

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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SENATE BILL 93

Short Title: En Banc Procedure.

(Public)

Sponsors: Senators Rand; Dalton, Gulley, Kinnaird, Martin of Guilford, and Metcalf.

Referred to: Judiciary I.

February 7, 2001

A BILL TO BE ENTITLED
AN ACT TO PROVIDE FOR THE NORTH CAROLINA COURT OF APPEALS TO
CONDUCT EN BANC PROCEEDINGS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-16 reads as rewritten:

"§ 7A-16. Creation and organization.

The Court of Appeals is created effective January 1, 1967. It shall consist initially of six judges, elected by the qualified voters of the State for terms of eight years. The Chief Justice of the Supreme Court shall designate one of the judges as Chief Judge, to serve in such capacity at the pleasure of the Chief Justice. Before entering upon the duties of his office, a judge of the Court of Appeals shall take the oath of office prescribed for a judge of the General Court of Justice.

The Governor on or after July 1, 1967, shall make temporary appointments to the six initial judgeships. The appointees shall serve until January 1, 1969. Their successors shall be elected at the general election for members of the General Assembly in November, 1968, and shall take office on January 1, 1969, to serve for the remainder of the unexpired term which began on January 1, 1967.

Upon the appointment of at least five judges, and the designation of a Chief Judge, the court is authorized to convene, organize, and promulgate, subject to the approval of the Supreme Court, such supplementary rules as it deems necessary and appropriate for the discharge of the judicial business lawfully assigned to it.

Effective January 1, 1969, the number of judges is increased to nine, and the Governor, on or after March 1, 1969, shall make temporary appointments to the additional judgeships thus created. The appointees shall serve until January 1, 1971. Their successors shall be elected at the general election for members of the General Assembly in November, 1970, and shall take office on January 1, 1971, to serve for the remainder of the unexpired term which began on January 1, 1969.

1 Effective January 1, 1977, the number of judges is increased to 12; and the
2 Governor, on or after July 1, 1977, shall make temporary appointments to the additional
3 judgeships thus created. The appointees shall serve until January 1, 1979. Their
4 successors shall be elected at the general election for members of the General Assembly
5 in November, 1978, and shall take office on January 1, 1979, to serve the remainder of
6 the unexpired term which began on January 1, 1977.

7 On or after December 15, 2000, the Governor shall appoint three additional judges
8 to increase the number of judges to 15. Each judgeship shall not become effective until
9 the temporary appointment is made, and each appointee shall serve from the date of
10 qualification until January 1, 2005. Those judges' successors shall be elected in the 2004
11 general election and shall take office on January 1, 2005, to serve terms expiring
12 December 31, 2012.

13 The Court of Appeals shall sit in panels of three judges ~~each~~ each and may also sit
14 en banc upon a vote of a majority of the judges of the court. The Chief Judge insofar as
15 practicable shall assign the members to panels in such fashion that each member sits a
16 substantially equal number of times with each other member. He shall preside over the
17 panel of which he is a member, and shall designate the presiding judge of the other
18 panel or panels.

19 Three judges shall constitute a quorum for the transaction of the business of the
20 court, except as may be provided in ~~§ 7A-32~~ G.S. 7A-32.

21 In the event the Chief Judge is unable, on account of absence or temporary
22 incapacity, to perform the duties placed upon him as Chief Judge, the Chief Justice shall
23 appoint an acting Chief Judge from the other judges of the Court, to temporarily
24 discharge the duties of Chief Judge."

25 **SECTION 2.** The Supreme Court, in consultation with the Court of Appeals,
26 is respectfully requested to adopt rules of procedure for en banc proceedings in the
27 Court of Appeals.

28 **SECTION 3.** This act is effective when it becomes law.