

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH40303-MS-95 (03/09)

Short Title: Amend Who Can Serve on Three-Judge Panel. (Public)

Sponsors: Representative Stevens.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT DISTRICT COURT JUDGES MAY BE APPOINTED TO
3 SERVE ON THREE-JUDGE PANELS FOR ACTIONS CHALLENGING THE
4 VALIDITY OF ACTS OF THE GENERAL ASSEMBLY.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 1-267.1 reads as rewritten:
7 "§ 1-267.1. Three-judge panel for actions challenging plans apportioning or redistricting
8 State legislative or congressional districts; claims challenging the facial validity
9 of an act of the General Assembly.

10 (a) Any action challenging the validity of any act of the General Assembly that
11 apports or redistricts State legislative or congressional districts shall be filed in the Superior
12 Court of Wake County and shall be heard and determined by a three-judge panel of the
13 Superior Court of Wake County organized as provided by subsection (b) of this section.

14 (a1) Except as otherwise provided in subsection (a) of this section, any facial challenge
15 to the validity of an act of the General Assembly shall be transferred pursuant to G.S. 1A-1,
16 Rule 42(b)(4), to the Superior Court of Wake County and shall be heard and determined by a
17 three-judge panel of the Superior Court of Wake County, organized as provided by subsection
18 (b2) of this section.

19 (b) Whenever any person files in the Superior Court of Wake County any action
20 challenging the validity of any act of the General Assembly that apports or redistricts State
21 legislative or congressional districts, a copy of the complaint shall be served upon the senior
22 resident superior court judge of Wake County, who shall be the presiding judge of the
23 three-judge panel required by subsection (a) of this section. Upon receipt of that complaint, the
24 senior resident superior court judge of Wake County shall notify the Chief Justice, who shall
25 appoint two additional resident superior court judges or district court judges to the three-judge
26 panel of the Superior Court of Wake County to hear and determine the action. Before making
27 those appointments, the Chief Justice shall consult with the North Carolina Conference of
28 Superior Court Judges, which shall provide the Chief Justice with a list of recommended
29 appointments. To ensure that members of the three-judge panel are drawn from different
30 regions of the State, the Chief Justice shall appoint to the three-judge panel one resident
31 superior court judge or district court judge from the First through Fourth Judicial Divisions and
32 one resident superior court judge or district court judge from the Fifth through Eighth Judicial
33 Divisions. In order to ensure fairness, to avoid the appearance of impropriety, and to avoid
34 political bias, no member of the panel, including the senior resident superior court judge of
35 Wake County, may be a former member of the General Assembly. Should the senior resident
36 superior court judge of Wake County be disqualified or otherwise unable to serve on the



1 three-judge panel, the Chief Justice shall appoint another resident superior court judge of Wake
2 County as the presiding judge of the three-judge panel. Should any other member of the
3 three-judge panel be disqualified or otherwise unable to serve on the three-judge panel, the
4 Chief Justice shall appoint as a replacement another resident superior court judge or district
5 court judge from the same group of judicial divisions as the resident superior court judge being
6 replaced.

7 (b1) Any facial challenge to the validity of an act of the General Assembly filed in the
8 Superior Court of Wake County, other than a challenge to plans apportioning or redistricting
9 State legislative or congressional districts that shall be heard pursuant to subsection (b) of this
10 section, or any claim transferred to the Superior Court of Wake County pursuant to subsection
11 (a1) of this section, shall be assigned by the senior resident Superior Court Judge of Wake
12 County to a three-judge panel established pursuant to subsection (b2) of this section.

13 (b2) For each challenge to the validity of statutes and acts subject to subsection (a1) of
14 this section, the Chief Justice of the Supreme Court shall appoint three resident superior court
15 judges or district court judges to a three-judge panel of the Superior Court of Wake County to
16 hear the challenge. The Chief Justice shall appoint a presiding judge of each three-judge panel.
17 To ensure that members of each three-judge panel are drawn from different regions of the State,
18 the Chief Justice shall appoint to each three-judge panel one resident superior court judge or
19 district court judge from the First, Second, or Fourth Judicial Division, one resident superior
20 court judge or district court judge from the Seventh or Eighth Judicial Division, and one
21 resident superior court judge or district court judge from the Third, Fifth, or Sixth Judicial
22 Division. Should any member of a three-judge panel be disqualified or otherwise unable to
23 serve on the three-judge panel or be removed from the panel at the discretion of the Chief
24 Justice, the Chief Justice shall appoint as a replacement another resident superior court judge or
25 district court judge from the same group of judicial divisions as the resident superior court
26 judge or district court judge being replaced.

27 (c) No order or judgment shall be entered affecting the validity of any act of the
28 General Assembly that apportions or redistricts State legislative or congressional districts, or
29 finds that an act of the General Assembly is facially invalid on the basis that the act violates the
30 North Carolina Constitution or federal law, except by a three-judge panel of the Superior Court
31 of Wake County organized as provided by subsection (b) or subsection (b2) of this section. In
32 the event of disagreement among the three resident superior court judges comprising a
33 three-judge panel, then the opinion of the majority shall prevail.

34 (d) This section applies only to civil proceedings. Nothing in this section shall be
35 deemed to apply to criminal proceedings, to proceedings under Chapter 15A of the General
36 Statutes, to proceedings making a collateral attack on any judgment entered in a criminal
37 proceeding, or to civil proceedings filed by a taxpayer pursuant to G.S. 105-241.17."

38 **SECTION 2.** This act is effective when it becomes law.