

GENERAL ASSEMBLY OF NORTH CAROLINA  
1985 SESSION

CHAPTER 698  
HOUSE BILL 1218

AN ACT TO APPROPRIATE FUNDS TO THE JUDICIAL DEPARTMENT AND TO  
IMPROVE THE ADMINISTRATION OF THE JUDICIAL SYSTEM.

The General Assembly of North Carolina enacts:

CLERKS'S EQUIPMENT UPGRADE FUNDS Section 1. (a) There is appropriated from the General Fund to the Judicial Department the sum of nine hundred thousand dollars (\$900,000) for fiscal year 1985-86 to be allocated for the following purposes:

- (1) To upgrade the accounting system equipment of the clerks of court \$ 500,000
- (2) To upgrade the microfilm and micrographic equipment of the clerks of court \$ 400,000

(b) The Administrative Office of the Courts shall report to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division before May 15, 1986, on its use of the funds appropriated in subsection (a) and on the need for additional funds to continue upgrading the equipment in the offices of the clerks of court. NEW PERSONNEL EQUIPMENT FUNDS

Sec. 2. There is appropriated from the General Fund to the Judicial Department the sum of forty-two thousand one hundred twenty-six dollars (\$42,126) for fiscal year 1985-86, and the sum of eleven thousand sixty-seven dollars (\$11,067) for fiscal year 1986-87, for equipment for new personnel. ASSISTANT CLERK RECLASSIFICATION FUNDS

Sec. 3. There is appropriated from the General Fund to the Judicial Department the sum of one hundred ninety-one thousand six hundred sixteen dollars (\$191,616) for fiscal year 1985-86, and the sum of one hundred ninety-one thousand six hundred sixteen dollars (\$191,616) for fiscal year 1986-87, to be held in reserve to fund the reclassification of assistant clerks in accordance with G.S. 7A-102. SUPREME COURT LIBRARY FUNDS

Sec. 4. There is appropriated from the General Fund to the Judicial Department the sum of thirty-eight thousand two hundred forty-seven dollars (\$38,247) for fiscal year 1985-86, and the sum of sixty-two thousand six hundred sixty dollars (\$62,660) for fiscal year 1986-87, to purchase books for the Supreme Court Library in Raleigh. PERSONNEL TRAINING FUNDS

Sec. 5. There is appropriated from the General Fund to the Judicial Department the sum of fifty thousand dollars (\$50,000) for fiscal year 1985-86, and the

sum of fifty thousand dollars (\$50,000) for fiscal year 1986-87, to train personnel. NEW DEPARTMENT PERSONNEL FUNDS

Sec. 6. There is appropriated from the General Fund to the Judicial Department the sum of four hundred eighty-four thousand six hundred eighty-two dollars (\$484,682) for fiscal year 1985-86, and the sum of six hundred thirty-eight thousand four hundred forty-four dollars (\$638,444) for fiscal year 1986- 87, for new department personnel. NEW DISTRICT JUDGESHIPS

Sec. 7. (a) Effective December 1, 1986, G.S. 7A-133 is amended in the table so that the numbers of district court judges for the indicated districts read:

"District Judges 10 9

14 5

17A 3

22 5

27A 5".

(b) The additional judges authorized by subsection (a) of this section shall be elected in the 1986 primary and elections in accordance with Chapter 163 of the General Statutes.

(c) There is appropriated from the General Fund to the Judicial Department the sum of one hundred seventy-two thousand thirty-six dollars (\$172,036) for fiscal year 1986-87 for salaries and benefits for the additional judges authorized by subsection (a) of this section. APPELLATE JUDGES LAW CLERKS

Sec. 8. (a) G.S. 7A-7(a) is amended by deleting the words "one research assistant" and substituting the words "not more than two research assistants" and by deleting the phrase "a graduate" and substituting the word "graduates".

(b) There is appropriated from the General Fund to the Judicial Department the sum of two hundred thirteen thousand one hundred fifty-nine dollars (\$213,159) for fiscal year 1985-86, and the sum of two hundred eighty-five thousand one hundred fifteen dollars (\$285,115) for fiscal year 1986-87, for salaries and benefits for the additional research assistants authorized by subsection (a) of this section.

