

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 526

Short Title: Superior Court Judge Elections. (Public)

Sponsors: Representatives Wainwright; Burr, Faison, and Underhill.

Referred to: Election Law and Campaign Finance Reform, if favorable, Judiciary III.

March 11, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT EACH SUPERIOR COURT JUDGESHIP SHALL BE ELECTED SEPARATELY, AS IS ALREADY PROVIDED FOR THE APPELLATE DIVISION AND DISTRICT COURT, AND THAT VACANCIES SHALL BE FILLED AT THE NEXT ELECTION FOR A FULL EIGHT-YEAR TERM AS IS ALREADY PROVIDED FOR THE APPELLATE DIVISION.

The General Assembly of North Carolina enacts:

SECTION 1. ~~G.S.~~ 163-9 reads as rewritten:

"§ 163-9. **Filling vacancies in State and district judicial offices.**

(a) Vacancies occurring in the offices of Justice of the Supreme Court, judge of the Court of Appeals, and judge of the superior court for causes other than expiration of term shall be filled by appointment of the Governor. An appointee to ~~the office of Justice of the Supreme Court or judge of the Court of Appeals~~ any of those offices shall hold office until January 1 next following the election for members of the General Assembly that is held more than 60 days after the vacancy occurs, at which time an election shall be held for an eight-year term and until a successor is elected and qualified.

(b) ~~Except for judges specified in the next paragraph of this subsection, an appointee to the office of judge of superior court shall hold his place until the next election for members of the General Assembly that is held more than 60 days after the vacancy occurs, at which time an election shall be held to fill the unexpired term of the office.~~

~~Appointees for judges of the superior court from any district:~~

(1) ~~With only one resident judge; or~~

(2) ~~In which no county is subject to section 5 of the Voting Rights Act of 1965, shall hold the office until the next election of members of the General Assembly that is held more than 60 days after the vacancy occurs, at which time an election shall be held to fill an eight year term.~~

(c) When the unexpired term of the office in which the vacancy has occurred expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill that vacancy for the unexpired term of the office.

(d) Vacancies in the office of district judge which occur before the expiration of a term shall not be filled by election. Vacancies in the office of district judge shall be filled in accordance with G.S. 7A-142."

SECTION 2. G.S. 163-322 reads as rewritten:

"§ 163-322. **Nonpartisan primary election method.**

(a) General. – Except as provided in G.S. 163-329, there shall be a primary to narrow the field of candidates to two candidates for each position to be filled if, when the filing period closes, there are more than two candidates for a single office ~~or the number of candidates for a~~



1 ~~group of offices exceeds twice the number of positions to be filled.~~ office. If only one or two
 2 candidates file for a single office, no primary shall be held for that office and the candidates
 3 shall be declared nominated. ~~If the number of candidates for a group of offices does not exceed~~
 4 ~~twice the number of positions to be filled, no primary shall be held for those offices and the~~
 5 ~~candidates shall be declared nominated.~~

6 (b) Determination of Nominees. – In the primary, the two candidates for a single office
 7 receiving the highest number of votes, ~~and those candidates for a group of offices receiving the~~
 8 ~~highest number of votes, equal to twice the number of positions to be filled,~~ votes shall be
 9 declared nominated. If two or more candidates receiving the highest number of votes each
 10 receive the same number of votes, the State Board of Elections shall determine their relative
 11 ranking by lot, and shall declare the nominees accordingly. The canvass of the primary shall be
 12 held on the same date as the primary canvass fixed under G.S. 163-182.5. The canvass shall be
 13 conducted in accordance with Article 15A of this Chapter.

14 (c) Determination of Election Winners. – In the election, the names of those candidates
 15 declared nominated without a primary and those candidates nominated in the primary shall be
 16 placed on the ballot. The candidate for a single office receiving the highest number of votes
 17 shall be elected. ~~Those candidates for a group of offices receiving the highest number of votes,~~
 18 ~~equal in number to the number of positions to be filled, shall be elected.~~ If two candidates
 19 receiving the highest number of votes each received the same number of votes, the State Board
 20 of Elections shall determine the winner by lot."

