

GENERAL ASSEMBLY OF NORTH CAROLINA
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HOUSE DRH20080-LU-58 (02/12)

Short Title: Retention Elections/Appellate Division. (Public)

Sponsors: Representatives Bryan, Daughtry, and Stevens (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT ALLOWING VOTERS TO ELECT TO RETAIN JUSTICES OF THE NORTH
3 CAROLINA SUPREME COURT AND JUDGES OF THE COURT OF APPEALS UP
4 FOR ELECTION.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Chapter 7A of the General Statutes is amended by adding a new
7 Article to read:

8 "Article 1A.

9 "Retention Elections.

10 "§ 7A-4.1. Retention elections.

11 (a) If the Chief Justice or an Associate Justice of the Supreme Court or a Judge of the
12 Court of Appeals was appointed to that office, then the next election for that office shall be by
13 ballot as otherwise provided by this Chapter and Chapter 163 of the General Statutes.

14 (b) A Chief Justice or Associate Justice of the Supreme Court or Judge of the Court of
15 Appeals who was elected to that office at the most recent election, whether by nonpartisan
16 election or by retention election, who desires to continue in office shall be subject to approval
17 by nonpartisan ballot at the general election immediately preceding the expiration of the term.
18 Approval shall be by a majority of votes cast on the issue of the justice's or judge's retention.
19 The qualified voters of the whole State shall be allowed to vote in a retention election of the
20 Chief Justice, Associate Justices, and Judges of the Appellate Division.

21 (c) A person subject to subsection (b) of this section shall indicate the desire to continue
22 in office by filing a notice to that effect with the State Board of Elections no later than 12:00
23 noon on the first business day of July in the year prior to the election. The notice shall be on a
24 form approved by the State Board of Elections. Notice can be withdrawn at any time prior to
25 December 15 of that year. If no retention notice is filed, or if it is filed and timely withdrawn,
26 then an election shall be held the next year to elect a successor in accordance with Article 25 of
27 Chapter 163 of the General Statutes.

28 (d) Retention elections shall be conducted and canvassed in accordance with rules of
29 the State Board of Elections in the same general manner as general elections under Article 25
30 of Chapter 163 of the General Statutes.

31 (e) Retention elections shall be placed on ballot in the same place as other nonpartisan
32 judicial elections. The question on the ballot shall be substantially in the following form:

33 [] FOR [] AGAINST

34 The retention of [name of Justice] on the North Carolina Supreme Court for a new term of
35 eight years.', or

36 [] FOR [] AGAINST



1 The retention of [name of Judge] on the North Carolina Court of Appeals for a new term of
2 eight years.', as appropriate.

3 (f) If a person who has filed a notice calling a retention election dies or is removed
4 from office prior to the time that the ballots are printed, the retention election is cancelled. If a
5 person who has filed a notice calling a retention election dies or is removed from office after
6 the ballots are printed, the State Board of Elections may cancel the retention election if it
7 determines that the ballots can be reprinted without significant expense. If the ballots cannot be
8 reprinted, then the results of the retention election shall be ineffective.

9 **"§ 7A-4.2. Retention approval; failure to retain.**

10 (a) If the voters vote to approve the retention in office of a Chief Justice, an Associate
11 Justice, or a Judge of the Appellate Division, the justice or judge shall be retained for a new
12 eight-year term.

13 (b) If the voters fail to approve the retention in office of a Chief Justice, an Associate
14 Justice, or a Judge of the Appellate Division, the office shall become vacant at the end of the
15 term of office, the incumbent shall not hold over, and it shall be filled by appointment as
16 provided by law until the next general election when a successor shall be elected for a full term.

17 **"§ 7A-4.3. Governor to issue commissions to justices and judges.**

18 When a justice or judge is retained in office by vote of the people, the Governor shall issue
19 a commission attesting that fact. The Governor shall issue the commission upon receipt of a
20 certification by the Secretary of State of the results of the election."

21 **SECTION 2.** G.S. 7A-10(a) reads as rewritten:

22 "(a) ~~The Supreme Court shall consist of a Chief Justice and six associate justices, elected~~
23 ~~by the qualified voters of the State for terms of eight years as provided by Article 1A of this~~
24 ~~Chapter. Before entering upon the duties of his office, each justice shall take an oath of office.~~
25 ~~Four justices shall constitute a quorum for the transaction of the business of the court. Except~~
26 ~~as otherwise provided in this subsection, sessions of the court shall be held in the city of~~
27 ~~Raleigh, and scheduled by rule of court so as to discharge expeditiously the court's business.~~
28 ~~The court may by rule hold sessions not more than twice annually in the Old Chowan County~~
29 ~~Courthouse (1767) in the Town of Edenton, which is a State-owned court facility that is~~
30 ~~designated as a National Historic Landmark by the United States Department of the Interior."~~

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

32 **"§ 7A-16. Creation and organization.**

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

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

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

48 ~~Effective January 1, 1969, the number of judges is increased to nine, and the Governor, on~~
49 ~~or after March 1, 1969, shall make temporary appointments to the additional judgeships thus~~
50 ~~created. The appointees shall serve until January 1, 1971. Their successors shall be elected at~~
51 ~~the general election for members of the General Assembly in November, 1970, and shall take~~

1 office on January 1, 1971, to serve for the remainder of the unexpired term which began on
2 January 1, 1969.

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

9 The Court of Appeals shall consist of 12 judges, elected as provided in Article 1A of this
10 Chapter. The Chief Justice of the Supreme Court shall designate one of the judges as Chief
11 Judge to serve in such capacity at the pleasure of the Chief Justice. Before entering upon the
12 duties of office, a judge of the Court of Appeals shall take the oath of office prescribed for a
13 judge of the General Court of Justice.

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

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

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

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

26 **SECTION 4.** G.S. 163-1 is amended in the table relating to entries for "Justices
27 and State Judges of the Appellate Division" by deleting the word "At" at the beginning of the
28 entry under the column titled "Date of Election" and substituting the phrase "Except as
29 provided in Article 1A of Chapter 7A of the General Statutes, at".

30 **SECTION 5.** G.S. 163-321 reads as rewritten:

31 "**§ 163-321. Applicability.**

32 The nomination and election of justices of the Supreme Court, judges of the Court of
33 Appeals, and superior and district court judges of the General Court of Justice shall be as
34 provided by this Article. Retention elections of Justices of the Supreme Court or Judges of the
35 Court of Appeals shall be as provided in Article 1A of Chapter 7A of the General Statutes."

36 **SECTION 6.** G.S. 163-324(a) reads as rewritten:

37 "(a) Fee Schedule. – At the time of filing a notice of candidacy under this Article,
38 including candidacy for retention election under G.S. 7A-4.1, each candidate shall pay to the
39 State Board of Elections a filing fee for the office he seeks in the amount of one percent (1%)
40 of the annual salary of the office sought."

41 **SECTION 7.** This act is effective when it becomes law.