

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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1

HOUSE BILL 21

Short Title: Appellate Judge Selection.

(Public)

Sponsors: Representative Michaux.

Referred to: Judiciary I.

January 26, 1995

A BILL TO BE ENTITLED

1 AN ACT TO AMEND THE NORTH CAROLINA CONSTITUTION TO PROVIDE
2 FOR THE APPOINTMENT OF APPELLATE JUSTICES AND JUDGES BY THE
3 GOVERNOR, WITH THE ADVICE AND CONSENT OF THE GENERAL
4 ASSEMBLY.

5 The General Assembly of North Carolina enacts:

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

8 "(1) **Membership.** The Supreme Court shall consist of a Chief Justice and six
9 Associate Justices, but the General Assembly may increase the number of Associate
10 Justices to not more than eight. The Governor shall nominate, and with the advice and
11 consent of a majority of the Senate and of the House of Representatives present and
12 voting, appoint the Chief Justice and the Associate Justices. The General Assembly
13 may by law permit persons nominated to serve pending appointment, and it may permit
14 persons appointed to serve pending the beginning of their initial term. In the event the
15 Chief Justice is unable, on account of absence or temporary incapacity, to perform any
16 of the duties placed upon him, the senior Associate Justice available may discharge
17 these duties."
18

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

21 **"Sec. 7. Court of Appeals.**

22 The structure, organization, and composition of the Court of Appeals shall be
23 determined by the General Assembly. The Governor shall nominate, and with the
24 advice and consent of a majority of the Senate and of the House of Representatives

1 present and voting, appoint the Judges of the Court of Appeals. The General Assembly
2 may by law permit persons nominated to serve pending appointment, and it may permit
3 persons appointed to serve pending the beginning of their initial term. The Court shall
4 have not less than five members, and may be authorized to sit in divisions, or other than
5 en banc. Sessions of the Court shall be held at such times and places as the General
6 Assembly may prescribe."

7 Sec. 3. Section 16 of Article IV of the North Carolina Constitution reads as
8 rewritten:

9 "Sec. 16. Terms of office and ~~election~~ selection of Justices of the Supreme Court,
10 Judges of the Court of Appeals, and Judges of the Superior Court.

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

17 Justices of the Supreme Court and Judges of the Court of Appeals shall be appointed
18 as provided by this Article and shall hold office for terms of eight years and until their
19 successors are elected and qualified."

20 Sec. 4. Section 19 of Article IV of the North Carolina Constitution reads as
21 rewritten:

22 "Sec. 19. Vacancies.

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

37 ~~(2)~~ When a vacancy occurs in the office of Chief Justice or Associate Justice of
38 the Supreme Court, or Judge of the Court of Appeals, the Governor shall nominate, and
39 with the advice and consent of a majority of those present and voting of the Senate and
40 of the House of Representatives, appoint a person to fill the unexpired term of the
41 office. The General Assembly may authorize by law interim appointment by the
42 Governor without the advice and consent of the General Assembly, subject to such
43 limitation on the duration of the interim appointment as the General Assembly shall
44 provide by general law." ♦

1 Sec. 5. Article IV of the North Carolina Constitution is amended by adding a
2 new section to read:

3 "Sec. 23. Transition to appointment system.

4 Justices of the Supreme Court and Judges of the Court of Appeals holding office on
5 the effective date of amendments to this Article deleting provisions requiring elections
6 for Justices and Judges, and inserting in their place provisions requiring appointment of
7 Justices and Judges, shall continue in office until the expiration of their terms. The
8 General Assembly may also provide by general law for the extension of terms of such
9 Justices and Judges if necessary to an orderly transition to an appointive system of
10 initial selection."

11 Sec. 6. The amendments set out in Sections 1 through 5 of this act shall be
12 submitted to the qualified voters of the State at a statewide election on November 7,
13 1995, which election shall be conducted under the laws then governing elections in the
14 State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of
15 the General Statutes. The question to be used in the voting systems and ballots shall be:

16 **"[] FOR [] AGAINST**

17 Constitutional amendments to change from election to appointment of
18 appellate judges by the Governor, subject to the advice and consent of the General
19 Assembly, for terms of eight years".

20 Sec. 7. If a majority of votes cast on the question are in favor of the
21 amendments set out in Sections 1 through 5 of this act, the State Board of Elections
22 shall certify the amendments to the Secretary of State. The amendments become
23 effective upon this certification. The Secretary of State shall enroll the amendments so
24 certified among the permanent records of that office.

25 Sec. 8. Notwithstanding G.S. 163-107(c), in 1996 only, if at the time filing of
26 notices for candidacy for the offices of Chief Justice of the Supreme Court, Justice of
27 the Supreme Court, or Judge of the Court of Appeals is to open under G.S. 163-106(c),
28 the provisions of this act that provide that those offices are no longer elective have not
29 been approved under Section 5 of the Voting Rights Act of 1965, then notices of
30 candidacy for that office shall not be filed with the State Board of Elections earlier than
31 the third Monday in January.

32 Sec. 9. This act is effective upon ratification.