21 **SECTION 3.** G.S. 163-323 reads as rewritten:

22 **"§ 163-323. Notice of candidacy.**

23 (a) Form of Notice. – Each person offering to be a candidate for election shall do so by
 24 filing a notice of candidacy with the State Board of Elections in the following form, inserting
 25 the words in parentheses when appropriate:

26 Date _____
 27 I hereby file notice that I am a candidate for election to the office of _____ in
 28 the regular election to be held _____, _____.
 29 Signed _____
 30 (Name of Candidate)

31 Witness: _____

32 The notice of candidacy shall be either signed in the presence of the chairman or secretary
 33 of the State Board of Elections, or signed and acknowledged before an officer authorized to
 34 take acknowledgments who shall certify the notice under seal. An acknowledged and certified
 35 notice may be mailed to the State Board of Elections. In signing a notice of candidacy, the
 36 candidate shall use only the candidate's legal name and, in his discretion, any nickname by
 37 which commonly known. A candidate may also, in lieu of that candidate's first name and legal
 38 middle initial or middle name, if any, sign that candidate's nickname, provided the candidate
 39 appends to the notice of candidacy an affidavit that the candidate has been commonly known
 40 by that nickname for at least five years prior to the date of making the affidavit. The candidate
 41 shall also include with the affidavit the way the candidate's name (as permitted by law) should
 42 be listed on the ballot if another candidate with the same last name files a notice of candidacy
 43 for that office.

44 A notice of candidacy signed by an agent or any person other than the candidate himself
 45 shall be invalid.

46 (b) Time for Filing Notice of Candidacy. – Candidates seeking election to the following
 47 offices shall file their notice of candidacy with the State Board of Elections no earlier than
 48 12:00 noon on the second Monday in February and no later than 12:00 noon on the last
 49 business day in February preceding the election:

- 50 Justices of the Supreme Court.
- 51 Judges of the Court of Appeals.

1 Judges of the superior courts.

2 Judges of the district courts.

3 (c) Withdrawal of Notice of Candidacy. – Any person who has filed a notice of
4 candidacy for an office shall have the right to withdraw it at any time prior to the date on which
5 the right to file for that office expires under the terms of subsection (b) of this section.

6 (d) Certificate That Candidate Is Registered Voter. – Candidates shall file along with
7 their notice a certificate signed by the chairman of the board of elections or the director of
8 elections of the county in which they are registered to vote, stating that the person is registered
9 to vote in that county, and if the candidacy is for superior court judge and the county contains
10 more than one superior court district, stating the superior court district of which the person is a
11 resident. In issuing such certificate, the chairman or director shall check the registration records
12 of the county to verify such information. During the period commencing 36 hours immediately
13 preceding the filing deadline, the State Board of Elections shall accept, on a conditional basis,
14 the notice of candidacy of a candidate who has failed to secure the verification ordered herein
15 subject to receipt of verification no later than three days following the filing deadline. The State
16 Board of Elections shall prescribe the form for such certificate, and distribute it to each county
17 board of elections no later than the last Monday in December of each odd-numbered year.

18 (e) Candidacy for More Than One Office Prohibited. – No person may file a notice of
19 candidacy for more than one office ~~or group of offices~~ described in subsection (b) of this
20 section, or for an office ~~or group of offices~~ described in subsection (b) of this section and an
21 office described in G.S. 163-106(c), for any one election. If a person has filed a notice of
22 candidacy with a board of elections under this section or under G.S. 163-106(c) for one ~~office~~
23 ~~or group of offices~~, office, then a notice of candidacy may not later be filed for any other office
24 ~~or group of offices~~ under this section when the election is on the same date unless the notice of
25 candidacy for the first office is withdrawn under subsection (c) of this section.

26 (f) Notice of Candidacy ~~for Certain Offices~~ to Indicate Vacancy. – In any election in
27 which there are two or more vacancies for the office of justice of the Supreme Court, judge of
28 the Court of Appeals, superior court judge, or district court judge to be filled by nominations,
29 each candidate shall, at the time of filing notice of candidacy, file with the State Board of
30 Elections a written statement designating the vacancy to which the candidate seeks election.
31 Votes cast for a candidate shall be effective only for election to the vacancy for which the
32 candidate has given notice of candidacy as provided in this subsection.

