

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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SENATE DRS35141-LBx-182B (02/28)

Short Title: Judicial Appointment/Voter Retention.

(Public)

Sponsors: Senators Clodfelter and Hartsell (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA CONSTITUTION TO REPLACE THE PRESENT PRACTICE OF SELECTING JUSTICES AND JUDGES OF THE APPELLATE DIVISION AND JUDGES OF THE SUPERIOR COURT GENERALLY BY GUBERNATORIAL APPOINTMENT, FOLLOWED BY ELECTIONS, WITH A METHOD BY WHICH (1) TWO CANDIDATES FOR JUSTICE AND JUDGE WILL BE NOMINATED BY A JUDICIAL NOMINATING COMMISSION, THE GOVERNOR WILL APPOINT ONE OF THEM, AND AT THE NEXT ELECTION THE VOTERS WILL CHOOSE IN A NONPARTISAN ELECTION BETWEEN THE TWO PERSONS, (2) AT THE END OF THE TERM OF A JUSTICE OR JUDGE WHO HAS SUCCESSFULLY WON AN ELECTION, THE QUESTION OF THE JUSTICE'S OR JUDGE'S RETENTION IN OFFICE IS SUBMITTED FOR APPROVAL OR DISAPPROVAL BY NONPARTISAN VOTE OF THE PEOPLE, (3) PROVISION IS MADE FOR THE CASE OF WITHDRAWAL OF A CANDIDATE BEFORE THE ELECTION, AND (4) PROVISION IS MADE FOR APPOINTMENT OF THE CHIEF JUSTICE FROM AMONG THE ASSOCIATE JUSTICES.

The General Assembly of North Carolina enacts:

**SECTION 1.** Section 16 of Article IV of the North Carolina Constitution reads as rewritten:

"Sec. 16.(1) Terms of office and election of Justices of the Supreme Court, Judges of the Court of Appeals, and Judges of the Superior Court. Justices of the Supreme Court, Judges of the Court of Appeals, and regular Judges of the Superior Court shall be elected and retained by the qualified voters as provided by this section 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 and retained by the qualified voters of the State. Regular Judges of the Superior Court ~~may~~ shall be elected and retained 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 and Judges of the Superior Court 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.



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- 1       (3) Nomination, appointment, election, and retention election. Nomination,  
2 appointment, election, retention election, and terms of Justices and Judges are as follows:
- 3       a. When a vacancy occurs in the office of Associate Justice of the Supreme  
4 Court, Judge of the Appellate Division, or Judge of Superior Court, the  
5 Governor shall appoint a person to fill the vacancy from among two  
6 nominees of the Judicial Nominating Commission. For purposes of this  
7 subsection, creation of a new judgeship creates a vacancy.
- 8       b. The term of office by appointment as Associate Justice of the Supreme  
9 Court, Judge of the Appellate Division, or Judge of Superior Court extends  
10 through January 31 after the next statewide election for members of the  
11 General Assembly that is held more than 210 days after the vacancy. That  
12 election shall be between the two candidates nominated by the Judicial  
13 Nominating Commission, with the winning candidate elected to a regular  
14 term.
- 15       c. If the person not appointed by the Governor chooses by July 31 of the year  
16 of the election not to seek election, the person holding by appointment the  
17 office of Associate Justice of the Supreme Court, Judge of the Appellate  
18 Division, or Judge of Superior Court who desires to continue in office shall  
19 be subject to approval by nonpartisan ballot, by a majority of the votes cast  
20 on the issue of the Justice's or Judge's retention. An Associate Justice, Judge  
21 of the Appellate Division, or Judge of Superior Court then approved for  
22 retention serves a regular term.
- 23       d. If the person appointed by the Governor chooses by July 31 of the year of  
24 the election not to seek election, the Judicial Nominating Commission shall  
25 nominate to the Governor two persons to hold office beginning the next  
26 February 1 as if there were a vacancy occurring on that next February 1, and  
27 the Governor shall appoint one of them to fill the vacancy.
- 28       e. An incumbent Justice or Judge who was successful in a contested election,  
29 or was successful in a retention election, files for retention by February 1 of  
30 the year of election is subject to approval by nonpartisan ballot, by a  
31 majority of the votes cast on the issue of the Justice's or Judge's retention for  
32 the subsequent term. If the person does not file for retention by that date, the  
33 office shall become vacant at the end of the term of office, and it shall be  
34 filled by nomination and appointment as prescribed in this section as if the  
35 vacancy occurred on February 1 after the election.
- 36       f. The regular terms of office of the Associate Justice of the Supreme Court,  
37 Judge of the Court of Appeals, and Judge of Superior Court is eight years  
38 and expires on January 31.
- 39       g. If the voters fail to approve the retention in office of an Associate Justice,  
40 Judge of the Court of Appeals, or Judge of Superior Court serving an  
41 appointed or regular term, the office shall become vacant at the end of the  
42 term of office and it shall be filled by nomination and appointment as  
43 prescribed in this section as if the vacancy occurred on February 1 after the  
44 election.
- 45       h. The General Assembly shall implement this Section by general law.
- 46       (4) Chief Justice. If a vacancy occurs in the office of Chief Justice, the Governor shall  
47 appoint to that office an Associate Justice who was elected to that position to serve as Chief  
48 Justice. The person appointed to be Chief Justice shall serve in that capacity for the remaining  
49 portion of the term to which the person serving was elected as Associate Justice. At the end of  
50 the term, the person so appointed shall be subject to a retention election as if the position were  
51 Associate Justice under subsection (3) of this Section. If there is no Associate Justice who was

