

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**SESSION 1991**

**H**

**1**

**HOUSE BILL 102**

Short Title: Appointed Judges – Constitution.

(Public)

---

Sponsors: Representatives Michaux; Gist, Gottovi, Mavretic, Oldham, and Wicker.

---

Referred to: Courts, Justice, Constitutional Amendments, & Referenda.

---

February 20, 1991

A BILL TO BE ENTITLED

1  
2 AN ACT TO AMEND THE NORTH CAROLINA CONSTITUTION TO PROVIDE  
3 FOR THE APPOINTMENT OF APPELLATE JUDGES BY THE GOVERNOR,  
4 WITH THE ADVICE AND CONSENT OF THE GENERAL ASSEMBLY, AND  
5 TO AUTHORIZE THE GENERAL ASSEMBLY TO PROVIDE A PROCEDURE  
6 TO DETERMINE IF JUDGES SO APPOINTED SHOULD BE RETAINED IN  
7 OFFICE.

8 The General Assembly of North Carolina enacts:

9 Section 1. Section 6(1) of Article IV of the North Carolina Constitution reads  
10 as rewritten:

11 "(1) Membership. The Supreme Court shall consist of a Chief Justice and six  
12 Associate Justices, but the General Assembly may increase the number of Associate  
13 Justices to not more than eight. The Governor shall nominate, and with the advice and  
14 consent of a majority of the Senate and of the House of Representatives, appoint the  
15 Chief Justice and the Associate Justices as provided by law. The General Assembly  
16 may require the Governor to make his nominations from names of persons submitted  
17 pursuant to procedures and in a manner prescribed by law. The General Assembly may  
18 by law permit persons nominated to serve pending appointment, and it may permit  
19 persons appointed to serve pending the beginning of their initial term. Justices  
20 appointed shall serve an initial term as provided by this Article and shall be eligible for  
21 subsequent terms pursuant to procedures and in a manner as shall be established by the  
22 General Assembly. In the event the Chief Justice is unable, on account of absence or  
23 temporary incapacity, to perform any of the duties placed upon him, the senior  
24 Associate Justice available may discharge these duties."

1           Sec. 2. Section 7 of Article IV of the North Carolina Constitution reads as  
2 rewritten:

3       **"Sec. 7. Court of Appeals.**

4       The structure, organization, and composition of the Court of Appeals shall be  
5 determined by the General Assembly. The Governor shall nominate, and with the  
6 advice and consent of a majority of the Senate and of the House of Representatives,  
7 appoint the Judges of the Court of Appeals as provided by law. The General Assembly  
8 may require the Governor to make his nominations from names of persons submitted  
9 pursuant to procedures and in a manner prescribed by law. The General Assembly may  
10 by law permit persons nominated to serve pending appointment, and it may permit  
11 persons appointed to serve pending the beginning of their initial term. Judges appointed  
12 shall serve an initial term as provided in this Article and shall be eligible for subsequent  
13 terms pursuant to procedures and in a manner as shall be established by the General  
14 Assembly. The Court shall have not less than five members, and may be authorized to  
15 sit in divisions, or other than **en banc**. Sessions of the Court shall be held at such times  
16 and places as the General Assembly may prescribe."

17           Sec. 3. Section 9(1) of Article IV of the North Carolina Constitution reads as  
18 rewritten:

19       "(1) Superior Court Judges and districts. The General Assembly shall, from time  
20 to time, divide the State into a convenient number of Superior Court judicial districts  
21 and shall provide for the election of one or more Superior Court Judges for each district.  
22 Judges of the Superior Court shall be elected by the qualified voters and shall hold  
23 office for terms of eight years and until their successors are elected and qualified.  
24 Regular Judges of the Superior Court may be elected by the qualified voters of the State  
25 or by the voters of their respective districts, as the General Assembly may prescribe.  
26 Each regular Superior Court Judge shall reside in the district for which he is elected.  
27 The General Assembly may provide by general law for the selection or appointment of  
28 special or emergency Superior Court Judges not selected for a particular judicial  
29 district."

