

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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SENATE BILL 878

Short Title: Judicial Appointment/Voter Retention. (Public)

Sponsors: Senators Clodfelter; and Hartsell.

Referred to: Ways & Means.

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA CONSTITUTION TO PROVIDE FOR  
NOMINATION OF JUSTICES OF THE SUPREME COURT AND JUDGES OF THE  
COURT OF APPEALS, GUBERNATORIAL APPOINTMENT, AND RETENTION BY  
VOTE OF THE PEOPLE.

The General Assembly of North Carolina enacts:

**SECTION 1.** Section 16 of Article IV of the North Carolina Constitution reads as  
rewritten:

**"Sec. 16. Terms of office and election of Justices of the Supreme Court, Judges of the  
Court of Appeals, and Judges of the Superior Court. Selection and tenure of Justices of  
the Supreme Court and Judges of the Court of Appeals; election of Judges of the Superior  
Court.**

Justices of the Supreme Court, Judges of the Court of Appeals, and regular

(1) Judges of the Superior Court shall be elected by the qualified voters and shall hold  
office for terms of eight years and until their successors are elected and qualified. Justices of  
the Supreme Court and Judges of the Court of Appeals shall be elected by the qualified voters  
of the State. Regular Judges of the Superior Court may shall be elected by the qualified voters  
of the State or by the voters of their respective districts, as the General Assembly may  
prescribe. districts.

(2) General principles. Justices and Judges of the Appellate Division should be selected  
for and continue to hold office solely upon the basis of personal and professional fitness to  
administer justice wisely, according to law, and without favor, denial, or delay to all persons  
who come into the courts. While their continuation in office should be periodically subject to  
approval by the people, both their initial selection and continuation in office should be free  
from the influences and necessities of partisan political activity.

(3) Nomination, appointment, retention election, and terms of Justices and Judges. On  
and after January 1, 2010, when a vacancy occurs in the office of Chief Justice, Associate  
Justice, or Judge of the Appellate Division, the Governor shall appoint a person to fill the  
vacancy. For the purposes of this section, creation of a new judgeship within the Appellate  
Division creates a vacancy.

The term of office by appointment as Chief Justice, Associate Justice, or Judge of the  
Appellate Division extends through June 30 after the next statewide election for members of  
the General Assembly that is held more than 18 months after the appointment. At that election,  
a person holding by appointment the office of Chief Justice, Associate Justice, or Judge of the  
Appellate Division who desires to continue in office shall be subject to approval by nonpartisan  
ballot, by a majority of the votes cast on the issue of the Justice's or Judge's retention. A Chief



1 Justice, Associate Justice, or Judge of the Appellate Division then approved for retention serves  
2 a regular term.

3 The regular term of office of the Chief Justice, Associate Justices, and Judges of the  
4 Appellate Division is eight years and expires on June 30.

5 A Chief Justice, Associate Justice, or Judge of the Appellate Division who desires to  
6 continue in office shall be subject to approval by nonpartisan ballot, by a majority of the votes  
7 cast on the issue of the Justice's or Judge's retention during the next general election preceding  
8 June 30 of the year that the Justice's or Judge's eight-year term would expire.

9 If the voters fail to approve the retention in office of a Chief Justice, Associate Justice, or  
10 Judge of the Appellate Division serving an appointed or regular term, the office shall become  
11 vacant at the end of the term of office, and it shall be filled by nomination and appointment as  
12 prescribed in this section.

13 Voting in a retention election on the Chief Justice, Associate Justices, and Judges of the  
14 Appellate Division shall be the qualified voters of the whole State.

15 (4) Transition provisions. The term of office of a person who has been elected before  
16 January 1, 2010, to the office of Chief Justice, Associate Justice, or Judge of the Appellate  
17 Division for a term which extends beyond January 1, 2008, and who is in office on January 1,  
18 2010, is extended through June 30 of the year following the eighth year after the date any such  
19 Justice or Judge was last elected to the office. If the person so elected continues to serve for the  
20 remainder of the term, that person may stand for retention in the office for a succeeding regular  
21 term as provided in this section, subject to the provisions of G.S. 7A-4.20. If the person  
22 continues to serve for the remainder of the term but does not stand for retention election, a  
23 vacancy is created in the office upon expiration of the term, and this vacancy shall be filled by  
24 nomination and appointment as provided in this section.