1 elected, the Governor shall appoint an Associate Justice to be Chief Justice, and the person  
2 shall be treated as if filling a vacancy as Associate Justice under subsection (3) of this Section.  
3 Appointment of an Associate Justice as Chief Justice creates a vacancy in the office of  
4 Associate Justice.

5 (5) Transition provisions. The term of office of a person who has been elected before  
6 January 1, 2013, to the office of Chief Justice, Associate Justice, or Judge of the Appellate  
7 Division for a term which extends beyond January 1, 2013, and who is in office on December  
8 31, 2012, is extended through January 31 of the year following the eighth year after the date  
9 any such Justice or Judge was last elected to the office. If the person so elected continues to  
10 serve for the remainder of the term, that person may stand for retention in the office for a  
11 succeeding regular term as provided in this Section, subject to the provisions of law relating to  
12 mandatory retirement. If the person continues to serve for the remainder of the term but does  
13 not stand for retention election, a vacancy is created in the office upon expiration of the term,  
14 and this vacancy shall be filled by nomination and appointment as provided in this Section.

15 The term of office of a person who has been appointed prior to January 1, 2013, to a  
16 vacancy occurring during the period beginning on the sixtieth day before the 2012 general  
17 election and ending December 31, 2012, to the office of Chief Justice, Associate Justice, or  
18 Judge of the Appellate Division for a term which extends beyond January 1, 2013, and who is  
19 in office on December 31, 2012, shall end on January 31, 2015. If the person so appointed  
20 continues to serve for the remainder of the term, that person may stand for retention in the  
21 office for a regular term as provided by this Section at the statewide election for members of  
22 the General Assembly held in 2014.

23 Upon the death, resignation, removal, or retirement of any incumbent Justice or Judge on or  
24 after January 1, 2013, and before the expiration of the Justice's or Judge's term of office, the  
25 resulting vacancy shall be filled by nomination and appointment as provided in this Section.

26 Vacancies in judicial offices in the Appellate Division occurring before January 1, 2012,  
27 and not filled by that date, shall be filled by nomination and appointment as provided in this  
28 Section.

29 From the date any incumbent described in this subsection is continued in office by retention  
30 vote for a term next succeeding the term in progress on January 1, 2013, or is succeeded in  
31 office by another person, the office is held subject to the provisions of this Section.

