

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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SENATE BILL 523

Short Title: En Banc Procedure.

(Public)

Sponsors: Senators Clodfelter; and Rand.

Referred to: Judiciary I.

March 15, 2005

A BILL TO BE ENTITLED
AN ACT TO PROVIDE FOR THE NORTH CAROLINA COURT OF APPEALS TO
CONDUCT EN BANC PROCEEDINGS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-16 reads as rewritten:

"§ 7A-16. Creation and organization.

The Court of Appeals is created effective January 1, 1967. It shall consist initially of six judges, elected by the qualified voters of the State for terms of eight years. The Chief Justice of the Supreme Court shall designate one of the judges as Chief Judge, to serve in such capacity at the pleasure of the Chief Justice. Before entering upon the duties of his office, a judge of the Court of Appeals shall take the oath of office prescribed for a judge of the General Court of Justice.

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

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

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

Effective January 1, 1977, the number of judges is increased to 12; and the Governor, on or after July 1, 1977, shall make temporary appointments to the additional

1 judgeships thus created. The appointees shall serve until January 1, 1979. Their
2 successors shall be elected at the general election for members of the General Assembly
3 in November, 1978, and shall take office on January 1, 1979, to serve the remainder of
4 the unexpired term which began on January 1, 1977.

5 On or after December 15, 2000, the Governor shall appoint three additional judges
6 to increase the number of judges to 15.

7 The Court of Appeals shall sit in panels of three judges ~~each~~ each and may also sit
8 en banc upon a vote of a majority of the judges of the court. The Chief Judge insofar as
9 practicable shall assign the members to panels in such fashion that each member sits a
10 substantially equal number of times with each other member. He shall preside over the
11 panel of which he is a member, and shall designate the presiding judge of the other
12 panel or panels.

13 ~~Three judges shall constitute a quorum for the transaction of the business of the~~
14 ~~court, except as may be provided in § 7A-32. Except as may be provided in G.S. 7A-32,~~
15 ~~three judges shall constitute a quorum for the transaction of the business of the court~~
16 ~~when sitting in panels of three judges, and a majority of the then sitting judges on the~~
17 ~~Court of Appeals shall constitute a quorum for the transaction of the business of the~~
18 ~~court when sitting en banc.~~

19 In the event the Chief Judge is unable, on account of absence or temporary
20 incapacity, to perform the duties placed upon him as Chief Judge, the Chief Justice shall
21 appoint an acting Chief Judge from the other judges of the Court, to temporarily
22 discharge the duties of Chief Judge."

23 **SECTION 2.** G.S. 7A-30 reads as rewritten:

24 "**§ 7A-30. Appeals of right from certain decisions of the Court of Appeals.**

25 Except as provided in G.S. 7A-28, an appeal lies of right to the Supreme Court from
26 any decision of the Court of Appeals rendered in a case:

- 27 (1) Which directly involves a substantial question arising under the
28 Constitution of the United States or of this State, or
29 (2) In which there is a ~~dissent~~ dissent when the Court of Appeals is sitting
30 in a panel of three judges."

31 **SECTION 3.** G.S. 7A-31(a) reads as rewritten:

32 "(a) In any cause in which appeal is taken to the Court of Appeals, Appeals
33 including any cause heard while the Court of Appeals was sitting en banc, except a
34 cause appealed from the North Carolina Industrial Commission, the North Carolina
35 State Bar pursuant to G.S. 84-28, the Property Tax Commission pursuant to
36 G.S. 105-345, the Board of State Contract Appeals pursuant to G.S. 143-135.9, or the
37 Commissioner of Insurance pursuant to G.S. 58-2-80, or a motion for appropriate relief
38 or valuation of exempt property pursuant to G.S. 7A-28, the Supreme Court may, in its
39 discretion, on motion of any party to the cause or on its own motion, certify the cause
40 for review by the Supreme Court, either before or after it has been determined by the
41 Court of Appeals. A cause appealed to the Court of Appeals from any of the
42 administrative bodies listed in the preceding sentence may be certified in similar
43 fashion, but only after determination of the cause in the Court of Appeals. The effect of
44 such certification is to transfer the cause from the Court of Appeals to the Supreme

1 Court for review by the Supreme Court. If the cause is certified for transfer to the
2 Supreme Court before its determination in the Court of Appeals, review is not had in the
3 Court of Appeals but the cause is forthwith transferred for review in the first instance by
4 the Supreme Court. If the cause is certified for transfer to the Supreme Court after its
5 determination by the Court of Appeals, the Supreme Court reviews the decision of the
6 Court of Appeals.

7 Except in motions within the purview of G.S. 7A-28, the State may move for
8 certification for review of any criminal cause, but only after determination of the cause
9 by the Court of Appeals."

10 **SECTION 4.** The Supreme Court, in consultation with the Court of Appeals,
11 is respectfully requested to adopt rules of procedure for en banc proceedings in the
12 Court of Appeals.

13 **SECTION 5.** This act is effective when it becomes law.