25 The term of office of a person who has been appointed before January 1, 2010, to the office  
26 of Chief Justice, Associate Justice, or Judge of the Appellate Division for a term which extends  
27 beyond January 1, 2010, and who is in office on January 1, 2010, shall end on June 30, 2011. If  
28 the person so appointed continues to serve for the remainder of the term, that person may stand  
29 for retention in the office for a regular term as provided by this section at the statewide election  
30 for members of the General Assembly held in 2010.

31 Upon the death, resignation, removal, or retirement of any incumbent Justice or Judge on or  
32 after January 1, 2010, and before the expiration of the Justice's or Judge's term of office, the  
33 resulting vacancy shall be filled by nomination and appointment as provided in this section.

34 Vacancies in judicial offices in the Appellate Division occurring before January 1, 2010,  
35 and not filled by that date, shall be filled by nomination and appointment as provided in this  
36 section.

37 From the date any incumbent described in this subsection is continued in office by retention  
38 vote for a term next succeeding the term in progress on January 1, 2008, or is succeeded in  
39 office by another person, the office is held subject to the provisions of this section.

40 (5) The General Assembly may implement this section by general law."

41 **SECTION 2.** The amendment set out in Section 1 of this act shall be submitted to  
42 the qualified voters of the State at an election on November 3, 2009, which election shall be  
43 conducted under the laws then governing elections in the State. Ballots, voting systems, or  
44 both may be used in accordance with Chapter 163 of the General Statutes. The question on the  
45 ballot shall be:

46 "[ ] FOR [ ] AGAINST

47 Constitutional amendment to replace the present practice of selecting Justices and  
48 Judges of the Appellate Division by gubernatorial appointment, followed by partisan elections,  
49 with a method by which Justices and Judges of the Appellate Division will be nominated by a  
50 nominating commission, appointed by the Governor, and then serve for limited terms after  
51 which the question of the Justice's or Judge's retention in office is regularly submitted for

1 approval or disapproval by nonpartisan vote of the people at general elections, and to provide  
2 for election of superior court judges in their districts."

3 **SECTION 3.** If a majority of votes cast on the question are in favor of the  
4 amendment set out in Section 1 of this act, the State Board of Elections shall certify the  
5 amendment to the Secretary of State. The amendment becomes effective upon this  
6 certification. The Secretary of State shall enroll the amendment so certified among the  
7 permanent records of that office.

8 **SECTION 4.** Chapter 7A of the General Statutes is amended by adding a new  
9 Article to read:

10 "Article 1A.

11 "Appointment of Justices and Judges; Retention Elections.

12 **"§ 7A-4.1. Nomination of Justices and Judges by nominating commission and**  
13 **appointment by Governor.**

14 The offices of Chief Justice and Justice of the Supreme Court and Judge of the Court of  
15 Appeals are filled by nomination by the Judicial Nomination Commission and appointment by  
16 the Governor in accordance with Section 16 of Article IV of the North Carolina Constitution.

17 **"§ 7A-4.2. Judicial Nomination Commission – creation; membership; terms;**  
18 **administration.**

19 (a) The Judicial Nomination Commission is created within the Administrative Office of  
20 the Courts for budgetary purposes.

21 (b) The Commission shall consist of 18 members as follows:

22 (1) A district attorney chosen by the Conference of District Attorneys;

23 (2) A public defender chosen by the public defenders;

24 (3) A superior court judge chosen by the Conference of Superior Court Judges;

25 (4) A district court judge chosen by the Conference of District Court Judges;

26 (5) A clerk of superior court chosen by the Association of Clerks of Superior  
27 Court of North Carolina;

28 (6) Six attorneys appointed by the Council of the State Bar to include at least  
29 one attorney actively engaged in the practice of criminal defense law, one  
30 attorney actively engaged in a civil law practice representing plaintiffs, and  
31 one attorney actively engaged in a civil law practice representing defendants;

32 (7) A present or former dean of an accredited law school in North Carolina  
33 appointed by the Council of the State Bar;

34 (8) Two nonattorneys appointed by the Governor;

35 (9) Two nonattorneys appointed by the General Assembly upon the  
36 recommendation of the Speaker of the House of Representatives; and

37 (10) Two nonattorneys appointed by the General Assembly upon the  
38 recommendation of the President Pro Tempore of the Senate.

