

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 835*

Short Title: Court Improvement Act/Constitution.

(Public)

Sponsors: Senator Ballance.

Referred to: Judiciary.

April 14, 1997

A BILL TO BE ENTITLED

1 AN ACT PROPOSING AMENDMENTS TO THE CONSTITUTION OF NORTH
2 CAROLINA TO IMPROVE THE COURT SYSTEM BY IMPLEMENTING THE
3 NEW COURT STRUCTURE RECOMMENDED BY THE COMMISSION FOR
4 THE FUTURE OF JUSTICE AND THE COURTS IN NORTH CAROLINA.
5

6 The General Assembly of North Carolina enacts:

7 **PART I.**

8 Section 1. Section 22 of Article I of the North Carolina Constitution reads as
9 rewritten:

10 "Sec. 22. Modes of prosecution.

11 ~~Except in misdemeanor cases initiated in the District Court Division, no~~ No person shall be
12 put to answer any ~~criminal~~ felony charge but by indictment, presentment, or
13 impeachment. But any person, when represented by counsel, may, under such
14 regulations as the General Assembly shall prescribe, waive indictment in noncapital
15 cases."

16 Section 2. Section 24 of Article I of the North Carolina Constitution reads as
17 rewritten:

18 "Sec. 24. Right of jury trial in criminal cases.

19 No person shall be convicted of any ~~crime~~ felony or any misdemeanor punishable by
20 imprisonment for six months or longer but by the unanimous verdict of a jury in open

1 court. The General Assembly may, however, provide ~~for other means of trial for~~
2 ~~misdemeanors, that such misdemeanors may be tried in the first instance without a jury,~~
3 with the right of appeal for trial ~~de novo.~~ de novo with a jury. For felonies, the jury shall
4 consist of 12 persons. For misdemeanors, the General Assembly shall specify the
5 number of jurors, but in no event may the number be fewer than six. In all criminal cases
6 to which the defendant is entitled to trial by jury, the defendant, with the concurrence of
7 the State, may waive that right, in which case the verdict of the judge shall have the force
8 and effect of a verdict by a jury; provided, that in a capital case, the trial judge must also
9 concur in the waiver of the right to a jury."

10 Section 3. Section 25 of Article I of the North Carolina Constitution reads as
11 rewritten:

12 "Sec. 25. Right of jury trial in civil cases.

13 In all controversies at law respecting property, the ancient mode of trial by jury is one
14 of the best securities of the rights of the people, and shall remain sacred and inviolable.
15 The parties in any civil case may expressly waive the right to have the issues determined
16 by a jury, in which case the finding of the judge upon the facts shall have the force and
17 effect of a verdict by a jury. The General Assembly may determine which categories of
18 civil cases must be decided by unanimous verdict of the jury and which cases, if any, may
19 be decided by a nonunanimous verdict. The General Assembly also may provide for trial
20 of specified categories of civil cases by a Magistrate without a jury, with appeal to the
21 Circuit Court for a trial by a jury of not fewer than six persons and may provide for a trial
22 of other cases in the circuit court initially with a jury of as few as six persons."

23 Section 4. Section 5(3) of Article III of the North Carolina Constitution reads
24 as rewritten:

25 "(3) Budget. The Governor shall prepare and recommend to the General Assembly
26 a comprehensive budget of the anticipated revenue and proposed expenditures of the
27 State for the ensuing fiscal period. The budget presented by the Governor shall include,
28 without change, the recommendations of the Chief Justice and State Judicial Council for
29 the Judicial Branch. The budget as enacted by the General Assembly shall be
30 administered by the Governor. ~~Governor,~~ except that the budget for the Judicial Branch
31 shall be administered by the Chief Justice.

32 The total expenditures of the State for the fiscal period covered by the budget shall
33 not exceed the total of receipts during that fiscal period and the surplus remaining in the
34 State Treasury at the beginning of the period. To insure that the State does not incur a
35 deficit for any fiscal period, the Governor shall continually survey the collection of the
36 revenue and shall effect the necessary economies in State expenditures, after first making
37 adequate provision for the prompt payment of the principal of and interest on bonds and
38 notes of the State according to their terms, whenever he determines that receipts during
39 the fiscal period, when added to any surplus remaining in the State Treasury at the
40 beginning of the period, will not be sufficient to meet budgeted expenditures. This
41 section shall not be construed to impair the power of the State to issue its bonds and notes
42 within the limitations imposed in Article V of this Constitution, nor to impair the
43 obligation of bonds and notes of the State now outstanding or issued hereafter."

