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SENATE BILL DRS35263-MS-58 (02/10)

Short Title: Eliminate Emergency Recall Judges.

(Public)

Sponsors: Senator Randleman (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ELIMINATE ALL EMERGENCY JUSTICES AND JUDGES EXCEPT FOR
3 RETIRED SPECIAL SUPERIOR COURT JUDGES WHO RETIRED FROM THE
4 BUSINESS COURT WHO MAY BE RECALLED TO SERVE AS EMERGENCY
5 JUDGES ON THE BUSINESS COURT.

6 The General Assembly of North Carolina enacts:

7 SECTION 1. G.S. 7A-39.1 is repealed.

8 SECTION 2. G.S. 7A-39.3 is repealed.

9 SECTION 3. G.S. 7A-39.5 is repealed.

10 SECTION 4. G.S. 7A-39.6 is repealed.

11 SECTION 5. G.S. 7A-39.7 is repealed.

12 SECTION 6. G.S. 7A-39.8 is repealed.

13 SECTION 7. G.S. 7A-39.9 is repealed.

14 SECTION 8. G.S. 7A-39.10 is repealed.

15 SECTION 9. G.S. 7A-39.13 is repealed.

16 SECTION 10. G.S. 7A-39.14 is repealed.

17 SECTION 11. G.S. 7A-39.15 is repealed.

18 SECTION 12. G.S. 7A-45.2 is repealed.

19 SECTION 13. G.S. 7A-48 reads as rewritten:

20 "§ 7A-48. Jurisdiction of emergency judges.

21 Emergency special superior court judges have the same power and authority in all matters
22 ~~whatsoever, whatsoever~~ in the ~~courts—complex business cases~~ which they are assigned to
23 ~~hold, assigned to hear and decide~~ that regular ~~judges holding the same courts—special superior~~
24 ~~court judges designated to hear and decide complex business cases~~ would have. An emergency
25 special superior court judge duly assigned to ~~hold the courts of~~ hear and decide complex
26 business cases in a county or district or set of districts as defined in G.S. 7A-41.1(a) has the
27 same powers in that county and district or set of districts in open court and in chambers ~~as that~~ a
28 ~~resident~~ regular special superior court judge of the district or set of districts ~~or any judge~~
29 ~~regularly~~ assigned to hold the hear and decide complex business cases in the courts of the
30 district or set of districts would have, but his jurisdiction in chambers extends only until the
31 session is adjourned or the session expires by operation of law, whichever is later."

32 SECTION 14. The title of Article 8 of Chapter 7A of the General Statutes and
33 G.S. 7A-50 read as rewritten:

34 "Article 8.

35 "Retirement of Judges of the Superior Court; Retirement Compensation for Superior Court
36 Judges; Recall to Emergency Service of Special Superior Court Judges of the District and



~~Superior Court; Designated to Hear and Decide Complex Business Cases; Disability~~

~~Retirement for Judges of the Superior Court.~~

"§ 7A-50. Emergency judge defined.

As used in this Article "emergency judge" means any ~~special superior court judge of the superior court~~ who has retired subject to recall to active service for temporary ~~duty~~ duty as assigned to hear and decide complex business court cases."

SECTION 15. G.S. 7A-52 reads as rewritten:

"§ 7A-52. Retired ~~district and~~ special superior court judges designated to hear and decide complex business cases may become emergency judges subject to recall to active service; compensation for emergency judges on recall.

(a) ~~Judges of the district court and judges of the superior court~~ Special superior court judges designated to hear and decide complex business court cases who have not reached the mandatory retirement age specified in G.S. 7A-4.20, but who have retired under the provisions of G.S. 7A-51, or under the Uniform Judicial Retirement Act after having completed five years of creditable service, may apply as provided in G.S. 7A-53 to become emergency ~~judges of the court from which they retired~~ judges. The Chief Justice of the Supreme Court may order any emergency judge ~~of the district or superior court~~ who, in his opinion, is competent to perform the duties of a special superior court judge of the court from which such judge retired, designated to hear and decide complex business cases to hold regular or special sessions ~~of such court, to hear and decide such cases~~, as needed. Order of assignment shall be in writing and entered upon the minutes of the court to which such emergency judge is assigned.

