

GENERAL ASSEMBLY OF NORTH CAROLINA
SECOND EXTRA SESSION 2018

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HOUSE BILL 3

Short Title: Nonpartisan Judicial Merit Commission. (Public)

Sponsors: Representative Lewis.

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

Referred to: Calendar 8/24/2018

August 24, 2018

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CONSTITUTION OF NORTH CAROLINA TO PROVIDE FOR
NONPARTISAN JUDICIAL MERIT COMMISSIONS FOR THE NOMINATION AND
RECOMMENDATION OF NOMINEES WHEN FILLING VACANCIES IN THE OFFICE
OF JUSTICE OR JUDGE OF THE GENERAL COURT OF JUSTICE AND TO MAKE
OTHER CONFORMING CHANGES TO THE CONSTITUTION.

The General Assembly of North Carolina enacts:

SECTION 1. Article IV of the North Carolina Constitution is amended by adding a
new section to read:

"Sec. 23. Merit selection; judicial vacancies.

(1) All vacancies occurring in the offices of Justice or Judge of the General Court of Justice shall be filled as provided in this section. Appointees shall hold their places until the next election following the election for members of the General Assembly held after the appointment occurs, when elections shall be held to fill those offices. When the vacancy occurs on or after the sixtieth day before the next election for members of the General Assembly and the term would expire on December 31 of that same year, the Chief Justice shall appoint to fill that vacancy for the unexpired term of the office.

(2) In filling any vacancy in the office of Justice or Judge of the General Court of Justice, individuals shall be nominated on merit by the people of the State to fill that vacancy. In a manner prescribed by law, nominations shall be received from the people of the State by a nonpartisan commission established under this section, which shall evaluate each nominee without regard to the nominee's partisan affiliation, but rather with respect to whether that nominee is qualified or not qualified to fill the vacant office, as prescribed by law. The evaluation of each nominee of people of the State shall be forwarded to the General Assembly, as prescribed by law. The General Assembly shall recommend to the Governor, for each vacancy, at least two of the nominees deemed qualified by a nonpartisan commission under this section. For each vacancy, within 10 days after the nominees are presented, the Governor shall appoint the nominee the Governor deems best qualified to serve from the nominees recommended by the General Assembly.

(3) The Nonpartisan Judicial Merit Commission shall consist of no more than nine members whose appointments shall be allocated between the Chief Justice of the Supreme Court, the Governor, and the General Assembly, as prescribed by law. The General Assembly shall, by general law, provide for the establishment of local merit commissions for the nomination of judges of the Superior and District Court. Appointments to local merit commissions shall be allocated between the Chief Justice of the Supreme Court, the Governor, and the General



1 Assembly, as prescribed by law. Neither the Chief Justice of the Supreme Court, the Governor,
2 nor the General Assembly shall be allocated a majority of appointments to a nonpartisan
3 commission established under this section.

4 (4) If the Governor fails to make an appointment within 10 days after the nominees are
5 presented by the General Assembly, the General Assembly shall elect, in joint session and by a
6 majority of the members of each chamber present and voting, an appointee to fill the vacancy in
7 a manner prescribed by law.

8 (5) If the General Assembly has adjourned sine die or for more than 30 days jointly as
9 provided under Section 20 of Article II of this Constitution, the Chief Justice shall have the
10 authority to appoint a qualified individual to fill a vacant office of Justice or Judge of the General
11 Court of Justice if any of the following apply:

12 (a) The vacancy occurs during the period of adjournment.

13 (b) The General Assembly adjourned without presenting nominees to the
14 Governor as required under subsection (2) of this section or failed to elect a
15 nominee as required under subsection (4) of this section.

16 (c) The Governor failed to appoint a recommended nominee under subsection (2)
17 of this section.

18 (6) Any appointee by the Chief Justice shall have the same powers and duties as any other
19 Justice or Judge of the General Court of Justice, when duly assigned to hold court in an interim
20 capacity, and shall serve until the earlier of:

21 (a) Appointment by the Governor.

22 (b) Election by the General Assembly.

23 (c) The first day of January succeeding the next election of the members of the
24 General Assembly, and such election shall include the office for which the
25 appointment was made.

26 However, no appointment by the Governor or election by the General Assembly to fill a judicial
27 vacancy shall occur after an election to fill that judicial office has commenced, as prescribed by
28 law."

