

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE DRS55104-LBx-171 (03/21)

Short Title: Judicial Appointment/Voter Retention. (Public)

Sponsors: Senator Rand.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA CONSTITUTION TO PROVIDE FOR GUBERNATORIAL APPOINTMENT OF JUSTICES OF THE SUPREME COURT AND JUDGES OF THE COURT OF APPEALS SUBJECT TO CONFIRMATION BY THE GENERAL ASSEMBLY AND TO PROVIDE FOR RETENTION BY VOTE OF THE PEOPLE.

The General Assembly of North Carolina enacts:

SECTION 1. Section 16 of Article IV of the North Carolina Constitution 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. Selection and tenure of Justices of the Supreme Court and Judges of the Court of Appeals; election of Judges of the Superior Court.

(1) Election of Judges of the Superior Court. Justices of the Supreme Court, Judges of the Court of Appeals, and 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 are elected and qualified. Justices of the Supreme Court and Judges of the Court of Appeals shall be elected by the qualified voters of the State. Regular Judges of the Superior Court may shall be elected by the qualified voters of the State or by the voters of their respective districts, as the General Assembly may prescribe. districts.

(2) Appointment, retention election, and terms of Justices and Judges of the Appellate Division. On and after January 1, 2005, when a vacancy occurs in the office of Chief Justice, Associate Justice, or Judge of the Appellate Division, the Governor shall appoint a person to fill the vacancy. For the purposes of this section, creation of a new judgeship within the Appellate Division creates a vacancy. Prior to appointment, such nominations by the Governor shall be subject to confirmation of the General Assembly by a simple majority of the members of each house present and voting. Each

1 house of the General Assembly shall vote on confirmation within 60 calendar days of
2 the date of nomination, except that no day shall be included within that calculation if it
3 is:

- 4 (a) Between sine die adjournment of one regular session and convening of
5 the next regular session; or
6 (b) During any period when the General Assembly has adjourned a regular
7 session for more than 30 days jointly as provided under Section 20 of
8 Article II of this Constitution.

9 If a nomination is made during either of the periods listed in subdivision (a) or (b) of
10 this subsection, the Governor may convene the General Assembly in extra session for
11 the purpose of considering confirmation of the nomination. No action of that extra
12 session shall be valid after the second calendar day of that session, and that extra session
13 may not consider any matters other than rules for the extra session, confirmation of the
14 nomination, and adjournment sine die. The nomination may not be confirmed in any
15 extra session other than one called under this subsection.

16 The term of office by appointment as Chief Justice, Associate Justice, or Judge of
17 the Appellate Division extends through December 31 after the next statewide election
18 for members of the General Assembly that is held more than 60 months after the
19 appointment. At that election, a person holding by appointment the office of Chief
20 Justice, Associate Justice, or Judge of the Appellate Division who desires to continue in
21 office shall be subject to approval by nonpartisan ballot, by a majority of the votes cast
22 on the issue of the Justice's or Judge's retention. A Chief Justice, Associate Justice, or
23 Judge of the Appellate Division then approved for retention serves a regular term.

24 The regular term of office of the Chief Justice, Associate Justices, and Judges of the
25 Appellate Division is eight years and expires on December 31.

26 A Chief Justice, Associate Justice, or Judge of the Appellate Division who desires to
27 continue in office shall be subject to approval by nonpartisan ballot, by a majority of the
28 votes cast on the issue of the Justice's or Judge's retention during the next general
29 election preceding December 31 of the year that the Justice's or Judge's eight-year term
30 would expire.

31 If the voters fail to approve the retention in office of a Chief Justice, Associate
32 Justice, or Judge of the Appellate Division serving an appointed or regular term, the
33 office shall become vacant at the end of the term of office, and it shall be filled by
34 appointment as prescribed in this section.

35 Voting in a retention election on the Chief Justice, Associate Justices, and Judges of
36 the Appellate Division shall be by the qualified voters of the whole State.

37 (3) Transition provisions. A person elected before January 1, 2005, to the office
38 of Chief Justice, Associate Justice, or Judge of the Appellate Division for a term which
39 extends beyond January 1, 2005, and who is in office on January 1, 2005, may continue
40 to serve for the remainder of the term. That person may stand for retention in the office
41 for a succeeding regular term as provided in this section, subject to the provisions of
42 G.S. 7A-4.20. If the person continues to serve for the remainder of the term but does not
43 stand for retention election, a vacancy is created in the office upon expiration of the
44 term, and this vacancy shall be filled by appointment as provided in this section.

