

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 71
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Short Title: Appointed Judges.

(Public)

Sponsors: Senators Winner, Hyde; Ballance, Basnight, Bryan, Carpenter, Cochrane, Daniel, Daughtry, Hartsell, Hunt, Lee, Martin of Pitt, Martin of Guilford, Marvin, Parnell, Plexico, Royall, Sands, Shaw, Sherron, Smith, Speed, and Ward.

Referred to: Constitution.

February 13, 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 those present and voting of the Senate and of the House of
15 Representatives, appoint the Chief Justice and the Associate Justices as provided by
16 law. The General Assembly may require the Governor to make his nominations from
17 names of persons submitted pursuant to procedures and in a manner prescribed by law.
18 The General Assembly may by law permit persons nominated to serve pending
19 appointment, and it may permit persons appointed to serve pending the beginning of
20 their initial term. Justices appointed shall serve an initial term as provided by this
21 Article and shall be eligible for subsequent terms pursuant to procedures and in a

1 manner as shall be established by the General Assembly. In the event the Chief Justice
2 is unable, on account of absence or temporary incapacity, to perform any of the duties
3 placed upon him, the senior Associate Justice available may discharge these duties."

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

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

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

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

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

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

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

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

1 The initial term of office for each person holding the office of Chief Justice of the
2 Supreme Court, Associate Justice of the Supreme Court, and Judge of the Court of
3 Appeals shall be four years, and each subsequent term for that person in that office shall
4 be eight years."

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

7 "Sec. 19. Vacancies.

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

20 (2) Vacancies on appellate courts. Vacancies in the office of Chief Justice,
21 Associate Justice, or Judge of the Court of Appeals shall be filled according to Sections
22 6 and 7 of this Article. The General Assembly may by general law specify provisions
23 contrary to those in Article VI, Section 10 to be applicable to Justices and Judges."

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

26 "Sec. 23. Transition to appointment system.

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

36 Sec. 7. The amendments set out in Sections 1 through 6 of this act shall be
37 submitted to the qualified voters of the State at the general election to be held in
38 November of 1992, which election shall be conducted under the laws then governing
39 elections in the State. At that election, each qualified voter desiring to vote shall be
40 provided a ballot on which shall be printed the following:

41 "[] FOR Constitutional amendments to change from election to
42 appointment of appellate judges by the Governor, subject to the advice
43 and consent of the General Assembly for initial terms of four years,

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

3 AGAINST Constitutional amendments to change from election to
4 appointment of appellate judges by the Governor, subject to the advice
5 and consent of the General Assembly for initial terms of four years,
6 followed by subsequent terms of eight years pursuant to a
7 reconfirmation procedure to be determined by the General Assembly."

8 Those qualified voters favoring the amendments set out in Sections 1 through
9 6 of this act shall vote by making an "X" or check mark in the square beside the
10 statement beginning "FOR", and those qualified voters opposed to that amendment shall
11 vote by marking an "X" or check mark in the square beside the statement beginning
12 "AGAINST".

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

16 Sec. 8. If a majority of votes cast thereon are in favor of the amendments set
17 out in Sections 1 through 6 of this act, the State Board of Elections shall certify the
18 amendments to the Secretary of State, who shall enroll the amendments so certified
19 among the permanent records of his office, and the amendments shall become effective
20 January 15, 1993.

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