

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 99

Short Title: Judicial Terms. (Public)

Sponsors: Representatives Ross and Rhyne (Primary Sponsors).
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Judiciary.

February 16, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA CONSTITUTION TO ALLOW APPELLATE COURT JUSTICES AND JUDGES ADEQUATE TIME TO FULFILL THEIR JUDICIAL DUTIES BEFORE RUNNING FOR ELECTION, AND TO IMPROVE ELECTION ADMINISTRATION BY INCREASING FROM SIXTY TO NINETY DAYS THE WINDOW WHERE A SPECIAL ELECTION IS REQUIRED TO FILL A VACANCY IN THE OFFICES OF SUPERIOR COURT JUDGE AND DISTRICT ATTORNEY, AND TO MAKE CONFORMING STATUTORY CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. Section 19 of Article IV of the North Carolina Constitution reads as rewritten:

"Sec. 19. Vacancies.

(1) All vacancies occurring in the offices of Chief Justice and justices of the Supreme Court and Judges of the Court of Appeals shall be filled by appointment of the Governor, and the appointees shall hold their places until the second election for members of the General Assembly that is held after the vacancy occurs, when elections shall be held to fill the offices.

(2) Unless otherwise provided in this Article, all vacancies occurring in the offices provided for by this Article shall be filled by appointment of the Governor, and the appointees shall hold their places until the election for members of the General Assembly that is held more than ~~60~~90 days after the vacancy occurs, when elections shall be held to fill the offices.

(3) ~~When~~ Notwithstanding subsections (1) and (2) of this section, the unexpired term of any of the offices named in this Article of the Constitution in which a vacancy has occurred, and in which it is herein provided that the Governor shall fill the vacancy, expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill that vacancy for the unexpired term of the office. If any person elected or appointed to any of these offices shall fail to qualify, the office shall be appointed to, held and filled as provided in case of vacancies occurring therein. All incumbents of these offices shall hold until their successors are qualified."

SECTION 2. The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at the statewide general election on November 6, 2012, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[] FOR [] AGAINST



1 Constitutional amendment to allow justices and judges of the Appellate Division
2 adequate time to fulfill their judicial duties before running for election, by allowing them to
3 serve until the second statewide general election after their appointment, and improving
4 election administration and absentee voting for the military by changing the requirement for a
5 special election to fill a vacancy for the remainder of the term of superior court judge and
6 district attorney from 60 days to 90 days prior to the general election."

7 **SECTION 3.** If a majority of votes cast on the question are in favor of the
8 amendment set out in Section 1 of this act, the State Board of Elections shall certify the
9 amendment to the Secretary of State. The Secretary of State shall enroll the amendment so
10 certified among the permanent records of that office. The amendment set out in Section 1 of
11 this act becomes effective upon certification and applies to vacancies occurring on or after the
12 sixtieth day before November 6, 2012.

13 **SECTION 4.** G.S. 163-9 reads as rewritten:

14 "**§ 163-9. Filling vacancies in State and district judicial offices.**

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

22 (b) Except for judges specified in the next paragraph of this subsection, an appointee to
23 the office of judge of superior court shall hold his place until the next election for members of
24 the General Assembly that is held more than ~~60~~ 90 days after the vacancy occurs, at which time
25 an election shall be held to fill the unexpired term of the office.

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

27 (1) With only one resident judge; or

28 (2) In which no county is subject to section 5 of the Voting Rights Act of 1965,
29 shall hold the office until the next election of members of the General Assembly that is held
30 more than ~~60~~ 90 days after the vacancy occurs, at which time an election shall be held to fill an
31 eight-year term.

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

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

38 **SECTION 5.** G.S. 163-10 reads as rewritten:

39 "**§ 163-10. Filling vacancy in office of district attorney.**

40 Any vacancy occurring in the office of district attorney for causes other than expiration of
41 term shall be filled by appointment of the Governor. An appointee shall hold his place until the
42 next election for members of the General Assembly that is held more than ~~60~~ 90 days after the
43 vacancy occurs, at which time an election shall be held to fill the unexpired term of the office:
44 Provided, that when the unexpired term of the office in which the vacancy has occurred expires
45 on the first day of January succeeding the next election for members of the General Assembly,
46 the Governor shall appoint to fill that vacancy for the unexpired term of the office."