1 Section 5. Article III of the North Carolina Constitution is amended by adding
2 a new section to read:

3 "Sec. 12. Circuit Attorneys and Solicitor General.

4 (1) Selection and qualifications of Circuit Attorneys. The State shall be divided
5 into a number of prosecutorial circuits, the boundaries of which shall be coterminous with
6 the judicial circuits established pursuant to Section 9 of Article IV of this Constitution,
7 and there shall be elected a Circuit Attorney for each such circuit. The Circuit Attorney,
8 who must be a resident of the circuit at the time of qualifying as a candidate for the
9 office, shall be elected by the qualified voters of the circuit for a term of four years in a
10 nonpartisan election held at the same time as the general election for members of the
11 General Assembly. Only persons duly authorized to practice law in the courts of this
12 State shall be eligible for election or appointment as a Circuit Attorney.

13 (2) Duties of Circuit Attorney. The Circuit Attorney shall advise the officers of
14 justice within the circuit, be responsible for the prosecution on behalf of the State of all
15 criminal actions in the circuit, and perform such other duties as the General Assembly
16 may prescribe.

17 (3) Vacancies. Any vacancy in the office of Circuit Attorney shall be filled by
18 appointment of the Governor, and the appointee shall hold office until a successor is
19 chosen at the time of the next regular election of members of the General Assembly held
20 more than 90 days after the vacancy occurred.

21 (4) Solicitor General. The General Assembly shall provide for an Office of
22 Solicitor General to represent the State in appeals of criminal cases. That office shall be
23 headed by a Solicitor General appointed by the Governor for a term of six years. The
24 Office of Solicitor General shall assist the several Circuit Attorneys, prosecute cases not
25 appropriate for the Circuit Attorney as provided by law, prepare and propose to the
26 Governor the budget for the Circuit Attorneys' offices, and perform such other duties as
27 may be assigned by the General Assembly.

28 (5) Removal of Circuit Attorney or Solicitor General. The General Assembly shall
29 prescribe a procedure for the removal of a Circuit Attorney or of the Solicitor General for
30 willful misconduct in office, willful and persistent failure to perform the duties of the
31 office, habitual intemperance, conviction of a crime involving moral turpitude, conduct
32 prejudicial to the administration of justice that brings the office into disrepute, or mental
33 or physical incapacity interfering with the performance of the duties of the office which
34 is, or is likely to become, permanent."

35 Section 6. Section 1 of Article IV of the North Carolina Constitution reads as
36 rewritten:

37 **"Sec. 1. Judicial power.**

38 The judicial power of the State shall, except as provided in Section 3 of this Article,
39 be vested in a Court for the Trial of Impeachments and in a General Court of Justice. The
40 General Assembly shall have no power to deprive the ~~judicial department~~ Judicial Branch
41 of any power or jurisdiction that rightfully pertains to it as a coordinate ~~department~~ branch
42 of the government, nor shall it establish or authorize any courts other than as permitted by
43 this Article. The Chief Justice shall be the chief executive of the Judicial Branch of

1 government. In performing those duties, the Chief Justice shall chair and be advised by a
2 State Judicial Council of 18 members, consisting of, in addition to the Chief Justice, the
3 Chief Judge of the Court of Appeals, a Circuit Judge chosen by the Circuit Judges, a
4 Circuit Attorney chosen by the Circuit Attorneys, a Public Defender chosen by the Public
5 Defenders, two members chosen by the statutorily created agency with the authority to
6 regulate the professional conduct of licensed attorneys, two members appointed by the
7 Chief Justice, and three members each appointed by the Governor, the President Pro
8 Tempore of the Senate, and the Speaker of the House of Representatives. The General
9 Assembly shall designate at least seven seats to be filled by persons who are not attorneys
10 and shall provide for staggered, four-year terms for members. No member of the State
11 Judicial Council may at the same time be a member of the General Assembly."

12 Section 7. Section 2 of Article IV of the North Carolina Constitution reads as
13 rewritten:

14 **"Sec. 2. General Court of Justice.**

15 The General Court of Justice shall constitute a unified judicial system for purposes of
16 jurisdiction, operation, and administration, and shall consist of an Appellate ~~Division, a~~
17 ~~Superior Court Division, Division~~ and a ~~District Trial~~ Division."