32 (6) The General Assembly shall create by law a Judicial Nominating Commission.  
33 Once established, the composition and method of choosing the members of the Commission  
34 shall not be changed except by a law approved by two-thirds of the members of each house  
35 present and voting. The law may provide for direct appointments by officers and leaders of the  
36 General Assembly. Except to fill a vacancy in the office of Chief Justice as provided by this  
37 Section, the Judicial Nominating Commission shall recommend two eligible persons to fill the  
38 vacancy, and the Governor may only appoint a person so recommended.

39 (7) The General Assembly may implement this Section by general law."

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

45  FOR  AGAINST

46 Constitutional amendment to replace the present practice of selecting Justices and  
47 Judges of the Appellate Division and Judges of the Superior Court by gubernatorial  
48 appointment, followed by elections, with a method by which (i) two candidates for Justice and  
49 Judge will be nominated by a nominating commission, the Governor will appoint one of them,  
50 and at the next election the voters will choose in a nonpartisan election between the two  
51 persons, (ii) at the end of the term of a Justice or Judge who has successfully won an election,

1 the question of the Justice's or Judge's retention in office is submitted for approval or  
2 disapproval by nonpartisan vote of the people, (iii) provision is made for the case of withdrawal  
3 of a candidate before the election, and (iv) provision is made for appointment of the Chief  
4 Justice from among the Associate Justices."

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

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

12 "Article 1A.

13 "Appointment of Justices and Judges; Retention Elections.

14 **"§ 7A-4.1. Nomination of justices and judges by Judicial Nominating Commission and**  
15 **appointment by Governor.**

16 Vacancies in the offices of justice of the Supreme Court, judge of the Court of Appeals, and  
17 judge of superior court are filled by nomination of two candidates by the Judicial Nomination  
18 Commission and appointment of one of the two nominees by the Governor in accordance with  
19 Section 16 of Article IV of the North Carolina Constitution.

20 **"§ 7A-4.2. Judicial Nominating Commission – creation; membership; terms;**  
21 **administration.**

22 (a) The Judicial Nominating Commission is created within the Administrative Office of  
23 the Courts for budgetary purposes.

24 (b) The Commission shall consist of 16 voting members appointed as follows:

- 25 (1) Two persons who are not attorneys, appointed by the Governor.  
26 (2) One person who is not an attorney, appointed by the President Pro Tempore  
27 of the Senate.  
28 (3) One person who is not an attorney, appointed by the Speaker of the House of  
29 Representatives.  
30 (4) One person who is not an attorney, appointed by the minority leader of the  
31 Senate.  
32 (5) One person who is not an attorney, appointed by the minority leader of the  
33 House of Representatives.  
34 (6) One person who is not an attorney, appointed by the majority leader or  
35 minority leader of the Senate of the party with which the Governor is not  
36 affiliated.  
37 (7) One person who is not an attorney, appointed by the majority leader or  
38 minority leader of the House of Representatives of the party with which the  
39 Governor is not affiliated.  
40 (8) One person appointed by the Governor from a list of three persons  
41 authorized to practice law in the courts of this State, submitted by the North  
42 Carolina Bar Association.  
43 (9) One person appointed by the Governor from a list of three persons  
44 authorized to practice law in the courts of this State, submitted by the North  
45 Carolina Advocates For Justice, Inc.  
46 (10) One person appointed by the Governor from a list of three persons  
47 authorized to practice law in the courts of this State, submitted by the North  
48 Carolina Association of Defense Attorneys.  
49 (11) One person appointed by the Governor from a list of three persons  
50 authorized to practice law in the courts of this State, submitted by the North  
51 Carolina Association of Women Attorneys, Inc.

1           (12) One person appointed by the Governor from a list of three persons  
2           authorized to practice law in the courts of this State, submitted by the North  
3           Carolina Association of Black Lawyers, Inc.

4           (13) One person appointed by the Governor from a list of three persons  
5           authorized to practice law in the courts of this State, submitted by the  
6           Council of the State Bar.