33 A person seeking election for a specialized district judgeship established under G.S. 7A-147
34 shall, at the time of filing notice of candidacy, file with the State Board of Elections a written
35 statement designating the specialized judgeship to which the person seeks nomination.

36 (g) No person may file a notice of candidacy for superior court judge unless that person
37 is at the time of filing the notice of candidacy a resident of the judicial district as it will exist at
38 the time the person would take office if elected. No person may be nominated as a superior
39 court judge under G.S. 163-114 unless that person is at the time of nomination a resident of the
40 judicial district as it will exist at the time the person would take office if elected. This
41 subsection implements Article IV, Section 9(1) of the North Carolina Constitution which
42 requires regular Superior Court Judges to reside in the district for which elected."

43 **SECTION 4.** G.S. 163-327.1 reads as rewritten:

44 "**§ 163-327.1. Rules when vacancies for superior court judge are to be voted on.**

45 If a vacancy occurs in a judicial district for any offices of superior court judge, and on
46 account of the occurrence of such vacancy, there is to be an election for one or more terms in
47 that district to fill the vacancy or vacancies, at that same election in accordance with G.S. 163-9
48 and Article IV, Section 19 of the North Carolina Constitution, the nomination and election shall
49 be determined by the following special rules in addition to any other provisions of law:

- 1 (1) If the vacancy occurs prior to the opening of the filing period under
2 G.S. 163-323(b), nominations shall be made by primary election as provided
3 by this Article, ~~without designation as to the vacancy.~~ Article.
4 (2) If the vacancy occurs beginning on opening of the filing period under
5 G.S. 163-323(b), and ending on the sixtieth day before the general election,
6 candidate filing shall be as provided ~~by G.S. 163-329 without designation as~~
7 ~~to the vacancy.~~ by G.S. 163-329.
8 (3) The general election ballot shall ~~contain, without designation as to vacancy,~~
9 contain spaces for the election to fill the vacancy where nominations were
10 made or candidates filed under subdivision (1) or (2) of this section. Except
11 as provided in G.S. 163-329, the ~~persons~~ person receiving the highest
12 ~~numbers~~ number of votes for each seat ~~equal to the term or terms to be filled~~
13 ~~shall be elected to the term or terms."~~

14 **SECTION 5.** G.S. 163-328 reads as rewritten:

15 **"§ 163-328. Failure of candidates to file; death or other disqualification of a candidate; no**
16 **withdrawal from candidacy.**

17 (a) Insufficient Number of Candidates. – If when the filing period expires, candidates
18 have not filed for an office to be filled under this Article, the State Board of Elections shall
19 extend the filing period for five days for any such offices.

20 (a1) Death or Disqualification of Candidate Before Primary. – If a candidate for
21 nomination in a primary dies or becomes disqualified before the primary but after the ballots
22 have been printed, the State Board of Elections shall determine whether or not there is time to
23 reprint the ballots. If the Board determines that there is not enough time to reprint the ballots,
24 the deceased or disqualified candidate's name shall remain on the ballots. If that candidate
25 receives enough votes for nomination, such votes shall be disregarded and the candidate
26 receiving the next highest number of votes below the number necessary for nomination shall be
27 declared nominated. If the death or disqualification of the candidate leaves only two candidates
28 for each office to be filled, the nonpartisan primary shall not be held and all candidates shall be
29 declared nominees.

30 (b) Earlier Non-Primary Vacancies; Reopening Filing. – If there is no primary because
31 only one or two candidates have filed for a single office, ~~or the number of candidates filed for a~~
32 ~~group of offices does not exceed twice the number of positions to be filled,~~ or if a primary has
33 occurred and eliminated candidates, and thereafter a remaining candidate dies or otherwise
34 becomes disqualified before the election and before the ballots are printed, the State Board of
35 Elections shall, upon notification of the death or other disqualification, immediately reopen the
36 filing period for an additional five days during which time additional candidates shall be
37 permitted to file for election. If the ballots have been printed at the time the State Board of
38 Elections receives notice of the candidate's death or other disqualification, the Board shall
39 determine whether there will be sufficient time to reprint them before the election if the filing
40 period is reopened for three days. If the Board determines that there will be sufficient time to
41 reprint the ballots, it shall reopen the filing period for three days to allow other candidates to
42 file for election, and that election shall be conducted as provided in G.S. 163-329(b1).