18 Section 8. Section 7 of Article IV of the North Carolina Constitution reads as
19 rewritten:

20 **"Sec. 7. Court of Appeals.**

21 The structure, organization, and composition of the Court of Appeals shall be
22 determined by the General Assembly. The Court shall have not ~~less~~ fewer than five
23 members, and may be authorized to sit in divisions, or other than en banc. Sessions of
24 the Court shall be held at such times and places as the ~~General Assembly~~ Chief Justice
25 may ~~prescribe~~ authorize or direct."

26 Section 9. Section 8 of Article IV of the North Carolina Constitution reads as
27 rewritten:

28 **"Sec. 8. Retirement of Justices and Judges.**

29 The General Assembly shall provide by general law for the retirement of Justices and
30 Judges of the General Court of Justice, and may provide for the temporary recall of any
31 retired ~~Justice or Judge~~ Justice, Judge, or Magistrate to serve on the court or courts of the
32 division from which he was retired. The General Assembly shall also prescribe
33 maximum age limits for service as a ~~Justice or Judge~~ Justice, Judge, or Magistrate."

34 Section 10. Section 9 of Article IV of the North Carolina Constitution reads as
35 rewritten:

36 **"Sec. 9. Superior Circuit Courts.**

37 (1) ~~Superior Court~~ Trial court districts ~~circuits.~~ The General Assembly ~~Chief~~
38 Justice, with the advice and approval of the State Judicial Council, shall, from time to
39 time, divide the State into a ~~convenient~~ an appropriate number of ~~Superior Court~~ judicial

40 districts ~~trial court circuits.~~ and shall provide for the election of one or more Superior Court
41 Judges for each district. The General Assembly shall determine the maximum number of
42 judges to be authorized for the Trial Division, and the Chief Justice, with the advice and
43 consent of the State Judicial Council, shall allocate those judges to circuits. Each ~~regular~~

1 ~~Superior Circuit Court Judge shall reside in the district circuit for which he is elected. that~~
2 ~~judge is selected. The General Assembly may provide by general law for the selection or~~
3 ~~appointment of special or emergency Superior Court Judges not selected for a particular judicial~~
4 ~~district.~~

5 (2) Chief Circuit Judge. For each circuit, the Chief Justice shall designate one
6 Circuit Judge to serve, at the pleasure of the Chief Justice, as the Chief Circuit Judge and
7 to fulfill such duties as shall be assigned by the Chief Justice.

8 (3) Circuit Judicial Council. In performing the administrative duties assigned by
9 the Chief Justice, the Chief Circuit Judge shall chair and be advised by a Circuit Judicial
10 Council chosen as provided by law and including judges, other court officials, attorneys,
11 and lay members, each of whom shall reside in the circuit.

12 (2)(4) Open at all times; sessions for trial of cases. times. The Superior Courts Circuit
13 Court shall be open at all times for the transaction of all business except the trial of issues
14 of fact requiring a jury. Regular trial sessions of the Superior Court shall be held at times fixed
15 pursuant to a calendar of courts promulgated by the Supreme Court. The Chief Judge of each
16 circuit shall assign cases and schedule court pursuant to policies set by the Chief Justice
17 and approved by the State Judicial Council. At least two sessions for the trial of jury cases
18 shall be held annually in each county.

19 (3) (5) Clerks. A Clerk of the Superior Court for each county shall be elected for
20 a term of four years by the qualified voters thereof, at the same time and places as
21 members of the General Assembly are elected. appointed by the Chief Circuit Judge for a
22 term of four years. The Clerk of Court shall be chosen from candidates nominated by a
23 county nominating panel. If the office of Clerk of the Superior Court becomes vacant
24 otherwise than by the expiration of the term, or if the people fail to elect, the senior
25 regular resident Judge of the Superior Court serving the county shall appoint to fill the
26 vacancy until an election can be regularly held. Vacancies in the office of Clerk of Court
27 shall be filled for the remainder of the unexpired term in the same manner."

