

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S

1

SENATE BILL 1436

Short Title: Appt. of Magistrates/Emergency Magistrates. (Public)

Sponsors: Senators Snow; and Kinnaird.

Referred to: Ways and Means.

March 26, 2007

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CONSTITUTION REGARDING APPOINTMENT OF
MAGISTRATES AND AUTHORIZE THE USE OF EMERGENCY
MAGISTRATES, AS RECOMMENDED BY THE STATE JUDICIAL COUNCIL.

The General Assembly of North Carolina enacts:

SECTION 1. Section 10 of Article IV of the North Carolina Constitution reads as rewritten:

"Sec. 10. District Courts.

The General Assembly shall, from time to time, divide the State into a convenient number of local court districts and shall prescribe where the District Courts shall sit, but a District Court must sit in at least one place in each county. District Judges shall be elected for each district for a term of four years, in a manner prescribed by law. When more than one District Judge is authorized and elected for a district, the Chief Justice of the Supreme Court shall designate one of the judges as Chief District Judge. Every District Judge shall reside in the district for which he is elected. ~~For each county, the senior regular resident Judge of the Superior Court serving the county shall appoint from nominations submitted by the Clerk of the Superior Court of the county, one or more Magistrates who shall be officers of the District Court.~~ For each county, one or more Magistrates shall be appointed in a manner prescribed by general law. Magistrates shall be officers of the District Court. The initial term of appointment for a magistrate shall be for two years and subsequent terms shall be for four years. The number of District Judges and Magistrates shall, from time to time, be determined by the General Assembly. The General Assembly may provide by general law for the appointment and assignment of Emergency Magistrates not selected for a particular county or district. Vacancies in the office of District Judge shall be filled for the unexpired term in a manner prescribed by law. Vacancies in the office of Magistrate shall be filled for the unexpired term in the manner ~~provided for original appointment to the office,~~ prescribed by law, unless otherwise provided by the General Assembly."

1 court fails to make nominations within the time prescribed by this subsection, the chief
2 district court judge shall appoint as magistrate a person who meets the qualifications in
3 G.S. 7A-171.2 whether or not such person was nominated by the clerk of the superior
4 court. If no appointment is made by the chief district court judge by the fourth Monday
5 in December, the appointment shall be made by the senior regular resident superior
6 court judge of the district or set of districts as defined in G.S. 7A-41.1(a) in which the
7 clerk's county is located. The senior regular resident superior court judge shall appoint a
8 person who meets the qualifications in G.S. 7A-171.2 and is not limited to persons
9 nominated by the clerk of the superior court.

10 (c) If an additional magisterial office for a county is approved to commence on
11 January 1 of an odd-numbered year, the new position shall be filled as provided in
12 subsection (b) of this section. If the additional position takes effect at any other time, it
13 is to be filled as provided in subsection (d) of this section.

14 (d) Within 30 days after a vacancy in the office of magistrate occurs the clerk of
15 superior court shall submit to the ~~senior regular resident superior court~~ chief district
16 judge the names of two up to three (or more, if so requested by the judge) nominees for
17 the office vacated. Within 15 days after receipt of the nominations the senior regular
18 resident superior chief district court judge shall appoint from the nominations received a
19 magistrate who shall take office immediately and shall serve until December 31 of the
20 even-numbered year, and thereafter the position shall be filled as provided in subsection
21 (b) of this section. If the clerk of superior court fails to make nominations within the
22 time prescribed by this subsection, the chief district court judge shall appoint as
23 magistrate a person who meets the qualifications in G.S. 7A-171.2 whether or not such
24 person was nominated by the clerk of the superior court. If no appointment is made by
25 the chief district court judge within 45 days after the vacancy occurs, the appointment
26 shall be made by the senior regular resident superior court judge. The senior regular
27 resident superior court judge shall appoint a person who meets the qualifications in
28 G.S. 7A-171.2 and is not limited to persons nominated by the clerk of the superior
29 court."

30 **SECTION 5.** Article 16 of Chapter 7A of the General Statutes is amended
31 by adding a new section to read:

32 **"§ 7A-171.3. Emergency magistrates.**

33 (a) As used in this section, "emergency magistrate" means any former magistrate
34 who is subject to recall to active service for temporary duty as provided in this section.

35 (b) Any former magistrate who has completed five years of service as a full-time
36 magistrate in any county may apply as provided in subsection (c) of this section to
37 become an emergency magistrate. The Director of the Administrative Office of the
38 Courts, after consultation with the chief district court judge, may order any emergency
39 magistrate who, in his opinion, is competent to perform the duties of a magistrate, to
40 serve temporarily as a magistrate in any county in the State, as needed. Each order of
41 assignment shall be in writing and entered upon the minutes of the district court in the
42 county to which such emergency magistrate is assigned. An emergency magistrate,
43 while assigned to temporary duty in a county, shall not be counted in determining

1 whether the county has the maximum number of magistrates allowed under
2 G.S. 7A-133.

3 (c) No former magistrate may become an emergency magistrate except upon
4 written application to the Director of the Administrative Office of the Courts certifying
5 a desire and the ability to serve as an emergency magistrate. If the Director is satisfied
6 that the applicant qualifies under subsection (b) of this section to become an emergency
7 magistrate and is physically and mentally able to perform the official duties of an
8 emergency magistrate, the Director shall appoint the applicant as an emergency
9 magistrate. The appointment shall be effective upon the date of its issue and shall
10 terminate when revoked by the Director.

11 (d) Each emergency magistrate has the same power and authority in all matters
12 whatsoever, in each county to which assigned, that the regular magistrates of the county
13 would have. The chief district court judge of any district to which an emergency
14 magistrate is assigned shall have the same administrative supervision and authority over
15 that emergency magistrate as over the regular magistrates of the county and shall assign
16 that magistrate to duty as provided in G.S. 7A-146.

17 (e) In addition to the compensation or retirement allowance the magistrate would
18 otherwise be entitled to receive by law, each emergency magistrate who is assigned to
19 temporary duty pursuant to this section shall be reimbursed for travel and subsistence
20 expenses at the same rate as State employees generally, plus one hundred twenty-five
21 dollars (\$125.00) for each day of active temporary duty. No emergency magistrate shall
22 receive from the State total annual compensation for service as an emergency magistrate
23 in excess of the Step 2 annual salary specified in the Table of Salaries of Full-Time
24 Magistrates in G.S. 7A-171.1."

25 **SECTION 6.** If the constitutional amendment proposed in Section 1 of this
26 act is approved by the voters, then this act becomes effective January 1, 2008, and
27 applies to appointments that take effect after that date.