(c) This section shall become effective October 1, 1985. EMERGENCY JUDGE PAY INCREASE

Sec. 9. (a) G.S. 7A-39.3(b) is amended by deleting the phrase "seventy-five dollars (\$75.00)" and substituting the phrase "one hundred dollars (\$100.00)".

(b) G.S. 7A-52(b) is amended by deleting the phrase "seventy-five dollars (\$75.00)" and substituting the phrase "one hundred dollars (\$100.00)".

(c) There is appropriated from the General Fund to the Judicial Department the sum of thirty thousand dollars (\$30,000) for fiscal year 1985-86, and the sum of thirty thousand dollars (\$30,000) for fiscal year 1986-87, for increased per diem payments for emergency justices and judges in the General Court of Justice. LONGEVITY PAY FOR JUDICIAL PERSONNEL

Sec. 10. (a) G.S. 7A-10(c), 7A-18(b), 7A-44(b), and 7A-144(b) are each amended by adding a sentence to the end to read:

"Service shall also mean service as a district attorney or as a clerk of superior court."

(b) G.S. 7A-65(c) is amended by adding a sentence to the end to read:

"Service shall also mean service as a justice or judge of the General Court of Justice or as a clerk of superior court."

(c) G.S. 7A-101 is amended by adding a sentence to the last paragraph to read:

"Service shall also mean service as a justice or judge of the General Court of Justice or as a district attorney."

(d) There is appropriated from the General Fund to the Judicial Department the sum of fifty thousand dollars (\$50,000) for fiscal year 1985-86, and the sum of sixty-one thousand dollars (\$61,000) for fiscal year 1986-87, to implement the provisions of this section. **NEW ASSISTANT DISTRICT ATTORNEY POSITIONS**

Sec. 11. (a) G.S. 7A-41 is amended in the table so that the total numbers of full-time assistant district attorneys for the indicated judicial districts read:

"Judicial No. of Full-Time District Asst. District Attorneys 9 6 20 8 22 7 24 3 30 5".

(b) There is appropriated from the General Fund to the Judicial Department the sum of two hundred twenty-three thousand one hundred sixty dollars (\$223,160) for fiscal year 1985-86, and the sum of two hundred twenty-three thousand two hundred fifty dollars (\$223,250) for fiscal year 1986-87, for salaries and benefits for the additional assistant district attorney positions authorized in subsection (a) of this section. **BUNCOMBE MAGISTRATE AUTHORIZED**

Sec. 12. G.S. 7A-133 is amended in the table so that the maximum number of magistrates authorized for Buncombe County is rewritten to read: "14". **MAGISTRATES SALARY INCREASE**

Sec. 13. (a) G.S. 7A-171.1(a)(1) is amended by rewriting the table of salaries to read:

"Number of prior years of service Annual salary Less than 1 \$12,764 1 or more but less than 3 13,424 3 or more but less than 5 14,804 5 or more but less than 7 16,316 7 or more but less than 9 17,984 9 or more but less than 11 19,808 11 or more 21,800".

(b) Section 210 of Chapter 479 of the 1985 Session Laws is repealed.

(c) There is appropriated from the General Fund to the Judicial Department the sum of one million ten thousand four hundred seventeen dollars (\$1,010,417) for fiscal year 1985-86, and the sum of two million two hundred four thousand seven hundred thirty-six dollars (\$2,204,736) for fiscal year 1986-87, to implement the provisions of this section.

(d) This section shall become effective July 1, 1985.

**MAGISTRATES BENEFITS CLARIFIED**

Sec. 14. G.S. 7A-171.1(2) is amended by inserting after the phrase "Courts," the phrase "is included, in accordance with G.S. 7A-170, under the provisions of G.S. 135-1(10) and 135- 40.2(a) and". **RETIRED APPELLATE JUDGE SERVICE**

Sec. 15. (a) Chapter 7A of the General Statutes is amended by adding a new section, G.S. 7A-39.14, to read as follows:

**"§ 7A-39.14. Recall by Chief Justice of retired or emergency justices or judges for temporary vacancy.** – (a) In addition to the authority granted to the Chief Justice under G.S. 7A-39.5 to recall emergency justices and under G.S. 7A-39.13 to recall retired justices, the Chief Justice may recall not more than one retired or emergency justice or retired emergency judge of the Court of Appeals, including an emergency justice or

judge whose commission has expired because he has reached the mandatory retirement age, in the following circumstances:

