

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 222
PROPOSED COMMITTEE SUBSTITUTE H222-PCS20315-ST-23

Short Title: Retention Elections/Appellate Division.

(Public)

Sponsors:

Referred to:

March 12, 2015

1 A BILL TO BE ENTITLED
2 AN ACT ALLOWING VOTERS TO ELECT, AND THEN RETAIN, JUSTICES OF THE
3 NORTH CAROLINA SUPREME COURT AND JUDGES OF THE COURT OF
4 APPEALS 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) A Chief Justice or Associate Justice of the Supreme Court or Judge of the Court of
12 Appeals who was elected to that office by vote of the voters at the most recent election who
13 desires to continue in office shall be subject to approval by the qualified voters of the whole
14 State in a retention election at the general election immediately preceding the expiration of the
15 elected term. Approval shall be by a majority of votes cast on the issue of the justice's or
16 judge's retention in accordance with this Article.

17 (b) If the Chief Justice or an Associate Justice of the Supreme Court or a Judge of the
18 Court of Appeals was appointed to fill a vacancy to that office, then the next election for that
19 office shall be by ballot as provided by Article 25 of Chapter 163 of the General Statutes.
20 Following that election, the justice or judge shall be eligible for retention election as provided
21 for in this Article.

22 (c) A justice or judge seeking retention shall indicate the desire to continue in office by
23 filing a notice to that effect with the State Board of Elections no later than 12:00 noon on the
24 first business day of July in the year prior to the general election immediately preceding the
25 expiration of the elected term. The notice shall be on a form provided by the State Board of
26 Elections. Notice can be withdrawn at any time prior to December 15 of that year. If no
27 retention notice is filed, or if it is filed and timely withdrawn, then an election shall be held the
28 next year to elect a successor in accordance with Article 25 of Chapter 163 of the General
29 Statutes.

30 (d) At the time of filing the notice under this Article, the justice or judge shall pay to the
31 State Board of Elections a filing fee for the office the candidate seeks in the amount of one
32 percent (1%) of the annual salary of the office sought.

33 (e) Except as provided for in this Article, retention elections shall be conducted and
34 canvassed in accordance with rules of the State Board of Elections in the same general manner
35 as general elections under Chapter 163 of the General Statutes. The State Board of Elections
36 shall certify the results.



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1 (f) The question on the ballot shall be substantially in the following form, as
 2 appropriate:

3 (1) Justices of the Supreme Court. –
 4 "[] FOR [] AGAINST

5 The retention of [name of Justice] on the North Carolina Supreme Court for a new term of
 6 eight years."

7 (2) Judges of the Court of Appeals. –
 8 "[] FOR [] AGAINST

9 The retention of [name of Judge] on the North Carolina Court of Appeals for a new term of
 10 eight years."

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

18 **§ 7A-4.2. Retention approval; failure to retain.**

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

22 (b) If the voters fail to approve the retention in office of a Chief Justice, an Associate
 23 Justice, or a Judge of the Appellate Division, the office shall become vacant at the end of the
 24 term of office, the incumbent shall not hold over, and the vacancy shall be filled as provided by
 25 law."

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

27 "(a) The Supreme Court shall consist of a Chief Justice and six associate justices, elected
 28 by the qualified voters of the State for terms of eight years. Such election shall be under Article
 29 25 of Chapter 163 of the General Statutes or Article 1A of this Chapter. Before entering upon
 30 the duties of his—the office, each justice shall take an oath of office. Four justices shall
 31 constitute a quorum for the transaction of the business of the court. Except as otherwise
 32 provided in this subsection, sessions of the court shall be held in the city of Raleigh, and
 33 scheduled by rule of court so as to discharge expeditiously the court's business. The court may
 34 by rule hold sessions not more than twice annually in the Old Chowan County Courthouse
 35 (1767) in the Town of Edenton, which is a State-owned court facility that is designated as a
 36 National Historic Landmark by the United States Department of the Interior."

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

38 **§ 7A-16. Creation and organization.**

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

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

50 ~~Upon the appointment of at least five judges, and the designation of a Chief Judge, the court~~
 51 ~~is authorized to convene, organize, and promulgate, subject to the approval of the Supreme~~

1 Court, such supplementary rules as it deems necessary and appropriate for the discharge of the
2 judicial business lawfully assigned to it.