39 (c) Members of the Commission shall serve for staggered four-year terms. One-half of  
40 the appointees shall serve an initial term of two years, as determined by lot at the first meeting  
41 of the Commission. The remainder of the appointees shall serve an initial term of four years.  
42 Commission members may not serve more than two consecutive terms.

43 (d) All members of the Commission are voting members. The members shall elect a  
44 chair at the Commission's first meeting. The chair shall preside for the duration of the chair's  
45 term as a member. Vacancies in the appointed membership shall be filled by the appointing  
46 officer who made the initial appointment.

47 (e) Members, staff, and consultants of the Commission shall receive travel and  
48 subsistence expenses in accordance with the provisions of G.S. 120-3.1, paid from funds  
49 appropriated to implement this Article and within the limits of those funds.

50 (f) No member of the General Assembly shall serve concurrently as a member of the  
51 Commission.

**"§ 7A-4.3. Judicial Nomination Commission; duties.**

The Commission shall:

- (1) Establish operating procedures for the Commission.
- (2) Solicit judicial nominations from interested persons and members of the general public to fill appellate court vacancies.
- (3) Establish and publicize the procedures for submitting a candidate to be considered by the Commission.
- (4) Interview and investigate candidates for judicial appointment to the appellate courts.
- (5) Nominate persons to the Governor for appointment to the appellate courts.
- (6) Review and evaluate the tenure of Justices and Judges who must stand for a retention election.
- (7) Issue a report on Justices and Judges standing for a retention election 90 days before the retention election. The report shall include: (i) information the Commission believes would be helpful to the citizens of North Carolina; and (ii) information regarding any disciplinary action taken against a Justice or Judge during tenure. The report may include a recommendation by the Commission for or against the Justice's or Judge's retention.
- (8) Perform any other duties the Commission deems necessary to carry out the mandate of this Article.

**"§ 7A-4.4. Nomination procedures.**

(a) The Commission may conduct an investigation of a nominee. The investigation may include an evaluation of the nominee's ethical conduct, the nominee's knowledge of and application of the law, the nominee's management of the courts over which he has presided, the nominee's work habits, the nominee's health, and the nominee's judicial demeanor. The nominee or Judge shall be given an opportunity to present to the Commission any information that the nominee determines to be appropriate.

(b) The Commission shall be allowed to inspect the files of the Judicial Standards Commission by request of the chair of the Commission. Notwithstanding the provisions of G.S. 7A-377, the files of the Judicial Standards Commission shall be made available to the Commission. Testimony and other evidence presented to the Commission are privileged in any action for defamation.

(c) The Commission shall nominate at least three and no more than five persons to be considered by the Governor for judicial appointment within 60 days of any vacancy in office that occurs because of death, resignation, retirement, failure to be retained, or any other reason. The Governor may appoint a person who was not nominated by the Commission.

(d) The internal files and information obtained by the Commission during the examination of a potential judicial nominee are not public records until such time as the candidate is recommended to the Governor for a judicial appointment. Nominations, the Commission's vote on judicial nominees, and reports made by the Commission are public records.

**"§ 7A-4.5. Governor to issue commissions to Justices and Judges.**

Every person duly nominated by the Judicial Nomination Commission and appointed by the Governor as Chief Justice of the Supreme Court, Associate Justice of the Supreme Court, or Judge of the Court of Appeals shall procure from the Governor a commission attesting that fact.

When a Judge is retained in office by vote of the people, the Governor shall issue a commission attesting that fact, which the Governor shall issue upon receipt of a certification by the Secretary of State of the results of the election.

**"§ 7A-4.6. No elections in 2010.**

No election as previously provided by law for Chief Justice or Associate Justice of the Supreme Court or Judge of the Court of Appeals shall be held in 2010 or thereafter.

1 **"§ 7A-4.7. Retention elections.**

2 (a) As provided by Section 16 of Article IV of the North Carolina Constitution, a Chief  
3 Justice or Associate Justice of the Supreme Court or Judge of the Court of Appeals desiring to  
4 continue in office shall be subject to approval by nonpartisan ballot, by a majority of votes cast  
5 on the issue of the Justice's or Judge's retention.

