

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE DRS85235-LL-211 (03/13)

Short Title: Appt. of Magistrates/Emergency Magistrates. (Public)

Sponsors: Senator Snow.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CONSTITUTION REGARDING APPOINTMENT OF
MAGISTRATES AND AUTHORIZE THE USE OF EMERGENCY
MAGISTRATES, AS RECOMMENDED BY THE STATE JUDICIAL COUNCIL.

The General Assembly of North Carolina enacts:

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

"Sec. 10. District Courts.

The General Assembly shall, from time to time, divide the State into a convenient number of local court districts and shall prescribe where the District Courts shall sit, but a District Court must sit in at least one place in each county. District Judges shall be elected for each district for a term of four years, in a manner prescribed by law. When more than one District Judge is authorized and elected for a district, the Chief Justice of the Supreme Court shall designate one of the judges as Chief District Judge. Every District Judge shall reside in the district for which he is elected. ~~For each county, the senior regular resident Judge of the Superior Court serving the county shall appoint from nominations submitted by the Clerk of the Superior Court of the county, one or more Magistrates who shall be officers of the District Court.~~ For each county, one or more Magistrates shall be appointed in a manner prescribed by general law. Magistrates shall be officers of the District Court. The initial term of appointment for a magistrate shall be for two years and subsequent terms shall be for four years. The number of District Judges and Magistrates shall, from time to time, be determined by the General Assembly. The General Assembly may provide by general law for the appointment and assignment of Emergency Magistrates not selected for a particular county or district. Vacancies in the office of District Judge shall be filled for the unexpired term in a manner prescribed by law. Vacancies in the office of Magistrate shall be filled for the

1 unexpired term in the manner ~~provided for original appointment to the office,~~ prescribed
2 by law, unless otherwise provided by the General Assembly."

3 **SECTION 2.** The amendment set out in Section 1 of this act shall be
4 submitted to the qualified voters of the State at an election on November 6, 2007, which
5 election shall be conducted under the laws then governing elections in the State. Ballots,
6 voting systems, or both may be used in accordance with Chapter 163 of the General
7 Statutes. The question to be used in the voting systems and ballots shall be:

8 "[] FOR [] AGAINST

9 Constitutional amendment to provide that the General Assembly may
10 prescribe the manner of appointing magistrates and to authorize the use of emergency
11 magistrates."

12 **SECTION 3.** If a majority of votes cast on the question are in favor of the
13 amendment set out in Section 1 of this act, the State Board of Elections shall certify the
14 amendment to the Secretary of State, who shall enroll the amendment so certified
15 among the permanent records of that office. The amendment becomes effective January
16 1, 2008.

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

18 "**§ 7A-171. Numbers; appointment and terms; vacancies.**

19 (a) The General Assembly shall establish a minimum quota of magistrates for
20 each county. In no county shall the minimum quota be less than one. The number of
21 magistrates in a county, above the minimum quota set by the General Assembly, is
22 determined by the Administrative Office of the Courts after consultation with the chief
23 district court judge for the district in which the county is located.

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

33 (b) Not earlier than ~~the Tuesday after the first Monday~~ nor later than the ~~third~~
34 fourth Monday in ~~December~~ October of each even-numbered year, the clerk of the
35 superior court shall submit to the ~~senior regular resident superior court judge of the~~
36 ~~district or set of districts as defined in G.S. 7A-41.1(a)~~ chief district court judge of the
37 district court district or set of districts as defined in G.S. 7A-200 in which the clerk's
38 county is located the names of two (or more, if requested by the judge) nominees for
39 each magisterial office for the county for which the term of office of the magistrate
40 holding that position shall expire on December 31 of that year. Not later than the fourth
41 Monday in December, the ~~senior regular resident superior court judge shall, from the~~
42 ~~nominations submitted by the clerk of the superior court,~~ chief district court judge shall
43 appoint magistrates to fill the positions for each county of the judge's district or set of
44 districts. The chief district court judge may reappoint an incumbent magistrate with at

1 least six years tenure as magistrate or shall make each appointment from the
2 nominations submitted by the clerk of the superior court. If the clerk of the superior
3 court fails to make nominations within the time prescribed by this subsection, the chief
4 district court judge shall appoint as magistrate a person who meets the qualifications in
5 G.S. 7A-171.2 whether or not such person was nominated by the clerk of the superior
6 court. If no appointment is made by the chief district court judge by the fourth Monday
7 in December, the appointment shall be made by the senior regular resident superior
8 court judge of the district or set of districts as defined in G.S. 7A-41.1(a) in which the
9 clerk's county is located. The senior regular resident superior court judge shall appoint a
10 person who meets the qualifications in G.S. 7A-171.2 and is not limited to persons
11 nominated by the clerk of the superior court.

