

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.

3 The Court of Appeals shall sit in panels of three judges each. The Chief Judge  
4 insofar as practicable shall assign the members to panels in such fashion that each  
5 member sits a substantially equal number of times with each other member. He shall  
6 preside over the panel of which he is a member, and shall designate the presiding judge  
7 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:

26 '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.

33 Signed

34 Name of candidate

35 Witness:

36 .....

37 .....

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:

Office Sought	Amount of Filing Fee
Governor	One percent (1%) of the annual salary of the office
Lieutenant Governor	sought
One percent (1%) of the annual	All State executive offices
salary of the office	sought
One percent (1%) of the annual	salary of the office
salary of the office	sought
<u>All Justices, Judges, and</u>	
<u>Superior and District</u>	One percent (1%) of the
<u>Court Judges and District</u>	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~~  
9 ~~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,

1 United States Senators,  
2 Members of the United States House of Representatives,  
3 State Senators in multi-county senatorial districts, and  
4 Members of the State House of Representatives in multi-county  
5 representative districts.

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

14 State Senators in single-county senatorial districts,  
15 Members of the State House of Representatives in single-  
16 county representative districts, and  
17 All county officers.

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

23 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:

- 26 (1) Ballot for presidential electors  
27 (2) Ballot for United States Senator  
28 (3) Ballot for member of the United States House of Representatives  
29 (4) State ballot  
30 (5) County ballot  
31 (7) Ballot for constitutional amendments and other propositions submitted  
32 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.

39 Unless prohibited by this section, the board of elections, State or county, charged by  
40 law with printing ballots may, in its discretion, combine any two or more official  
41 ballots. Whenever two or more ballots are combined, the voting instructions for the  
42 State ballot set out in subsection (b)(4) of this section shall be used, except that if the  
43 two ballots being combined do not contain a multi-seat race, then the second sentence of  
44 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.