6 (b) A person subject to subsection (a) of this section shall indicate the desire to continue  
7 in office by filing a notice to that effect with the State Board of Elections no later than 12:00  
8 noon on the first business day of July in the year of the election. The notice shall be on a form  
9 approved by the State Board of Elections. Notice can be withdrawn at any time prior to the  
10 deadline for filing notice under this subsection.

11 (c) Retention elections shall be conducted and canvassed in accordance with rules of  
12 the State Board of Elections in the same general manner as general elections under Chapter 163  
13 of the General Statutes, except that the retention election is nonpartisan. The form of the ballot  
14 shall be determined by the State Board of Elections.

15 (d) Retention elections shall be placed at the top of the ballot above all other elections  
16 or matters for decision, whether partisan, nonpartisan, or otherwise.

17 (e) If a person who has filed a notice calling a retention election dies or is removed  
18 from office prior to the time that the ballots are printed, the retention election is cancelled. If a  
19 person who has filed a notice calling a retention election dies or is removed from office after  
20 the ballots are printed, the State Board of Elections may cancel the election if it determines that  
21 the ballots can be reprinted without significant expense. If the ballots cannot be reprinted, then  
22 the results of the election shall be ineffective."

23 **SECTION 5.** G.S. 7A-10(a) reads as rewritten:

24 "(a) The Supreme Court shall consist of a Chief Justice and six associate justices, elected  
25 by the qualified voters of the State for terms of eight years selected as provided by Article 1A of  
26 this Chapter. Before entering upon the duties of his office, each justice shall take an oath of  
27 office. Four justices shall constitute a quorum for the transaction of the business of the court.  
28 Sessions of the court shall be held in the city of Raleigh, and scheduled by rule of court so as to  
29 discharge expeditiously the court's business. The court may by rule hold sessions not more than  
30 twice annually in the Old Chowan County Courthouse (1767) in the Town of Edenton, which is  
31 a State-owned court facility that is designated as a National Historic Landmark by the United  
32 States Department of the Interior."

33 **SECTION 6.** G.S. 7A-16 reads as rewritten:

34 **"§ 7A-16. Creation and organization.**

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

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

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

50 ~~Effective January 1, 1969, the number of judges is increased to nine, and the Governor, on~~  
51 ~~or after March 1, 1969, shall make temporary appointments to the additional judgeships thus~~

1 created. The appointees shall serve until January 1, 1971. Their successors shall be elected at  
2 the general election for members of the General Assembly in November, 1970, and shall take  
3 office on January 1, 1971, to serve for the remainder of the unexpired term which began on  
4 January 1, 1969.

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

11 On or after December 15, 2000, the Governor shall appoint three additional judges to  
12 increase the number of judges to 15.

13 The Court of Appeals shall consist of 15 judges, selected as provided in Article 1A of this  
14 Chapter. The Chief Justice of the Supreme Court shall designate one of the judges as Chief  
15 Judge to serve in such capacity at the pleasure of the Chief Justice. Before entering upon the  
16 duties of his office, a Judge of the Court of Appeals shall take the oath of office prescribed for a  
17 Judge of the General Court of Justice.

18 The Court of Appeals shall sit in panels of three judges each. The Chief Judge insofar as  
19 practicable shall assign the members to panels in such fashion that each member sits a  
20 substantially equal number of times with each other member. He shall preside over the panel of  
21 which he is a member, and shall designate the presiding judge of the other panel or panels.

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

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

28 **SECTION 7.** G.S. 163-1 is amended in the table by deleting the entries for  
29 "Justices and Judges of the Appellate Division."

30 **SECTION 8.** G.S. 163-9 reads as rewritten:

31 "**§ 163-9. Filling vacancies in State and district judicial offices.**

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

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

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

44 (1) With only one resident judge; or

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

49 (c) When the unexpired term of the office in which the vacancy has occurred expires on  
50 the first day of January succeeding the next election for members of the General Assembly, the  
51 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 9. G.S. 143-318.11(a) is amended by adding the following new subdivision to read:

"(10) To consider the qualifications, competence, performance, character, and fitness of a candidate who is seeking a judicial nomination to the Governor by the Judicial Nomination Commission."

SECTION 10. The title of Subchapter X of Chapter 163 of the General Statutes reads as rewritten:

"SUBCHAPTER X. ELECTION OF ~~APPELLATE, SUPERIOR, SUPERIOR AND~~ DISTRICT COURT JUDGES."

