

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 676

Short Title: Special Superior Court Judge Assignments. (Public)

Sponsors: Representative Stevens.

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary III

April 11, 2017

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A MINIMUM AMOUNT OF WORK REQUIRED BEFORE A
SPECIAL SUPERIOR COURT JUDGE CAN BE ASSIGNED TO WORK IN A
JUDICIAL DISTRICT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-45.1 reads as rewritten:

"§ 7A-45.1. Special judges.

(a) Effective November 1, 1993, the Governor may appoint two special superior court judges to serve terms expiring September 30, 2000. Effective October 1, 2000, one of those positions is abolished. Successors to the special superior court judge appointed pursuant to this subsection shall be appointed to a five-year term. A special judge takes the same oath of office and is subject to the same requirements and disabilities as are or may be prescribed by law for regular judges of the superior court, save the requirement of residence in a particular district.

(a1) Effective October 1, 1995, the Governor may appoint two special superior court judges to serve terms expiring September 30, 2000. Successors to the special superior court judges appointed pursuant to this subsection shall be appointed to five-year terms. A special judge takes the same oath of office and is subject to the same requirements and disabilities as are or may be prescribed by law for regular judges of the superior court, save the requirement of residence in a particular district.

(a2) Effective December 15, 1996, the Governor may appoint four special superior court judges to serve terms expiring five years from the date that each judge takes office. Successors to the special superior court judges appointed pursuant to this subsection shall be appointed to five-year terms. A special judge takes the same oath of office and is subject to the same requirements and disabilities as are or may be prescribed by law for regular judges of the superior court, save the requirement of residence in a particular district.

(a3) Effective December 15, 1998, the Governor may appoint a special superior court judge to serve a term expiring five years from the date that judge takes office. Successors to the special superior court judge appointed pursuant to this subsection shall be appointed to five-year terms. A special judge takes the same oath of office and is subject to the same requirements and disabilities as are or may be prescribed by law for regular judges of the superior court, save the requirement of residence in a particular district.

(a4) Effective October 1, 1999, the Governor may appoint four special superior court judges to serve terms expiring five years from the date that each judge takes office. Successors to the special superior court judges appointed pursuant to this subsection shall be appointed to five-year terms. A special judge takes the same oath of office and is subject to the same



1 requirements and disabilities as are or may be prescribed by law for regular judges of the
2 superior court, save the requirement of residence in a particular district.

3 (a5) Effective October 1, 2001, the Governor may appoint a special superior court judge
4 to serve a term expiring five years from the date that judge takes office. Successors to the
5 special superior court judge appointed pursuant to this subsection shall be appointed to
6 five-year terms. A special judge takes the same oath of office and is subject to the same
7 requirements and disabilities as are or may be prescribed by law for regular judges of the
8 superior court, save the requirement of residence in a particular district.

9 (a6) Effective December 1, 2004, the Governor may appoint a special superior court
10 judge to serve a term expiring five years from the date that each judge takes office. Successors
11 to the special superior court judge appointed pursuant to this subsection shall be appointed to
12 five-year terms. A special judge takes the same oath of office and is subject to the same
13 requirements and disabilities as are or may be prescribed by law for regular judges of the
14 superior court, save the requirement of residence in a particular district.

15 (a7) Effective January 1, 2008, the Governor may appoint two special superior court
16 judges to serve terms expiring five years from the date that each judge takes office. Successors
17 to the special superior court judges appointed pursuant to this subsection shall be appointed to
18 five-year terms. A special judge takes the same oath of office and is subject to the same
19 requirements and disabilities as are or may be prescribed by law for regular judges of the
20 superior court, save the requirement of residence in a particular district.

21 (a8) Notwithstanding any other provision of this section, the four special superior court
22 judgeships held as of April 1, 2014, by judges whose terms expire on April 29, 2015, October
23 20, 2015, and December 31, 2017, and the two special superior court judgeships held as of
24 April 1, 2015, by judges whose terms expire January 26, 2016, are abolished when any of the
25 following first occurs:

- 26 (1) Retirement of the incumbent judge.
- 27 (2) Resignation of the incumbent judge.
- 28 (3) Removal from office of the incumbent judge.
- 29 (4) Death of the incumbent judge.
- 30 (5) Expiration of the term of the incumbent judge.

