

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2017

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HOUSE BILL 241

Short Title: Special Sup. Ct. Judgeship Appointed by GA.

(Public)

Sponsors: Representatives Burr, K. Hall, Saine, and Bumgardner (Primary Sponsors).

*For a complete list of sponsors, refer to the North Carolina General Assembly web site.*

Referred to: Judiciary IV

March 6, 2017

A BILL TO BE ENTITLED  
AN ACT TO PROVIDE THAT SPECIAL SUPERIOR COURT JUDGES ARE APPOINTED BY  
THE GENERAL ASSEMBLY.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 7A-45.1 reads as rewritten:

**"§ 7A-45.1. Special judges.**

(a) ~~Effective November 1, 1993, the Governor may appoint two special superior court judges to serve terms expiring September 30, 2000. Effective October 1, 2000, one of those positions is abolished. Successors to the special superior court judge appointed pursuant to this subsection shall be appointed to a five-year term.~~ The General Assembly may appoint special superior court judges to serve a five-year term when any of the following occurs for the special superior court judges holding office on or after January 1, 2017:

(1) Retirement of the incumbent judge.

(2) Resignation of the incumbent judge.

(3) Removal from office of the incumbent judge.

(4) Death of the incumbent judge.

(5) Expiration of the term of the incumbent judge.

(6) For any other reason that causes a judgeship to become vacant.

A special judge takes the same oath of office and is subject to the same requirements and disabilities as are or may be prescribed by law for regular judges of the superior court, save the requirement of residence in a particular district.

(a1) ~~Effective October 1, 1995, the Governor may appoint two special superior court judges to serve terms expiring September 30, 2000. Successors to the special superior court judges appointed pursuant to this subsection shall be appointed to five-year terms. A special judge takes the same oath of office and is subject to the same requirements and disabilities as are or may be prescribed by law for regular judges of the superior court, save the requirement of residence in a particular district.~~

(a2) ~~Effective December 15, 1996, the Governor may appoint four special superior court judges to serve terms expiring five years from the date that each judge takes office. Successors to the special superior court judges appointed pursuant to this subsection shall be appointed to five-year terms. A special judge takes the same oath of office and is subject to the same requirements and disabilities as are or may be prescribed by law for regular judges of the superior court, save the requirement of residence in a particular district.~~

(a3) ~~Effective December 15, 1998, the Governor may appoint a special superior court judge to serve a term expiring five years from the date that judge takes office. Successors to the special~~



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superior court judge appointed pursuant to this subsection shall be appointed to five year terms. A special judge takes the same oath of office and is subject to the same requirements and disabilities as are or may be prescribed by law for regular judges of the superior court, save the requirement of residence in a particular district.

(a4) ~~Effective October 1, 1999, the Governor may appoint four special superior court judges to serve terms expiring five years from the date that each judge takes office. Successors to the special superior court judges appointed pursuant to this subsection shall be appointed to five year terms. A special judge takes the same oath of office and is subject to the same requirements and disabilities as are or may be prescribed by law for regular judges of the superior court, save the requirement of residence in a particular district.~~

(a5) ~~Effective October 1, 2001, the Governor may appoint a special superior court judge to serve a term expiring five years from the date that judge takes office. Successors to the special superior court judge appointed pursuant to this subsection shall be appointed to five year terms. A special judge takes the same oath of office and is subject to the same requirements and disabilities as are or may be prescribed by law for regular judges of the superior court, save the requirement of residence in a particular district.~~

(a6) ~~Effective December 1, 2004, the Governor may appoint a special superior court judge to serve a term expiring five years from the date that each judge takes office. Successors to the special superior court judge appointed pursuant to this subsection shall be appointed to five year terms. A special judge takes the same oath of office and is subject to the same requirements and disabilities as are or may be prescribed by law for regular judges of the superior court, save the requirement of residence in a particular district.~~

(a7) ~~Effective January 1, 2008, the Governor may appoint two special superior court judges to serve terms expiring five years from the date that each judge takes office. Successors to the special superior court judges appointed pursuant to this subsection shall be appointed to five year terms. A special judge takes the same oath of office and is subject to the same requirements and disabilities as are or may be prescribed by law for regular judges of the superior court, save the requirement of residence in a particular district.~~

(a8) ~~Notwithstanding any other provision of this section, the four special superior court judgeships held as of April 1, 2014, by judges whose terms expire on April 29, 2015, October 20, 2015, and December 31, 2017, and the two special superior court judgeships held as of April 1, 2015, by judges whose terms expire January 26, 2016, are abolished when any of the following first occurs:~~