(a1) An emergency judge ~~of the superior court~~ may be recalled to active service by the Chief Justice and assigned to hear and decide complex business cases if, at the time of the judge's retirement, all of the following conditions are met:

- (1) The judge is a special superior court judge who is retiring from a term to which the judge was appointed pursuant to G.S. 7A-45.1.
- (2) The judge is retiring from a term for which the judge was assigned by the Chief Justice to hear and decide complex business cases as a business court judge pursuant to G.S. 7A-45.3.
- (3) The judge's nomination to serve a successive term in the same office is pending before the General Assembly, or was not acted upon by the General Assembly prior to adjournment sine die.
- (4) If confirmed and appointed to the successive term of office for which nominated, the judge would reach mandatory retirement age before completing that term of office.

An emergency judge assigned to hear and decide complex business cases pursuant to this subsection shall be designated by the Chief Justice as a senior business court judge and shall be eligible to serve in that capacity for five years from the issuance date of the judge's commission under G.S. 7A-53 or until the judge's commission expires, whichever occurs first. Order of assignment shall be in writing and entered upon the minutes of the court to which such emergency judge is assigned.

(b) In addition to the compensation or retirement allowance the judge would otherwise be entitled to receive by law, each emergency judge ~~of the district or superior court~~ who is assigned to temporary active service by the Chief Justice shall be paid by the State the judge's actual expenses, plus four hundred dollars (\$400.00) for each day of active service rendered upon recall, and each emergency judge designated as a senior business court judge pursuant to subsection (a1) of this section shall be paid by the State the judge's actual expenses, plus five hundred dollars (\$500.00) for each day of active service rendered upon recall as a senior business court judge. No day of active service rendered by an emergency judge pursuant to assignment under subsection (a) of this section shall overlap with a day of active service rendered pursuant to assignment under subsection (a1) of this section. No recalled retired trial

1 judge shall receive from the State total annual compensation for judicial services in excess of
2 that received by an active judge of the bench to which the judge is recalled."

3 **SECTION 16.** G.S. 7A-53 reads as rewritten:

4 **"§ 7A-53. Application to the Governor; commission as emergency judge.**

5 ~~No retired judge of the district or the superior court special superior court judge authorized~~
6 ~~by G.S. 7A-45.1 to hear and decide complex business cases~~ may become an emergency judge
7 except upon his written application to the Governor certifying his desire and ability to serve as
8 an emergency judge. If the Governor is satisfied that the applicant qualifies under
9 G.S. 7A-52(a) to become an emergency judge and that he is physically and mentally able to
10 perform the official duties of an emergency judge, he shall issue to such applicant a
11 commission as an emergency ~~judge of the court from which he retired, special superior court~~
12 ~~judge.~~ The commission shall be effective upon the date of its issue and shall terminate when the
13 judge to whom it is issued reaches the maximum age for judicial service under
14 G.S. 7A-4.20(a)."

15 **SECTION 17.** G.S. 7A-374.2 reads as rewritten:

16 **"§ 7A-374.2. Definitions.**

17 Unless the context clearly requires otherwise, the definitions in this section shall apply
18 throughout this Article:

19 ...

20 (5) "Judge" means any justice or judge of the General Court of Justice of North
21 Carolina, including any retired ~~justice or special superior judge court judge~~
22 who is recalled for service as an emergency judge ~~of any division of the~~
23 ~~General Court of Justice pursuant to G.S. 7A-53.~~

24"

25 **SECTION 18.** G.S. 7A-376(c) reads as rewritten:

26 **"§ 7A-376. Grounds for discipline by Commission; public reprimand, censure,**
27 **suspension, or removal by the Supreme Court.**

28 ...

