

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 218
Constitution Committee Substitute Adopted 4/19/89

Short Title: Appointed Judges.

(Public)

Sponsors:

Referred to:

February 21, 1989

A BILL TO BE ENTITLED

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

8
9 The General Assembly of North Carolina enacts:

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

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

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

1 "Sec. 7. Court of Appeals.

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

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

13 "(1) Superior Court Judges and districts. The General Assembly shall, from
14 time to time, divide the State into a convenient number of Superior Court judicial
15 districts and shall provide for the election of one or more Superior Court Judges for
16 each district. Judges of the Superior Court shall be elected by the qualified voters and
17 shall hold office for terms of eight years and until their successors are elected and
18 qualified. Regular Judges of the Superior Court may be elected by the qualified voters
19 of the State or by the voters of their respective districts, as the General Assembly may
20 prescribe. Each regular Superior Court Judge shall reside in the district for which he is
21 elected. 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. 4. Section 16 of Article IV of the North Carolina Constitution reads as
25 rewritten:

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

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

35 The initial term of office for each person holding the office of Chief Justice of the
36 Supreme Court, Associate Justice of the Supreme Court, and Judge of the Court of
37 Appeals shall be four years, and each subsequent term for that person in that office shall
38 be eight years."

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

41 "Sec. 19. Vacancies.

42 (1) Unless otherwise provided in this Article, all vacancies occurring in the offices
43 provided for by this Article shall be filled by appointment of the Governor, and the
44 appointees shall hold their places until the next election for members of the General

1 Assembly that is held more than 60 days after the vacancy occurs, when elections shall
2 be held to fill the offices. When the unexpired term of any of the offices named in this
3 Article of the Constitution in which a vacancy has occurred, and in which it is herein
4 provided that the Governor shall fill the vacancy, expires on the first day of January
5 succeeding the next election for members of the General Assembly, the Governor shall
6 appoint to fill that vacancy for the unexpired term of the office. If any person elected or
7 appointed to any of these offices shall fail to qualify, the office shall be appointed to,
8 held and filled as provided in case of vacancies occurring therein. All incumbents of
9 these offices shall hold until their successors are qualified.

10 (2) Vacancies in the office of Chief Justice, Associate Justice, or Judge of the
11 Court of Appeals may be filled by interim appointment of the Governor, subject to such
12 limitation on the duration of the interim appointments as the General Assembly shall
13 provide by general law. The General Assembly may by general law specify provisions
14 contrary to those in Article VI, Section 10 to be applicable to Justices and Judges.

15 (3) The General Assembly may require the Governor, in making appointments
16 pursuant to this Section, or pursuant to Sections 6, 7, or 24 of this Article, to make his
17 appointments from nominations submitted pursuant to procedures and in a manner
18 prescribed by law."

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

21 "Sec. 23. Transition to appointment system.

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

31 Sec. 7. Article IV of the North Carolina Constitution is amended by adding a
32 new section at the end to read:

33 "Sec. 24. Alternative method of selection of trial judges.

34 (1) Notwithstanding the provisions of Sections 9, 10, and 19 of this Article, the
35 General Assembly may prescribe by law that the Governor shall nominate, and with the
36 advice and consent of a majority of the Senate and of the House of Representatives,
37 appoint Superior Court and District Court Judges. Judges so appointed shall reside in
38 the districts for which they are appointed. The General Assembly, in exercising its
39 power under this Section, may provide that only Judges in one of the trial divisions of
40 the General Court of Justice shall be appointed. The initial term of office for Judges so
41 appointed shall be four years, and each subsequent term of office for that person in that
42 office shall be eight years. Judges appointed shall be eligible for subsequent terms
43 pursuant to procedures and in a manner as shall be established by the General
44 Assembly. If the General Assembly determines, pursuant to this Section, that Superior

1 Court Judges or District Court Judges, or both, shall be appointed, vacancies in those
2 offices may be filled by interim appointment of the Governor, subject to such
3 limitations on the duration of the interim appointments as the General Assembly shall
4 provide by general law. The General Assembly may by law specify provisions contrary
5 to those in Article VI, Section 10 to be applicable to Judges so appointed.

6 (2) If the General Assembly determines pursuant to this Section that Superior
7 Court Judges or District Court Judges, or both, shall be appointed, or if it determines
8 pursuant to this Section that those Judges shall be elected instead of appointed, Judges
9 holding office on the effective date of the change shall be eligible to continue in office
10 until the expiration of their terms. To continue in office beyond the expiration of their
11 terms, those Judges shall be subject to the retention or election procedures applicable to
12 Judges in their division of the General Court of Justice. The General Assembly may also
13 provide for the extension of terms of Superior Court and District Court Judges if
14 necessary for an orderly transition to a different system of selection of Superior Court
15 and Court Judges."

16 Sec. 8. The amendments set out in Sections 1 through 7 of this act shall be
17 submitted to the qualified voters of the State at the general election to be held in
18 November of 1990, which election shall be conducted under the laws then governing
19 elections in the State. At that election, each qualified voter desiring to vote shall be
20 provided a ballot on which shall be printed the following:

21 "[] FOR Constitutional amendments to provide for appointment of
22 appellate judges by the Governor, subject to the advice and consent of
23 the General Assembly for initial terms of four years, followed by
24 subsequent terms of eight years pursuant to a reconfirmation procedure
25 to be determined by the General Assembly, and to authorize the
26 General Assembly to provide for a similar appointment system for
27 selection of trial judges.

28 [] AGAINST Constitutional amendments to provide for appointment of
29 appellate judges by the Governor, subject to the advice and consent of
30 the General Assembly for initial terms of four years, followed by
31 subsequent terms of eight years pursuant to a reconfirmation procedure
32 to be determined by the General Assembly, and to authorize the
33 General Assembly to provide for a similar appointment system for
34 selection of trial judges."

35 Those qualified voters favoring the amendments set out in Sections 1 through
36 7 of this act shall vote by making an "X" or check mark in the square beside the
37 statement beginning "FOR", and those qualified voters opposed to that amendment shall
38 vote by marking an "X" or check mark in the square beside the statement beginning
39 "AGAINST".

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

43 Sec. 9. If a majority of votes cast thereon are in favor of the amendments set
44 out in Sections 1 through 7 of this act, the State Board of Elections shall certify the

1 amendments to the Secretary of State, who shall enroll the amendments so certified
2 among the permanent records of his office, and the amendments shall become effective
3 January 15, 1991.

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