1 The term of office of a person who has been appointed before January 1, 2005, to the
2 office of Chief Justice, Associate Justice, or Judge of the Appellate Division for a term
3 which extends beyond January 1, 2003, and who is in office on January 1, 2005, shall
4 end on December 31, 2006. If the person so appointed wishes to continue to serve an
5 additional term, that person shall provide written notice to the Governor, the President
6 Pro Tempore of the Senate, and the Speaker of the House of Representatives no later
7 than 5:00 P.M. on April 30, 2006, and shall be reappointed subject to confirmation by
8 the General Assembly as provided herein. The term of office by reappointment of the
9 person, if so confirmed, shall be the same as the term of office when the Governor
10 makes an appointment and the appointment is confirmed by the General Assembly, as
11 provided herein. The term of office for the person will begin January 1, 2007.

12 Upon the death, resignation, removal, or retirement of any incumbent Justice or
13 Judge on or after January 1, 2005, and before the expiration of the Justice's or Judge's
14 term of office, the resulting vacancy shall be filled by appointment as provided in this
15 section.

16 Vacancies in judicial offices in the Appellate Division occurring before January 1,
17 2005, and not filled by that date shall be filled by appointment as provided in this
18 section.

19 From the date any incumbent described in this subsection is continued in office by
20 retention vote for a term next succeeding the term in progress on January 1, 2005, or is
21 succeeded in office by another person, the office is held subject to the provisions of this
22 section.

23 (4) The General Assembly may implement this section by general law."

24 **SECTION 2.** The amendment set out in Section 1 of this act shall be
25 submitted to the qualified voters of the State at the general election in November 2004,
26 which election shall be conducted under the laws then governing elections in the State.
27 Ballots, voting systems, or both may be used in accordance with Chapter 163 of the
28 General Statutes. The question to be used in the voting systems and ballots shall be:

29 " FOR AGAINST

30 Constitutional amendment to replace the present practice of election of
31 Justices and Judges of the Appellate Division with a method by which Justices and
32 Judges of the Appellate Division will be appointed by the Governor, confirmed by the
33 General Assembly, and then serve for limited terms after which the question of the
34 Justice's or Judge's retention in office is regularly submitted for approval or disapproval
35 by nonpartisan vote of the people at general elections."

36 **SECTION 3.** If a majority of votes cast on the question are in favor of the
37 amendment set out in Section 1 of this act, the State Board of Elections shall certify the
38 amendment to the Secretary of State. The amendment becomes effective upon this
39 certification. The Secretary of State shall enroll the amendment so certified among the
40 permanent records of that office.

41 **SECTION 3.1.** Chapter 7A of the General Statutes is amended by adding a
42 new Article to read:

43 "Article 1C.

44 "Appointment of Justices and Judges; Retention Elections.

1 **"§ 7A-4.31. Appointment of Justices and Judges by Governor.**

2 (a) The offices of Chief Justice and Justice of the Supreme Court and Judge of
3 the Court of Appeals are filled by appointment by the Governor subject to confirmation
4 by the General Assembly in accordance with Section 16 of Article IV of the North
5 Carolina Constitution.

6 (b) Nominees are subject to confirmation as provided in this subsection. A
7 nominee is confirmed by passage of a joint resolution of the General Assembly. The
8 Governor may withdraw a nomination at any time.

9 **"§ 7A-4.32. Confirmation procedures.**

10 (a) A legislative committee to which the issue of confirmation is referred may
11 conduct an investigation of the nominee. The investigation may include an evaluation of
12 the nominee's ethical conduct, the nominee's knowledge of and application of the law,
13 the nominee's management of the courts over which the nominee has presided, the
14 nominee's work habits, the nominee's health, and the nominee's judicial demeanor. The
15 nominee or judge shall be given an opportunity to present to the committee any
16 information that the nominee determines to be appropriate.

17 (b) The committee shall be allowed to inspect the files of the Judicial Standards
18 Commission by request of the chair of the committee. Notwithstanding the provisions of
19 G.S. 7A-377, the files of the Judicial Standards Commission shall be made available to
20 the committee. Testimony and other evidence presented to the committee is privileged
21 in any action for defamation.

22 **"§ 7A-4.33. Governor to issue commissions to Justices and Judges.**

23 Every person duly nominated by the Governor as Chief Justice of the Supreme
24 Court, Associate Justice of the Supreme Court, or Judge of the Court of Appeals and
25 duly confirmed by the General Assembly shall be appointed by the Governor and shall
26 procure from the Governor a commission attesting that fact, which the Governor shall
27 issue upon receipt of a certification by the Secretary of State of the joint resolution of
28 confirmation.

