

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 1145

Short Title: Judicial Retention.

(Public)

Sponsors: Representative Culpepper.

Referred to: Election Law and Campaign Reform.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR RETENTION OF APPELLATE JUSTICES AND
JUDGES OF THE GENERAL COURT OF JUSTICE BY VOTE OF THE PEOPLE.

The General Assembly of North Carolina enacts:

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

"Sec. 16. Terms of office and election of Justices of the Supreme Court, Judges of the
Court of Appeals, and Judges of the Superior Court.

As vacancies occur whether by expiration of term, failure of the voters to retain a
Justice or Judge in office, or otherwise, Justices of the Supreme Court, Court and Judges
of the Court of Appeals, and regular Appeals shall be appointed by the Governor from a
list of three recommendations of qualified nominees submitted by a commission
established by law consisting of members of the General Assembly, and shall serve until
January following the next statewide general election held at least one year from taking
office. The General Assembly may provide by law for the Speaker of the House of
Representatives and the President Pro Tempore of the Senate to appoint members of the
commission. To continue in office after that time, the Justice or Judge must have been
retained in office by a vote of the qualified voters of the State, and shall hold office for
terms of eight years. Regular Judges of the Superior Court shall be elected by the
qualified voters and shall hold office for terms of eight years and until their successors

1 are elected and qualified. ~~Justices of the Supreme Court and Judges of the Court of Appeals~~
2 ~~shall be elected by the qualified voters of the State.~~ Regular Judges of the Superior Court
3 may be elected by the qualified voters of the State or by the voters of their respective
4 districts, as the General Assembly may prescribe."

5 Section 2. The amendment set out in Section 1 of this act shall be submitted to
6 the qualified voters of the State at an election to be conducted on the Tuesday after the
7 first Monday in November 1997, which election shall be conducted under the laws then
8 governing elections in the State. Ballots, voting systems, or both may be used in
9 accordance with Chapter 163 of the General Statutes. The question to be used in the
10 voting systems and ballots shall be:

11 **"[] FOR [] AGAINST**

12 Constitutional amendment allowing appointment of Appellate Justices and
13 Judges by the Governor upon recommendation of three names from a nominating
14 commission, and allowing the voters to decide whether or not Appellate Justices and
15 Judges should remain in office."

16 Section 3. If a majority of the votes cast on the question are in favor of the
17 amendment set out in Section 1 of this act, the State Board of Elections shall certify the
18 amendment to the Secretary of State. The amendment becomes effective upon this
19 certification. The Secretary of State shall enroll the amendment so certified among the
20 permanent records of that office.

21 Section 4. Chapter 163 of the General Statutes is amended by adding a new
22 Subchapter to read:

23 **"SUBCHAPTER X. RETENTION OF JUSTICES AND JUDGES.**

24 **"ARTICLE 26.**

25 **"Retention of Appellate Justices and Judges by Vote of the People.**

26 **"§ 163-341. Applicability.**

27 This Article applies to every Appellate Justice and Judge of the General Court of
28 Justice who on July 1, 1997, was serving a term of office for which he or she was elected,
29 and to every Appellate Justice and Judge of the General Court of Justice elected to, or
30 retained in, office after that date. Vacancies in judgeships shall be filled as provided by
31 law.

32 **"§ 163-342. Notice of candidacy for retention vote; payment of filing fee.**

33 (a) Form of Notice. – Each Justice or Judge who has been elected to office, or
34 retained in office, who wishes to stand for a retention vote must state that intention to the
35 State Board of Elections by filing a notice of candidacy for retention with the State Board
36 of Elections in the following form, inserting the words in parentheses when appropriate:

37
38 ‘Date _____ ;

39
40 I hereby file notice that (a) I was elected to the office of _____ on _____ (date),
41 [(b) the following if applicable: I was last retained for a succeeding regular term of office
42 on _____ (date)], (c) my current term expires at the end of the next calendar year, and

(d) I wish to stand for a retention vote about whether I should remain in my office for the next succeeding regular term of office.