- (1) If a vacancy exists on the Supreme Court, he may recall an emergency or retired justice to serve on that court until the vacancy is filled in accordance with law.
- (2) If a vacancy exists on the Court of Appeals, he may recall an emergency or retired justice of the Supreme Court or judge of the Court of Appeals to serve on the Court of Appeals until the vacancy is filled in accordance with law.
- (3) With the concurrence of a majority of the Supreme Court, he may recall an emergency or retired justice to serve on the Supreme Court in place of a sitting justice who, as determined by the Chief Justice, is temporarily unable to perform all of the duties of his office.
- (4) With the concurrence of a majority of the Supreme Court, he may recall an emergency or retired justice of the Supreme Court or judge of the Court of Appeals to serve on the Court of Appeals in place of a sitting judge who, as determined by the Chief Justice, is temporarily unable to perform all of the duties of his office.

(b) No judge or justice may be recalled unless he consents to the recall. Orders of recall issued pursuant to this section must be in writing and entered on the minutes of the court. In addition, if the judge or justice is recalled pursuant to subdivision (a)(3) or (a)(4), the order shall contain a finding by the Chief Justice setting out, in detail, the reason for the recall.

(c) A judge or justice recalled pursuant to subdivision (a)(1) or (a) (2) of this section:

- (1) Has the same authority and jurisdiction granted to emergency justices and judges under G.S. 7A-39.7;
- (2) Is subject to rules adopted pursuant to G.S. 7A- 39.8 regarding filing of opinions and other matters; and
- (3) Is compensated as are other retired or emergency justices or judges recalled for service pursuant to G.S. 7A-39.5 or G.S. 7A-39.13.

(d) A judge or justice recalled pursuant to subdivision (a)(3) or (a)(4) of this section:

- (1) Has the same authority and jurisdiction granted to emergency justices and judges under G.S. 7A-39.7;
- (2) Is subject to rules adopted pursuant to G.S. 7A- 39.8 regarding filing of opinions and other matters;
- (3) May, after the return of the judge or justice in whose place he was sitting, complete the duties assigned to him before the return of that judge or justice; and
- (4) Is compensated as are other retired or emergency justices or judges recalled for service pursuant to G.S. 7A-39.5 or G.S. 7A-39.13.

(e) A retired or emergency justice or judge may serve on the Supreme Court or Court of Appeals pursuant to subdivision (a)(3) or (a)(4) only if he is recalled to serve temporarily in place of a sitting justice or judge who is not temporarily incapacitated under circumstances that would permit temporary service of the retired or emergency justice or judge pursuant to G.S. 7A-39.5 or G.S. 7A-39.13. This section does not authorize more than seven justices to serve on the Supreme Court at any given time, nor does it authorize more than 12 justices and judges to serve on the Court of Appeals at any given time. In no case may more than one emergency justice or emergency judge serve on one panel of the Court of Appeals at any given time."

(b) This section shall expire on June 30, 1986.

(c) There is appropriated from the General Fund to the Judicial Department the sum of eight thousand seven hundred forty-three dollars (\$8,743) for fiscal year 1985-86 to implement the provisions of this section. RETIRED JUSTICE SERVICE ON COURT OF APPEALS

Sec. 16. (a) G.S. 7A-39.1(b) is amended by putting a period after the word "service" and deleting the remainder of the subsection.

(b) G.S. 7A-39.3(a) is rewritten to read as follows:

"(a) Justices of the Supreme Court and judges of the Court of Appeals who have not reached the mandatory retirement age specified in G.S. 7A-4.20, but who have retired under the provisions of G.S. 7A-39.2, or under the Uniform Judicial Retirement Act after having completed 12 years of creditable service, may apply as provided in G.S. 7A-39.6 to become emergency justices or judges and upon being commissioned as an emergency justice or emergency judge shall be subject to temporary recall to active service in place of a justice or judge who is temporarily incapacitated as provided in G.S. 7A-39.5."