28 Section 11. Section 10 of Article IV of the North Carolina Constitution reads
29 as rewritten:

30 "Sec. 10. ~~District Courts. Magistrates.~~

31 The General Assembly shall, from time to time, divide the State into a convenient
32 number of local court districts and shall prescribe where the District Courts shall sit, but a
33 District Court must sit in at least one place in each county. District Judges shall be
34 elected for each district for a term of four years, in a manner prescribed by law. When
35 more than one District Judge is authorized and elected for a district, the Chief Justice of
36 the Supreme Court shall designate one of the judges as Chief District Judge. Every
37 District Judge shall reside in the district for which he is elected. For each county, circuit,
38 the senior regular resident Judge of the Superior Court serving the county Chief Circuit
39 Judge, with the advice of the Circuit Judicial Council, shall appoint for a term of two four
40 years, from nominations submitted by the Clerk of the Superior Court of the county, one
41 or more Magistrates who shall be officers of the District Circuit Court. The number of
42 District Judges and Magistrates shall, from time to time, be determined by the General
43 Assembly. Chief Justice, with the advice of the State Judicial Council. Vacancies in the

1 office of District Judge shall be filled for the unexpired term in a manner prescribed by
2 law. Vacancies in the office of Magistrate shall be filled for the unexpired term in the
3 manner provided for original appointment to the office."

4 Section 12. Section 11 of Article IV of the North Carolina Constitution reads
5 as rewritten:

6 "Sec. 11. Assignment of Judges.

7 Subject to general supervision by the ~~The~~ Chief Justice of the Supreme Court, ~~Court~~
8 and the State Judicial Council, the Chief Circuit Judge acting in accordance with the rules of
9 the Supreme Court, shall make assignments of Circuit Judges. Judges of the Superior Court
10 and may transfer District Judges from one district to another for temporary or specialized duty.
11 The Chief Justice may transfer Circuit Court Judges from one circuit to another for
12 temporary or specialized duty. The principle of rotating Superior-Circuit Court Judges
13 among the various districts of a division is a salutary one and shall be observed. ~~observed by~~
14 the assignment of such judges to hold court throughout the circuit. For this purpose the
15 General Assembly may divide the State into a number of judicial divisions. Subject to the
16 general supervision of the Chief Justice of the Supreme Court, assignment of District Judges
17 within each local court district shall be made by the Chief District Judge."

18 Section 13. Section 12 of Article IV of the North Carolina Constitution reads
19 as rewritten:

20 "Sec. 12. Jurisdiction of the General Court of Justice.

21 (1) Supreme Court. The Supreme Court shall have jurisdiction to review upon
22 appeal any decision of the courts below, upon any matter of law or legal inference. The
23 jurisdiction of the Supreme Court over 'issues of fact' and 'questions of fact' shall be the
24 same exercised by it prior to the adoption of this Article, and the Court may issue any
25 remedial writs necessary to give it general supervision and control over the proceedings
26 of the other courts. The Supreme Court also has jurisdiction to review, when authorized
27 by law, direct appeals from a final order or decision of the North Carolina Utilities
28 Commission.

29 (2) Court of Appeals. The Court of Appeals shall have such appellate jurisdiction
30 as the General Assembly may prescribe.

31 (3) ~~Superior-Trial~~ Court. ~~Except as otherwise provided by the General Assembly, the~~
32 ~~Superior-The Circuit~~ Court shall have original general jurisdiction throughout the State.
33 The Clerks of the ~~Superior~~ Court shall have such jurisdiction and powers as the General
34 Assembly shall prescribe by general law uniformly applicable in every county of the
35 State.

36 (4) ~~District Courts;~~ Magistrates. The General Assembly shall, by general law
37 uniformly applicable ~~in every local court district of~~ throughout the State, prescribe the
38 jurisdiction and powers of ~~the District Court and~~ Magistrates. The General Assembly may
39 provide for greater jurisdiction for Magistrates who are licensed attorneys, with the
40 exercise of such jurisdiction subject to authorization by the State Judicial Council and
41 assignment by the Chief Circuit Judge.

42 (5) Waiver. ~~The General Assembly may by general law provide that the~~
43 ~~jurisdictional limits may be waived in civil cases.~~

1 ~~(6)~~ (5) Appeals. The General Assembly shall by general law provide a proper
2 system of appeals. Appeals from Magistrates shall be heard de novo, ~~with~~ when the
3 matter has been heard without a jury and it is a matter to which the right of trial by jury as
4 defined in ~~applies pursuant to this Constitution and the laws of this State."~~

5 Section 14. Section 13 of Article IV of the North Carolina Constitution reads
6 as rewritten:

7 "Sec. 13. Forms of action; rules of procedure.

8 (1) Forms of Action. There shall be in this State but one form of action for the
9 enforcement or protection of private rights or the redress of private wrongs, which shall
10 be denominated a civil action, ~~and in which there shall be a right to have issues of fact tried~~
11 ~~before a jury.~~ action. Every action prosecuted by the people of the State as a party against
12 a person charged with a public offense, for the punishment thereof, shall be termed a
13 criminal action.

