

NORTH CAROLINA GENERAL ASSEMBLY  
1961 SESSION

CHAPTER 313  
HOUSE BILL 104

1 AN ACT TO AMEND THE CONSTITUTION OF NORTH CAROLINA BY REWRITING  
2 ARTICLE IV THEREOF AND MAKING APPROPRIATE AMENDMENTS OF OTHER  
3 ARTICLES SO AS TO IMPROVE THE ADMINISTRATION OF JUSTICE IN NORTH  
4 CAROLINA.

5  
6 The General Assembly of North Carolina do enact:

7  
8 **Section 1.** The Constitution of North Carolina is amended by rewriting Article IV  
9 thereof to read as follows:

10 "ARTICLE IV.

11 "JUDICIAL DEPARTMENT.

12 **"Section 1.** Division of judicial power. The judicial power of the State shall, except as  
13 provided in Section 3 of this Article, be vested in a court for the Trial of Impeachments and in a  
14 General Court of Justice. The General Assembly shall have no power to deprive the judicial  
15 department of any power or jurisdiction which rightfully pertains to it as a co-ordinate  
16 department of the government, nor shall it establish or authorize any courts other than as  
17 permitted by this Article.

18 **"Sec. 2.** General Court of Justice. The General Court of Justice shall constitute a unified  
19 judicial system for purposes of jurisdiction, operation, and administration; and shall consist of  
20 an appellate division, a Superior Court division, and a District Court division.

21 **"Sec. 3.** Judicial powers of administrative agencies. The General Assembly may vest in  
22 administrative agencies established pursuant to law such judicial powers as may be reasonably  
23 necessary as an incident to the accomplishment of the purposes for which the agencies were  
24 created. Appeals from administrative agencies shall be to the General Court of Justice.

25 **"Sec. 4.** Court for the Trial of Impeachments. The House of Representatives solely shall  
26 have the power of impeaching. The Court for the Trial of Impeachments shall be the Senate.  
27 When the Governor or Lieutenant-Governor is impeached, the Chief Justice shall preside over  
28 the Court. A majority of the members shall be necessary to a quorum, and no person shall be  
29 convicted without the concurrence of two-thirds of the Senators present. Judgment upon  
30 conviction shall not extend beyond removal from and disqualification to hold office in this  
31 State, but the party shall be liable to indictment and punishment according to law.

32 **"Sec. 5.** Appellate Division. The appellate division of the General Court of Justice shall  
33 consist of the Supreme Court.

34 **"Sec. 6.** Supreme Court.

35 "(1) Membership. The Supreme Court shall consist of a Chief Justice and six  
36 Associate Justices, but the General Assembly may increase the number of  
37 Associate Justices to not more than eight. In the event the Chief Justice is  
38 unable, on account of absence or temporary incapacity, to perform any of the  
39 duties placed upon him, the senior Associate Justice available is authorized  
40 to discharge such duties. The General Assembly may provide for the  
41 retirement of members of the Supreme Court and for the recall of such  
42 retired members to serve on that Court in lieu of any active member thereof  
43 who is, for any cause, temporarily incapacitated.

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

4 **"Sec. 7. Superior Courts.**

5           "(1) Superior Court districts. The General Assembly shall, from time to time,  
6 divide the State into a convenient number of Superior Court judicial districts  
7 and shall provide for the election of one or more Superior Court Judges for  
8 each district. Each regular Superior Court Judge shall reside in the district  
9 for which he is elected. The General Assembly may provide by general law  
10 for the selection or appointment of special or emergency Superior Court  
11 Judges not selected for a particular judicial district.

12           "(2) Open at all times; sessions for trial of cases. The Superior Courts shall be  
13 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  
15 held at times fixed pursuant to a calendar of courts promulgated by the  
16 Supreme Court. At least two sessions for the trial of jury cases shall be held  
17 annually in each county.

