

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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SENATE DRS95010-LL-44 (02/09)

Short Title: Chief Dist. Ct Judge Appoints Magistrates. (Public)

Sponsors: Senator Clodfelter.

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND THE CONSTITUTION TO PROVIDE FOR APPOINTMENT OF  
3 MAGISTRATES BY THE CHIEF DISTRICT COURT JUDGE FROM NOMINATIONS  
4 SUBMITTED BY THE CLERK OF SUPERIOR COURT, AND TO MAKE  
5 CONFORMING CHANGES TO THE GENERAL STATUTES.

6 The General Assembly of North Carolina enacts:

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

9 "Sec. 10. District Courts.

10 The General Assembly shall, from time to time, divide the State into a convenient number  
11 of local court districts and shall prescribe where the District Courts shall sit, but a District  
12 Court must sit in at least one place in each county. District Judges shall be elected for each  
13 district for a term of four years, in a manner prescribed by law. When more than one District  
14 Judge is authorized and elected for a district, the Chief Justice of the Supreme Court shall  
15 designate one of the judges as Chief District Judge. Every District Judge shall reside in the  
16 district for which he is elected. For each county, the ~~senior regular resident Judge of the~~  
17 ~~Superior Court~~ Chief District Court Judge serving the county shall appoint from nominations  
18 submitted by the Clerk of the Superior Court of the county, one or more Magistrates who shall  
19 be officers of the District Court. The initial term of appointment for a magistrate shall be for  
20 two years and subsequent terms shall be for four years. The number of District Judges and  
21 Magistrates shall, from time to time, be determined by the General Assembly. Vacancies in the  
22 office of District Judge shall be filled for the unexpired term in a manner prescribed by law.  
23 Vacancies in the office of Magistrate shall be filled for the unexpired term in the manner  
24 provided for original appointment to the office, unless otherwise provided by the General  
25 Assembly."

26 SECTION 2. The amendment set out in Section 1 of this act shall be submitted to  
27 the qualified voters of the State at the general election in November 2012, which election shall  
28 be conducted under the laws then governing elections in the State. Ballots, voting systems, or  
29 both may be used in accordance with Chapter 163 of the General Statutes. The question to be  
30 used in the voting systems and ballots shall be:

31 "[ ] FOR [ ] AGAINST

32 Constitutional amendment to provide for appointment of magistrates by the chief district  
33 court judge from nominations submitted by the clerk of superior court."

34 SECTION 3. If a majority of the votes cast on the question are in favor of the  
35 amendment set out in Section 1 of this act, the State Board of Elections shall certify the



1 amendment to the Secretary of State, who shall enroll the amendment so certified among the  
2 permanent records of that office. The amendment becomes effective January 1, 2013.

3 **SECTION 4.** G.S. 7A-171 reads as rewritten:

4 "**§ 7A-171. Numbers; appointment and terms; vacancies.**

5 (a) The General Assembly shall establish a minimum quota of magistrates for each  
6 county. In no county shall the minimum quota be less than one. The number of magistrates in a  
7 county, above the minimum quota set by the General Assembly, is determined by the  
8 Administrative Office of the Courts after consultation with the chief district court judge for the  
9 district in which the county is located.

10 (a1) The initial term of appointment for a magistrate is two years and subsequent terms  
11 shall be for a period of four years. The term of office begins on the first day of January of the  
12 odd-numbered year after appointment. The service of an individual as a magistrate filling a  
13 vacancy as provided in subsection (d) of this section does not constitute an initial term. For  
14 purposes of this section, any term of office for a magistrate who has served a two-year term is  
15 for four years even if the two-year term of appointment was before the effective date of this  
16 section, the term is after a break in service, or the term is for appointment in a different county  
17 from the county where the two-year term of office was served.

18 (b) Not earlier than the Tuesday after the first Monday nor later than the third Monday  
19 in December of each even-numbered year, the clerk of the superior court shall submit to the  
20 ~~senior regular resident superior~~ chief district court judge of the district or set of districts as  
21 defined in G.S. 7A-41.1(a) in which the clerk's county is located the names of two (or more, if  
22 requested by the judge) nominees for each magisterial office for the county for which the term  
23 of office of the magistrate holding that position shall expire on December 31 of that year. Not  
24 later than the fourth Monday in December, the ~~senior regular resident superior~~ chief district  
25 court judge shall, from the nominations submitted by the clerk of the superior court, appoint  
26 magistrates to fill the positions for each county of the judge's district or set of districts.

27 (c) If an additional magisterial office for a county is approved to commence on January  
28 1 of an odd-numbered year, the new position shall be filled as provided in subsection (b) of this  
29 section. If the additional position takes effect at any other time, it is to be filled as provided in  
30 subsection (d) of this section.

31 (d) Within 30 days after a vacancy in the office of magistrate occurs the clerk of  
32 superior court shall submit to the ~~senior regular resident superior~~ chief district court judge the  
33 names of two (or more, if so requested by the judge) nominees for the office vacated. Within 15  
34 days after receipt of the nominations the ~~senior regular resident superior~~ chief district court  
35 judge shall appoint from the nominations received a magistrate who shall take office  
36 immediately and shall serve until December 31 of the even-numbered year, and thereafter the  
37 position shall be filled as provided in subsection (b) of this section."

38 **SECTION 5.** Section 4 of this act becomes effective only upon approval by the  
39 voters of the constitutional amendment proposed in Section 1 of this act. If the constitutional  
40 amendment proposed in Section 1 is approved by the voters, Section 4 of this act becomes  
41 effective January 1, 2013, and applies to appointments that take effect on or after that date. The  
42 remainder of this act is effective when it becomes law and applies to acts occurring on or after  
43 that date.