14 (2) Rules of Procedure. The Supreme Court shall have exclusive authority to
15 make rules of procedure and practice for the ~~Appellate Division.~~ General Court of Justice.
16 Rules adopted for the Trial Division shall become effective 30 days after being submitted
17 to the General Assembly, at a time when the General Assembly is in session unless
18 rejected by joint resolution of the General Assembly. The General Assembly by joint
19 resolution may also specifically approve the rule, in which case the Supreme Court may
20 make the rule effective at an earlier date. ~~The General Assembly may make rules of~~
21 ~~procedure and practice for the Superior Court and District Court Divisions, and the General~~
22 ~~Assembly may delegate this authority to the Supreme Court.~~ No rule of procedure or practice
23 shall abridge substantive rights or abrogate or limit the right of trial by jury. ~~If the General~~
24 ~~Assembly should delegate to the Supreme Court the rule making power, the General Assembly~~
25 ~~may, nevertheless, alter, amend, or repeal any rule of procedure or practice adopted by the~~
26 ~~Supreme Court for the Superior Court or District Court Divisions."~~

27 Section 15. Section 14 of Article IV of the North Carolina Constitution is
28 repealed.

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

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

33 Justices of the Supreme Court, Judges of the Court of Appeals, and ~~regular~~ Judges of
34 the ~~Superior Circuit~~ Court shall be elected by the qualified voters and shall hold office for
35 terms of eight years and until their successors are elected and qualified. Justices of the
36 Supreme Court and Judges of the Court of Appeals shall be elected by the qualified
37 voters of the State. ~~Regular~~ Judges of the ~~Superior Circuit~~ Court shall be elected by the
38 qualified voters of their respective districts, which shall be established within their
39 circuits. ~~may be elected by the qualified voters of the State or by the voters of their respective~~
40 ~~districts, as the General Assembly may prescribe."~~

41 Section 17. Section 17 of Article IV of the North Carolina Constitution reads
42 as rewritten:

43 "Sec. 17. Removal of Judges, Magistrates and Clerks.

1 (1) Removal of Judges by the General Assembly. Any Justice or Judge of the
2 General Court of Justice may be removed from office for mental or physical incapacity
3 by joint resolution of two-thirds of all the members of each house of the General
4 Assembly. Any Justice or Judge against whom the General Assembly may be about to
5 proceed shall receive notice thereof, accompanied by a copy of the causes alleged for his
6 removal, at least 20 days before the day on which either house of the General Assembly
7 shall act thereon. Removal from office by the General Assembly for any other cause
8 shall be by impeachment.

9 (2) Additional method of removal of Judges. The General Assembly shall
10 prescribe a procedure, in addition to impeachment and address set forth in this section,
11 for the removal of a Justice or Judge of the General Court of Justice for mental or
12 physical incapacity interfering with the performance of his duties which is, or is likely to
13 become, permanent, and for the censure and removal of a Justice or Judge of the General
14 Court of Justice for wilful misconduct in office, wilful and persistent failure to perform
15 his duties, habitual intemperance, conviction of a crime involving moral turpitude, or
16 conduct prejudicial to the administration of justice that brings the judicial office into
17 disrepute.

18 (3) Removal of Magistrates. The General Assembly shall provide by general law
19 for the removal of Magistrates for misconduct or mental or physical incapacity.

20 (4) Removal of Clerks. ~~Any Clerk of the Superior Court may be removed from~~
21 ~~office for misconduct or mental or physical incapacity by the senior regular resident~~
22 ~~Superior Court Judge serving the county. Any Clerk against whom proceedings are~~
23 ~~instituted shall receive written notice of the charges against him at least 10 days before~~
24 ~~the hearing upon the charges. Any Clerk so removed from office shall be entitled to an~~
25 ~~appeal as provided by law.~~ The General Assembly shall prescribe a procedure for the
26 removal of a Clerk of Court for mental or physical incapacity interfering with the
27 performance of the duties of the office, which incapacity is, or is likely to become,
28 permanent, and for the censure and removal of a Clerk of Court for willful misconduct in
29 office, willful and persistent failure to perform the duties of the office, habitual
30 intemperance, conviction of a crime involving moral turpitude, or conduct prejudicial to
31 the administration of justice that brings the office into disrepute."

32 Section 18. Section 18 of Article IV of the North Carolina Constitution is
33 repealed.

34 Section 19. Section 21 of Article IV of the North Carolina Constitution reads
35 as rewritten:

36 "Sec. 21. Fees, salaries, and emoluments.