(c) G.S. 7A-39.5(b) is amended by adding two new sentences between the first and second sentences of that subsection to read as follows:

"If the Chief Judge does not recall an emergency judge to serve in the place of the temporarily incapacitated judge, the Chief Justice may recall an emergency justice who, in his opinion, is competent to perform the duties of a judge of the Court of Appeals, to serve temporarily in the place of the judge in whose behalf he is recalled. In no case, however, may more than one emergency justice or emergency judge serve on one panel of the Court of Appeals at any given time."

(d) G.S. 7A-39.9(a) is rewritten to read as follows:

"(a) Decisions of the Chief Justice and the Chief Judge regarding recall of emergency justices and emergency judges, when not in conflict with the provisions of this Article, are final."

(e) G.S. 7A-39.9(c) is amended in the second sentence by inserting after the word "judge" the second time it appears the words "or justice".

(f) G.S. 7A-39.13(2) is rewritten to read as follows:

"(2) The Chief Justice may recall retired justices to serve on the Supreme Court or on the Court of Appeals, and the Chief Judge may recall retired judges of the Court of Appeals to serve on that court." STATE JUDICIAL CENTER COMMISSION

Sec. 17. (a) There is created the State Judicial Center Commission, which shall consist of nine members. The Governor, Chief Justice, Speaker of the House of Representatives, and President of the Senate shall each appoint two members. The Director of the Administrative Office of the Courts shall serve ex officio. All appointed members shall be appointed by July 1, 1985, or as soon thereafter as is practicable, and shall serve until the Commission's duties are completed. Any vacancy in the appointed membership shall be filled by the officer making the initial appointment to the seat vacated. The Chief Justice shall designate one of the members as chairman, and the Chief Justice may designate a vice-chairman.

(b) The State Judicial Center Commission shall have the following powers and duties:

- (1) To study the current and future needs for office and court facilities of the Supreme Court, the Court of Appeals, and the Administrative Office of the Courts, and the desirability and practicability of providing a single facility for the exclusive use of the State-level components of the judicial branch of government.
- (2) To keep the Capital Planning Commission informed, from time to time, of the progress of its study and to report its findings and recommendations to the Capital Planning Commission.
- (3) To report its findings and recommendations to the Governor and the General Assembly no later than March 1, 1987. If the Commission recommends that a new building be constructed, the recommendation shall include a general recommendation as to size, appearance, design, and location of the proposed building.

(c) The members of the State Judicial Center Commission shall receive for their services the per diem and reimbursement for travel expenses authorized by law for members of State boards and commissions.

(d) The State Judicial Center Commission shall meet at such times and places as the chairman shall designate. Subject to the approval of the Legislative Services Commission, the facilities of the State Legislative Building and the Legislative Office Building shall be available to the Commission. Subject to the approval of the Legislative Services Commission, the Legislative Services Office shall make the services of its clerical and professional staff available to the Commission. The State Judicial Center Commission shall work with the Capital Planning Commission and the Office of State Property in conducting its study.

(e) There is appropriated from the General Fund to the General Assembly the sum of ten thousand dollars (\$10,000) for fiscal year 1985-86 to fund the activities of the State Judicial Center Commission. The Commission is authorized, subject to the availability of funds, to observe other states' judicial facilities as it deems necessary in the course of its study to determine the proper kind of judicial facility for this State.

(f) The State Judicial Center Commission may call upon any department, agency, institution, or officer of the State, or any political subdivision thereof for such assistance as it deems appropriate, and these departments, agencies, institutions, and

officers shall cooperate with the Commission and its committees to the fullest possible extent.

(g) This section shall expire June 30, 1987.

#### MECKLENBURG PILOT PROGRAM EXTENDED

Sec. 18. (a) Section 162(a) of Chapter 761 of the 1983 Session Laws is amended by deleting the phrase "June 30, 1985" and substituting the phrase "June 30, 1987".

(b) There is appropriated from the General Fund to the Judicial Department the sum of seventy thousand dollars (\$70,000) for fiscal year 1985-86, and the sum of seventy thousand dollars (\$70,000) for fiscal year 1986-87, to continue the Mecklenburg County pilot program requiring mediation of disputes over child custody and visitation. The Judicial Department is also authorized to expend up to fifteen thousand dollars (\$15,000) in receipts from this program for fiscal year 1985-86 and fifteen thousand dollars (\$15,000) in receipts from this program for fiscal year 1986-87 for this purpose.