30           Sec. 4. Section 16 of Article IV of the North Carolina Constitution reads as  
31 rewritten:

32       "~~Sec. 16. Terms of office and election of Justices of the Supreme Court, and Judges~~  
33 ~~of the Court of Appeals, and Judges of the Superior Court.~~

34       ~~Justices of the Supreme Court, Judges of the Court of Appeals, and regular Judges of~~  
35 ~~the Superior court shall be elected by the qualified voters and shall hold office for terms~~  
36 ~~of eight years and until their successors are elected and qualified. Justices of the~~  
37 ~~Supreme Court and Judges of the Court of Appeals shall be elected by the qualified~~  
38 ~~voters of the State. Regular Judges of the Superior Court may be elected by the~~  
39 ~~qualified voters of the State or by the voters of their respective districts, as the General~~  
40 ~~Assembly may prescribe.~~

41       The initial term of office for each person holding the office of Chief Justice of the  
42 Supreme Court, Associate Justice of the Supreme Court, and Judge of the Court of  
43 Appeals shall be four years, and each subsequent term for that person in that office shall  
44 be eight years."

1           Sec. 5. Section 19 of Article IV of the North Carolina Constitution reads as  
2 rewritten:

3           "Sec. 19. Vacancies.

4           (1) Vacancies generally. Unless otherwise provided in this Article, all vacancies  
5 occurring in the offices provided for by this Article shall be filled by appointment of the  
6 Governor, and the appointees shall hold their places until the next election for members  
7 of the General Assembly that is held more than 60 days after the vacancy occurs, when  
8 elections shall be held to fill the offices. When the unexpired term of any of the offices  
9 named in this Article of the Constitution in which a vacancy has occurred, and in which  
10 it is herein provided that the governor shall fill the vacancy, expires on the first day of  
11 January succeeding the next election for members of the General Assembly, the  
12 governor shall appoint to fill that vacancy for the unexpired term of the office. If any  
13 person elected or appointed to any of these offices shall fail to qualify, the office shall  
14 be appointed to, held and filled as provided in case of vacancies occurring therein. All  
15 incumbents of these offices shall hold until their successors are qualified.

16           (2) Vacancies on appellate courts. Vacancies in the office of Chief Justice,  
17 Associate Justice, or Judge of the Court of Appeals shall be filled according to Sections  
18 6 and 7 of this Article. The General Assembly may by general law specify provisions  
19 contrary to those in Article VI, Section 10 to be applicable to Justices and Judges."

20           Sec. 6. Article IV of the North Carolina Constitution is amended by adding a  
21 new section at the end to read:

22           "Sec. 23. Transition to appointment system.

23           The Chief Justice, Associate Justices, and Judges of the Court of Appeals holding  
24 office on the effective date of amendments to this Article deleting provisions requiring  
25 elections to those offices, and inserting in their place provisions requiring appointment  
26 to those offices, shall continue in office until the expiration of their terms. Those  
27 Justices and Judges, to remain in office beyond the expiration of their terms, shall be  
28 subject to the reconfirmation or retention procedures established by the General  
29 Assembly. The General Assembly may also provide by general law for the extension of  
30 terms of those Justices and Judges if necessary to an orderly transition to an appointive  
31 system of initial selection."

32           Sec. 7. The amendments set out in Sections 1 through 6 of this act shall be  
33 submitted to the qualified voters of the State at a statewide election to be held on  
34 November 5, 1991, which election shall be conducted under the laws then governing  
35 elections in the State. At that election, each qualified voter desiring to vote shall be  
36 provided a ballot on which shall be printed the following:

37           " FOR Constitutional amendments to provide for appointment of  
38 appellate judges by the Governor, subject to the advice and consent of  
39 the General Assembly for initial terms of four years, followed by  
40 subsequent terms of eight years pursuant to a reconfirmation procedure  
41 to be determined by the General Assembly.

42            AGAINST Constitutional amendments to provide for appointment of  
43 appellate judges by the Governor, subject to the advice and consent of  
44 the General Assembly for initial terms of four years, followed by

1                   subsequent terms of eight years pursuant to a reconfirmation procedure  
2                   to be determined by the General Assembly."

3                   Those qualified voters favoring the amendments set out in Sections 1 through  
4 6 of this act shall vote by making an "X" or check mark in the square beside the  
5 statement beginning "FOR", and those qualified voters opposed to that amendment shall  
6 vote by marking an "X" or check mark in the square beside the statement beginning  
7 "AGAINST".

8                   Notwithstanding the foregoing provisions of this section, voting machines  
9 may be used in accordance with rules and regulations prescribed by the State Board of  
10 Elections.

11                   Sec. 8. If a majority of votes cast thereon are in favor of the amendments set  
12 out in Sections 1 through 6 of this act, the State Board of Elections shall certify the  
13 amendments to the Secretary of State, who shall enroll the amendments so certified  
14 among the permanent records of his office, and the amendments shall become effective  
15 January 15, 1992.

16                   Sec. 9. This act is effective upon ratification.