

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 1454

Short Title: Superior Court Judge Elections.

(Public)

Sponsors: Representatives Wainwright; and Faison.

Referred to: Election Law and Campaign Finance Reform, if favorable, Judiciary II.

April 16, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT EACH SUPERIOR COURT JUDGESHIP SHALL BE ELECTED SEPARATELY, AS IS ALREADY PROVIDED FOR THE APPELLATE DIVISION AND DISTRICT COURT, AND THAT VACANCIES SHALL BE FILLED AT THE NEXT ELECTION FOR A FULL EIGHT-YEAR TERM AS IS ALREADY PROVIDED FOR THE APPELLATE DIVISION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S 163-9 reads as rewritten:

"§ 163-9. Filling vacancies in State and district judicial offices.

(a) Vacancies occurring in the offices of Justice of the Supreme Court, judge of the Court of Appeals, and judge of the superior court for causes other than expiration of term shall be filled by appointment of the Governor. An appointee to ~~the office of Justice of the Supreme Court or judge of the Court of Appeals~~ any of those offices shall hold office until January 1 next following the election for members of the General Assembly that is held more than 60 days after the vacancy occurs, at which time an election shall be held for an eight-year term and until a successor is elected and qualified.

~~(b) Except for judges specified in the next paragraph of this subsection, an appointee to the office of judge of superior court shall hold his place until the next election for members of the General Assembly that is held more than 60 days after the vacancy occurs, at which time an election shall be held to fill the unexpired term of the office.~~

~~Appointees for judges of the superior court from any district:~~

~~(1) With only one resident judge; or~~

~~(2) In which no county is subject to section 5 of the Voting Rights Act of 1965,~~

~~shall hold the office until the next election of members of the General Assembly that is held more than 60 days after the vacancy occurs, at which time an election shall be held to fill an eight-year term.~~

1 (c) When the unexpired term of the office in which the vacancy has occurred
 2 expires on the first day of January succeeding the next election for members of the
 3 General Assembly, the Governor shall appoint to fill that vacancy for the unexpired
 4 term of the office.

5 (d) Vacancies in the office of district judge which occur before the expiration of
 6 a term shall not be filled by election. Vacancies in the office of district judge shall be
 7 filled in accordance with G.S. 7A-142."

8 **SECTION 2.** G.S. 163-322 reads as rewritten:

9 **"§ 163-322. Nonpartisan primary election method.**

10 (a) General. – Except as provided in G.S. 163-329, there shall be a primary to
 11 narrow the field of candidates to two candidates for each position to be filled if, when
 12 the filing period closes, there are more than two candidates for a single office ~~or the~~
 13 ~~number of candidates for a group of offices exceeds twice the number of positions to be~~
 14 ~~filled.~~ office. If only one or two candidates file for a single office, no primary shall be
 15 held for that office and the candidates shall be declared nominated. ~~If the number of~~
 16 ~~candidates for a group of offices does not exceed twice the number of positions to be~~
 17 ~~filled, no primary shall be held for those offices and the candidates shall be declared~~
 18 ~~nominated.~~

19 (b) Determination of Nominees. – In the primary, the two candidates for a single
 20 office receiving the highest number of votes, ~~and those candidates for a group of offices~~
 21 ~~receiving the highest number of votes, equal to twice the number of positions to be~~
 22 ~~filled,~~ votes shall be declared nominated. If two or more candidates receiving the
 23 highest number of votes each receive the same number of votes, the State Board of
 24 Elections shall determine their relative ranking by lot, and shall declare the nominees
 25 accordingly. The canvass of the primary shall be held on the same date as the primary
 26 canvass fixed under G.S. 163-182.5. The canvass shall be conducted in accordance with
 27 Article 15A of this Chapter.

28 (c) Determination of Election Winners. – In the election, the names of those
 29 candidates declared nominated without a primary and those candidates nominated in the
 30 primary shall be placed on the ballot. The candidate for a single office receiving the
 31 highest number of votes shall be elected. ~~Those candidates for a group of offices~~
 32 ~~receiving the highest number of votes, equal in number to the number of positions to be~~
 33 ~~filled, shall be elected.~~ If two candidates receiving the highest number of votes each
 34 received the same number of votes, the State Board of Elections shall determine the
 35 winner by lot."