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

16 (d) Within 30 days after a vacancy in the office of magistrate occurs the clerk of
17 superior court shall submit to the ~~senior regular resident superior court~~ chief district
18 judge the names of two up to three (or more, if so requested by the judge) nominees for
19 the office vacated. Within 15 days after receipt of the nominations the senior regular
20 resident superior chief district court judge shall appoint from the nominations received a
21 magistrate who shall take office immediately and shall serve until December 31 of the
22 even-numbered year, and thereafter the position shall be filled as provided in subsection
23 (b) of this section. If the clerk of superior court fails to make nominations within the
24 time prescribed by this subsection, the chief district court judge shall appoint as
25 magistrate a person who meets the qualifications in G.S. 7A-171.2 whether or not such
26 person was nominated by the clerk of the superior court. If no appointment is made by
27 the chief district court judge within 45 days after the vacancy occurs, the appointment
28 shall be made by the senior regular resident superior court judge. The senior regular
29 resident superior court judge shall appoint a person who meets the qualifications in
30 G.S. 7A-171.2 and is not limited to persons nominated by the clerk of the superior
31 court."

32 **SECTION 5.** Article 16 of Chapter 7A of the General Statutes is amended
33 by adding a new section to read:

34 **"§ 7A-171.3. Emergency magistrates.**

35 (a) As used in this section, "emergency magistrate" means any former magistrate
36 who is subject to recall to active service for temporary duty as provided in this section.

37 (b) Any former magistrate who has completed five years of service as a full-time
38 magistrate in any county may apply as provided in subsection (c) of this section to
39 become an emergency magistrate. The Director of the Administrative Office of the
40 Courts, after consultation with the chief district court judge, may order any emergency
41 magistrate who, in his opinion, is competent to perform the duties of a magistrate, to
42 serve temporarily as a magistrate in any county in the State, as needed. Each order of
43 assignment shall be in writing and entered upon the minutes of the district court in the
44 county to which such emergency magistrate is assigned. An emergency magistrate,

1 while assigned to temporary duty in a county, shall not be counted in determining
2 whether the county has the maximum number of magistrates allowed under
3 G.S. 7A-133.

4 (c) No former magistrate may become an emergency magistrate except upon
5 written application to the Director of the Administrative Office of the Courts certifying
6 a desire and the ability to serve as an emergency magistrate. If the Director is satisfied
7 that the applicant qualifies under subsection (b) of this section to become an emergency
8 magistrate and is physically and mentally able to perform the official duties of an
9 emergency magistrate, the Director shall appoint the applicant as an emergency
10 magistrate. The appointment shall be effective upon the date of its issue and shall
11 terminate when revoked by the Director.

12 (d) Each emergency magistrate has the same power and authority in all matters
13 whatsoever, in each county to which assigned, that the regular magistrates of the county
14 would have. The chief district court judge of any district to which an emergency
15 magistrate is assigned shall have the same administrative supervision and authority over
16 that emergency magistrate as over the regular magistrates of the county and shall assign
17 that magistrate to duty as provided in G.S. 7A-146.

18 (e) In addition to the compensation or retirement allowance the magistrate would
19 otherwise be entitled to receive by law, each emergency magistrate who is assigned to
20 temporary duty pursuant to this section shall be reimbursed for travel and subsistence
21 expenses at the same rate as State employees generally, plus one hundred twenty-five
22 dollars (\$125.00) for each day of active temporary duty. No emergency magistrate shall
23 receive from the State total annual compensation for service as an emergency magistrate
24 in excess of the Step 2 annual salary specified in the Table of Salaries of Full-Time
25 Magistrates in G.S. 7A-171.1."

26 **SECTION 6.** If the constitutional amendment proposed in Section 1 of this
27 act is approved by the voters, then this act becomes effective January 1, 2008, and
28 applies to appointments that take effect after that date.