



HOUSE BILL 3: Nonpartisan Judicial Merit Commission.

2017-2018 General Assembly

Committee:	Senate Rules and Operations of the Senate	Date:	August 27, 2018
Introduced by:	Rep. Lewis	Prepared by:	Jessica Sammons
Analysis of:	Second Edition		Staff Attorney

OVERVIEW: *House Bill 3 would set forth an amendment to the North Carolina Constitution, to be voted on by the people on November 6, 2018, to do the following:*

- *Establish nonpartisan judicial merit commissions for the nomination and recommendation of nominees to fill vacancies in the office of Justice or Judge of the General Court of Justice.*
- *Provide that bills which recommend nominees to the Governor or elect a nominee to fill a judicial vacancy, and containing no other matter, are not subject to gubernatorial veto.*

CURRENT LAW:

Article IV, Section 19 of the North Carolina Constitution provides for the filling of vacancies for Justice of the Supreme Court, Judge of the Court of Appeals, Superior Court Judge, and District Attorneys by appointment of the Governor.

Sec. 19. Vacancies.

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

Article IV, Section 10 of the North Carolina Constitution authorizes the General Assembly to legislate the process for filling vacancies for District Court Judge. Vacancies in the office of district court judge are filled for the unexpired term by appointment of the Governor. The bar of the judicial district is to nominate, by vote of the bar members who reside in the district, five persons who are residents of the judicial district and who are duly authorized to practice law in the district for consideration by the Governor. Prior to filling the vacancy, the Governor must give due consideration to the nominations provided by the judicial district bar. G.S. 163A-717 and G.S. 7A-142.

For vacancies in the office of district attorney, the vacancy is filled by appointment of the Governor. The appointee holds office until the next election for members of the General Assembly that is held more than 60 days after the vacancy occurs, at which time an election is held to fill the unexpired term of the office.

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If the unexpired term of the office expires on the first day of January succeeding the next election for members of the General Assembly, the Governor appoints to fill that vacancy for the unexpired term of the office. G.S. 163A-718.

BILL ANALYSIS:

Section 1 of the bill would create a new Section 23 in Article IV of the North Carolina Constitution establishing a merit selection process for vacancies in the office of Justice or judge of the courts, if approved by the voters in the November 2018 election. If approved by the voters, the new Section 23 of Article IV would contain the following provisions:

- Provide that appointees hold the appointed office until the next election following the first election for members of the General Assembly held after the appointment occurs. *Current Constitutional provisions provide that the appointees hold the appointed office until the next election for members of the General Assembly.*
- Authorize the Chief Justice to appoint to fill a vacancy for an unexpired term of office if the vacancy occurs within 60 days of a general election in an even-numbered year and the term of office expires on December 31 of that same year. *Current Constitutional provisions provide that the Governor makes appointments to fill such vacancies.*
- Establish the Nonpartisan Judicial Merit Commission, which would consist of no more than nine members to be appointed by the Chief Justice of the Supreme Court, the Governor, and the General Assembly. The General Assembly is required to also provide for the establishment of local merit selection committees, also to be appointed by the Chief Justice of the Supreme Court, the Governor, and the General Assembly. In establishing those nonpartisan commissions, none of the three branches appointing authorities may be granted a majority of appointments.
- Except as otherwise indicated, provide for the following process to fill vacancies in the office of Justice or judge of the courts:
 - Individuals may be nominated by the people of the State to fill any judicial vacancy.
 - The nonpartisan commissions are to evaluate each nominee with respect to whether the nominee is qualified or not qualified to fill the vacant office and submit all evaluations to the General Assembly.
 - For each vacancy, the General Assembly must recommend to the Governor at least two nominees deemed qualified by a nonpartisan commission.
 - The Governor is to appoint the nominee he or she deems best qualified from the recommended nominees, within 10 days after the recommendations are presented by the General Assembly.
 - If the Governor fails to appoint one of the nominees within the 10 days, the General Assembly is to elect an appointee to fill the vacancy, in a joint session by a majority of each chamber present and voting.
 - If the Governor fails to appoint within 10 days, and the General Assembly has adjourned sine die or for more than 30 days, the Chief Justice is authorized to appoint a temporary appointee, serving until the Governor or the General Assembly act or the next even-numbered year election is held.

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Sections 2 – 5 of the bill would make conforming changes to the North Carolina Constitution, if approved by the voters in the November 2018 election, as follows:

- Amend Section 10 of Article IV of the North Carolina Constitution to remove authorization for the General Assembly to legislatively determine the process for filling vacancies for District Court Judge. **Section 2.**
- Create a new subdivision to Section 18 of Article IV of the North Carolina Constitution to provide that vacancies in the office of District Attorney would continue to be appointed by the Governor in the same manner currently provided in Section 19 of Article IV. **Section 3.**
- Repeal Section 19 of Article IV of the North Carolina Constitution, which currently provides for the filling of vacancies for Justice of the Supreme Court, Judge of the Court of Appeals, Superior Court Judge, and District Attorneys. **Section 4.**
- Amend subsection (5) of Section 22 of Article II of the North Carolina Constitution to provide that bills which recommend nominees to the Governor to fill a judicial vacancy or bills which elect a nominee to fill a judicial vacancy, and which contain no other matter, are not subject to gubernatorial veto. **Section 5.**

Sections 6 & 7 of the bill would direct that the proposed constitutional amendments be submitted to the voters of the State at the general election in November 2018. If a majority of the votes cast are in favor of the proposals, the bill would direct the Bipartisan State Board of Elections and Ethics Enforcement to certify and the Secretary of State to enroll the amendments.

EFFECTIVE DATE: If approved by the voters in the November 2018 election, the amendments to the North Carolina Constitution become effective upon certification and apply to vacancies occurring on or after November 6, 2018.