7           (14) One person appointed by the Governor from a list of three persons  
8           authorized to practice law in the courts of this State, submitted by the North  
9           Carolina Conference of District Attorneys.

10          (15) One person appointed by the Governor from a list of three persons  
11          authorized to practice law in the courts of this State, submitted by the  
12          Commission on Indigent Defense Services.

13          (c) In addition to the voting members, all retired Chief Justices are nonvoting members,  
14          but shall not be considered in determining a quorum, and may serve in addition to any other  
15          offices they are authorized to hold under Chapter 128 of the General Statutes.

16          (d) Members of the Commission shall serve staggered four-year terms. One-half of the  
17          appointees shall serve an initial term of two years, as determined by lot at the first meeting of  
18          the Commission. The remainder of the appointees shall serve an initial term of four years.  
19          Commission members may not serve more than one full four-year term.

20          (e) Vacancies in the membership of the Commission shall be filled for the remainder of  
21          the unexpired term by the appointing officer who made the initial appointment under the same  
22          process as a regular appointment.

23          (f) The Governor shall appoint a chair from among the voting membership to serve a  
24          two-year term. The Commission shall appoint from among its membership a vice-chair for a  
25          two-year term and shall appoint a Secretary.

26          (g) Members of the Commission shall not receive compensation but shall be paid  
27          necessary subsistence and travel expenses as provided by G.S. 138-5 and G.S. 138-6 as  
28          applicable, paid from funds appropriated to implement this Article and within the limits of  
29          those funds.

30          (h) No member of the General Assembly shall serve concurrently as a member of the  
31          Commission.

32          (i) In making appointments to the Commission from among lists of three nominated  
33          persons, the Governor shall consider and give due regard to the following:

34               (1) An even balance of party affiliation.

35               (2) Law practice background, practice area, and practice setting.

36               (3) Race and ethnicity.

37               (4) Gender.

38               (5) Geography.

39          **"§ 7A-4.3. Judicial Nominating Commission; duties.**

40               The Commission shall do the following:

41                   (1) Establish operating procedures for the Commission.

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

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

46                   (4) Interview and investigate candidates for judicial appointment to the appellate  
47                   courts.

48                   (5) Nominate persons to the Governor for appointment to the appellate and  
49                   superior courts.

50                   (6) Review and evaluate the tenure of justices and judges who must stand for a  
51                   contested or retention election.

- 1           (7) Issue a report on justices and judges standing for a contested or retention  
2 election 90 days before the election. The report shall include (i) information  
3 the Commission believes would be helpful to the citizens of North Carolina  
4 and (ii) information regarding any disciplinary action taken against a justice  
5 or judge during tenure. The report may include a recommendation by the  
6 Commission for or against the justice's or judge's retention.  
7           (8) Perform any other duties the Commission deems necessary to carry out the  
8 mandate of this Article.

9 **"§ 7A-4.4. Nomination procedures.**

10       (a) The Commission shall conduct an investigation of a candidate for nomination based  
11 on criteria it establishes, including the following at a minimum:

- 12           (1) Integrity.  
13           (2) Legal knowledge and ability.  
14           (3) Professional experience demonstrating excellence in the profession.  
15           (4) Judicial temperament.  
16           (5) Diligence.  
17           (6) Health.  
18           (7) Personal financial responsibility.  
19           (8) Public service.

20       (b) In choosing nominees, the Commission shall foster diversity in race, sex, ethnicity,  
21 geography, and professional experience.

22       (c) The Commission shall establish a procedure for eligible persons to submit  
23 themselves as candidates for nomination. If fewer than two eligible persons apply, the  
24 Commission shall reopen the process one time.

25       (d) A candidate for nomination shall be given an opportunity to present to the  
26 Commission any information that the candidate determines to be appropriate.

27       (e) The commission shall not investigate any candidate for nomination who is not  
28 eligible to hold the office.

