

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

S

D

SENATE DRS75251-LL-167 (1/28)

Short Title: Appointment/Reappointment of Magistrates. (Public)

Sponsors: Senator Apodaca.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW AND THE CONSTITUTION OF NORTH CAROLINA TO PROVIDE THAT MAGISTRATES SHALL BE APPOINTED AND REAPPOINTED BY THE CHIEF DISTRICT COURT JUDGE FOR THE DISTRICT THAT INCLUDES THE COUNTY SERVED BY THE MAGISTRATES, AND TO REVISE THE LAWS REGARDING THE SUSPENSION AND REMOVAL OF MAGISTRATES AND THE DELEGATION TO CLERKS OF SUPERIOR COURT OF THE AUTHORITY TO SUPERVISE MAGISTRATES.

The General Assembly of North Carolina enacts:

SECTION 1. Section 10 of Article IV of the North Carolina Constitution reads as rewritten:

"Sec. 10. District Courts.

The General Assembly shall, from time to time, divide the State into a convenient number of local court districts and shall prescribe where the District Courts shall sit, but a District Court must sit in at least one place in each county. District Judges shall be elected for each district for a term of four years, in a manner prescribed by law. When more than one District Judge is authorized and elected for a district, the Chief Justice of the Supreme Court shall designate one of the judges as Chief District Judge. Every District Judge shall reside in the district for which he is elected. For each county, the ~~senior regular resident Judge of the Superior Court~~ Chief District Judge serving the county shall appoint from nominations submitted by the Clerk of the Superior Court of the county, one or more Magistrates who shall be officers of the District Court. The initial term of appointment for a magistrate shall be for two years and subsequent terms shall be for four years. The number of District Judges and Magistrates shall, from time to time, be determined by the General Assembly. Vacancies in the office of District Judge shall be filled for the unexpired term in a manner prescribed by law. Vacancies in

1 the office of Magistrate shall be filled for the unexpired term in the manner provided for
2 original appointment to the office, unless otherwise provided by the General Assembly."

3 **SECTION 2.** The amendment set out in Section 1 of this act shall be
4 submitted to the qualified voters of the State at the general election in November 2006,
5 which election shall be conducted under the laws then governing elections in the State.
6 Ballots, voting systems, or both may be used in accordance with Chapter 163 of the
7 General Statutes. The question to be used in the voting systems and ballots shall be:

8 "[] FOR [] AGAINST

9 Constitutional amendment to provide for appointment of magistrates by the
10 chief district court judge from nominations submitted by the clerk of superior court."

11 **SECTION 3.** If a majority of the votes cast on the question are in favor of
12 the amendment set out in Section 1 of this act, the State Board of Elections shall certify
13 the amendment to the Secretary of State, who shall enroll the amendment so certified
14 among the permanent records of that office. The amendment becomes effective January
15 1, 2007.

16 **SECTION 4.** G.S. 7A-171 reads as rewritten:

17 "**§ 7A-171. Numbers; appointment and terms; vacancies.**

18 (a) The General Assembly shall establish a minimum and a maximum quota of
19 magistrates for each county. In no county shall the minimum quota be less than one.
20 The number of magistrates in a county, within the quota set by the General Assembly, is
21 determined by the Administrative Office of the Courts after consultation with the chief
22 district court judge for the district in which the county is located.

23 (a1) The initial term of appointment for a magistrate is two years and subsequent
24 terms shall be for a period of four years. The term of office begins on the first day of
25 January of the odd-numbered year after appointment. The service of an individual as a
26 magistrate filling a vacancy as provided in subsection (d) of this section does not
27 constitute an initial term. For purposes of this section, any term of office for a
28 magistrate who has served a two-year term is for four years even if the two-year term of
29 appointment was before the effective date of this section, the term is after a break in
30 service, or the term is for appointment in a different county from the county where the
31 two-year term of office was served.

32 (b) Not earlier than the Tuesday after the first Monday nor later than the third
33 Monday in December of each even-numbered year, the clerk of the superior court shall
34 submit to the ~~senior regular resident superior court judge of the district or set of districts~~
35 ~~as defined in G.S. 7A-41.1(a)~~ chief district court judge for the district in which the
36 clerk's county is located the names of two (or more, if requested by the judge) nominees
37 for each magisterial office for the county for which the term of office of the magistrate
38 holding that position shall expire on December 31 of that year. Not later than the fourth
39 Monday in December, the ~~senior regular resident superior court~~ chief district court
40 judge shall, from the nominations submitted by the clerk of the superior court, appoint
41 magistrates to fill the positions for each county of the judge's ~~district or set of districts.~~
42 district.

43 (c) If an additional magisterial office for a county is approved to commence on
44 January 1 of an odd-numbered year, the new position shall be filled as provided in

1 subsection (b) of this section. If the additional position takes effect at any other time, it
2 is to be filled as provided in subsection (d) of this section.

3 (d) Within 30 days after a vacancy in the office of magistrate occurs the clerk of
4 superior court shall submit to the ~~senior regular resident superior~~ chief district court
5 judge the names of two (or more, if so requested by the judge) nominees for the office
6 vacated. Within 15 days after receipt of the nominations the ~~senior regular resident~~
7 ~~superior~~ chief district court judge shall appoint from the nominations received a
8 magistrate who shall take office immediately and shall serve until December 31 of the
9 even-numbered year, and thereafter the position shall be filled as provided in subsection
10 (b) of this section."