29 When a judge is retained in office by vote of the people, the Governor shall issue a
30 commission attesting that fact, which the Governor shall issue upon receipt of a
31 certification by the Secretary of State of the results of the election.

32 **"§ 7A-4.34. No elections in 2006.**

33 No partisan election as previously provided by law for Chief Justice or Associate
34 Justice of the Supreme Court or Judge of the Court of Appeals shall be held in 2006 or
35 thereafter.

36 **"§ 7A-4.35. Retention elections.**

37 (a) As provided by Section 16 of Article IV of the North Carolina Constitution, a
38 Chief Justice or Associate Justice of the Supreme Court or Judge of the Court of
39 Appeals desiring to continue in office shall be subject to approval by nonpartisan ballot,
40 by a majority of votes cast on the issue of the justice's or judge's retention.

41 (b) A person subject to subsection (a) of this section shall indicate the desire to
42 continue in office by filing a notice to that effect with the State Board of Elections no
43 later than 12:00 noon on the first business day of July in the year of the election. The

1 notice shall be on a form approved by the State Board of Elections. Notice can be
2 withdrawn at any time prior to the deadline for filing notice under this subsection.

3 (c) Retention elections shall be conducted and canvassed in accordance with
4 rules of the State Board of Elections in the same general manner as general elections
5 under Chapter 163 of the General Statutes, except that the retention election is
6 nonpartisan. The form of the ballot shall be determined by the State Board of Elections.

7 (d) If a person who has filed a notice calling a retention election dies or is
8 removed from office prior to the time that the ballots are printed, the retention election
9 is cancelled. If a person who has filed a notice calling a retention election dies or is
10 removed from office after the ballots are printed, the State Board of Elections may
11 cancel the election if it determines that the ballots can be reprinted without significant
12 expense. If the ballots cannot be reprinted, then the results of the election shall be
13 ineffective.

14 **"§ 7A-4.36. Filing fees; refunds.**

15 A person filing a notice to continue in office shall pay to the State Board of
16 Elections at the time of filing a filing fee in the amount of one percent (1%) of the
17 annual salary of the office sought. If any person who has filed a notice under this
18 section and paid the filing fee withdraws his or her notice prior to the date on which the
19 right to file for that office expires, he or she shall be entitled to have the fee refunded.
20 The chairman of the State Board of Elections shall cause a warrant to be drawn on the
21 State Treasurer for the refund payment. If any person who has filed a notice under this
22 section and paid the filing fee dies prior to the date of the election, the personal
23 representative of the estate shall be entitled to have the fee refunded if application is
24 made to the State Board of Elections no later than one year after the date of death, and
25 refund shall be made in the same manner as in withdrawal of candidacy."

26 **SECTION 3.2.** For the purpose of Section 1 of this act, terms of justices and
27 judges covered by Section 2 of Chapter 98 of the 1995 Session Laws are as provided by
28 that act.

29 **SECTION 3.3.** G.S. 7A-10(a) reads as rewritten:

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

40 **SECTION 3.4.** G.S. 7A-16 reads as rewritten:

41 **"§ 7A-16. Creation and organization.**

42 The Court of Appeals is created effective January 1, 1967. It shall consist initially of
43 ~~six judges, elected by the qualified voters of the State for terms of eight years.~~ The
44 Chief Justice of the Supreme Court shall designate one of the judges as Chief Judge, to

1 ~~serve in such capacity at the pleasure of the Chief Justice. Before entering upon the~~
2 ~~duties of his office, a judge of the Court of Appeals shall take the oath of office~~
3 ~~prescribed for a judge of the General Court of Justice.~~

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

9 ~~Upon the appointment of at least five judges, and the designation of a Chief Judge,~~
10 ~~the court is authorized to convene, organize, and promulgate, subject to the approval of~~
11 ~~the Supreme Court, such supplementary rules as it deems necessary and appropriate for~~
12 ~~the discharge of the judicial business lawfully assigned to it.~~

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

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

25 ~~On or after December 15, 2000, the Governor shall appoint three additional judges~~
26 ~~to increase the number of judges to 15. Each judgeship shall not become effective until~~
27 ~~the temporary appointment is made, and each appointee shall serve from the date of~~
28 ~~qualification until January 1, 2005. Those judges' successors shall be elected in the 2004~~
29 ~~general election and shall take office on January 1, 2005, to serve terms expiring~~
30 ~~December 31, 2012.~~

31 The Court of Appeals shall consist of 15 judges, selected as provided in Article 1C
32 of this Chapter. The Chief Justice of the Supreme Court shall designate one of the
33 judges as Chief Judge to serve in such capacity at the pleasure of the Chief Justice.
34 Before entering upon the duties of office, a judge of the Court of Appeals shall take the
35 oath of office prescribed for a judge of the General Court of Justice.