18           "(3) Clerks. A Clerk of the Superior Court for each county shall be elected for a  
19 term of four years by the qualified voters thereof, at the time and in the  
20 manner prescribed by law for the election of members of the General  
21 Assembly. If the office of Clerk of the Superior Court becomes vacant  
22 otherwise than by the expiration of the term, or if the people fail to elect, the  
23 senior regular resident Judge of the Superior Court serving the county shall  
24 appoint to fill the vacancy until an election can be regularly held.

25 **"Sec. 8. District Courts.** The General Assembly shall, from time to time, divide the State  
26 into a convenient number of local court districts and shall prescribe where the District Courts  
27 shall sit; but a District Court must sit in at least one place in each county. District Judges shall  
28 be elected for each district for a term of four years, in a manner provided by law. When more  
29 than one District Judge is authorized and elected for a district, the Chief Justice of the Supreme  
30 Court shall designate one of the judges as Chief District Judge. Every District Judge shall  
31 reside in the district for which he is elected. For each county, the senior regular resident Judge  
32 of the Superior Court serving the county shall appoint for a term of two years, from  
33 nominations submitted by the Clerk of the Superior Court of the county, one or more  
34 Magistrates who shall be officers of the District Court. The number of District Judges and  
35 Magistrates shall, from time to time, be determined by the General Assembly. Vacancies in the  
36 office of District Judge shall be filled, for the unexpired term, in a manner provided by law.  
37 Vacancies in the office of Magistrate shall be filled, for the unexpired term, in the manner  
38 provided for original appointment to the office.

39 **"Sec. 9. Assignment of Judges.** The Chief Justice of the Supreme Court, acting in  
40 accordance with rules of the Supreme Court, shall make assignments of Judges of the Superior  
41 Court and may transfer District Judges from one district to another for temporary or specialized  
42 duty. The principle of rotating Superior Court Judges among the various districts of a division  
43 is a salutary one and shall be observed. For this purpose the General Assembly may divide the  
44 State into a number of judicial divisions. Subject to the general supervision of the Chief Justice  
45 of the Supreme Court, assignment of District Judges within each local court district shall be  
46 made by the Chief District Judge.

47 **"Sec. 10. Jurisdiction of the General Court of Justice.**

48           "(1) Supreme Court. The Supreme Court shall have jurisdiction to review upon  
49 appeal any decision of the courts below, upon any matter of law or legal  
50 inference. The jurisdiction of the Supreme Court over 'issues of fact' and  
51 'questions of fact' shall be the same exercised by it prior to the adoption of

1 this Article, and the Court shall have the power to issue any remedial writs  
2 necessary to give it a general supervision and control over the proceedings of  
3 the other courts. The Supreme Court shall have original jurisdiction to hear  
4 claims against the State, but its decisions shall be merely recommendatory;  
5 no process in the nature of execution shall issue thereon; the decisions shall  
6 be reported to the next Session of the General Assembly for its action.

7 "(2) Superior Court. Except as otherwise provided by the General Assembly, the  
8 Superior Court shall have original general jurisdiction throughout the State.  
9 The Clerks of the Superior Court shall have such jurisdiction and powers as  
10 the General Assembly shall provide by general law uniformly applicable in  
11 every county of the State.

12 "(3) District Courts; Magistrates. The General Assembly shall, by general law  
13 uniformly applicable in every local court district of the State, prescribe the  
14 jurisdiction and powers of the District Courts and Magistrates.

15 "(4) Waiver. The General Assembly may by general law provide that the  
16 jurisdictional limits may be waived in civil cases.

17 "(5) Appeals. The General Assembly shall, by general law, provide a proper  
18 system of appeals: Provided, that appeals from Magistrates shall be heard de  
19 novo, with the right of trial by jury as denned in this Constitution and the  
20 laws of this State.

21 **"Sec. 11.** Forms of action; rules of procedure.

22 "(1) Forms of action. There shall be in this State but one form of action for the  
23 enforcement or protection of private rights or the redress of private wrongs,  
24 which shall be denominated a civil action, and in which there shall be a right  
25 to have issues of fact tried before a jury. Every action prosecuted by the  
26 people of the State as a party against a person charged with a public offense,  
27 for the punishment of the same, shall be termed a criminal action.

