2 of this act.

5           Sec. 5. This act is effective upon ratification.