36 **SECTION 3.** G.S. 163-323 reads as rewritten:

37 **"§ 163-323. Notice of candidacy.**

38 (a) Form of Notice. – Each person offering to be a candidate for election shall do
 39 so by filing a notice of candidacy with the State Board of Elections in the following
 40 form, inserting the words in parentheses when appropriate:

41 Date _____

42 I hereby file notice that I am a candidate for election to the office of
 43 _____ in the regular election to be held _____, _____.

44 Signed _____

(Name of Candidate)

1
2 Witness: _____

3 The notice of candidacy shall be either signed in the presence of the chairman or
4 secretary of the State Board of Elections, or signed and acknowledged before an officer
5 authorized to take acknowledgments who shall certify the notice under seal. An
6 acknowledged and certified notice may be mailed to the State Board of Elections. In
7 signing a notice of candidacy, the candidate shall use only the candidate's legal name
8 and, in his discretion, any nickname by which commonly known. A candidate may also,
9 in lieu of that candidate's first name and legal middle initial or middle name, if any, sign
10 that candidate's nickname, provided the candidate appends to the notice of candidacy an
11 affidavit that the candidate has been commonly known by that nickname for at least five
12 years prior to the date of making the affidavit. The candidate shall also include with the
13 affidavit the way the candidate's name (as permitted by law) should be listed on the
14 ballot if another candidate with the same last name files a notice of candidacy for that
15 office.

16 A notice of candidacy signed by an agent or any person other than the candidate
17 himself shall be invalid.

18 (b) Time for Filing Notice of Candidacy. – Candidates seeking election to the
19 following offices shall file their notice of candidacy with the State Board of Elections
20 no earlier than 12:00 noon on the second Monday in February and no later than 12:00
21 noon on the last business day in February preceding the election:

22 Justices of the Supreme Court.

23 Judges of the Court of Appeals.

24 Judges of the superior courts.

25 Judges of the district courts.

26 (c) Withdrawal of Notice of Candidacy. – Any person who has filed a notice of
27 candidacy for an office shall have the right to withdraw it at any time prior to the date
28 on which the right to file for that office expires under the terms of subsection (b) of this
29 section.

30 (d) Certificate That Candidate Is Registered Voter. – Candidates shall file along
31 with their notice a certificate signed by the chairman of the board of elections or the
32 director of elections of the county in which they are registered to vote, stating that the
33 person is registered to vote in that county, and if the candidacy is for superior court
34 judge and the county contains more than one superior court district, stating the superior
35 court district of which the person is a resident. In issuing such certificate, the chairman
36 or director shall check the registration records of the county to verify such information.
37 During the period commencing 36 hours immediately preceding the filing deadline, the
38 State Board of Elections shall accept, on a conditional basis, the notice of candidacy of
39 a candidate who has failed to secure the verification ordered herein subject to receipt of
40 verification no later than three days following the filing deadline. The State Board of
41 Elections shall prescribe the form for such certificate, and distribute it to each county
42 board of elections no later than the last Monday in December of each odd-numbered
43 year.

1 (e) Candidacy for More Than One Office Prohibited. – No person may file a
2 notice of candidacy for more than one office ~~or group of offices~~ described in subsection
3 (b) of this section, or for an office ~~or group of offices~~ described in subsection (b) of this
4 section and an office described in G.S. 163-106(c), for any one election. If a person has
5 filed a notice of candidacy with a board of elections under this section or under
6 G.S. 163-106(c) for one ~~office or group of offices~~, office, then a notice of candidacy
7 may not later be filed for any other office ~~or group of offices~~ under this section when
8 the election is on the same date unless the notice of candidacy for the first office is
9 withdrawn under subsection (c) of this section.

10 (f) Notice of Candidacy ~~for Certain Offices~~ to Indicate Vacancy. – In any
11 election in which there are two or more vacancies for the office of justice of the
12 Supreme Court, judge of the Court of Appeals, superior court judge, or district court
13 judge to be filled by nominations, each candidate shall, at the time of filing notice of
14 candidacy, file with the State Board of Elections a written statement designating the
15 vacancy to which the candidate seeks election. Votes cast for a candidate shall be
16 effective only for election to the vacancy for which the candidate has given notice of
17 candidacy as provided in this subsection.