29 (c) Upon recommendation of the Commission, the Supreme Court may suspend, for a
30 period of time the Supreme Court deems necessary, any judge for temporary physical or mental
31 incapacity interfering with the performance of the judge's duties, and may remove any judge for
32 physical or mental incapacity interfering with the performance of the judge's duties which is, or
33 is likely to become, permanent. A judge who is suspended for temporary incapacity shall
34 continue to receive compensation during the period of the suspension. A judge removed for
35 mental or physical incapacity is entitled to retirement compensation if the judge has
36 accumulated the years of creditable service required for incapacity or disability retirement
37 under any provision of State law, but he shall not sit as an emergency ~~justice or special superior~~
38 ~~court judge.~~"

39 **SECTION 19.** G.S. 90-21.62 reads as rewritten:

40 **"§ 90-21.62. Selection of arbitrator.**

41 (a) Selection by Agreement. – An arbitrator shall be selected by agreement of all the
42 parties no later than 45 days after the date of the filing of the stipulation where the parties
43 agreed to submit the dispute to arbitration under this Article. The parties may agree to select
44 more than one arbitrator to conduct the arbitration. The parties may agree in writing to the
45 selection of a particular arbitrator or particular arbitrators as a precondition for a stipulation to
46 arbitrate.

47 (b) ~~Selection From List. — If all the parties are unable to agree to an arbitrator by the~~
48 ~~time specified in subsection (a) of this section, the arbitrator shall be selected from emergency~~
49 ~~superior court judges who agree to be on a list maintained by the Administrative Office of the~~
50 ~~Courts. Each party shall alternately strike one name on the list, and the last remaining name on~~

1 ~~the list shall be the arbitrator. The emergency superior court judge serving as an arbitrator~~
2 ~~would be compensated at the same rate as an emergency judge serving in superior court."~~

3 **SECTION 20.** G.S. 115C-431 reads as rewritten:

4 **"§ 115C-431. Procedure for resolution of dispute between board of education and board**
5 **of county commissioners.**

6 ...

7 (c) Within five days after an announcement of no agreement by the mediator, the local
8 board of education may file an action in the superior court division of the General Court of
9 Justice. Either board has the right to have the issues of fact tried by a jury. When a jury trial is
10 demanded, the cause shall be set for the first succeeding term of the superior court in the
11 county, and shall take precedence over all other business of the court. However, if the judge
12 presiding certifies to the Chief Justice of the Supreme Court, either before or during the term,
13 that because of the accumulation of other business, the public interest will be best served by not
14 trying the cause at the term next succeeding the filing of the action, the Chief Justice shall
15 immediately call a special term of the superior court for the county, to convene as soon as
16 possible, and assign a judge of the superior court ~~or an emergency judge~~ to hold the court, and
17 the cause shall be tried at this special term. The judge shall find, or if the issue is submitted to
18 the jury, the jury shall find the facts as to the following in order to maintain a system of free
19 public schools as defined by State law and State Board of Education policy: (i) the amount of
20 money legally necessary from all sources and (ii) the amount of money legally necessary from
21 the board of county commissioners. In making the finding, the judge or the jury shall consider
22 the educational goals and policies of the State and the local board of education, the budgetary
23 request of the local board of education, the financial resources of the county and the local board
24 of education, and the fiscal policies of the board of county commissioners and the local board
25 of education.

26 All findings of fact in the superior court, whether found by the judge or a jury, shall be
27 conclusive. When the facts have been found, the court shall give judgment ordering the board
28 of county commissioners to appropriate a sum certain to the local school administrative unit,
29 and to levy such taxes on property as may be necessary to make up this sum when added to
30 other revenues available for the purpose.

31"

32 **SECTION 21.** G.S. 135-71(c) reads as rewritten:

33 **"§ 135-71. Return to membership of retired former member.**

34 ...

35 (c) Notwithstanding any other provision in this Chapter, the retirement allowance of a
36 justice or judge shall not be affected by the compensation received as an emergency justice ~~or~~
37 judge or as a senior business court judge."

38 **SECTION 22.** This act is effective when it becomes law.