43 (c) Later Vacancies; Ballots Not Reprinted. – If the ballots have been printed at the
44 time the State Board of Elections receives notice of a candidate's death or other
45 disqualification, and if the Board determines that there is not enough time to reprint the ballots
46 before the election if the filing period is reopened for three days, then regardless of the number
47 of candidates remaining for the office or group of offices, the ballots shall not be reprinted and
48 the name of the vacated candidate shall remain on the ballots. If a vacated candidate should poll
49 the highest number of votes in the election for a single ~~office or enough votes to be elected to~~
50 ~~one of a group of offices,~~ office, the State Board of Elections shall declare the office vacant and
51 it shall be filled in the manner provided by law.

1 (d) No Withdrawal Permitted of Living, Qualified Candidate After Close of Filing. –
2 After the close of the candidate filing period, a candidate who has filed a notice of candidacy
3 for the office, who has not withdrawn notice before the close of filing as permitted by
4 G.S. 163-323(b), who remains alive, and has not become disqualified for the office may not
5 withdraw his or her candidacy. That candidate's name shall remain on the ballot, any votes cast
6 for the candidacy shall be counted in primary or election, and if the candidate wins, the
7 candidate may fail to qualify by refusing to take the oath of office.

8 (e) Death, Disqualification, or Failure to Qualify After Election. – If a person elected to
9 the office of justice of the Supreme Court, judge of the Court of Appeals, or superior or district
10 court judge dies or becomes disqualified on or after election day and before he has qualified by
11 taking the oath of office, or fails to qualify by refusing to take the oath of office, the office shall
12 be deemed vacant and shall be filled as provided by law."

13 **SECTION 6.** G.S. 163-329(b1) reads as rewritten:

14 "(b1) Method for Vacancy Election. – If a vacancy for the office of justice of the Supreme
15 Court, judge of the Court of Appeals, or judge of the superior court occurs more than 60 days
16 before the general election and after the opening of the filing period for the primary, then the
17 State Board of Elections shall designate a special filing period of one week for candidates for
18 the office. If more than two candidates file and qualify for the office in accordance with
19 G.S. 163-323, then the Board shall conduct the election for the office as follows:

20 (1) When the vacancy described in this section occurs more than 63 days before
21 the date of the second primary for members of the General Assembly, a
22 special primary shall be held on the same day as the second primary. The
23 two candidates with the most votes in the special primary shall have their
24 names placed on the ballot for the general election held on the same day as
25 the general election for members of the General Assembly.

26 (2) When the vacancy described in this section occurs less than 64 days before
27 the date of the second primary, a general election for all the candidates shall
28 be held on the same day as the general election for members of the General
29 Assembly and the "instant runoff voting" method shall be used to determine
30 the winner. Under "instant runoff voting," voters rank up to three of the
31 candidates by order of preference, first, second, or third. If the candidate
32 with the greatest number of first-choice votes receives more than fifty
33 percent (50%) of the first-choice votes, that candidate wins. If no candidate
34 receives that minimum number, the two candidates with the greatest number
35 of first-choice votes advance to a second round of counting. In this round,
36 each ballot counts as a vote for whichever of the two final candidates is
37 ranked highest by the voter. The candidate with the most votes in the second
38 round wins the election. ~~If more than one seat is to be filled in the same race,~~
39 ~~the voter votes the same way as if one seat were to be filled. The counting is~~
40 ~~the same as when one seat is to be filled, with one or two rounds as needed,~~
41 ~~except that counting is done separately for each seat to be filled. The first~~
42 ~~count results in the first winner. Then the second count proceeds without the~~
43 ~~name of the first winner. This process results in the second winner. For each~~
44 ~~additional seat to be filled, an additional count is done without the names of~~
45 ~~the candidates who have already won. In multi-seat contests, the State Board~~
46 ~~of Elections may give the voter more than three choices.~~

47 (3) If two or more candidates receiving the highest number of votes each receive
48 the same number of votes, the board of elections shall resolve the tie in
49 accordance with G.S. 163-182.8."

50 **SECTION 7.** This act is effective when it becomes law.