31 (a9) Effective upon the retirement, resignation, removal from office, death, or expiration
32 of the term of the special superior court judge held as of April 1, 2014, by the judge whose term
33 expires on April 29, 2015, a new special superior court judgeship shall be created and filled
34 through the procedure for nomination and confirmation provided for in subsection (a10) of this
35 section.

36 Prior to submitting a nominee for the judgeship created under this subsection to the General
37 Assembly for confirmation, the Governor shall consult with the Chief Justice to ensure that the
38 person nominated to fill this judgeship has the requisite expertise and experience to be
39 designated by the Chief Justice as a business court judge under G.S. 7A-45.3, and the Chief
40 Justice is requested to designate this judge as a business court judge.

41 (a10) Except for the judgeships abolished pursuant to subsection (a8) of this section, upon
42 the retirement, resignation, removal from office, death, or expiration of the term of any special
43 superior court judge on or after September 1, 2014, each judgeship shall be filled for a full
44 five-year term beginning upon the judge's taking office according to the following procedure
45 prescribed by the General Assembly pursuant to Article IV, Section 9(1) of the North Carolina
46 Constitution. As each judgeship becomes vacant or the term expires, the Governor shall submit
47 the name of a nominee for that judgeship to the General Assembly for confirmation by ratified
48 joint resolution. Upon each such confirmation, the Governor shall appoint the confirmed
49 nominee to that judgeship.

50 However, upon the failure of the Governor to submit the name of a nominee within 90 days
51 of the occurrence of the vacancy or within 90 days of the expiration of the judge's term, as

1 applicable, the President Pro Tempore of the Senate and the Speaker of the House of
2 Representatives jointly shall submit the name of a nominee to the General Assembly. The
3 appointment shall then be made by enactment of a bill. The bill shall state the name of the
4 person being appointed, the office to which the appointment is being made, and the county of
5 residence of the appointee.

6 The Governor may withdraw any nomination prior to it failing on any reading, and in case
7 of such withdrawal the Governor shall submit a different nomination within 45 days of
8 withdrawal. If a nomination shall fail any reading, the Governor shall submit a different
9 nomination within 45 days of such failure. In either case of failure to submit a new nomination
10 within 45 days, the President Pro Tempore of the Senate and the Speaker of the House of
11 Representatives shall submit the name of a nominee to the General Assembly under the
12 procedure provided in the preceding paragraph.

13 No person shall occupy a special superior court judgeship authorized under this subsection
14 in any capacity, or have any right to, claim upon, or powers of those judgeships, unless that
15 person's nomination has been confirmed by the General Assembly by joint resolution or
16 appointed through the enactment of a bill upon the failure of the Governor to submit a nominee.
17 Until confirmed by the General Assembly and appointed by the Governor, or appointed by the
18 General Assembly upon the failure of the Governor to appoint a nominee, and qualified by
19 taking the oath of office, a nominee is neither a de jure nor a de facto officer.

20 (a11) The Chief Justice is requested, pursuant to the authority under G.S. 7A-45.3 to
21 designate business court judges, to maintain at least five business court judgeships from among
22 the special superior court judgeships authorized under this section.

23 (b) A special judge is subject to removal from office for the same causes and in the
24 same manner as a regular judge of the superior court, and a vacancy occurring in the office of
25 special judge is filled by the Governor by appointment for the unexpired term.

26 (c) A special judge, in any court in which he is duly appointed to hold, has the same
27 power and authority in all matters that a regular judge holding the same court would have. A
28 special judge, duly assigned to hold the court of a particular county, has during the session of
29 court in that county, in open court and in chambers, the same power and authority of a regular
30 judge in all matters arising in the district or set of districts as defined in G.S. 7A-41.1(a) in
31 which that county is located, that could properly be heard or determined by a regular judge
32 holding the same session of court.

33 (d) A special judge is authorized to settle cases on appeal and to make all proper orders
34 in regard thereto after the time for which he was commissioned has expired.

35 (e) A special judge shall not be assigned to a district unless there is at least four hours
36 of work as determined by the chief resident superior court judge of that district."

37 **SECTION 2.** This act is effective when it becomes law.