18 A person seeking election for a specialized district judgeship established under
19 G.S. 7A-147 shall, at the time of filing notice of candidacy, file with the State Board of
20 Elections a written statement designating the specialized judgeship to which the person
21 seeks nomination.

22 (g) No person may file a notice of candidacy for superior court judge unless that
23 person is at the time of filing the notice of candidacy a resident of the judicial district as
24 it will exist at the time the person would take office if elected. No person may be
25 nominated as a superior court judge under G.S. 163-114 unless that person is at the time
26 of nomination a resident of the judicial district as it will exist at the time the person
27 would take office if elected. This subsection implements Article IV, Section 9(1) of the
28 North Carolina Constitution which requires regular Superior Court Judges to reside in
29 the district for which elected."

30 **SECTION 4.** G.S. 163-327.1 reads as rewritten:

31 **"§ 163-327.1. Rules when vacancies for superior court judge are to be voted on.**

32 If a vacancy occurs in a judicial district for any offices of superior court judge, and
33 on account of the occurrence of such vacancy, there is to be an election for one or more
34 terms in that district to fill the vacancy or vacancies, at that same election in accordance
35 with G.S. 163-9 and Article IV, Section 19 of the North Carolina Constitution, the
36 nomination and election shall be determined by the following special rules in addition to
37 any other provisions of law:

38 (1) If the vacancy occurs prior to the opening of the filing period under
39 G.S. 163-323(b), nominations shall be made by primary election as
40 provided by this ~~Article, without designation as to the vacancy.~~
41 Article.

42 (2) If the vacancy occurs beginning on opening of the filing period under
43 G.S. 163-323(b), and ending on the sixtieth day before the general

1 election, candidate filing shall be as provided by ~~G.S. 163-329 without~~
2 ~~designation as to the vacancy, by G.S. 163-329.~~

- 3 (3) The general election ballot shall ~~contain, without designation as to~~
4 ~~vacancy,~~ contain spaces for the election to fill the vacancy where
5 nominations were made or candidates filed under subdivision (1) or (2)
6 of this section. Except as provided in G.S. 163-329, the ~~persons~~ person
7 receiving the highest ~~numbers~~ number of votes for each seat equal to
8 ~~the term or terms to be filled shall be elected to the term or terms."~~

9 **SECTION 5.** G.S. 163-328 reads as rewritten:

10 **"§ 163-328. Failure of candidates to file; death or other disqualification of a**
11 **candidate; no withdrawal from candidacy.**

12 (a) Insufficient Number of Candidates. – If when the filing period expires,
13 candidates have not filed for an office to be filled under this Article, the State Board of
14 Elections shall extend the filing period for five days for any such offices.

15 (a1) Death or Disqualification of Candidate Before Primary. – If a candidate for
16 nomination in a primary dies or becomes disqualified before the primary but after the
17 ballots have been printed, the State Board of Elections shall determine whether or not
18 there is time to reprint the ballots. If the Board determines that there is not enough time
19 to reprint the ballots, the deceased or disqualified candidate's name shall remain on the
20 ballots. If that candidate receives enough votes for nomination, such votes shall be
21 disregarded and the candidate receiving the next highest number of votes below the
22 number necessary for nomination shall be declared nominated. If the death or
23 disqualification of the candidate leaves only two candidates for each office to be filled,
24 the nonpartisan primary shall not be held and all candidates shall be declared nominees.

25 (b) Earlier Non-Primary Vacancies; Reopening Filing. – If there is no primary
26 because only one or two candidates have filed for a single office, ~~or the number of~~
27 ~~candidates filed for a group of offices does not exceed twice the number of positions to~~
28 ~~be filled,~~ or if a primary has occurred and eliminated candidates, and thereafter
29 a remaining candidate dies or otherwise becomes disqualified before the election and
30 before the ballots are printed, the State Board of Elections shall, upon notification of the
31 death or other disqualification, immediately reopen the filing period for an additional
32 five days during which time additional candidates shall be permitted to file for election.
33 If the ballots have been printed at the time the State Board of Elections receives notice
34 of the candidate's death or other disqualification, the Board shall determine whether
35 there will be sufficient time to reprint them before the election if the filing period is
36 reopened for three days. If the Board determines that there will be sufficient time to
37 reprint the ballots, it shall reopen the filing period for three days to allow other
38 candidates to file for election, and that election shall be conducted as provided in
39 G.S. 163-329(b1).