29       (f) Notwithstanding G.S. 7A-377, the Commission may inspect the files of the Judicial  
30 Standards Commission by request of the chair of the Commission. Testimony and other  
31 evidence presented to the Commission are privileged in any action for defamation.

32       (g) The Commission shall nominate two persons to be considered by the Governor for  
33 judicial appointment within 60 days of any vacancy in office. The Governor shall appoint one  
34 of the persons nominated by the Commission.

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

40 **"§ 7A-4.5. Governor to issue commissions to justices and judges.**

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

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

45       "(a) The Supreme Court shall consist of a Chief Justice and six associate justices, ~~electe~~  
46 ~~by the qualified voters of the State for terms of eight years.~~ selected as provided by Article 1A  
47 of this Chapter. Before entering upon the duties of his office, each justice shall take an oath of  
48 office. Four justices shall constitute a quorum for the transaction of the business of the court.  
49 Sessions of the court shall be held in the city of Raleigh, and scheduled by rule of court so as to  
50 discharge expeditiously the court's business. The court may by rule hold sessions not more than  
51 twice annually in the Old Chowan County Courthouse (1767) in the Town of Edenton, which is

1 a State-owned court facility that is designated as a National Historic Landmark by the United  
2 States Department of the Interior."

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

4 "**§ 7A-16. Creation and organization.**

5 ~~The Court of Appeals is created effective January 1, 1967. It shall consist initially of six~~  
6 ~~judges, elected by the qualified voters of the State for terms of eight years. The Chief Justice of~~  
7 ~~the Supreme Court shall designate one of the judges as Chief Judge, to serve in such capacity at~~  
8 ~~the pleasure of the Chief Justice. Before entering upon the duties of his office, a judge of the~~  
9 ~~Court of Appeals shall take the oath of office prescribed for a judge of the General Court of~~  
10 ~~Justice.~~

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

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

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

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

32 ~~On or after December 15, 2000, the Governor shall appoint three additional judges to~~  
33 ~~increase the number of judges to 15.~~

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

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

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

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

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

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

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

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

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

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

(1) ~~With only one resident judge; or~~

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

(c) ~~When the unexpired term of the office in which the vacancy has occurred 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.~~

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

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

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

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

**"SUBCHAPTER X. ELECTION AND RETENTION ELECTION OF APPELLATE, SUPERIOR, APPELLATE AND SUPERIOR COURT JUDGES, AND ELECTION OF AND-DISTRICT COURT JUDGES."**

**SECTION 11.** G.S. 163-321 reads as rewritten:

**"§ 163-321. Applicability.**

~~The nomination and election and retention election of justices of the Supreme Court, judges of the Court of Appeals, and superior court judges and the nomination and election of district court judges of the General Court of Justice shall be as provided by this Article."~~

**SECTION 12.** G.S. 163-323 reads as rewritten:

**"§ 163-323. Notice of candidacy.**

(a) Form of Notice. – Each person offering to be a candidate for election as district court judge shall do so by filing a notice of candidacy with the State Board of Elections in the following form, inserting the words in parentheses when appropriate:

Date: \_\_\_\_\_

I hereby file notice that I am a candidate for election to the office of \_\_\_\_\_ district court judge in the regular election to be held \_\_\_\_\_, \_\_\_\_\_.



Signed: \_\_\_\_\_

(Name of Candidate)

Witness: \_\_\_\_\_

The notice of candidacy shall be either signed in the presence of the chairman or secretary of the State Board of Elections, or signed and acknowledged before an officer authorized to take acknowledgments who shall certify the notice under seal. An acknowledged and certified notice may be mailed to the State Board of Elections. In signing a notice of candidacy, the candidate shall use only the candidate's legal name and, in his discretion, any nickname by which commonly known. A candidate may also, in lieu of that candidate's first name and legal middle initial or middle name, if any, sign that candidate's nickname, provided the candidate appends to the notice of candidacy an affidavit that the candidate has been commonly known by that nickname for at least five years prior to the date of making the affidavit. The candidate shall also include with the affidavit the way the candidate's name (as permitted by law) should be listed on the ballot if another candidate with the same last name files a notice of candidacy for that office.

