

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 218

Short Title: Appointed Judges.

(Public)

Sponsors: Senators Winner, Bryan and Daniel.

Referred to: Constitution.

February 21, 1989

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA CONSTITUTION TO PROVIDE FOR APPOINTMENT OF JUSTICES AND JUDGES BY THE GOVERNOR, WITH THE ADVICE AND CONSENT OF THE GENERAL ASSEMBLY, AND TO AUTHORIZE THE GENERAL ASSEMBLY TO PROVIDE FOR A PROCEDURE TO DETERMINE IF JUDGES SO APPOINTED SHOULD BE RETAINED IN OFFICE.

The General Assembly of North Carolina enacts:

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

"(1) Membership. The Supreme Court shall consist of a Chief Justice and six Associate Justices, but the General Assembly may increase the number of Associate Justices to not more than eight. The Governor shall nominate, and with the advice and consent of a majority of the Senate and of the House of Representatives, appoint the Chief Justice and the Associate Justices as provided by law. Justices appointed shall serve an initial term as provided by this Article and shall be eligible for subsequent terms pursuant to procedures and in a manner as shall be established by the General Assembly. In the event the Chief Justice is unable, on account of absence or temporary incapacity, to perform any of the duties placed upon him, the senior Associate Justice available may discharge these duties."

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

"Sec. 7. Court of Appeals.

1 The structure, organization, and composition of the Court of Appeals shall be
2 determined by the General Assembly. The Governor shall nominate, and with the
3 advice and consent of a majority of the Senate and of the House of Representatives,
4 appoint the Judges of the Court of Appeals as provided by law. Judges appointed shall
5 serve an initial term as provided in this Article and shall be eligible for subsequent
6 terms pursuant to procedures and in a manner as shall be established by the General
7 Assembly. The Court shall have not less than five members, and may be authorized to
8 sit in divisions, or other than en banc. Sessions of the Court shall be held at such times
9 and places as the General Assembly may prescribe."

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

12 "(1) Superior Court districts. The General Assembly shall, from time to time,
13 divide the State into a convenient number of Superior Court judicial districts and shall
14 provide for the ~~election~~appointment of one or more Superior Court Judges for each
15 district. The Governor shall nominate, and with the advice and consent of a majority of
16 the Senate and of the House of Representatives, appoint the regular Superior Court
17 Judges as provided by law. Judges appointed shall serve an initial term as provided in
18 this Article and shall be eligible for subsequent terms pursuant to procedures and in a
19 manner as shall be established by the General Assembly. Each regular Superior Court
20 Judge shall reside in the district for which he is ~~elected~~appointed. The General
21 Assembly may provide by general law for the selection or appointment of special or
22 emergency Superior Court Judges not selected for a particular judicial district."

23 Sec. 4. Section 10 of Article IV of the North Carolina Constitution reads as
24 rewritten:

25 "Sec. 10. District Courts.

26 The General Assembly shall, from time to time, divide the State into a convenient
27 number of local court districts and shall prescribe where the District Courts shall sit, but
28 a District Court must sit in at least one place in each county. District Judges shall be
29 ~~elected~~appointed for each district ~~for a term of four years, in a manner prescribed by law.~~
30 The Governor shall nominate, and with the advice and consent of a majority of the
31 Senate and of the House of Representatives, appoint District Judges as provided by law.
32 Judges appointed shall serve an initial term as provided in this Article and shall be
33 eligible for subsequent terms pursuant to procedures and in a manner as shall be
34 established by the General Assembly. When more than one District Judge is authorized
35 and ~~elected~~appointed for a district, the Chief Justice of the Supreme Court shall
36 designate one of the judges as Chief District Judge. Every District Judge shall reside in
37 the district for which he is ~~elected~~appointed. For each county, the senior regular
38 resident Judge of the Superior Court serving the county shall appoint for a term of two
39 years, from nominations submitted by the Clerk of the Superior Court of the county, one
40 or more Magistrates who shall be officers of the District Court. The number of District
41 Judges and Magistrates shall, from time to time, be determined by the General
42 Assembly. ~~Vacancies in the office of District Judge shall be filled for the unexpired term in a~~
43 ~~manner prescribed by law.~~ Vacancies in the office of Magistrate shall be filled for the
44 unexpired term in the manner provided for original appointment to the office."