28 "(2) Rules of procedure. The Supreme Court shall have exclusive authority to  
29 make rules of procedure and practice for the appellate division. The General  
30 Assembly shall have authority to make rules of procedure and practice for  
31 the Superior Court and District Court divisions, and the General Assembly  
32 may delegate this authority to the Supreme Court. No rule of procedure or  
33 practice shall abridge substantive rights or abrogate or limit the right of trial  
34 by jury. If the General Assembly should delegate to the Supreme Court the  
35 rule-making power, the General Assembly may, nevertheless, alter, amend,  
36 or repeal any rule of procedure or practice adopted by the Supreme Court for  
37 the Superior Court or District Court divisions.

38 **"Sec. 12.** Waiver of jury trial. In all issues of fact joined in any court, the parties in any  
39 civil case may waive the right to have the same determined by a jury; in which case the finding  
40 of the judge upon the facts shall have the force and effect of a verdict by a jury.

41 **"Sec. 13.** Administration. The General Assembly shall provide for an administrative office  
42 of the courts to carry out the provisions of this Article.

43 **"Sec. 14.** Term of office and election of Justices of Supreme Court and Judges of Superior  
44 Court. Justices of the Supreme Court and regular Judges of the Superior Court shall be elected  
45 by the qualified voters and shall hold office for terms of eight years and until their successors  
46 are elected and qualified. Justices of the Supreme Court shall be elected by the qualified voters  
47 of the State. Regular Judges of the Superior Court may be elected by the qualified voters of the  
48 State or by the voters of their respective districts, as the General Assembly may provide.

49 **"Sec. 15.** Removal of judges and clerks.

50 "(1) Justices of Supreme Court and Judges of Superior Court. Any Justice of the  
51 Supreme Court or Judge of the Superior Court may be removed from office

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

7 "(2) District Judges and Magistrates. The General Assembly shall provide by  
8 general law for the removal of District Judges and Magistrates for  
9 misconduct or mental or physical incapacity.

10 "(3) Clerks. Any Clerk of the Superior Court may be removed from office for  
11 misconduct or mental or physical incapacity by the senior regular resident  
12 Superior Court Judge serving the county. Any Clerk against whom  
13 proceedings are instituted shall receive written notice of the charges against  
14 him at least ten days before the hearing upon the charges. Clerks of District  
15 Courts shall be removed for such causes and in such manner as the General  
16 Assembly may provide by general law. Any clerk so removed from office  
17 shall be entitled to an appeal as provided by law.

18 **"Sec. 16. Solicitors and solicitorial districts.**

19 "(1) Solicitors. The General Assembly shall, from time to time, divide the State  
20 into a convenient number of solicitorial districts, for each of which a  
21 Solicitor shall be chosen for a term of four years by the qualified voters  
22 thereof, as is prescribed for members of the General Assembly. When the  
23 Attorney General determines that there is serious imbalance in the work  
24 loads of the Solicitors, or that there is other good cause, he shall recommend  
25 redistricting to the General Assembly. The Solicitor shall advise the officers  
26 of justice in his district, be responsible for the prosecution on behalf of the  
27 State of all criminal actions in the Superior Courts of his district, perform  
28 such duties related to appeals therefrom as the Attorney General may  
29 require, and perform such other duties as the General Assembly may  
30 prescribe.

31 "(2) Prosecution in District Court division. Criminal actions in the District Court  
32 division shall be prosecuted in such manner as the General Assembly may  
33 prescribe by general law uniformly applicable in every local court district of  
34 the State.