11 **SECTION 5.** G.S. 7A-173 reads as rewritten:

12 "**§ 7A-173. Suspension; removal; reinstatement.**

13 (a) A magistrate may be suspended from performing the duties of his office by
14 the chief district judge of the district court district in which his county is located, or
15 removed from office by ~~the senior regular resident superior court judge of, or any~~
16 ~~regular superior court judge holding court in, the district or set of districts as defined in~~
17 ~~G.S. 7A-41.1(a) in which the county is located.~~ a superior court judge from another
18 district within the judicial division who is on rotation in the district or set of districts as
19 defined in G.S. 7A-41.1(a) in which the magistrate resides. Grounds for suspension or
20 removal are the same as for a judge of the General Court of Justice.

21 (b) Suspension from performing the duties of the office may be ordered upon
22 filing of sworn written charges in the office of clerk of superior court for the county in
23 which the magistrate resides. If the charges are brought by the clerk of superior court,
24 the magistrate shall be suspended pending disposition of the charges. If the chief district
25 judge, upon examination of the sworn charges, finds that the charges, if true, constitute
26 grounds for removal, he may enter an order suspending the magistrate from performing
27 the duties of his office until a final determination of the charges on the merits. During
28 suspension the salary of the magistrate continues.

29 (c) If a hearing, with or without suspension, is ordered, the magistrate against
30 whom the charges have been made shall be given immediate written notice of the
31 proceedings and a true copy of the charges, and the matter shall be set by the chief
32 district judge for hearing before the ~~senior regular resident superior court judge or a~~
33 ~~regular superior court judge holding court in the district or set of districts as defined in~~
34 ~~G.S. 7A-41.1(a) in which the county is located.~~ rotating superior court judge described
35 in subsection (a) of this section. The hearing shall be held in a county within the district
36 or set of districts not less than 10 days nor more than 30 days after the magistrate has
37 received a copy of the charges. The hearing shall be open to the public. All testimony
38 offered shall be recorded. At the hearing the superior court judge shall receive evidence,
39 and make findings of fact and conclusions of law. If he finds that grounds for removal
40 exist, he shall enter an order permanently removing the magistrate from office, and
41 terminating his salary. If he finds that no such grounds exist, he shall terminate the
42 suspension, if any.

43 (d) A magistrate may appeal from an order of removal to the Court of Appeals on
44 the basis of error of law by the superior court judge. Pending decision of the case on

1 appeal, the magistrate shall not perform any of the duties of his office. If, upon final
2 determination, he is ordered reinstated, either by the appellate division or by the
3 superior court on remand, his salary shall be restored from the date of the original order
4 of removal."

5 **SECTION 6.** G.S. 7A-146 reads as rewritten:

6 **"§ 7A-146. Administrative authority and duties of chief district judge.**

7 The chief district judge, subject to the general supervision of the Chief Justice of the
8 Supreme Court, has administrative supervision and authority over the operation of the
9 district courts and magistrates in his district. These powers and duties include, but are
10 not limited to, the following:

- 11 (1) Arranging schedules and assigning district judges for sessions of
12 district courts;
- 13 (2) Arranging or supervising the calendaring of noncriminal matters for
14 trial or hearing;
- 15 (3) Supervising the clerk of superior court in the discharge of the clerical
16 functions of the district court;
- 17 (4) Assigning matters to magistrates, and consistent with the salaries set
18 by the Administrative Officer of the Courts, prescribing times and
19 places at which magistrates shall be available for the performance of
20 their duties; however, the chief district judge may in writing delegate
21 his authority to prescribe times and places at which magistrates in a
22 particular county shall be available for the performance of their duties
23 to another district court judge ~~or~~ or, with the concurrence of the clerk
24 of superior court, to the clerk of the superior court, and the person to
25 whom such authority is delegated shall make monthly reports to the
26 chief district judge of the times and places actually served by each
27 magistrate; and
- 28 (5) Making arrangements with proper authorities for the drawing of civil
29 court jury panels and determining which sessions of district court shall
30 be jury sessions;
- 31 (6) Arranging for the reporting of civil cases by court reporters or other
32 authorized means;
- 33 (7) Arranging sessions, to the extent practicable for the trial of specialized
34 cases, including traffic, domestic relations, and other types of cases,
35 and assigning district judges to preside over these sessions so as to
36 permit maximum practicable specialization by individual judges;
- 37 (8) Repealed by Session Laws 1991 (Regular Session, 1992), c. 900, s.
38 118(b), effective July 15, 1992.
- 39 (9) Assigning magistrates during an emergency to temporary duty outside
40 the county of their residence but within that district; and, upon the
41 request of a chief district judge of an adjoining district and upon the
42 approval of the Administrative Officer of the Courts, to temporary
43 duty in the district of the requesting chief district judge; and

1 (10) Designating another district judge of his district as acting chief district
2 judge, to act during the absence or disability of the chief district
3 judge."

4 **SECTION 7.** Section 4 of this act becomes effective only upon approval by
5 the voters of the constitutional amendment proposed in Section 1 of this act. If the
6 constitutional amendment proposed in Section 1 is approved by the voters, Section 4 of
7 this act becomes effective January 1, 2007, and applies to appointments that take effect
8 on or after that date. The remainder of this act is effective when it becomes law and
9 applies to acts occurring on or after that date.