

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE BILL 969

Short Title: Constit. Amend./Magistrates' Terms.

(Public)

Sponsors: Representative Warner.

Referred to: Judiciary II.

April 9, 2003

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CONSTITUTION OF NORTH CAROLINA TO
CHANGE THE TERM OF OFFICE OF MAGISTRATES.

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 ~~for a term of two years,~~ 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. 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. 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 unexpired term in the manner provided for original appointment to the ~~office.~~ office, unless otherwise provided by the General Assembly."

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

1 "[] FOR [] AGAINST

2 Constitutional amendment to provide for the first term of office for
3 magistrates of the General Court of Justice to be two years and for subsequent terms to
4 be four years."

5 **SECTION 3.** If a majority of the votes cast on the question are in favor of
6 the amendment set out in Section 1 of this act, the State Board of Elections shall certify
7 the amendment to the Secretary of State, who shall enroll the amendment so certified
8 among the permanent records of that office. The amendment becomes effective January
9 1, 2005.

10 **SECTION 4.** G.S. 7A-71 reads as rewritten:

11 **"§ 7A-171. Numbers; appointment and terms; vacancies.**

12 (a) The General Assembly shall establish a minimum and a maximum quota of
13 magistrates for each county. In no county shall the minimum quota be less than one.
14 The number of magistrates in a county, within the quota set by the General Assembly, is
15 determined by the Administrative Officer of the Courts, after consultation with the chief
16 district court judge for the district in which the county is located.

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

26 (b) Not earlier than the Tuesday after the first Monday nor later than the third
27 Monday in December of each even-numbered year, the clerk of the superior court shall
28 submit to the senior regular resident superior court judge of the district or set of districts
29 as defined in G.S. 7A-41.1(a) in which ~~his~~ the clerk's county is located the names of two
30 (or more, if requested by the judge) nominees for each magisterial office ~~in the~~
31 ~~minimum quota established~~ for the county. county for which the term of office of the
32 magistrate holding that position shall expire on December 31 of that year. Not later than
33 the fourth Monday in December, the senior regular resident superior court judge shall,
34 from the nominations submitted by the clerk of the superior court, appoint magistrates
35 to fill the ~~minimum quota established~~ positions for each county of ~~his~~ the judge's district
36 or set of districts. ~~The term of a magistrate so appointed shall be two years,~~
37 ~~commencing on the first day in January of the calendar year next ensuing the calendar~~
38 ~~year of appointment.~~

39 (c) ~~After the biennial appointment of the minimum quota of magistrates,~~
40 ~~additional magistrates in a number not to exceed, in total, the maximum quota~~
41 ~~established for each county may be appointed in the following manner. The chief~~
42 ~~district judge for the district court district in which the county is located, with the~~
43 ~~approval of the Administrative Officer of the Courts, may certify to the clerk of superior~~
44 ~~court that the minimum quota is insufficient for the efficient administration of justice~~

1 and that a specified additional number, not to exceed the maximum quota established
2 for the county, is required. Within 15 days after the receipt of this certification the clerk
3 of superior court shall submit to the senior regular resident superior court judge of the
4 district or set of districts as defined in G.S. 7A-41.1(a) in which his county is located the
5 names of two (or more, if requested by the judge) nominees for each additional
6 magisterial office. Within 15 days after receipt of the nominations the senior regular
7 resident superior court judge shall from the nominations submitted appoint magistrates
8 in the number specified in the certification. A magistrate so appointed shall serve a term
9 commencing immediately and expiring on the same day as the terms of office of
10 magistrates appointed to fill the minimum quota for the county. If an additional
11 magisterial office for a county is approved to commence on January 1 of an
12 odd-numbered year, the new position shall be filled as provided in subsection (b) of this
13 section. If the additional position takes effect at any other time, it is to be filled as
14 provided in subsection (d) of this section.

15 (d) Within 30 days after a vacancy in the office of magistrate occurs the clerk of
16 superior court shall submit to the senior regular resident superior court judge the names
17 of two (or more, if so requested by the judge) nominees for the office vacated. Within
18 15 days after receipt of the nominations the senior regular resident superior court judge
19 shall appoint from the nominations received a magistrate who shall take office
20 immediately and shall serve ~~for the remainder of the unexpired term.~~ until December 31
21 of the even-numbered year, and thereafter the position shall be filled as provided in
22 subsection (b) of this section."

23 **SECTION 5.** Sections 1 through 3 of this act are effective when they
24 become law. Section 4 of this act becomes effective only upon approval by the voters of
25 the constitutional amendment proposed in Section 2 of this act. If the constitutional
26 amendment proposed in that section is approved by the voters, Section 4 of this act
27 becomes effective January 1, 2005, and applies to appointments that take effect after
28 that date.