47 **SECTION 6.** G.S. 163-327.1 reads as rewritten:

48 "**§ 163-327.1. Rules when vacancies for superior court judge are to be voted on.**

49 If a vacancy occurs in a judicial district for any offices of superior court judge, and on
50 account of the occurrence of such vacancy, there is to be an election for one or more terms in
51 that district to fill the vacancy or vacancies, at that same election in accordance with G.S. 163-9

1 and Article IV, Section 19 of the North Carolina Constitution, the nomination and election shall
2 be determined by the following special rules in addition to any other provisions of law:

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

16 **SECTION 7.(a)** G.S. 163-329(a) reads as rewritten:

17 "(a) General. – If a vacancy is created in the office of ~~justice of the Supreme Court,~~
18 ~~judge of the Court of Appeals, or~~ judge of superior court after the filing period for the primary
19 opens but more than ~~60~~ 90 days before the general election, and under the Constitution of
20 North Carolina an election is to be held for that position, such that the office shall be filled in
21 the general election as provided in G.S. 163-9, the election to fill the office for the remainder of
22 the term shall be conducted without a primary using the method provided in subsection (b1) of
23 this section. If a vacancy is created in the office of ~~justice of the Supreme Court, judge of the~~
24 ~~Court of Appeals, or~~ judge of superior court before the filing period for the primary opens, and
25 under the Constitution of North Carolina an election is to be held for that position, such that the
26 office shall be filled in the general election as provided in G.S. 163-9, the election to fill the
27 office for the remainder of the term shall be conducted in accordance with G.S. 163-322."

28 **SECTION 7.(b)** G.S. 163-329(b1) reads as rewritten:

29 "(b1) Method for Vacancy Election. – If a vacancy for the office of ~~justice of the Supreme~~
30 ~~Court, judge of the Court of Appeals, or~~ judge of the superior court occurs more than ~~60~~ 90
31 days before the general election and after the opening of the filing period for the primary, then
32 the State Board of Elections shall designate a special filing period of one week for candidates
33 for the office. If more than two candidates file and qualify for the office in accordance with
34 G.S. 163-323, then the Board shall conduct the election for the office as follows:

- 35 (1) When the vacancy described in this section occurs more than 63 days before
36 the date of the second primary for members of the General Assembly, a
37 special primary shall be held on the same day as the second primary. The
38 two candidates with the most votes in the special primary shall have their
39 names placed on the ballot for the general election held on the same day as
40 the general election for members of the General Assembly.
- 41 (2) When the vacancy described in this section occurs less than 64 days before
42 the date of the second primary, a general election for all the candidates shall
43 be held on the same day as the general election for members of the General
44 Assembly and the "instant runoff voting" method shall be used to determine
45 the winner. Under "instant runoff voting," voters rank up to three of the
46 candidates by order of preference, first, second, or third. If the candidate
47 with the greatest number of first-choice votes receives more than fifty
48 percent (50%) of the first-choice votes, that candidate wins. If no candidate
49 receives that minimum number, the two candidates with the greatest number
50 of first-choice votes advance to a second round of counting. In this round,
51 each ballot counts as a vote for whichever of the two final candidates is

1 ranked highest by the voter. The candidate with the most votes in the second
2 round wins the election. If more than one seat is to be filled in the same race,
3 the voter votes the same way as if one seat were to be filled. The counting is
4 the same as when one seat is to be filled, with one or two rounds as needed,
5 except that counting is done separately for each seat to be filled. The first
6 count results in the first winner. Then the second count proceeds without the
7 name of the first winner. This process results in the second winner. For each
8 additional seat to be filled, an additional count is done without the names of
9 the candidates who have already won. In multi-seat contests, the State Board
10 of Elections may give the voter more than three choices.

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

14 **SECTION 8.** G.S. 163-278.64A is repealed.

15 **SECTION 9.** Sections 4 through 8 of this act are effective only if the constitutional
16 amendment proposed by Section 1 of this act is approved by the qualified voters of the State as
17 provided in Section 2 of this act, and in such case become effective with respect to vacancies
18 occurring on or after the sixtieth day before November 6, 2012.

19 **SECTION 10.** This act is effective when it becomes law.