

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1033

Short Title: Appellate Judge Elections.

(Public)

Sponsors: Representative Culpepper.

Referred to: Judiciary IV.

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE INITIAL ELECTION OF AN APPELLATE JUDGE SHALL CONTINUE AS CURRENT, BUT SUBSEQUENT ELECTIONS FOR THAT JUSTICE OR JUDGE TO THE SAME OFFICE SHALL BE BY NONPARTISAN RETENTION ELECTION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 7A of the General Statutes is amended by adding a new Article to read:

“ARTICLE 1A.

“RETENTION ELECTIONS.

“§ 7A-4.1. Retention elections.

(a) If the Chief Justice or an Associate Justice of the Supreme Court or a Judge of the Court of Appeals was appointed to that office, then the next election for that office shall be by partisan ballot as otherwise provided by this Chapter and Chapter 163 of the General Statutes.

(b) A Chief Justice or Associate Justice of the Supreme Court or Judge of the Court of Appeals who was elected to that office at the most recent election, whether by partisan election or by retention election, who desires to continue in office shall be subject to approval by nonpartisan ballot at the general election immediately preceding the expiration of the term, by a majority of votes cast on the issue of the justice's or

1 judge's retention. Voting in a retention election on the Chief Justice, Associate Justices,
2 and Judges of the Appellate Division shall be the qualified voters of the whole State.

3 (c) A person subject to subsection (b) of this section shall indicate the desire to
4 continue in office by filing a notice to that effect with the State Board of Elections no
5 later than 12:00 noon on the first business day of July in the year prior to the election.
6 The notice shall be on a form approved by the State Board of Elections. Notice can be
7 withdrawn at any time prior to December 15 of that year. If no retention notice is filed,
8 or if it is filed and timely withdrawn, then a partisan election shall be held the next year
9 to elect a successor.

10 (d) Retention elections shall be conducted and canvassed in accordance with rules
11 of the State Board of Elections in the same general manner as general elections under
12 Chapter 163 of the General Statutes, except that the retention election is nonpartisan. The
13 form of the ballot shall be determined by the State Board of Elections.

14 (e) Retention elections shall be placed at the top of the ballot above all other
15 elections or matters for decision, whether partisan, nonpartisan, or otherwise.

16 (f) If a person who has filed a notice calling a retention election dies or is removed
17 from office prior to the time that the ballots are printed, the retention election is
18 cancelled. If a person who has filed a notice calling a retention election dies or is
19 removed from office after the ballots are printed, the State Board of Elections may cancel
20 the election if it determines that the ballots can be reprinted without significant expense.
21 If the ballots cannot be reprinted, then the results of the election shall be ineffective.

22 **"§ 7A-4.2. Failure to retain.**

23 If the voters fail to approve the retention in office of a Chief Justice, Associate
24 Justice, or Judge of the Appellate Division, the office shall become vacant at the end of
25 the term of office, the incumbent shall not hold over, and it shall be filled by appointment
26 as provided by law until the next general election when a successor shall be elected for a
27 full term as provided by G.S. 163-9.

28 **"§ 7A-4.3. Governor to issue commissions to justices and judges.**

29 When a judge is retained in office by vote of the people, the Governor shall issue a
30 commission attesting that fact, which the Governor shall issue upon receipt of a
31 certification by the Secretary of State of the results of the election."

32 Section 2. G.S. 163-140(a) reads as rewritten:

33 "(a) Kinds of General Election Ballots; Right to Combine. – For purposes of
34 general elections, there shall be seven kinds of official ballots entitled:

- 35 (1) Ballot for presidential electors
- 36 (2) Ballot for United States Senator
- 37 (3) Ballot for member of the United States House of Representatives
- 38 (4) State ballot
- 39 (5) County ballot
- 40 (6) Repealed by Session Laws 1973, c. 793, s. 56
- 41 (7) Ballot for constitutional amendments and other propositions submitted
42 to the people
- 43 (8) Judicial ballot for superior court.

1 Use of official ballots shall be limited to the purposes indicated by their titles. The
2 printing on all ballots shall be plain and legible but, unless large type is specified by this
3 section, type larger than 10-point shall not be used in printing ballots. All general election
4 ballots shall be prepared in such a way as to leave sufficient blank space beneath each
5 name printed thereon in which a voter may conveniently write the name of any person for
6 whom he may desire to vote.

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

13 Contests in the general election for seats in the State House of Representatives and
14 State Senate shall be on ballots that are separate from ballots containing non-legislative
15 contests, except where the voting system used makes separation of ballots impractical.
16 State House and State Senate contests shall be on the same ballot, unless one is a single-
17 seat contest and the other a multi-seat contest.

18 All candidates in a partisan election for the Appellate Division shall appear on the
19 same ballot.”

20 Section 3. G.S. 7A-10(a) reads as rewritten:

21 "(a) The Supreme Court shall consist of a Chief Justice and six associate justices,
22 ~~elected by the qualified voters of the State for terms of eight years.~~ elected as provided by
23 Article 1A of this Chapter. Before entering upon the duties of his office, each justice shall
24 take an oath of office. Four justices shall constitute a quorum for the transaction of the
25 business of the court. Sessions of the court shall be held in the city of Raleigh, and
26 scheduled by rule of court so as to discharge expeditiously the court's business."