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

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

43 In the event the Chief Judge is unable, on account of absence or temporary
44 incapacity, to perform the duties placed upon him as Chief Judge, the Chief Justice shall

1 appoint an acting Chief Judge from the other judges of the Court, to temporarily
2 discharge the duties of Chief Judge."

3 SECTION 3.5. The title of Subchapter X of Chapter 163 of the General
4 Statutes reads as rewritten:

5 "SUBCHAPTER X. ELECTION OF APPELLATE, SUPERIOR, SUPERIOR
6 AND DISTRICT COURT JUDGES."

7 SECTION 3.6. The title of Article 25 of Chapter 163 of the General Statutes
8 reads as rewritten:

9 "Article 25.

10 Nomination and Election of Appellate, Superior, Superior and District Court Judges."

11 SECTION 3.7. G.S. 163-321 reads as rewritten:

12 "§ 163-321. Applicability.

13 The nomination and election of justices of the Supreme Court, judges of the Court of
14 Appeals, and superior and district court judges of the General Court of Justice shall be
15 as provided by this Article."

16 SECTION 3.8. G.S. 163-323 reads as rewritten:

17 "§ 163-323. Notice of candidacy.

18 (a) Form of Notice. – Each person offering to be a candidate for election shall do
19 so by filing a notice of candidacy with the State Board of Elections in the following
20 form, inserting the words in parentheses when appropriate:

21
22 Date: _____

23
24 I hereby file notice that I am a candidate for election to the office of
25 _____ in the regular election to be held _____, ____.

26
27 Signed: _____
28 (Name of Candidate)

29
30 Witness: _____

31
32 The notice of candidacy shall be either signed in the presence of the chairman or
33 secretary of the State Board of Elections, or signed and acknowledged before an officer
34 authorized to take acknowledgments who shall certify the notice under seal. An
35 acknowledged and certified notice may be mailed to the State Board of Elections. In
36 signing a notice of candidacy, the candidate shall use only the candidate's legal name
37 and, in his discretion, any nickname by which commonly known. A candidate may also,
38 in lieu of that candidate's first name and legal middle initial or middle name, if any, sign
39 that candidate's nickname, provided the candidate appends to the notice of candidacy an
40 affidavit that the candidate has been commonly known by that nickname for at least five
41 years prior to the date of making the affidavit. The candidate shall also include with the
42 affidavit the way the candidate's name (as permitted by law) should be listed on the
43 ballot if another candidate with the same last name files a notice of candidacy for that
44 office.

1 A notice of candidacy signed by an agent or any person other than the candidate
2 himself shall be invalid.

3 (b) Time for Filing Notice of Candidacy. – Candidates seeking election to the
4 following offices shall file their notice of candidacy with the State Board of Elections
5 no earlier than 12:00 noon on the second Monday in February and no later than 12:00
6 noon on the last business day in February preceding the election:

7 ~~Justices of the Supreme Court.~~

8 ~~Judges of the Court of Appeals.~~

9 Judges of the superior courts.

10 Judges of the district courts.

11 (c) Withdrawal of Notice of Candidacy. – Any person who has filed a notice of
12 candidacy for an office shall have the right to withdraw it at any time prior to the date
13 on which the right to file for that office expires under the terms of subsection (b) of this
14 section.

15 (d) Certificate That Candidate Is Registered Voter. – Candidates shall file along
16 with their notice a certificate signed by the chairman of the board of elections or the
17 supervisor of elections of the county in which they are registered to vote, stating that the
18 person is registered to vote in that county, and if the candidacy is for superior court
19 judge and the county contains more than one superior court district, stating the superior
20 court district of which the person is a resident. In issuing such certificate, the chairman
21 or supervisor shall check the registration records of the county to verify such
22 information. During the period commencing 36 hours immediately preceding the filing
23 deadline, the State Board of Elections shall accept, on a conditional basis, the notice of
24 candidacy of a candidate who has failed to secure the verification ordered herein subject
25 to receipt of verification no later than three days following the filing deadline. The State
26 Board of Elections shall prescribe the form for such certificate, and distribute it to each
27 county board of elections no later than the last Monday in December of each
28 odd-numbered year.