(c) Subsection (a) of this section is effective June 30, 1985. Subsection (b) of this section is effective July 1, 1985. SOME SAFE ROADS ACT FUNDS TO COUNTIES

Sec. 19. (a) The Director of the Budget shall transfer to the Judicial Department all funds that accumulated before June 30, 1985, in the Reserve for the Safe Roads Act established pursuant to Section 45.1 of Chapter 435 of the 1983 Session Laws. The Judicial Department shall distribute these funds as soon as practicable after the effective date of this section to the counties to reimburse them for additional costs incurred in weekend confinement of persons convicted of driving while impaired. These funds shall be distributed in a lump sum to each of the 100 counties on the basis of the number of civil license revocations under the provisions of the Safe Roads Act in each county, as reported by the Judicial Department.

(b) Effective July 1, 1985, Section 45.1 of Chapter 435 of the 1983 Session Laws is rewritten to read:

"Sec. 45.1. The funds collected pursuant to Section 14 of this act shall be paid into a Reserve Fund in the Judicial Department. The Judicial Department shall distribute these funds to the counties on a monthly basis to reimburse them for additional costs incurred in weekend confinement of persons convicted of driving while impaired. These funds shall be distributed to the 100 counties on the basis of the number of civil license revocations under the provisions of the Safe Roads Act in each county, as reported by the Judicial Department." APPELLATE DEFENDER ESTABLISHED

Sec. 20. (a) Chapter 7A of the General Statutes is amended by adding a new Article to read:

"Article 38A.

"Appellate Defender Office.

"§ 7A-486. **Appellate defender office established.** – (a) There is established the office of appellate defender.

(b) The appellate defender shall be an attorney licensed to practice law in North Carolina and shall devote his full time to the duties of the office.

**"§ 7A-486.1. Term of office.** – The initial term of office of the appellate defender shall be from July 15, 1985, through June 30, 1989. Subsequent terms shall be for four years.

**"§ 7A-486.2. Appointment; vacancy; removal.** – (a) The appellate defender shall be appointed by the Chief Justice of the Supreme Court.

(b) A vacancy in the office of appellate defender shall be filled by appointment of the Chief Justice for the unexpired term.

(c) The appellate defender may be suspended or removed from office and reinstated for the same causes and under the same procedures as are applicable to removal of a district attorney.

**"§ 7A-486.3. Duties.** – The appellate defender shall:

- (1) Represent indigent persons subsequent to conviction in trial courts pursuant to assignment by trial court judges under the general supervision of the Chief Justice of the Supreme Court. The Chief Justice may, following consultation with the appellate defender and consistent with the resources available to the appellate defender to ensure quality criminal defense services by the appellate defender's office, authorize the appellate defender not to accept assignments of certain appeals but instead to cause those appeals to be assigned either to a local public defender's office or to private assigned counsel.
- (2) Maintain a repository of briefs prepared by the appellate defender to be made available to private counsel representing indigents in criminal cases.
- (3) Provide continuing legal education training to assistant appellate defenders and to private counsel representing indigents in criminal cases, as resources are available.

**"§ 7A-486.4. Assistants and staff.** – The appellate defender shall appoint assistants and staff, not to exceed the number authorized by the Administrative Office of the Courts. The assistants and staff shall serve at the pleasure of the appellate defender.

**"§ 7A-486.5. Funds.** – Funds to operate the office of appellate defender, including office space, office equipment, supplies, postage, telephone, library, staff salaries, training, and travel, shall be provided by the Administrative Office of the Courts from funds authorized by law. Salaries shall be set by the Administrative Office of the Courts.

**"§ 7A-486.6. Records and reports.** – The appellate defender shall keep appropriate records and make periodic reports, as requested, to the Administrative Office of the Courts."

(b) There is allocated from the Indigent Persons Attorney Fee Fund in the Judicial Department the sum of four hundred fifty thousand dollars (\$450,000) for fiscal year 1985- 86, and the sum of four hundred fifty thousand dollars (\$450,000) for fiscal year 1986-87, to implement the provisions of this section.