29 **SECTION 2.** Section 10 of Article IV of the North Carolina Constitution reads as
30 rewritten:

31 **"Sec. 10. District Courts.**

32 (1) The General Assembly shall, from time to time, divide the State into a convenient
33 number of local court districts and shall prescribe where the District Courts shall sit, but a District
34 Court must sit in at least one place in each county. District Judges shall be elected for each district
35 for a term of four years, in a manner prescribed by law. When more than one District Judge is
36 authorized and elected for a district, the Chief Justice of the Supreme Court shall designate one
37 of the judges as Chief District Judge. Every District Judge shall reside in the district for which
38 he is elected.

39 (2) For each county, the senior regular resident Judge of the Superior Court serving the
40 county shall appoint from nominations submitted by the Clerk of the Superior Court of the
41 county, one or more Magistrates who shall be officers of the District Court. The initial term of
42 appointment for a magistrate shall be for two years and subsequent terms shall be for four years.

43 (3) The number of District Judges and Magistrates shall, from time to time, be determined
44 by the General Assembly. ~~Vacancies in the office of District Judge shall be filled for the~~
45 ~~unexpired term in a manner prescribed by law.~~ Vacancies in the office of Magistrate shall be
46 filled for the unexpired term in the manner provided for original appointment to the office, unless
47 otherwise provided by the General Assembly."

48 **SECTION 3.** Section 18 of Article IV of the North Carolina Constitution is amended
49 by adding a new subsection to read:

50 "(3) Vacancies. All vacancies occurring in the office of District Attorney shall be filled by
51 appointment of the Governor, and the appointees shall hold their places until the next election

1 for members of the General Assembly that is held more than 60 days after the vacancy occurs,
2 when elections shall be held to fill the offices. When the unexpired term in which a vacancy has
3 occurred expires on the first day of January succeeding the next election for members of the
4 General Assembly, the Governor shall appoint to fill that vacancy for the unexpired term of the
5 office."

6 **SECTION 4.** Section 19 of Article IV of the North Carolina Constitution is repealed.

7 **SECTION 5.** Subsection (5) of Section 22 of Article II of the North Carolina
8 Constitution reads as rewritten:

9 "(5) Other exceptions. Every bill:

- 10 (a) In which the General Assembly makes an appointment or appointments to
11 public office and which contains no other matter;
12 (b) Revising the senate districts and the apportionment of Senators among those
13 districts and containing no other matter;
14 (c) Revising the representative districts and the apportionment of Representatives
15 among those districts and containing no other matter;~~or~~
16 (d) Revising the districts for the election of members of the House of
17 Representatives of the Congress of the United States and the apportionment
18 of Representatives among those districts and containing no other
19 ~~matter,matter;~~
20 (e) Recommending a nominee or nominees to fill a vacancy in the office of Justice
21 and Judge of the General Court of Justice, in accordance with Section 23 of
22 Article IV of this Constitution and containing no other matter; or
23 (f) Electing a nominee or nominees to fill a vacancy in the office of Justice or
24 Judge of the General Court of Justice, in accordance with Section 23 of Article
25 IV of this Constitution and containing no other matter,

26 shall be read three times in each house before it becomes law and shall be signed by the presiding
27 officers of both houses."

28 **SECTION 6.** The amendments set out in Sections 1 through 5 of this act shall be
29 submitted to the qualified voters of the State at a statewide general election to be held in
30 November of 2018, which election shall be conducted under the laws then governing elections
31 in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163A of
32 the General Statutes. The question to be used in the voting systems and ballots shall be:

33 "[] FOR [] AGAINST

34 Constitutional amendment to change the process for filling judicial vacancies that
35 occur between judicial elections from a process in which the Governor has sole appointment
36 power to a process in which the people of the State nominate individuals to fill vacancies by way
37 of a commission comprised of appointees made by the judicial, executive, and legislative
38 branches charged with making recommendations to the legislature as to which nominees are
39 deemed qualified; then the legislature will recommend nominees to the Governor via legislative
40 action not subject to gubernatorial veto; and the Governor will appoint judges from among these
41 nominees."

42 **SECTION 7.** If a majority of the votes cast on the question are in favor of the
43 amendment set out in Sections 1 through 5 of this act, the Bipartisan State Board of Elections
44 and Ethics Enforcement shall certify the amendment to the Secretary of State, who shall enroll
45 the amendment so certified among the permanent records of that office. The amendment becomes
46 effective upon certification and applies to vacancies occurring on or after the date of the general
47 election.

48 **SECTION 8.** Except as otherwise provided, this act is effective when it becomes
49 law.