SECTION 11. The title of Article 25 of Chapter 163 of the General Statutes reads as rewritten:

"Article 25.

Nomination and Election of ~~Appellate, Superior, Superior~~ and District Court Judges."

SECTION 12. G.S. 163-321 reads as rewritten:

"§ 163-321. Applicability.

The nomination and election of ~~justices of the Supreme Court, judges of the Court of Appeals, and~~ superior and district court judges of the General Court of Justice shall be as provided by this Article."

SECTION 13. G.S. 163-323 reads as rewritten:

"§ 163-323. Notice of candidacy.

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

Date: \_\_\_\_\_

I hereby file notice that I am a candidate for election to the office of \_\_\_\_\_ in the regular election to be held \_\_\_\_\_, \_\_\_\_.

Signed: \_\_\_\_\_  
(Name of Candidate)

Witness: \_\_\_\_\_

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

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

1 (b) Time for Filing Notice of Candidacy. – Candidates seeking election to the following  
2 offices shall file their notice of candidacy with the State Board of Elections no earlier than  
3 12:00 noon on the second Monday in February and no later than 12:00 noon on the last  
4 business day in February preceding the election:

5 ~~Justices of the Supreme Court.~~

6 ~~Judges of the Court of Appeals.~~

7 Judges of the superior courts.

8 Judges of the district courts.

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

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

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

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

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

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

50 **SECTION 14.** G.S. 163-325 reads as rewritten:

51 "**§ 163-325. Petition in lieu of payment of filing fee.**



1 (a) General. – Any qualified voter who seeks election under this Article may, in lieu of  
2 payment of any filing fee required for the office he seeks, file a written petition requesting him  
3 to be a candidate for a specified office with the State Board of Elections.

4 (b) Requirements of Petition; Deadline for Filing. – If the candidate is seeking the  
5 office of ~~justice of the Supreme Court, judge of the Court of Appeals, or superior or district~~  
6 ~~court judge, that individual shall file a written petition with the State Board of Elections no~~  
7 ~~later than 12:00 noon on Monday preceding the filing deadline before the primary. If the office~~  
8 ~~is justice of the Supreme Court or judge of the Court of Appeals, the petition shall be signed by~~  
9 ~~10,000 registered voters in the State. If the office is superior court or district court judge, the~~  
10 ~~petition shall be signed by ten percent (10%) of the registered voters of the election area in~~  
11 ~~which the office will be voted for. The board of elections shall verify the names on the petition,~~  
12 ~~and if the petition and notice of candidacy are found to be sufficient, the candidate's name shall~~  
13 ~~be printed on the appropriate ballot. Petitions must be presented to the county board of~~  
14 ~~elections for verification at least 15 days before the petition is due to be filed with the State~~  
15 ~~Board of Elections. The State Board of Elections may adopt rules to implement this section and~~  
16 ~~to provide standard petition forms."~~

17 **SECTION 15.** G.S. 163-326(b) reads as rewritten:

18 "(b) Notification of Local Boards. – No later than 10 days after the time for filing notices  
19 of candidacy under the provisions of G.S. 163-323(b) has expired, the chairman of the State  
20 Board of Elections shall certify to the chairman of the county board of elections in each county  
21 in the appropriate district the names of candidates for nomination to the offices of ~~justice of the~~  
22 ~~Supreme Court, judge of the Court of Appeals, and superior and district court judge who have~~  
23 ~~filed the required notice and paid the required filing fee or presented the required petition to the~~  
24 ~~State Board of Elections, so that their names may be printed on the official judicial ballot for~~  
25 ~~justice of the Supreme Court, judge of the Court of Appeals, and superior and district court~~  
26 ~~ballot."~~

27 **SECTION 16.** G.S. 163-328(e) is repealed.