(c) This section shall become effective July 15, 1985, except that appointment of the appellate defender may occur at any time after ratification of this act. PUBLIC AND APPELLATE DEFENDER/COUNSEL FEES



Sec. 21. (a) Article 37 of Chapter 7A of the General Statutes is amended by adding at the end a new section to read:

"§ 7A-471. **Judgment for legal fees.** – In every case in which the State is entitled to a lien pursuant to G.S. 7A-455, the public defender shall at the time of sentencing or other conclusion of the proceeding petition the court to fix the value of the legal services rendered by the public defender, as provided in G.S. 7A-455(b)."

(b) Article 38 of Chapter 7A of the General Statutes is amended by adding at the end a new section to read:

"§ 7A-484. **Judgment for legal fees.** – In every case in which the State is entitled to a lien pursuant to G.S. 7A-455, the appellate defender shall upon completion of the appeal petition or request the trial court to fix the value of the legal services rendered by the appellate defender, as provided in G.S. 7A-455(b)."

(c) This section is effective upon ratification.

#### CO-COUNSEL IN CAPITAL CASES

Sec. 22. (a) G.S. 7A-450 is amended by inserting after subsection (b) a new subsection to read:

"(b1) An indigent person indicted for murder may not be tried where the State is seeking the death penalty without an assistant counsel being appointed in a timely manner. If the indigent person is represented by the public defender's office, the requirement of an assistant counsel may be satisfied by the assignment to the case of an additional attorney from the public defender's staff."

(b) There is appropriated from the General Fund to the Indigent Persons Attorney Fee Fund in the Judicial Department the sum of two hundred thousand dollars (\$200,000) for fiscal year 1985-86, and the sum of two hundred thousand dollars (\$200,000) for fiscal year 1986-87, to implement the provisions of this section. If the funds appropriated in this section are not adequate, the Administrative Office of the Courts may use additional funds from the Indigent Persons Attorney Fee Fund to implement the provisions of this section.

(c) This section applies to indictments returned on or after the date of ratification of this act. PUBLIC DEFENDER SELECTION PROCEDURE

Sec. 22.1. G.S. 7A-466 is rewritten to read:

"§ 7A-466. **Selection of defender; term; removal.** – (a) Appointment. The public defender of each district shall be appointed by the senior resident superior court judge of that district from a list of not less than two and not more than three names nominated by written ballot of the attorneys resident in the district who are licensed to practice law in North Carolina. The balloting shall be conducted pursuant to regulations promulgated by the Administrative Office of the Courts.

(b) Term; Vacancy; Removal. The terms of office of the public defenders authorized in G.S. 7A-465 are for four years, beginning on the dates specified in that section for each district, and each fourth year thereafter. A vacancy in the office of public defender is filled for the unexpired term as set forth in subsection (a). A public defender or assistant public defender may be suspended or removed from office, and reinstated, for the same causes and under the same procedures as are applicable to removal of a district attorney." ARBITRATION PILOT PROGRAM

Sec. 23. In order to determine whether a system of mandatory, nonbinding arbitration of small cases may help reduce costs in the trial divisions of the General Court of Justice and make the operation of these divisions generally more efficient, the Supreme Court of North Carolina may, by such rules as it shall determine appropriate, provide for an experimental, pilot program in three judicial districts selected by the Court, of mandatory, nonbinding arbitration of all claims for money damages of \$15,000 or less. The rules shall make all such claims subject to decision initially by arbitration; but the rules must also insure that no party is deprived of the right to a jury trial and that any party dissatisfied with the arbitration award may receive a trial de novo. The pilot program shall be evaluated for a reasonable period of time under the direction of the Court. The Court shall report the results of the evaluation to the General Assembly. The Court may seek such funds as are needed to establish and conduct the pilot program from such willing private sources as the Court may deem appropriate; provided, further, that no State funds shall be used to implement the pilot program. The Court may solicit the suggestions and cooperation of Attorneys, judges, and laypersons interested in the administration of justice in establishing, conducting, and funding the pilot program. EFFECTIVE DATE

Sec. 24. Except as otherwise provided, this act is effective July 1, 1985.

In the General Assembly read three times and ratified, this the 11th day of July, 1985.