- ~~(1) Retirement of the incumbent judge.~~
- ~~(2) Resignation of the incumbent judge.~~
- ~~(3) Removal from office of the incumbent judge.~~
- ~~(4) Death of the incumbent judge.~~
- ~~(5) Expiration of the term of the incumbent judge.~~

(a9) ~~Effective upon the retirement, resignation, removal from office, death, or expiration of the term of the special superior court judge held as of April 1, 2014, by the judge whose term expires on April 29, 2015, a new special superior court judgeship shall be created and filled through the procedure for nomination and confirmation provided for in subsection (a10) of this section.~~

~~Prior to submitting a nominee for the judgeship created under this subsection to the General Assembly for confirmation, the Governor shall consult with the Chief Justice to ensure that the person nominated to fill this judgeship has the requisite expertise and experience to be designated by the Chief Justice as a business court judge under G.S. 7A-45.3, and the Chief Justice is requested to designate this judge as a business court judge.~~

(a10) ~~Except for the judgeships abolished pursuant to subsection (a8) of this section, upon the retirement, resignation, removal from office, death, or expiration of the term of any special superior court judge on or after September 1, 2014, each judgeship shall be filled for a full~~

1 ~~five year term beginning upon the judge's taking office according to the following procedure~~  
2 ~~prescribed by the General Assembly pursuant to Article IV, Section 9(1) of the North Carolina~~  
3 ~~Constitution. As each judgeship becomes vacant or the term expires, the Governor-General~~  
4 ~~Assembly shall submit the name of a nominee for that judgeship to the General Assembly for~~  
5 ~~confirmation by ratified joint resolution. Upon each such confirmation, the Governor shall appoint~~  
6 ~~the confirmed nominee to that judgeship. appoint a new special superior court judge to fill that~~  
7 ~~seat.~~

8 ~~However, upon the failure of the Governor to submit the name of a nominee within 90 days of~~  
9 ~~the occurrence of the vacancy or within 90 days of the expiration of the judge's term, as~~  
10 ~~applicable, the President Pro Tempore of the Senate and the Speaker of the House of~~  
11 ~~Representatives jointly shall submit the name of a nominee to the General Assembly. The~~  
12 ~~appointment Appointments shall then be made by enactment of a bill. The bill shall state the name~~  
13 ~~of the person being appointed, the office to which the appointment is being made, and the county~~  
14 ~~of residence of the appointee.~~

15 ~~The Governor may withdraw any nomination prior to it failing on any reading, and in case of~~  
16 ~~such withdrawal the Governor shall submit a different nomination within 45 days of withdrawal. If~~  
17 ~~a nomination shall fail any reading, the Governor shall submit a different nomination within 45~~  
18 ~~days of such failure. In either case of failure to submit a new nomination within 45 days, the~~  
19 ~~President Pro Tempore of the Senate and the Speaker of the House of Representatives shall submit~~  
20 ~~the name of a nominee to the General Assembly under the procedure provided in the preceding~~  
21 ~~paragraph.~~

22 ~~No person shall occupy a special superior court judgeship authorized under this subsection in~~  
23 ~~any capacity, or have any right to, claim upon, or powers of those judgeships, unless that person's~~  
24 ~~nomination has been confirmed by the General Assembly by joint resolution or appointed through~~  
25 ~~the enactment of a bill upon the failure of the Governor to submit a nominee. Until confirmed by~~  
26 ~~the General Assembly and appointed by the Governor, or appointed by the General Assembly~~  
27 ~~upon the failure of the Governor to appoint a nominee, and qualified by taking the oath of office, a~~  
28 ~~nominee is neither a de jure nor a de facto officer.~~

29 (a11) The Chief Justice is requested, pursuant to the authority under G.S. 7A-45.3 to  
30 designate business court judges, to maintain at least five business court judgeships from among the  
31 special superior court judgeships authorized under this section.

32 (b) A special judge is subject to removal from office for the same causes and in the same  
33 manner as a regular judge of the superior court, ~~and a vacancy occurring in the office of special~~  
34 ~~judge is filled by the Governor by appointment for the unexpired term.~~ court.

35 (c) A special judge, in any court in which he is duly appointed to hold, has the same power  
36 and authority in all matters that a regular judge holding the same court would have. A special  
37 judge, duly assigned to hold the court of a particular county, has during the session of court in that  
38 county, in open court and in chambers, the same power and authority of a regular judge in all  
39 matters arising in the district or set of districts as defined in G.S. 7A-41.1(a) in which that county  
40 is located, that could properly be heard or determined by a regular judge holding the same session  
41 of court.

42 (d) A special judge is authorized to settle cases on appeal and to make all proper orders in  
43 regard thereto after the time for which he was commissioned has expired."

44 **SECTION 2.** This act is effective when it becomes law.