28 **SECTION 17.** G.S. 163-329(a) reads as rewritten:

29 "(a) General. – If a vacancy is created in the office of ~~justice of the Supreme Court,~~  
30 ~~judge of the Court of Appeals, or judge of superior court after the filing period for the primary~~  
31 ~~opens but more than 60 days before the general election, and under the Constitution of North~~  
32 ~~Carolina an election is to be held for that position, such that the office shall be filled in the~~  
33 ~~general election as provided in G.S. 163-9, the election to fill the office for the remainder of the~~  
34 ~~term shall be conducted without a primary using the method provided in subsection (b1) of this~~  
35 ~~section. If a vacancy is created in the office of justice of the Supreme Court, judge of the Court~~  
36 ~~of Appeals, or judge of superior court before the filing period for the primary opens, and under~~  
37 ~~the Constitution of North Carolina an election is to be held for that position, such that the office~~  
38 ~~shall be filled in the general election as provided in G.S. 163-9, the election to fill the office for~~  
39 ~~the remainder of the term shall be conducted in accordance with G.S. 163-322."~~

40 **SECTION 18.** G.S. 163-329(b1) reads as rewritten:

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

47 (1) When the vacancy described in this section occurs more than 63 days before  
48 the date of the second primary for members of the General Assembly, a  
49 special primary shall be held on the same day as the second primary. The  
50 two candidates with the most votes in the special primary shall have their

- 1 names placed on the ballot for the general election held on the same day as  
2 the general election for members of the General Assembly.
- 3 (2) When the vacancy described in this section occurs less than 64 days before  
4 the date of the second primary, a general election for all the candidates shall  
5 be held on the same day as the general election for members of the General  
6 Assembly and the "instant runoff voting" method shall be used to determine  
7 the winner. Under "instant runoff voting," voters rank up to three of the  
8 candidates by order of preference, first, second, or third. If the candidate  
9 with the greatest number of first-choice votes receives more than fifty  
10 percent (50%) of the first-choice votes, that candidate wins. If no candidate  
11 receives that minimum number, the two candidates with the greatest number  
12 of first-choice votes advance to a second round of counting. In this round,  
13 each ballot counts as a vote for whichever of the two final candidates is  
14 ranked highest by the voter. The candidate with the most votes in the second  
15 round wins the election. If more than one seat is to be filled in the same race,  
16 the voter votes the same way as if one seat were to be filled. The counting is  
17 the same as when one seat is to be filled, with one or two rounds as needed,  
18 except that counting is done separately for each seat to be filled. The first  
19 count results in the first winner. Then the second count proceeds without the  
20 name of the first winner. This process results in the second winner. For each  
21 additional seat to be filled, an additional count is done without the names of  
22 the candidates who have already won. In multi-seat contests, the State Board  
23 of Elections may give the voter more than three choices.
- 24 (3) If two or more candidates receiving the highest number of votes each receive  
25 the same number of votes, the board of elections shall resolve the tie in  
26 accordance with G.S. 163-182.8."

27 **SECTION 19.** G.S. 163-332(b) reads as rewritten:

28 "(b) Ballots to Be Furnished by County Board of Elections. – It shall be the duty of the  
29 county board of elections to print official ballots for the following offices to be voted for in the  
30 primary:

- 31 ~~Justice of the Supreme Court.~~  
32 ~~Judge of the Court of Appeals.~~  
33 Superior court judge.  
34 District court judge.

35 In printing ballots, the county board of elections shall be governed by instructions of the  
36 State Board of Elections with regard to width, color, kind of paper, form, and size of type.

37 Three days before the election, the chairman of the county board of elections shall  
38 distribute official ballots to the chief judge of each precinct in his county, and the chief judge  
39 shall give a receipt for the ballots received. On the day of the primary, it shall be the chief  
40 judge's duty to have all the ballots so delivered available for use at the precinct voting place."

41 **SECTION 20.** The General Assembly recognizes the importance of having a  
42 well-qualified and diverse group of Justices and Judges to serve on the State's appellate courts.  
43 In selecting persons to serve on the Judicial Nomination Commission, the appointing authority  
44 should select, from among the most qualified persons, those persons whose appointment would  
45 promote gender, ethnic, racial, and geographical diversity in the membership of the  
46 Commission. When appointing nonattorneys to the Commission, the Governor, Speaker of the  
47 House of Representatives, and the President Pro Tempore of the Senate are encouraged to  
48 consider individuals with experience in alternative dispute resolution, individuals with  
49 experience working with victim assistance programs, and individuals with an interest in  
50 children's and family issues.

1           **SECTION 21.** Sections 4 through 20 of this act are effective only if the  
2 constitutional amendment proposed by Section 1 of this act is approved by the qualified voters  
3 in accordance with Section 2 of this act.

4           **SECTION 22.** Except as otherwise provided for, this act is effective when it  
5 becomes law.