37 The General Assembly shall prescribe and regulate the fees, salaries, and emoluments
38 of all officers provided for in this Article, ~~but the salaries of Judges shall not be diminished~~
39 ~~during their continuance in office.~~ except that the salaries of Justices and Judges shall be set
40 by the State Judicial Council subject to disapproval by joint resolution of the General
41 Assembly pursuant to law. The salaries of Justices and Judges shall not be diminished
42 during their continuance in office. In no case shall the compensation of any Justice,

1 ~~Judge~~ Judge, or Magistrate be dependent upon his decision or upon the collection of
2 costs."

3 Section 20. Section 22 of Article IV of the North Carolina Constitution reads
4 as rewritten:

5 "Sec. 22. Qualification of Justices and Judges.

6 Only persons duly authorized to practice law in the courts of this State shall be eligible
7 ~~for election or appointment to serve~~ as a Justice of the Supreme Court, Judge of the Court
8 of Appeals, ~~Judge of the Superior Court, or Circuit Court Judge of the District Court.~~ Judge.
9 This section shall not apply to persons elected to or serving in such capacities on or
10 before January 1, 1981."

11 Section 21. Article IV of the North Carolina Constitution is amended by
12 adding a new section to read:

13 "Sec. 23. Transition.

14 The General Assembly shall determine the date by which the Trial Division
15 established by this Article shall be finally implemented statewide and the date by which
16 the District Attorneys and their prosecutorial districts are replaced by the Circuit
17 Attorneys and circuits as provided in Article III, Section 12. In so providing, the General
18 Assembly shall assure that all Justices, Judges, Magistrates, Clerks of Court, and District
19 Attorneys shall be entitled to complete the elected or appointed terms which they are
20 servng at the time the reorganization of the courts is implemented for their offices or
21 districts. Upon implementation of the Circuit Court, the Chief Justice and the State
22 Judicial Council may assign holdover Judges to serve in circuits other than the ones in
23 which they reside to resolve any imbalances in caseload resulting from the transition
24 from the current judicial districts to the new circuits."

25 PART II.

26 Section 22. Section 6 of Article IV of the North Carolina Constitution reads as
27 rewritten:

28 "**Sec. 6. Supreme Court.**

29 (1) Membership. The Supreme Court shall consist of a Chief Justice and six
30 Associate Justices, but the General Assembly may increase the number of Associate
31 Justices to not more than eight. The Chief Justice shall be appointed by the Governor in
32 the same manner as the appointment of the other Justices. In the event the Chief Justice
33 is unable, on account of absence or temporary incapacity, to perform any of the duties
34 placed upon him, the senior Associate Justice available may discharge those duties.

35 (2) Sessions of the Supreme Court. The sessions of the Supreme Court shall be
36 held in the City of Raleigh unless otherwise provided by the General Assembly."

37 Section 23. Section 16 of Article IV of the North Carolina Constitution reads
38 as rewritten:

39 "Sec. 16. Terms of office and ~~election~~ selection of Justices of the Supreme Court,
40 Judges of the Court of Appeals, and Judges of the ~~Superior~~ Circuit Court.

41 The General Assembly shall provide for appointment of Justices of the Supreme
42 Court, and Judges of the Court of Appeals, and regular Judges of the Superior Court shall be
43 elected by the qualified voters. Appeals by the Governor from nominations submitted by an

1 appellate nominating panel which shall consist of the 13 members of the State Judicial
2 Council other than the Chief Justice, the Chief Judge of the Court of Appeals, the Circuit
3 Judge, the Circuit Attorney, and the Public Defender. and shall hold office for terms of eight
4 years and until their successors are elected and qualified. Justices of the Supreme Court and
5 Judges of the Court of Appeals shall be elected by the qualified voters of the State. Regular
6 Judges of the Superior Court may be elected by the qualified voters of the State or by the voters
7 of their respective districts, as the General Assembly may prescribe. The General Assembly
8 shall provide for appointment of Circuit Court Judges by the Governor from nominations
9 by a circuit nominating panel for each circuit. Each Justice and Judge appointed to office
10 shall be subject to a retention election at the same time as the first general election for
11 members of the General Assembly held more than one year after the appointment of the
12 Justice or Judge. If retained at that election, the Justice or Judge shall hold office for
13 subsequent terms of eight years at the end of each of which the Justice's or Judge's
14 continuation in office shall be subject to approval by the voters in a retention election.
15 Retention elections for Justices of the Supreme Court and Judges of the Court of Appeals
16 shall be statewide, and retention elections for Circuit Court Judges shall be circuitwide."

