

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005**

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**SENATE BILL 68**

Short Title: Appointment/Reappointment of Magistrates.

(Public)

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Sponsors: Senator Kerr.

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Referred to: Judiciary II.

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February 7, 2005

A BILL TO BE ENTITLED

1 AN ACT TO AMEND THE LAW AND THE CONSTITUTION OF NORTH  
2 CAROLINA TO PROVIDE THAT MAGISTRATES SHALL BE APPOINTED  
3 AND REAPPOINTED BY THE CHIEF DISTRICT COURT JUDGE FOR THE  
4 DISTRICT THAT INCLUDES THE COUNTY SERVED BY THE  
5 MAGISTRATES.  
6

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** Section 10 of Article IV of the North Carolina Constitution  
9 reads as rewritten:

10 **"Sec. 10. District Courts.**

11 The General Assembly shall, from time to time, divide the State into a convenient  
12 number of local court districts and shall prescribe where the District Courts shall sit, but  
13 a District Court must sit in at least one place in each county. District Judges shall be  
14 elected for each district for a term of four years, in a manner prescribed by law. When  
15 more than one District Judge is authorized and elected for a district, the Chief Justice of  
16 the Supreme Court shall designate one of the judges as Chief District Judge. Every  
17 District Judge shall reside in the district for which he is elected. For each county, the  
18 ~~senior regular resident Judge of the Superior Court~~ Chief District Judge serving the  
19 county shall appoint from nominations submitted by the Clerk of the Superior Court of  
20 the county, one or more Magistrates who shall be officers of the District Court. The  
21 initial term of appointment for a magistrate shall be for two years and subsequent terms  
22 shall be for four years. The number of District Judges and Magistrates shall, from time  
23 to time, be determined by the General Assembly. Vacancies in the office of District  
24 Judge shall be filled for the unexpired term in a manner prescribed by law. Vacancies  
25 in the office of Magistrate shall be filled for the unexpired term in the manner provided  
26 for original appointment to the office, unless otherwise provided by the General  
27 Assembly."

28 **SECTION 2.** The amendment set out in Section 1 of this act shall be  
29 submitted to the qualified voters of the State at the general election in November 2006,

1 which election shall be conducted under the laws then governing elections in the State.  
2 Ballots, voting systems, or both may be used in accordance with Chapter 163 of the  
3 General Statutes. The question to be used in the voting systems and ballots shall be:

4 "[ ] FOR [ ] AGAINST

5 Constitutional amendment to provide for appointment of magistrates by the  
6 chief district court judge from nominations submitted by the clerk of superior court."

7 **SECTION 3.** If a majority of the votes cast on the question are in favor of  
8 the amendment set out in Section 1 of this act, the State Board of Elections shall certify  
9 the amendment to the Secretary of State, who shall enroll the amendment so certified  
10 among the permanent records of that office. The amendment becomes effective January  
11 1, 2007.

12 **SECTION 4.** G.S. 7A-171 reads as rewritten:

13 "**§ 7A-171. Numbers; appointment and terms; vacancies.**

14 (a) The General Assembly shall establish a minimum and a maximum quota of  
15 magistrates for each county. In no county shall the minimum quota be less than one.  
16 The number of magistrates in a county, within the quota set by the General Assembly, is  
17 determined by the Administrative Office of the Courts after consultation with the chief  
18 district court judge for the district in which the county is located.

19 (a1) The initial term of appointment for a magistrate is two years and subsequent  
20 terms shall be for a period of four years. The term of office begins on the first day of  
21 January of the odd-numbered year after appointment. The service of an individual as a  
22 magistrate filling a vacancy as provided in subsection (d) of this section does not  
23 constitute an initial term. For purposes of this section, any term of office for a  
24 magistrate who has served a two-year term is for four years even if the two-year term of  
25 appointment was before the effective date of this section, the term is after a break in  
26 service, or the term is for appointment in a different county from the county where the  
27 two-year term of office was served.

28 (b) Not earlier than the Tuesday after the first Monday nor later than the third  
29 Monday in December of each even-numbered year, the clerk of the superior court shall  
30 submit to the ~~senior regular resident superior court judge of the district or set of districts~~  
31 ~~as defined in G.S. 7A-41.1(a)~~ chief district court judge for the district in which the  
32 clerk's county is located the names of two (or more, if requested by the judge) nominees  
33 for each magisterial office for the county for which the term of office of the magistrate  
34 holding that position shall expire on December 31 of that year. Not later than the fourth  
35 Monday in December, the ~~senior regular resident superior court~~ chief district court  
36 judge shall, from the nominations submitted by the clerk of the superior court, appoint  
37 magistrates to fill the positions for each county of the judge's ~~district or set of districts.~~  
38 district.

39 (c) If an additional magisterial office for a county is approved to commence on  
40 January 1 of an odd-numbered year, the new position shall be filled as provided in  
41 subsection (b) of this section. If the additional position takes effect at any other time, it  
42 is to be filled as provided in subsection (d) of this section.

43 (d) Within 30 days after a vacancy in the office of magistrate occurs the clerk of  
44 superior court shall submit to the ~~senior regular resident superior~~ chief district court

1 judge the names of two (or more, if so requested by the judge) nominees for the office  
2 vacated. Within 15 days after receipt of the nominations the ~~senior-regular-resident~~  
3 ~~superior~~ chief district court judge shall appoint from the nominations received a  
4 magistrate who shall take office immediately and shall serve until December 31 of the  
5 even-numbered year, and thereafter the position shall be filled as provided in subsection  
6 (b) of this section."

7           **SECTION 5.** Section 4 of this act becomes effective only upon approval by  
8 the voters of the constitutional amendment proposed in Section 1 of this act. If the  
9 constitutional amendment proposed in Section 1 is approved by the voters, Section 4 of  
10 this act becomes effective January 1, 2007, and applies to appointments that take effect  
11 on or after that date. The remainder of this act is effective when it becomes law and  
12 applies to appointments made on or after that date.