40 (c) Later Vacancies; Ballots Not Reprinted. – If the ballots have been printed at
41 the time the State Board of Elections receives notice of a candidate's death or other
42 disqualification, and if the Board determines that there is not enough time to reprint the
43 ballots before the election if the filing period is reopened for three days, then regardless
44 of the number of candidates remaining for the office or group of offices, the ballots shall

1 not be reprinted and the name of the vacated candidate shall remain on the ballots. If a
2 vacated candidate should poll the highest number of votes in the election for a single
3 ~~office or enough votes to be elected to one of a group of offices, office,~~ the State Board
4 of Elections shall declare the office vacant and it shall be filled in the manner provided
5 by law.

6 (d) No Withdrawal Permitted of Living, Qualified Candidate After Close of
7 Filing. – After the close of the candidate filing period, a candidate who has filed a notice
8 of candidacy for the office, who has not withdrawn notice before the close of filing as
9 permitted by G.S. 163-323(b), who remains alive, and has not become disqualified for
10 the office may not withdraw his or her candidacy. That candidate's name shall remain
11 on the ballot, any votes cast for the candidacy shall be counted in primary or election,
12 and if the candidate wins, the candidate may fail to qualify by refusing to take the oath
13 of office.

14 (e) Death, Disqualification, or Failure to Qualify After Election. – If a person
15 elected to the office of justice of the Supreme Court, judge of the Court of Appeals, or
16 superior or district court judge dies or becomes disqualified on or after election day and
17 before he has qualified by taking the oath of office, or fails to qualify by refusing to take
18 the oath of office, the office shall be deemed vacant and shall be filled as provided by
19 law."

20 **SECTION 6.** G.S. 163-329(b1) reads as rewritten:

21 "(b1) Method for Vacancy Election. – If a vacancy for the office of justice of the
22 Supreme Court, judge of the Court of Appeals, or judge of the superior court occurs
23 more than 60 days before the general election and after the opening of the filing period
24 for the primary, then the State Board of Elections shall designate a special filing period
25 of one week for candidates for the office. If more than two candidates file and qualify
26 for the office in accordance with G.S. 163-323, then the Board shall conduct the
27 election for the office as follows:

28 (1) When the vacancy described in this section occurs more than 63 days
29 before the date of the second primary for members of the General
30 Assembly, a special primary shall be held on the same day as the
31 second primary. The two candidates with the most votes in the special
32 primary shall have their names placed on the ballot for the general
33 election held on the same day as the general election for members of
34 the General Assembly.

35 (2) When the vacancy described in this section occurs less than 64 days
36 before the date of the second primary, a general election for all the
37 candidates shall be held on the same day as the general election for
38 members of the General Assembly and the "instant runoff voting"
39 method shall be used to determine the winner. Under "instant runoff
40 voting," voters rank up to three of the candidates by order of
41 preference, first, second, or third. If the candidate with the greatest
42 number of first-choice votes receives more than fifty percent (50%)
43 of the first-choice votes, that candidate wins. If no candidate receives that
44 minimum number, the two candidates with the greatest number of

1 first-choice votes advance to a second round of counting. In this round,
2 each ballot counts as a vote for whichever of the two final candidates
3 is ranked highest by the voter. The candidate with the most votes in the
4 second round wins the election. ~~If more than one seat is to be filled in~~
5 ~~the same race, the voter votes the same way as if one seat were to be~~
6 ~~filled. The counting is the same as when one seat is to be filled, with~~
7 ~~one or two rounds as needed, except that counting is done separately~~
8 ~~for each seat to be filled. The first count results in the first winner.~~
9 ~~Then the second count proceeds without the name of the first winner.~~
10 ~~This process results in the second winner. For each additional seat to~~
11 ~~be filled, an additional count is done without the names of the~~
12 ~~candidates who have already won. In multi-seat contests, the State~~
13 ~~Board of Elections may give the voter more than three choices.~~

- 14 (3) If two or more candidates receiving the highest number of votes each
15 receive the same number of votes, the board of elections shall resolve
16 the tie in accordance with G.S. 163-182.8."

17 **SECTION 7.** This act is effective when it becomes law.