17 Section 24. Section 19 of Article IV of the North Carolina Constitution reads
18 as rewritten:

19 "Sec. 19. Vacancies.

20 Unless otherwise provided in this Article, all vacancies occurring in the offices
21 provided for by this Article shall be filled by appointment of the Governor, and the
22 appointees shall hold their places ~~until the next election for members of the General Assembly~~
23 ~~that is held more than 60 days after the vacancy occurs, when elections shall be held to fill the~~
24 ~~offices. as provided by law until their successors can be nominated and appointed in the~~
25 ~~manner provided in this Article. When the unexpired term of any of the offices named in this~~
26 ~~Article of the Constitution in which a vacancy has occurred, and in which it is herein provided~~
27 ~~that the Governor shall fill the vacancy, expires on the first day of January succeeding the next~~
28 ~~election for members of the General Assembly, the Governor shall appoint to fill that vacancy~~
29 ~~for the unexpired term of the office. If any person elected or appointed to any of these offices~~
30 ~~shall fail to qualify, the office shall be appointed to, held, and filled as provided in case of~~
31 ~~vacancies occurring therein. All incumbents of these offices shall hold until their successors are~~
32 ~~qualified."~~

33 Section 25. Section 10 of Article IV of the North Carolina Constitution reads
34 as rewritten:

35 "Sec. 10. District Courts.

36 The General Assembly shall, from time to time, divide the State into a convenient
37 number of local court districts and shall prescribe where the District Courts shall sit, but a
38 District Court must sit in at least one place in each county. District Judges shall be
39 ~~elected~~ appointed by the Governor for each district for a term of four years, in a manner
40 prescribed by law. When more than one District Judge is authorized and elected for a
41 district, the Chief Justice of the Supreme Court shall designate one of the judges as Chief
42 District Judge. Every District Judge shall reside in the district for which he is ~~elected~~
43 appointed. For each county, the senior regular resident Judge of the Superior Court
44 serving the county shall appoint for a term of two years, from nominations submitted by

1 the Clerk of the Superior Court of the county, one or more Magistrates who shall be
2 officers of the District Court. The number of District Judges and Magistrates shall, from
3 time to time, be determined by the General Assembly. Vacancies in the office of District
4 Judge shall be filled for the unexpired term in a manner prescribed by law. Vacancies in
5 the office of Magistrate shall be filled for the unexpired term in the manner provided for
6 original appointment to the office."

7 Section 26. Section 16 of Article IV of the North Carolina Constitution reads
8 as rewritten:

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

11 Justices of the Supreme Court, Judges of the Court of Appeals, and regular Judges of
12 the Superior Court shall be ~~elected by the qualified voters~~ appointed by the Governor in the
13 manner prescribed by law, and shall hold office for terms of eight years and until their
14 successors are ~~elected~~ appointed and qualified. ~~Justices of the Supreme Court and Judges of~~
15 ~~the Court of Appeals shall be elected by the qualified voters of the State. Regular Judges of the~~
16 ~~Superior Court may be elected by the qualified voters of the State or by the voters of their~~
17 ~~respective districts, as the General Assembly may prescribe."~~

18 PART III.

19 Section 27. (a) The amendments set out in Part I of this act shall be submitted
20 to the qualified voters of the State at an election to be held on Tuesday, November 4,
21 1997, which election shall be conducted under the laws then governing elections in the
22 State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of
23 the General Statutes. The question to be used in the voting systems and ballots shall be:

24 "[] FOR [] AGAINST

25 Amendments to Articles I, III, and IV of the North Carolina Constitution to restructure
26 the Judicial Branch of government and revise court procedures by: (1) merging Superior
27 and District Courts into a single trial court known as the Circuit Court, (2) establishing a
28 State Judicial Council to assist the Chief Justice in governance of the Judicial Branch, (3)
29 transferring prosecutors from the Judicial Branch to the Executive Branch, (4) creating an
30 Office of Solicitor General to represent the State in criminal appeals, (5) appointing
31 Clerks of Court for terms of four years, (6) extending the terms of Magistrate to four
32 years, (7) empowering the Supreme Court to set rules of procedure for the trial courts, (8)
33 allowing the use of juries of as few as six members, (9) permitting defendants to waive
34 the right to jury in all criminal cases, (10) authorizing the General Assembly to provide
35 for nonjury trials for some petty misdemeanors, (11) empowering the General Assembly
36 to determine the dates by which implementation of the new court structure shall begin
37 and shall be completed, and (12) making other related and conforming changes."

