# GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2001

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# SENATE BILL 93 Judiciary I Committee Substitute Adopted 4/23/01

Short Title:	En Banc Procedure.	(Public)
Sponsors:		
Referred to:		
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#### February 7, 2001

1 A BILL TO BE ENTITLED

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

4 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

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

On or after December 15, 2000, the Governor shall appoint three additional judges to increase the number of judges to 15. Each judgeship shall not become effective until the temporary appointment is made, and each appointee shall serve from the date of qualification until January 1, 2005. Those judges' successors shall be elected in the 2004 general election and shall take office on January 1, 2005, to serve terms expiring December 31, 2012.

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

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

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

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

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

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

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

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

"(a) In any cause in which appeal is taken to the Court of Appeals, Appeals including any cause heard while the Court of Appeals was sitting en banc, except a cause appealed from the North Carolina Industrial Commission, the North Carolina State Bar pursuant to G.S. 84-28, the Property Tax Commission pursuant to G.S. 105-345, the Board of State Contract Appeals pursuant to G.S. 143-135.9, or the Commissioner of Insurance pursuant to G.S. 58-2-80, or a motion for appropriate relief or valuation of exempt property pursuant to G.S. 7A-28, the Supreme Court may, in its discretion, on motion of any party to the cause or on its own motion, certify the cause

- for review by the Supreme Court, either before or after it has been determined by the 1 2 Court of Appeals. A cause appealed to the Court of Appeals from any of the 3 administrative bodies listed in the preceding sentence may be certified in similar 4 fashion, but only after determination of the cause in the Court of Appeals. The effect of 5 such certification is to transfer the cause from the Court of Appeals to the Supreme 6 Court for review by the Supreme Court. If the cause is certified for transfer to the 7 Supreme Court before its determination in the Court of Appeals, review is not had in the 8 Court of Appeals but the cause is forthwith transferred for review in the first instance by 9 the Supreme Court. If the cause is certified for transfer to the Supreme Court after its 10 determination by the Court of Appeals, the Supreme Court reviews the decision of the 11 Court of Appeals.
  - Except in motions within the purview of G.S. 7A-28, the State may move for certification for review of any criminal cause, but only after determination of the cause by the Court of Appeals."
  - **SECTION 4.** The Supreme Court, in consultation with the Court of Appeals, is respectfully requested to adopt rules of procedure for en banc proceedings in the Court of Appeals.
    - **SECTION 5.** This act is effective when it becomes law.

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