29 (e) Candidacy for More Than One Office Prohibited. – No person may file a
30 notice of candidacy for more than one office or group of offices described in subsection
31 (b) of this section, or for an office or group of offices described in subsection (b) of this
32 section and an office described in G.S. 163-106(c), for any one election. If a person has
33 filed a notice of candidacy with a board of elections under this section or under G.S.
34 163-106(c) for one office or group of offices, then a notice of candidacy may not later
35 be filed for any other office or group of offices under this section when the election is
36 on the same date unless the notice of candidacy for the first office is withdrawn under
37 subsection (c) of this section.

38 (f) Notice of Candidacy for Certain Offices to Indicate Vacancy. – In any
39 election in which there are two or more vacancies for the office of ~~justice of the~~
40 ~~Supreme Court, judge of the Court of Appeals, or district court judge~~ to be filled by
41 nominations, each candidate shall, at the time of filing notice of candidacy, file with the
42 State Board of Elections a written statement designating the vacancy to which the
43 candidate seeks election. Votes cast for a candidate shall be effective only for election

1 to the vacancy for which the candidate has given notice of candidacy as provided in this
2 subsection.

3 A person seeking election for a specialized district judgeship established under G.S.
4 7A-147 shall, at the time of filing notice of candidacy, file with the State Board of
5 Elections a written statement designating the specialized judgeship to which the person
6 seeks nomination.

7 (g) No person may file a notice of candidacy for superior court judge unless that
8 person is at the time of filing the notice of candidacy a resident of the judicial district as
9 it will exist at the time the person would take office if elected. No person may be
10 nominated as a superior court judge under G.S. 163-114 unless that person is at the time
11 of nomination a resident of the judicial district as it will exist at the time the person
12 would take office if elected. This subsection implements Article IV, Section 9(1) of the
13 North Carolina Constitution which requires regular Superior Court Judges to reside in
14 the district for which elected."

15 **SECTION 3.9.** G.S. 163-325 reads as rewritten:

16 "**§ 163-325. Petition in lieu of payment of filing fee.**

17 (a) General. – Any qualified voter who seeks election under this Article may, in
18 lieu of payment of any filing fee required for the office he seeks, file a written petition
19 requesting him to be a candidate for a specified office with the State Board of Elections.

20 (b) Requirements of Petition; Deadline for Filing. – If the candidate is seeking
21 the office of ~~justice of the Supreme Court, judge of the Court of Appeals, or superior or~~
22 ~~district court judge,~~ that individual shall file a written petition with the State Board of
23 Elections no later than 12:00 noon on Monday preceding the filing deadline before the
24 primary. ~~If the office is justice of the Supreme Court or judge of the Court of Appeals,~~
25 ~~the petition shall be signed by 10,000 registered voters in the State. If the office is~~
26 ~~superior court or district court judge, the~~The petition shall be signed by ten percent
27 (10%) of the registered voters of the election area in which the office will be voted for.
28 The board of elections shall verify the names on the petition, and if the petition and
29 notice of candidacy are found to be sufficient, the candidate's name shall be printed on
30 the appropriate ballot. Petitions must be presented to the county board of elections for
31 verification at least 15 days before the petition is due to be filed with the State Board of
32 Elections. The State Board of Elections may adopt rules to implement this section and
33 to provide standard petition forms.

34 **SECTION 3.10.** G.S. 163-326(b) reads as rewritten:

35 "(b) Notification of Local Boards. – No later than 10 days after the time for filing
36 notices of candidacy under the provisions of G.S. 163-323(b) has expired, the chairman
37 of the State Board of Elections shall certify to the chairman of the county board of
38 elections in each county in the appropriate district the names of candidates for
39 nomination to the offices of ~~justice of the Supreme Court, judge of the Court of~~
40 ~~Appeals, and superior and district court judge~~ who have filed the required notice and
41 paid the required filing fee or presented the required petition to the State Board of
42 Elections, so that their names may be printed on the official ~~judicial ballot for justice of~~
43 ~~the Supreme Court, judge of the Court of Appeals, and superior and district court~~
44 ~~ballot.~~"

1 **SECTION 3.11.** G.S. 163-327(b) reads as rewritten:

2 "(b) Death, Disqualification, or Resignation of Official After Election. – If a
3 person elected to the office of ~~justice of the Supreme Court, judge of the Court of~~
4 ~~Appeals, or superior or district court judge~~ dies, becomes disqualified, or resigns on or
5 after election day and before he has qualified by taking the oath of office, the office
6 shall be deemed vacant and shall be filled as provided by law."