35 **"Sec. 17. Vacancies.** Unless otherwise provided in this Article, all vacancies occurring in  
36 the offices provided for by this Article shall be filled by appointment of the Governor, and the  
37 appointees shall hold their places until the next election for members of the General Assembly  
38 that is held more than thirty days after such vacancy occurs, when elections shall be held to fill  
39 such offices: Provided, that when the unexpired term of any of the offices named in this Article  
40 of the Constitution in which such vacancy has occurred, and in which it is herein provided that  
41 the Governor shall fill the vacancy, expires on the first day of January succeeding the next  
42 election for members of the General Assembly, the Governor shall appoint to fill that vacancy  
43 for the unexpired term of the office. If any person elected or appointed to any of said offices  
44 shall neglect and fail to qualify, such office shall be appointed to, held, and filled as provided in  
45 case of vacancies occurring therein. All incumbents of said offices shall hold until their  
46 successors are qualified.

47 **"Sec. 18. Revenues and expenses of the judicial department.** The General Assembly shall  
48 provide for the establishment of a schedule of court fees and costs which shall be uniform  
49 throughout the State within each division of the General Court of Justice. The operating  
50 expenses of the judicial department, other than compensation to process servers and other  
51 locally paid non-judicial officers, shall be paid from State funds.

1       **Sec. 19.** Fees, salaries, and emoluments. The General Assembly shall prescribe and  
2 regulate the fees, salaries, and emoluments of all officers provided for in this Article; but the  
3 salaries of judges shall not be diminished during their continuance in office. In no case shall the  
4 compensation of any judge or magistrate be dependent upon his decision or upon the collection  
5 of costs.

6       **Sec. 20.** Effect of uniform general law requirement. Where the General Assembly is  
7 required by the provisions of this Article to enact only general laws uniformly applicable  
8 throughout the State or in every county or local court district thereof, no special, public-local,  
9 or private law shall be enacted relating to the subject-matter of those provisions, and every  
10 amendment or repeal of any law relating to such subject-matter shall also be general and  
11 uniform in its application and effect throughout the State.

12       **Sec. 21.** Schedule. Immediately upon the certification by the Governor to the Secretary of  
13 State of the amendments constituting this Article, the Supreme Court and the Superior Courts  
14 shall be incorporated within the General Court of Justice, as provided in this Article. All  
15 Justices of the Supreme Court and Judges of the Superior Court shall continue to serve as such  
16 within the General Court of Justice for the remainder of their respective terms.

17       "The statutes and rules governing procedure and practice in the Superior Courts and inferior  
18 courts, in force at the time the amendments constituting this Article are ratified by the people,  
19 shall continue in force until superseded or repealed by rules of procedure and practice adopted  
20 pursuant to Section 11(2) of this Article.

21       "Upon certification of the Governor to the Secretary of State of the amendments  
22 constituting this Article, the General Assembly shall proceed, as rapidly as practicable, to  
23 provide for the creation of local court districts and the establishment of District Courts therein;  
24 District Courts shall be established to serve every county of the State by not later than January  
25 1, 1971. As of January 1, 1971, all previously existing courts inferior to the Superior Court  
26 shall cease to exist, and cases pending in these courts shall be transferred as provided in the  
27 next succeeding paragraph of this Section. Until a District Court has been thus established to  
28 serve a county, all of the courts of that county, including the Superior Court, shall continue to  
29 be financed and the revenues of these courts shall continue to be paid as they were immediately  
30 prior to the certification of the amendments constituting this Article; and the laws and rules  
31 governing these courts and appeals from the inferior courts to the Superior Court shall continue  
32 in force and shall be deemed to comply with the provisions of this Article.

33       "As soon as a District Court shall have been established for a county, all of the provisions  
34 of this Article shall become fully effective with respect to the courts in that county, and all  
35 previously existing courts inferior to the Superior Court shall cease to exist. All cases pending  
36 in these inferior courts shall be transferred to the appropriate division of the General Court of  
37 Justice, and all records of these courts shall be transferred to the appropriate clerk's office  
38 pursuant to rule of the Supreme Court. Judges of these inferior courts, except mayors' courts  
39 and justice of the peace courts, shall become District Judges and shall serve as such for  
40 remainders of their respective terms.