1 Sec. 5. Section 16 of Article IV of the North Carolina Constitution reads as
2 rewritten:

3 "Sec. 16. ~~Terms of office and election of Justices of the Supreme Court, Judges of the~~
4 ~~Court of Appeals, and Judges of the Superior Court.~~ Court, and Judges of the District
5 Court.

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

13 The initial term of office for each person holding the office of Chief Justice of the
14 Supreme Court, Associate Justice of the Supreme Court, Judge of the Court of Appeals,
15 regular Judge of the Superior Court, and Judge of the District Court shall be four years,
16 and each subsequent term for that person in that office shall be eight years."

17 Sec. 6. Section 19 of Article IV of the North Carolina Constitution reads as
18 rewritten:

19 "Sec. 19. Vacancies.

20 ~~(1) Unless otherwise provided in this Article, all vacancies occurring in the offices provided~~
21 ~~for by this Article. Vacancies in the office of district attorney shall be filled by~~
22 ~~appointment of the Governor, and the appointees shall hold their places until the next~~
23 ~~election for members of the General Assembly that is held more than 60 days after the~~
24 ~~vacancy occurs, when elections shall be held to fill the offices. When the unexpired~~
25 ~~term of any of the offices named in this Article of the Constitution in which a vacancy has~~
26 ~~occurred, and in which it is herein provided that the Governor shall fill the vacancy, district~~
27 ~~attorney expires on the first day of January succeeding the next election for members of~~
28 ~~the General Assembly, the Governor shall appoint to fill that vacancy for the unexpired~~
29 ~~term of the office. If any person elected or appointed to any of these offices the office of~~
30 ~~district attorney or clerk of superior court shall fail to qualify, the office shall be~~
31 ~~appointed to, held and filled as provided in case of vacancies occurring therein. All~~
32 ~~incumbents of these offices shall hold until their successors are qualified.~~

33 ~~(2) Vacancies in the office of Chief Justice, Associate Justice, Judge of the Court~~
34 ~~of Appeals, Superior Court Judge, and District Judge may be filled by interim~~
35 ~~appointment of the Governor, subject to such limitation on the duration of the interim~~
36 ~~appointments as the General Assembly shall provide by general law. The General~~
37 ~~Assembly may by general law specify provisions contrary to those in Article VI,~~
38 ~~Section 10 to be applicable to Justices and Judges." ♦~~

39 Sec. 7. Article IV of the North Carolina Constitution is amended by adding a
40 new section to read:

41 "Sec. 23. Transition to appointment system.

42 Justices and Judges holding office on the effective date of amendments to this
43 Article deleting provisions requiring elections for Justices and Judges, and inserting in
44 their place provisions requiring appointment of Justices and Judges, shall continue in

1 office until the expiration of their terms. Those Justices and Judges, to remain in office
2 beyond the expiration of their terms, shall be subject to the reconfirmation or retention
3 procedures established by the General Assembly. The General Assembly may also
4 provide by the general law for the extension of terms of Justices and Judges if necessary
5 to an orderly transition to an appointive system of initial selection."

6 Sec. 8. The amendments set out in Sections 1 through 7 of this act shall be
7 submitted to the qualified voters of the State at a special election to be held on
8 November 7, 1989, which election shall be conducted under the laws then governing
9 elections in the State. At that election, each qualified voter desiring to vote shall be
10 provided a ballot on which shall be printed the following:

11 FOR Constitutional amendments to provide for appointment of judges
12 by the Governor, subject to the advice and consent of the General
13 Assembly for initial terms of four years, followed by subsequent terms
14 of eight years pursuant to a reconfirmation procedure to be determined
15 by the General Assembly.

16 AGAINST Constitutional amendments to provide for appointment of
17 judges by the Governor, subject to the advice and consent of the
18 General Assembly for initial terms of four years, followed by
19 subsequent terms of eight years pursuant to a reconfirmation procedure
20 to be determined by the General Assembly.

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

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

28 Sec. 9. If a majority of votes cast thereon are in favor of the amendments set
29 out in Sections 1 through 7 of this act, the State Board of Elections shall certify the
30 amendments to the Secretary of State, who shall enroll the amendments so certified
31 among the permanent records of his office, and the amendments shall become effective
32 January 15, 1990.

33 Sec. 10. This act is effective upon ratification.