A notice of candidacy signed by an agent or any person other than the candidate himself shall be invalid.

(b) Time for Filing Notice of Candidacy. – Candidates seeking election to the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the second Monday in February and no later than 12:00 noon on the last business day in February preceding the election:

~~Justices of the Supreme Court.~~

~~Judges of the Court of Appeals.~~

~~Judges of the superior courts.~~

Judges of the district courts.

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

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

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

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

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

11 ~~(g) No person may file a notice of candidacy for superior court judge unless that person~~  
12 ~~is at the time of filing the notice of candidacy a resident of the judicial district as it will exist at~~  
13 ~~the time the person would take office if elected. No person may be nominated as a superior~~  
14 ~~court judge under G.S. 163-114 unless that person is at the time of nomination a resident of the~~  
15 ~~judicial district as it will exist at the time the person would take office if elected. This~~  
16 ~~subsection implements Article IV, Section 9(1) of the North Carolina Constitution which~~  
17 ~~requires regular Superior Court Judges to reside in the district for which elected."~~

18 **SECTION 13.** G.S. 163-325 reads as rewritten:

19 **"§ 163-325. Petition in lieu of payment of filing fee.**

20 (a) General. – Any qualified voter who seeks election as district court judge under this  
21 Article may, in lieu of payment of any filing fee required for the office he seeks, file a written  
22 petition requesting him to be a candidate for a specified office with the State Board of  
23 Elections.

24 (b) Requirements of Petition; Deadline for Filing. – If the candidate is seeking the  
25 office of ~~justice of the Supreme Court, judge of the Court of Appeals, or superior or~~ district  
26 court judge, that individual shall file a written petition with the State Board of Elections no  
27 later than 12:00 noon on Monday preceding the filing deadline before the primary. ~~If the office~~  
28 ~~is justice of the Supreme Court or judge of the Court of Appeals, the petition shall be signed by~~  
29 ~~10,000 registered voters in the State. If the office is superior court or district court judge, the~~  
30 The petition shall be signed by ten percent (10%) of the registered voters of the election area in  
31 which the office will be voted for. The board of elections shall verify the names on the petition,  
32 and if the petition and notice of candidacy are found to be sufficient, the candidate's name shall  
33 be printed on the appropriate ballot. Petitions must be presented to the county board of  
34 elections for verification at least 15 days before the petition is due to be filed with the State  
35 Board of Elections. The State Board of Elections may adopt rules to implement this section and  
36 to provide standard petition forms."

37 **SECTION 14.** G.S. 163-326(b) reads as rewritten:

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

47 **SECTION 15.** G.S. 163-328(e) is repealed.

48 **SECTION 16.** G.S. 163-329(a) is repealed.

49 **SECTION 17.** G.S. 163-329(b1) is repealed.

50 **SECTION 18.** G.S. 163-332(b) reads as rewritten:

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

- 4       Justice of the Supreme Court.
- 5       Judge of the Court of Appeals.
- 6       Superior court judge.
- 7       District court judge.

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

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

14       Ballots for justice of the supreme court, judge of the Court of Appeals, and superior court  
15 judge shall be either (i) between the two candidates nominated by the Judicial Nominating  
16 Commission in accordance with Section 16 of Article IV of the North Carolina Constitution,  
17 G.S. 7A-4.4, and G.S. 163-331.1 or (ii) on the question of retention of the justice or judge in  
18 accordance with Section 16 of Article IV of the North Carolina Constitution and  
19 G.S. 163-331.2."