41       "As soon as a District Court has been established to serve every county of the State, all of  
42 the provisions of this Article shall become fully effective throughout the State."

43       **Sec. 2.** The Constitution of North Carolina is amended by renumbering Article I,  
44 Section 37, as Article I, Section 38, and by inserting in Article I an additional Section, to be  
45 designated Section 37, which shall follow immediately after Section 36, and which shall read as  
46 follows:

47       **Sec. 37.** Treason against the State. Treason against the State shall consist only in levying  
48 war against it or adhering to its enemies, giving them aid and comfort. No person shall be  
49 convicted of treason unless on the testimony of two witnesses to the same overt act, or on  
50 confession in open court. No conviction of treason or attainder shall work corruption of blood  
51 or forfeiture."

1           **Sec. 3.** The Constitution of North Carolina is amended by striking from Article II,  
2 Section 29 thereof the words "relating to the establishment of courts inferior to the Superior  
3 Court; relating to the appointment of justices of the peace;" which follow immediately the word  
4 "resolution" in Section 29.

5           **Sec. 4.** The Constitution of North Carolina is amended by striking out Section 5 of  
6 Article VII, and by inserting a new Section 5 to read as follows:

7           **"Sec. 5.** Sheriffs. In each county a Sheriff shall be elected by the qualified voters thereof as  
8 is prescribed for members of the General Assembly, and shall hold his office for a period of  
9 four years. In case of a vacancy existing for any cause in any Sheriff's office, the governing  
10 authority of the county shall fill such vacancy by appointment for the unexpired term."

11           **Sec. 5.** The Constitution of North Carolina is amended by striking out Sections 6, 9,  
12 and 10 of Article VII, and renumbering the succeeding Sections of Article VII appropriately.

13           **Sec. 6.** The Constitution of North Carolina is amended by rewriting and  
14 renumbering Article VII, Section 13 thereof to read as follows:

15           **"Sec. 10.** Powers of General Assembly over municipal corporations. The General  
16 Assembly shall have full power by statute to modify, change, or abrogate any and all of the  
17 provisions of this Article, and substitute others in their place, except Sections 5, 6, 7, and 9."

18           **Sec. 7.** The Constitution of North Carolina is amended by rewriting Article XIV,  
19 Section 7, thereof to read as follows:

20           **"Sec. 7.** Dual office-holding. No person who shall hold any office or place of trust or profit  
21 under the United States or any department thereof, or under this State, or under any other state  
22 or government, shall hold or exercise any other office or place of trust or profit under the  
23 authority of this State, or be eligible to a seat in either house of the General Assembly:  
24 Provided, that nothing herein contained shall extend to officers in the militia, notaries public,  
25 commissioners of public charities, or commissioners for special purposes."

26           **Sec. 8.** The amendments set out in Sections 1 through 7 of this Act shall be  
27 submitted to the qualified voters of the State at the next general election. Voting on these  
28 amendments shall be conducted under the laws now governing general elections in this State.

29           **Sec. 9.** In such election the voters favoring these amendments shall vote ballots on  
30 which shall be printed or written the words: "FOR constitutional amendments revising the  
31 structure and functioning of the Judicial Department of North Carolina"; and those opposed  
32 shall vote ballots on which shall be printed or written the words: "AGAINST constitutional  
33 amendments revising the structure and functioning of the Judicial Department of North  
34 Carolina."

35           **Sec. 10.** If a majority of the votes cast thereon be in favor of these amendments, the  
36 Governor shall certify the amendments under the Great Seal of the State to the Secretary of  
37 State, who shall enroll the amendments so certified among the permanent records of his office,  
38 and the amendments so certified shall be in full force and effect from and after the date of  
39 certification.

40           **Sec. 11.** All laws and clauses of laws in conflict with this Act are hereby repealed.

41           **Sec. 12.** This Act shall take effect immediately upon its ratification.

42           In the General Assembly read three times and ratified, this the 2nd day of May,  
43 1961.