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

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

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

17 The Court of Appeals shall consist of 15 judges, elected by the qualified voters of the State
18 for terms of eight years. Such election shall be under Article 25 of Chapter 163 of the General
19 Statutes or Article 1A of this Chapter. The Chief Justice of the Supreme Court shall designate
20 one of the judges as Chief Judge to serve in such capacity at the pleasure of the Chief Justice.
21 Before entering upon the duties of the office, each judge shall take an oath of office.

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

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

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

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

36 **SECTION 5.** G.S. 163-165.6(b) reads as rewritten:

37 "(b) Order of Precedence for Candidate Ballot Items. – The State Board of Elections
38 shall promulgate rules prescribing the order of offices to be voted on the official ballot. Those
39 rules shall adhere to the following guidelines:

- 40 (1) Federal offices shall be listed before State and local offices. Member of the
41 United States House of Representatives shall be listed immediately after
42 United States Senator.
- 43 (2) State and local offices shall be listed according to the size of the electorate.
- 44 (3) Partisan offices, regardless of the size of the constituency, shall be listed
45 before nonpartisan offices.
- 46 (4) When offices are in the same class, they shall be listed in alphabetical order
47 by office name, or in numerical or alphabetical order by district name.
48 Governor and Lieutenant Governor, in that order, shall be listed before other
49 Council of State offices. Mayor shall be listed before other citywide offices.
50 Chair of a board, where elected separately, shall be listed before other board

1 seats having the same electorate. Chief Justice shall be listed before
2 Associate Justices.

3 (5) Ballot items for full terms of an office shall be listed before ballot items for
4 partial terms of the same office.

5 (6) Ballot items for retention elections held under Article 1A of Chapter 7A of
6 the General Statutes shall be grouped with like state offices, but shall be
7 listed after offices for which an election is conducted under Article 25 of this
8 Chapter."

9 **SECTION 6.** G.S. 163-182.16 reads as rewritten:

10 **"§ 163-182.16. Governor to issue commissions for certain offices.**

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

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

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

17 **SECTION 7.** G.S. 163-321 reads as rewritten:

18 **"§ 163-321. Applicability.**

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

23 **SECTION 8.** G.S. 163-335 reads as rewritten:

24 **"§ 163-335. Other rules.**

25 (a) Except as provided by this Article, the conduct of elections shall be governed by
26 Subchapter VI of this Chapter.

27 (b) Following election under this Article, a duly elected justice of the Supreme Court or
28 judge of the Court of Appeals may opt for a retention election under Article 1A of Chapter 7A
29 of the General Statutes. Any such retention shall be conducted in accordance with this Chapter
30 except as specifically stated in that Article."

31 **SECTION 9.(a)** G.S. 163-278.6(4) reads as rewritten:

32 "(4) The term "candidate" means any individual who, with respect to a public
33 office listed in G.S. 163-278.6(18), has taken positive action for the purpose
34 of bringing about that individual's ~~nomination~~nomination, retention, or
35 election to public office. Examples of positive action include~~include any of~~
36 the following:

37 a. Filing a notice of ~~candidacy~~candidacy, filing a notice to be retained,
38 or a petition requesting to be a~~candidate~~candidate.

39 b. Being certified as a nominee of a political party for a
40 ~~vacancy~~vacancy.

41 c. Otherwise qualifying as a candidate in a manner authorized by
42 ~~law~~law.

43 d. Making a public announcement of a definite intent to run for public
44 office in a particular ~~election~~election.

45 e. Receiving funds or making payments or giving the consent for
46 anyone else to receive funds or transfer anything of value for the
47 purpose of bringing about that individual's nomination or election to
48 office. Transferring anything of value includes incurring an
49 obligation to transfer anything of value.

50 Status as a candidate for the purpose of this Article continues if the
51 individual is receiving contributions to repay loans or cover a deficit or is

1 making expenditures to satisfy obligations from an election already held.
2 Special definitions of "candidate" and "candidate campaign committee" that
3 apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z."

4 **SECTION 9.(b)** G.S. 163-278.38Z(2) reads as rewritten:

5 "(2) "Candidate" means any individual who, with respect to a public office listed
6 in G.S. 163-278.6(18), has filed a notice of ~~candidacy~~retention, notice of
7 retention, or a petition requesting to be a candidate, or has been certified as a
8 nominee of a political party for a vacancy, or has otherwise qualified as a
9 candidate in a manner authorized by law, or has filed a statement of
10 organization under G.S. 163-278.7 and is required to file periodic financial
11 disclosure statements under G.S. 163-278.9."

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