27 Section 4. G.S. 7A-16 reads as rewritten:

28 **"§ 7A-16. Creation and organization.**

29 ~~The Court of Appeals is created effective January 1, 1967. It shall consist initially of~~
30 ~~six judges, elected by the qualified voters of the State for terms of eight years. The Chief~~
31 ~~Justice of the Supreme Court shall designate one of the judges as Chief Judge, to serve in~~
32 ~~such capacity at the pleasure of the Chief Justice. Before entering upon the duties of his~~
33 ~~office, a judge of the Court of Appeals shall take the oath of office prescribed for a judge~~
34 ~~of the General Court of Justice.~~

35 ~~The Governor on or after July 1, 1967, shall make temporary appointments to the six~~
36 ~~initial judgeships. The appointees shall serve until January 1, 1969. Their successors shall~~
37 ~~be elected at the general election for members of the General Assembly in November,~~
38 ~~1968, and shall take office on January 1, 1969, to serve for the remainder of the~~
39 ~~unexpired term which began on January 1, 1967.~~

40 ~~Upon the appointment of at least five judges, and the designation of a Chief Judge, the~~
41 ~~court is authorized to convene, organize, and promulgate, subject to the approval of the~~
42 ~~Supreme Court, such supplementary rules as it deems necessary and appropriate for the~~
43 ~~discharge of the judicial business lawfully assigned to it.~~

1 ~~Effective January 1, 1969, the number of judges is increased to nine, and the~~
 2 ~~Governor, on or after March 1, 1969, shall make temporary appointments to the~~
 3 ~~additional judgeships thus created. The appointees shall serve until January 1, 1971.~~
 4 ~~Their successors shall be elected at the general election for members of the General~~
 5 ~~Assembly in November, 1970, and shall take office on January 1, 1971, to serve for the~~
 6 ~~remainder of the unexpired term which began on January 1, 1969.~~

7 ~~Effective January 1, 1977, the number of judges is increased to 12; and the Governor,~~
 8 ~~on or after July 1, 1977, shall make temporary appointments to the additional judgeships~~
 9 ~~thus created. The appointees shall serve until January 1, 1979. Their successors shall be~~
 10 ~~elected at the general election for members of the General Assembly in November, 1978,~~
 11 ~~and shall take office on January 1, 1979, to serve the remainder of the unexpired term~~
 12 ~~which began on January 1, 1977.~~

13 The Court of Appeals shall consist of 12 judges, elected as provided in Article 1A of
 14 this Chapter. The Chief Justice of the Supreme Court shall designate one of the judges as
 15 Chief Judge to serve in such capacity at the pleasure of the Chief Justice. Before entering
 16 upon the duties of his office, a judge of the Court of Appeals shall take the oath of office
 17 prescribed for a judge of the General Court of Justice.

18 The Court of Appeals shall sit in panels of three judges each. The Chief Judge insofar
 19 as practicable shall assign the members to panels in such fashion that each member sits a
 20 substantially equal number of times with each other member. He shall preside over the
 21 panel of which he is a member, and shall designate the presiding judge of the other panel
 22 or panels.

23 Three judges shall constitute a quorum for the transaction of the business of the court,
 24 except as may be provided in G.S. 7A-32.

25 In the event the Chief Judge is unable, on account of absence or temporary incapacity,
 26 to perform the duties placed upon him as Chief Judge, the Chief Justice shall appoint an
 27 acting Chief Judge from the other judges of the Court, to temporarily discharge the duties
 28 of Chief Judge."

29 Section 5. G.S. 163-107(a) reads as rewritten:

30 "(a) Fee Schedule. – At the time of filing a notice of ~~candidacy~~ candidacy,
 31 including candidacy for retention election under G.S. 7A-4.1, each candidate shall pay to
 32 the board of elections with which he files under the provisions of G.S. 163-106 a filing
 33 fee for the office he seeks in the amount specified in the following tabulation:

Office Sought	Amount of Filing Fee
Governor	One percent (1%) of the annual salary of the office sought
Lieutenant Governor	One percent (1%) of the annual salary of the office sought
All State executive offices	One percent (1%) of the annual salary of the office sought
All Justices, Judges, and District Attorneys of the	One percent (1%) of the annual salary of the office sought

1	General Court of Justice	
2	other than superior court judge	
3	United States Senator	One percent (1%) of the annual
4		salary of the office sought
5	Members of the United States	One percent (1%) of the annual
6	House of Representatives	salary of the office sought
7	State Senator	One percent (1%) of the annual
8		salary of the office sought
9	Member of the State House of	One percent (1%) of the annual
10	Representatives	salary of the office sought
11	All county offices not	One percent (1%) of the annual
12	compensated by fees	salary of the office sought
13	County commissioners, if	Ten dollars (\$10.00)
14	compensated entirely by fees	
15	Members of county board of	Five dollars (\$5.00)
16	education, if compensated	
17	entirely by fees	
18	Sheriff, if compensated	Forty dollars (\$40.00), plus one
19	entirely by fees	percent (1%) of the income of the
20		office above four thousand
21		dollars (\$4,000)
22	Clerk of superior court, if	Forty dollars (\$40.00), plus one
23	compensated entirely by fees	percent (1%) of the income of the
24		office above four thousand
25		dollars (\$4,000)
26	Register of deeds, if	Forty dollars (\$40.00), plus one
27	compensated entirely by fees	percent (1%) of the income of the
28		office above four thousand
29		dollars (\$4,000)
30	Any other county office, if	Twenty dollars (\$20.00), plus one
31	compensated entirely by fees	percent (1%) of the income of the
32		office above two thousand dollars
33		(\$2,000)
34	All county offices compensated	One percent (1%) of the first
35	partly by salary and partly	annual salary to be received
36	by fees (exclusive of fees)."Section 6. This act is effective when it becomes law.	