

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE DRS25014-LBx-150 (02/20)

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

Sponsors: Senator Clodfelter.

Referred to:

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.

1 (3) Nomination, appointment, retention election, and terms of Justices and
2 Judges. On and after January 1, 2008, when a vacancy occurs in the office of Chief
3 Justice, Associate Justice, or Judge of the Appellate Division, the Governor shall
4 appoint a person to fill the vacancy. For the purposes of this section, creation of a new
5 judgeship within the Appellate Division creates a vacancy.

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

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

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

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

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

27 (4) Transition provisions. The term of office of a person who has been elected
28 before January 1, 2008, to the office of Chief Justice, Associate Justice, or Judge of the
29 Appellate Division for a term which extends beyond January 1, 2006, and who is in
30 office on January 1, 2008, is extended through June 30 of the year following the eighth
31 year after the date any such Justice or Judge was last elected to the office. If the person
32 so elected continues to serve for the remainder of the term, that person may stand for
33 retention in the office for a succeeding regular term as provided in this section, subject
34 to the provisions of G.S. 7A-4.20. If the person continues to serve for the remainder of
35 the term but does not stand for retention election, a vacancy is created in the office upon
36 expiration of the term, and this vacancy shall be filled by nomination and appointment
37 as provided in this section.

38 The term of office of a person who has been appointed before January 1, 2008, to the
39 office of Chief Justice, Associate Justice, or Judge of the Appellate Division for a term
40 which extends beyond January 1, 2008, and who is in office on January 1, 2008, shall
41 end on June 30, 2009. If the person so appointed continues to serve for the remainder of
42 the term, that person may stand for retention in the office for a regular term as provided
43 by this section at the statewide election for members of the General Assembly held in
44 2008.

1 Upon the death, resignation, removal, or retirement of any incumbent Justice or
2 Judge on or after January 1, 2008, and before the expiration of the Justice's or Judge's
3 term of office, the resulting vacancy shall be filled by nomination and appointment as
4 provided in this section.

5 Vacancies in judicial offices in the Appellate Division occurring before January 1,
6 2008, and not filled by that date, shall be filled by nomination and appointment as
7 provided in this section.

8 From the date any incumbent described in this subsection is continued in office by
9 retention vote for a term next succeeding the term in progress on January 1, 2006, or is
10 succeeded in office by another person, the office is held subject to the provisions of this
11 section.

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

13 **SECTION 2.** The amendment set out in Section 1 of this act shall be
14 submitted to the qualified voters of the State at an election on November 6, 2007, which
15 election shall be conducted under the laws then governing elections in the State.
16 Ballots, voting systems, or both may be used in accordance with Chapter 163 of the
17 General Statutes. The question on the ballot shall be:

18 "[] FOR [] AGAINST

19 Constitutional amendment to replace the present practice of selecting Justices
20 and Judges of the Appellate Division by gubernatorial appointment, followed by
21 partisan elections, with a method by which Justices and Judges of the Appellate
22 Division will be nominated by a nominating commission, appointed by the Governor,
23 and then serve for limited terms after which the question of the Justice's or Judge's
24 retention in office is regularly submitted for approval or disapproval by nonpartisan vote
25 of the people at general elections, and to provide for election of superior court judges in
26 their districts."

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

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

34 "Article 1A.

35 "Appointment of Justices and Judges; Retention Elections.

36 "§ 7A-4.1. Nomination of justices and judges by nominating commission and
37 appointment by Governor.

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

42 "§ 7A-4.2. Judicial Nomination Commission – creation; membership; terms;
43 administration.

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

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

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

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

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

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

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

12 (6) Six attorneys appointed by the Council of the State Bar to include at
13 least one attorney actively engaged in the practice of criminal defense
14 law, one attorney actively engaged in a civil law practice representing
15 plaintiffs, and one attorney actively engaged in a civil law practice
16 representing defendants;

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

19 (8) Two nonattorneys appointed by the Governor;

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

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

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

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

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

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

38 **"§ 7A-4.3. Judicial Nomination Commission; duties.**

39 The Commission shall:

40 (1) Establish operating procedures for the Commission.