Signed
(Name of Justice or Judge)
(District number, if applicable)

Witness: !

Each candidate for retention shall sign the notice of candidacy in the presence of the chairman or secretary of the State Board of Elections. Or, a candidate may sign and acknowledge the notice of candidacy before an officer authorized to take acknowledgments and administer oaths; in this case, the officer shall certify the notice under seal. An acknowledged and certified notice may be mailed to the State Board of Elections.

The candidate for retention shall sign the notice of candidacy with his or her legal name, and, in his or her discretion, any nickname by which the candidate is commonly known, in the form that the candidate wishes to appear on the retention ballot but substantially as in the following example: 'Richard D. (Dick) Roc.' A candidate for retention may also, in lieu of his or her legal first name and legal middle initial or middle name (if any) sign his or her nickname, provided that he or she appends to the notice of candidacy for retention 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.

(b) Time for Filing Notice of Candidacy for Retention. – Any Appellate Justice or Judge of the General Court of Justice who is seeking to remain in office by retention vote must file a notice of candidacy for retention with the State Board of Elections no earlier than 12:00 noon on the first Friday in July and no later than 12:00 noon on the first Friday in August of the year immediately preceding the final year of the Justice's or Judge's current term of office. Failure to comply with this subsection means that regular election procedures provided elsewhere in the General Statutes apply to the judgeship in question.

(b1) Time for Filing Notice of Candidacy for Retention Where Term Expires in 1998. – Notwithstanding subsection (b) of this section, any Appellate Justice or Judge of the General Court of Justice, whose term of office expires in 1998 and who is seeking to remain in office by retention vote, must file a notice of candidacy for retention with the State Board of Elections no earlier than 12:00 noon on the seventh day after the date upon which this Article is approved under section 5 of the Voting Rights Act of 1965 and no later than 12:00 noon on the twenty-first day after the date upon which this Article is approved under section 5 of the Voting Rights Act of 1965. This section expires December 31, 1998. The State Board of Election may promulgate a special filing period for the 1998 election for any case in which a regular election for that office is required.

1 (c) Payment of Filing Fee. – At the time he or she files notice of candidacy for
2 retention, a Justice or Judge seeking to remain in office by retention vote must pay the
3 filing fee applicable to that office provided in G.S. 163-107(a).

4 (d) Withdrawal of Notice of Candidacy for Retention. – A Justice or Judge of the
5 General Court of Justice who has filed notice of candidacy for retention shall have the
6 right to withdraw it at any time prior to the date on which the right to file notice of
7 candidacy for retention expires, as provided in subsection (b) of this section. If a Justice
8 or Judge seeking retention does not withdraw before the filing deadline, his or her name
9 shall be printed on the retention ballot, any votes for that Justice or Judge shall be
10 counted, and that Justice or Judge shall not be refunded the filing fee.

11 **"§ 163-343. Retention ballot.**

12 (a) General. – A Justice or Judge to whom G.S. 163-341 applies, and who has filed
13 a notice of candidacy and paid a filing fee as required by G.S. 163-342, shall stand for
14 approval by ballot by the people on the issue of the Justice's or Judge's retention. The
15 Justice's or Judge's name shall appear on the ballot, but his or her political party
16 affiliation shall not be identified on the ballot. The issue on the ballot is whether the
17 Justice or Judge should remain in office. This retention ballot shall be held in an election
18 on the Tuesday next after the first Monday in November of the year immediately
19 preceding the final year of the Justice's or Judge's current term of office.

20 (b) Voters Eligible to Participate in Retention Ballot. – Voting on retention of the
21 Chief Justice, Associate Justices, and Judges of the Appellate Division shall be by the
22 qualified voters of the whole State.