7 **SECTION 3.12.** G.S. 163-329 reads as rewritten:

8 "**§ 163-329. Elections to fill vacancy created after primary filing period to use**
9 **plurality method.**

10 (a) General. – If a vacancy is created in the office of ~~justice of the Supreme~~
11 ~~Court, judge of the Court of Appeals, or judge of superior court~~ after the filing period
12 for the primary opens but more than 60 days before the general election, and under the
13 Constitution of North Carolina an election is to be held for that position, such that the
14 office shall be filled in the general election as provided in G.S. 163-9, the election to fill
15 the office for the remainder of the term shall be conducted without a primary using the
16 plurality method as provided in subsection (b) of this section. If a vacancy is created in
17 the office of ~~justice of the Supreme Court, judge of the Court of Appeals, or judge of~~
18 ~~superior court~~ before the filing period for the primary opens, and under the Constitution
19 of North Carolina an election is to be held for that position, such that the office shall be
20 filled in the general election as provided in G.S. 163-9, the election to fill the office for
21 the remainder of the term shall be conducted in accordance with G.S. 163-322.

22 (b) Plurality Election Rules. – Elections under this section shall be conducted
23 using the following rules:

- 24 (1) The filing period shall be prescribed by the State Board of Elections,
25 but in no event may it be less than five working days. If a vacancy
26 occurs in a second office in the same superior court district after the
27 first filing period established under the section has closed, the State
28 Board of Elections shall reopen filing for a period of not less than five
29 working days for the office of ~~justice of the Supreme Court, judge of~~
30 ~~the Court of Appeals, or superior court judge~~. All persons filing in
31 either filing period shall run as a group and the election results shall be
32 determined by subdivision (3) of this subsection.
- 33 (2) When more than one person is seeking election to a single office, the
34 candidate who receives the highest number of votes shall be declared
35 elected.
- 36 (3) When more persons are seeking election to two or more offices
37 (constituting a group) than there are offices to be filled, those
38 candidates receiving the highest number of votes, equal in number to
39 the number of offices to be filled, shall be declared elected.
- 40 (4) If two or more candidates receiving the highest number of votes each
41 receive the same number of votes, the board of elections shall resolve
42 the tie in accordance with G.S. 163-182.8.
- 43 (5) Except as provided in this section, the provisions of this Article apply
44 to elections conducted under this section."

1 **SECTION 3.13.** G.S. 163-332(b) reads as rewritten:

2 "(b) Ballots to Be Furnished by County Board of Elections. – It shall be the duty
3 of the county board of elections to print official ballots for the following offices to be
4 voted for in the primary:

5 ~~Justice of the Supreme Court.~~

6 ~~Judge of the Court of Appeals.~~

7 Superior court judge.

8 District court judge.

9 In printing ballots, the county board of elections shall be governed by instructions of
10 the State Board of Elections with regard to width, color, kind of paper, form, and size of
11 type.

12 Three days before the election, the chairman of the county board of elections shall
13 distribute official ballots to the chief judge of each precinct in his county, and the chief
14 judge shall give a receipt for the ballots received. On the day of the primary, it shall be
15 the chief judge's duty to have all the ballots so delivered available for use at the precinct
16 voting place."

17 **SECTION 3.14.** G.S. 163-9(a) reads as rewritten:

18 "(a) Vacancies occurring in the ~~offices of Justice of the Supreme Court, judge of~~
19 ~~the Court of Appeals, and office of~~ judge of the superior court for causes other than
20 expiration of term shall be filled by appointment of the Governor. An appointee to the
21 office of Justice of the Supreme Court or judge of the Court of Appeals shall hold office
22 until January 1 next following the election for members of the General Assembly that is
23 held more than 60 days after the vacancy occurs, at which time an election shall be held
24 for an eight-year term and until a successor is elected and qualified."

25 **SECTION 3.15.** Sections 3.1 through 3.14 of this act become effective
26 January 1, 2005, but are effective only if the constitutional amendment proposed by
27 Section 1 of this act is approved by the qualified voters in accordance with Section 2 of
28 this act.

29 **SECTION 4.** This act is effective when it becomes law.