38 (b) If a majority of votes cast on the question are in favor of the amendments
39 set out in Part I of this act, the State Board of Elections shall certify the amendments to
40 the Secretary of State. The amendments shall take effect as provided in subsection (c) of
41 this section. The Secretary of State shall enroll the amendments so certified among the
42 permanent records of that office.

1 (c) The amendments included in Sections 1, 2, 3, 6, 8, 9, 15, and 21 of this act
2 shall take effect on January 1, 1998. The amendments included in Section 4 of this act
3 shall take effect on July 1, 1998, and also shall apply to preparation of the budget for
4 fiscal year 1998-99. The amendments included in Section 14 of this act shall take effect
5 on July 1, 1998. The amendments included in Sections 5, 7, 10, 11, 12, 13, 16, 17, 18,
6 19, and 20 of this act, concerning the establishment of the Circuit Court and the offices of
7 Circuit Attorney and Solicitor General, shall take effect on January 1, 1998, but the
8 implementation of the new circuit court structure and the reorganization of prosecution
9 and indigent defense shall not begin until January 1, 2000. At that time, the State Judicial
10 Council shall begin to phase in the new circuit court structure and the prosecution and
11 indigent defense, pursuant to a schedule adopted by the council. By January 1, 2002, the
12 State Judicial Council shall have implemented the new court structure and prosecution
13 and indigent defense organization statewide. Until the Circuit Court and the reorganized
14 prosecution and indigent defense are implemented in a court or prosecutorial district, the
15 constitutional provisions amended by Sections 5, 7, 10, 11, 12, 13, 16, 17, 18, 19, and 20
16 of this act shall continue in effect for that district as they read before the amendments.

17 Section 28. (a) The amendments set out in Part II of this act shall be submitted
18 to the qualified voters of the State at an election to be held on Tuesday, November 4,
19 1997, which election shall be conducted under the laws then governing elections in the
20 State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of
21 the General Statutes. The question to be used in the voting systems and ballots shall be:

22 **"[] FOR [] AGAINST**

23 Amendments to Article IV of the North Carolina Constitution to provide that Justices and
24 Judges shall be appointed by the Governor from nominees submitted by nominating
25 panels, shall serve terms of eight years, and shall be subject to retention elections at the
26 first general election held more than one year after the Justice or Judge takes office and at
27 the end of each eight-year term."

28 (b) If a majority of votes cast on the question are in favor of the amendments
29 set out in Part II of this act, and the amendments included in Part I of this act are also
30 approved in the referendum, the State Board of Elections shall certify the amendments to
31 the Secretary of State, the constitutional amendments proposed in Sections 22, 23, and 24
32 of this act take effect on January 1, 1998, and Sections 16, 25, and 26 of this act shall not
33 become effective, provided that (i) each Justice of the Supreme Court and Judge of the
34 Court of Appeals holding office at that time shall be entitled to complete the term to
35 which that Justice or Judge was elected, (ii) the amendments shall not affect elections in
36 1998 for Superior Court and District Court Judges, Clerks of Court, and District
37 Attorneys (iii) the amendments shall not affect elections in 2000 for Superior and District
38 Court Judges, Clerks of Court, and District Attorneys in judicial districts, counties, and
39 prosecutorial districts for which implementation of the new circuit court structure and the
40 reorganization of prosecution is not scheduled to begin until January 1, 2002, and (iv) all
41 Judges, Clerks, and District Attorneys shall be entitled to complete the terms for which
42 they were last elected prior to the application of the constitutional amendments to that
43 office.

1 (c) If a majority of the votes cast on the question are in favor of the amendments
2 set out in Part I of this act, but the amendments proposed by Part II of this act are not
3 approved by the voters, then the State Board of Elections shall certify the amendments to
4 the Secretary of State, the constitutional amendments proposed in Sections 22, 24, 25,
5 and 26 of this act take effect on January 1, 1998, and Section 23 of this act does not
6 become effective; provided, that each Justice and Judge holding office at the time the
7 amendments become effective shall be entitled to complete the term of office.

8 (d) The Secretary of State shall enroll the amendments so certified among the
9 permanent records of that office.

10 Section 29. This act is effective when it becomes law.