23 (c) Effect of Retention. – If a majority of the votes cast in the retention ballot are
24 for the Justice or Judge to remain in office, the Justice or Judge shall continue in office
25 for the next succeeding regular term.

26 (d) Effect of Failure to Retain. – If the voters fail to approve for retention a Justice
27 or Judge, the judgeship is deemed open for the next succeeding regular term of office,
28 and candidates may file and run for election to that office as provided elsewhere in the
29 General Statutes.

30 (e) Unretained Justice or Judge May File for Election. – A Justice or Judge who
31 was not retained by the retention vote may file and run for election, as provided
32 elsewhere in the General Statutes, to the judgeship the Justice or Judge has vacated.

33 **"§ 163-344. Death, disqualification, or resignation of Justice or Judge seeking**
34 **retention, or who has been retained.**

35 (a) Death, Disqualification, or Resignation After Filing Notice of Candidacy for
36 Retention Vote, but Before Retention Vote. – If a Justice or Judge of the General Court of
37 Justice seeking retention dies, is disqualified, or resigns after filing his or her notice of
38 candidacy for a retention vote, the office shall be deemed vacant and shall be filled as
39 provided by law.

40 (b) Death, Disqualification, or Resignation After Retention, but Before End of
41 Original Term Extended by Retention. – If a Justice or Judge of the General Court of
42 Justice who has been retained in office dies, is disqualified, or resigns before the end of

1 his or her original term of office extended by retention, the office shall be deemed vacant
2 and shall be filled as provided by law.

3 (c) Death, Disqualification, or Resignation After Retention, and After End of
4 Original Term Extended by Retention. – If a Justice or Judge of the General Court of
5 Justice who has been in office dies, is disqualified, or resigns after retention and after the
6 end of the original term extended by retention, the Governor shall appoint to fill the
7 vacancy, as provided by law, until the next election at which members of the General
8 Assembly are elected, occurring more than 60 days after the death, disqualification, or
9 resignation.

10 **"§ 163-345. Applicability of laws governing administration of elections to retention**
11 **votes.**

12 Insofar as they do not conflict with the provisions of this Article, the provisions of
13 Subchapter I. (Time of Primaries and Elections), Subchapter II. (Election Officers),
14 Subchapter III. (Qualifying to Vote), Subchapter VI. (Conduct of Primaries and
15 Elections), Subchapter VII. (Absentee Voting), and Subchapter VIII. (Regulation of
16 Election Campaign) of this Chapter (Elections and Election Law) apply to the
17 administration of the retention votes described in this Article. The State Board of
18 Elections may adopt rules to implement this Article."

19 Section 5. Chapter 7A of the General Statutes is amended by adding a new
20 Article to read:

21 "ARTICLE 6A.

22 "Joint Legislative Commission on Selection of Appellate Judges.

23 **"§ 7A-39.21. Joint Legislative Commission on Selection of Appellate Judges.**

24 (a) There is established in the General Assembly the Joint Legislative Commission
25 on Selection of Appellate Judges.

26 (b) The Commission shall consist of six members of the House of Representatives
27 appointed by the Speaker of the House of Representatives and six members of the Senate
28 appointed by the President Pro Tempore of the Senate.

29 (c) For each vacancy in the office of Justice or Judge of the Appellate Division of
30 the General Court of Justice, the Commission shall nominate to the Governor three
31 eligible persons as candidates."

32 Section 6. The Administrative Office of the Courts shall notify every Judge
33 and Justice of the General Court of Justice who is affected by G.S. 163-342(b1) as
34 enacted by this act of its contents immediately upon its approval under section 5 of the
35 Voting Rights Act of 1965.

36 Section 7. Sections 4 and 5 of this act become effective only if the
37 constitutional amendment proposed by Section 1 of this act is approved by the qualified
38 voters as provided in Section 2 of this act, and in such case they are effective 10 days
39 after the date upon which it is approved under section 5 of the Voting Rights Act of 1965.