41 (2) Solicit judicial nominations from interested persons and members of
42 the general public to fill appellate court vacancies.

43 (3) Establish and publicize the procedures for submitting a candidate to be
44 considered by the Commission.

- 1 (4) Interview and investigate candidates for judicial appointment to the
2 appellate courts.
- 3 (5) Nominate persons to the Governor for appointment to the appellate
4 courts.
- 5 (6) Review and evaluate the tenure of Justices and Judges who must stand
6 for a retention election.
- 7 (7) Issue a report on Justices and Judges standing for a retention election
8 90 days before the retention election. The report shall include: (i)
9 information the Commission believes would be helpful to the citizens
10 of North Carolina; and (ii) information regarding any disciplinary
11 action taken against a Justice or Judge during tenure. The report may
12 include a recommendation by the Commission for or against the
13 Justice's or Judge's retention.
- 14 (8) Perform any other duties the Commission deems necessary to carry out
15 the mandate of this Article.

16 **"§ 7A-4.4. Nomination procedures.**

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

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

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

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

39 **"§ 7A-4.5. Governor to issue commissions to justices and judges.**

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

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

4 **"§ 7A-4.6. No elections in 2008.**

5 No election as previously provided by law for Chief Justice or Associate Justice of
6 the Supreme Court, or Judge of the Court of Appeals shall be held in 2008 or thereafter.

7 **"§ 7A-4.7. Retention elections.**

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

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

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

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

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

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

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

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

42 **"§ 7A-16. Creation and organization.**

43 The Court of Appeals is created effective January 1, 1967. It shall consist initially of
44 six judges, elected by the qualified voters of the State for terms of eight years. The

1 Chief Justice of the Supreme Court shall designate one of the judges as Chief Judge, to
2 serve in such capacity at the pleasure of the Chief Justice. Before entering upon the
3 duties of his office, a judge of the Court of Appeals shall take the oath of office
4 prescribed for a judge of the General Court of Justice.

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

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

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

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

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

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

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

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

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

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

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

4 "**§ 163-9. Filling vacancies in State and district judicial offices.**

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

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

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

18 (1) With only one resident judge; or

19 (2) In which no county is subject to section 5 of the Voting Rights Act of
20 1965,

21 shall hold the office until the next election of members of the General Assembly that is
22 held more than 60 days after the vacancy occurs, at which time an election shall be held
23 to fill an eight-year term.

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

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

31 **SECTION 9.** G.S. 143-318.11(a) is amended by adding the following new
32 subdivision to read:

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

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

38 "**SUBCHAPTER X. ELECTION OF APPELLATE, SUPERIOR, SUPERIOR**
39 **AND DISTRICT COURT JUDGES.**"

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

42 "Article 25.

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

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

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

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

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

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

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

40 (g) No person may file a notice of candidacy for superior court judge unless that
41 person is at the time of filing the notice of candidacy a resident of the judicial district as
42 it will exist at the time the person would take office if elected. No person may be
43 nominated as a superior court judge under G.S. 163-114 unless that person is at the time
44 of nomination a resident of the judicial district as it will exist at the time the person

1 would take office if elected. This subsection implements Article IV, Section 9(1) of the
2 North Carolina Constitution which requires regular Superior Court Judges to reside in
3 the district for which elected."

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

5 "**§ 163-325. Petition in lieu of payment of filing fee.**

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

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

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

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

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

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

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

1 Carolina an election is to be held for that position, such that the office shall be filled in
2 the general election as provided in G.S. 163-9, the election to fill the office for the
3 remainder of the term shall be conducted in accordance with G.S. 163-322."

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

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

12 (1) When the vacancy described in this section occurs more than 63 days
13 before the date of the second primary for members of the General
14 Assembly, a special primary shall be held on the same day as the
15 second primary. The two candidates with the most votes in the special
16 primary shall have their names placed on the ballot for the general
17 election held on the same day as the general election for members of
18 the General Assembly.

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

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

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

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

5 ~~Justice of the Supreme Court.~~

6 ~~Judge of the Court of Appeals.~~

7 Superior court judge.

8 District court judge.

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

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

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

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

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