20       **SECTION 19.** Article 25 of Chapter 163 of the General Statutes is amended by  
21 adding new sections to read:

22       "**§ 163-333.1. Contested election after appointment by the Governor.**

23       (a) When two persons have been nominated by the Judicial Nominating Commission  
24 for the Governor to appoint to fill a vacancy, and an election is to be held in accordance with  
25 Section 16 of Article IV of the North Carolina Constitution between the person appointed by  
26 the Governor and the person not appointed by the Governor, it shall be held under the  
27 applicable provisions of this Chapter. The ballot shall allow the voter to choose between the  
28 two candidates, and the party affiliation of the two candidates shall not appear on the ballot.

29       (b) If the nominee of the Judicial Nominating Commission not appointed by the  
30 Governor to fill the vacancy files with the State Board of Elections prior to August 1 of the year  
31 of the election notice that the person does not seek election, no election shall be held under this  
32 section, but a retention election shall be held under G.S. 163-331.2.

33       (c) If the person appointed by the Governor prior to August 1 of the year of the election  
34 files notice with the State Board of Elections that the person chooses not to seek election, no  
35 election shall be held under this Article that year, and the Judicial Nominating Commission  
36 shall nominate to the Governor two persons to hold office beginning the next February 1 as if  
37 there were a vacancy occurring on that next February 1, and the Governor shall appoint one of  
38 them to fill the vacancy.

39       (d) Any notice under this section shall be on a form prescribed by the State Board of  
40 Elections.

41       "**§ 163-331.2. Retention elections.**

42       (a) As provided by Section 16 of Article IV of the North Carolina Constitution, an  
43 Associate Justice of the Supreme Court, judge of the Court of Appeals, or judge of superior  
44 court desiring to continue in office shall be subject to approval by nonpartisan ballot, by a  
45 majority of votes cast on the issue of the justice's or judge's retention. This section applies (i)  
46 when the incumbent was elected to that term under G.S. 163-331.1(a), (ii) when the person not  
47 appointed declines candidacy under G.S. 163-331.1(b), (iii) where an Associate Justice has  
48 been appointed Chief Justice under Section 16(4) of Article IV of the North Carolina  
49 Constitution and seeks retention at the end of the term as provided therein, or (iv) in the case of  
50 a person holding office on December 31, 2012, where the provisions of Section 16(5) of Article  
51 IV of the North Carolina Constitution provides for a retention election in 2014.

1       **(b)** A person subject to subsection (a) of this section shall indicate the choice to  
2 continue in office by filing a notice to that effect with the State Board of Elections no later than  
3 12:00 noon on February 1 in the year of the election. The notice shall be on a form approved by  
4 the State Board of Elections. Notice can be withdrawn at any time prior to the deadline for  
5 filing notice under this subsection.

6       **(c)** Retention elections shall be conducted and canvassed in accordance with rules of  
7 the State Board of Elections in the same general manner as general elections under Chapter 163  
8 of the General Statutes, except that the retention election is nonpartisan. The form of the ballot  
9 shall be determined by the State Board of Elections. The ballot shall ask whether the named  
10 justice or judge shall continue in an office for another term.

11       **(d)** If a person who has filed a notice calling a retention election dies or is removed  
12 from office prior to the time that the ballots are printed, the retention election is cancelled. If a  
13 person who has filed a notice calling a retention election dies or is removed from office after  
14 the ballots are printed, the State Board of Elections may cancel the election if it determines that  
15 the ballots can be reprinted without significant expense. If the ballots cannot be reprinted, then  
16 the results of the election shall be ineffective."

17       **SECTION 20.** G.S. 163-182.16 reads as rewritten:

18       **"§ 163-182.16. Governor to issue commissions for certain offices.**

19       The Secretary of State shall send a notice to the Governor that a certificate of election has  
20 been issued for any of the following offices, and upon receiving the notice, the Governor shall  
21 provide to each such elected official a commission attesting to that person's ~~election:~~ election or  
22 retention:

23           (1) Members of the United States House of Representatives.

24           (2) Justices, judges, and district attorneys of the General Court of Justice."

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

28       **SECTION 22.** Except as otherwise provided for herein, this act is effective when it  
29 becomes law.