

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 671

Short Title: Replacing Officials Called to Active Duty. (Public)

Sponsors: Representatives Martin, Killian (Primary Sponsors); Alexander, Blust, Brown, Church, Cleveland, Current, Daughtry, Folwell, Glazier, Gulley, Harrison, Moore, Ross, Saunders, Steen, Underhill, Wainwright, and Weiss.

Referred to: Homeland Security, Military and Veterans Affairs, if favorable, State Personnel.

March 15, 2007

A BILL TO BE ENTITLED

1 AN ACT TO CHANGE THE PROCEDURE BY WHICH A MEMBER OF THE
2 GENERAL ASSEMBLY OR ANY OTHER STATE, COUNTY, OR MUNICIPAL
3 OFFICIAL MAY OBTAIN A LEAVE OF ABSENCE WHEN THE MEMBER OR
4 OFFICIAL IS CALLED TO ACTIVE DUTY IN THE ARMED FORCES OR
5 NATIONAL GUARD; AND CHANGING THE PROCEDURES BY WHICH
6 TEMPORARY OFFICIALS ARE APPOINTED TO REPLACE MEMBERS OF
7 THE GENERAL ASSEMBLY CALLED TO ACTIVE DUTY IN THE ARMED
8 FORCES OR NATIONAL GUARD.
9

10 The General Assembly of North Carolina enacts:

11 **SECTION 1.** G.S. 128-39 reads as rewritten:

12 "**§ 128-39. Leaves of absence for State ~~officials~~officials for protracted illness or**
13 **other reason.**

14 Any elective or appointive State official may obtain leave of absence from ~~his duties~~
15 ~~for military or naval service, protracted illness,~~the official's duties for protracted illness
16 or other reason satisfactory to the Governor, for such period as the Governor may
17 designate. ~~Such~~The leave shall be obtained only upon application by the official and
18 with the consent of the Governor. The official shall receive no salary during the period
19 of leave unless the leave of absence is granted by reason of protracted illness, in which
20 event the granting of a leave of absence shall not ~~operate to deprive any such~~deprive the
21 official of the benefits of cumulative sick leave to which ~~he~~the official may be entitled
22 under rules and regulations adopted pursuant to G.S. 143-37 or to which he may
23 otherwise be entitled by law. The period of leave may be extended upon application to
24 and with the approval of the Governor if the reason for the original leave still exists, and
25 it may be shortened if the ~~said~~ reason shall unexpectedly terminate: Provided, that no

1 leave or extension thereof shall operate to extend the term of office of any official
2 beyond the period for which ~~he~~the official was elected or appointed. If, by reason of the
3 length of the period of absence or the nature of the duties of the official, the Governor
4 deems it necessary, the Governor may appoint any citizen of the State, without regard to
5 residence or district, as ~~acting official or substitute~~a temporary replacement for the
6 period of the official's leave of absence, ~~such appointee to~~absence. This appointee shall
7 have all the authority, duties, perquisites, and emoluments of his principalthe official
8 temporarily replaced."

9 **SECTION 2.** Chapter 128 of the General Statutes is amended by adding a
10 new section to read:

11 **"§ 128-39A. Leaves of absence for State officials for military or naval service.**

12 (a) Any elective or appointive State official may obtain leave of absence from the
13 official's duties when the official enters active duty in the armed forces of the United
14 States or the North Carolina National Guard as a result of being voluntarily or
15 involuntarily activated, drafted, or otherwise called to duty. The official shall receive no
16 salary during the period of leave. No vacancy is created by a State official obtaining a
17 leave of absence under this section.

18 (b) If the official will be on active duty for a period of at least 30 days, a leave of
19 absence may be obtained and a temporary replacement for the official may be appointed
20 in the following manner:

21 (1) If the official is not a member of the General Assembly:

- 22 a. Leave of absence shall be obtained by filing a copy of the
23 official's active duty orders with the Office of the Governor.
24 b. G.S. 128-39 shall provide the procedure for selecting a
25 temporary replacement official.

26 (2) If the official is a member of the General Assembly:

- 27 a. Leave of absence shall be obtained by filing a copy of the
28 official's active duty orders with the clerk of the house of the
29 General Assembly of which the official is a member.
30 b. The Governor shall select a person to serve as the temporary
31 replacement representative or senator. The Governor's selection
32 shall be all of the following:
33 1. A resident of the legislative district represented by the
34 legislator being temporarily replaced.
35 2. A member of the same political party as the legislator
36 being temporarily replaced.

37 The Governor's selection is subject to approval by a majority
38 vote of the appropriate house of the General Assembly. The
39 person selected must be qualified for office under Section 6 of
40 Article II of the North Carolina Constitution if a senator, or
41 Section 7 of Article II of the North Carolina Constitution if a
42 representative.

1 (c) If the official will be on active duty for a period of less than 30 days, a
2 temporary replacement official shall not be appointed, even if a leave of absence is
3 obtained.

4 (d) The Governor shall appoint the temporary replacement to begin service on
5 the date specified in writing by the official being temporarily replaced as the date the
6 official will enter active military service, or as soon as practicable thereafter. A
7 temporary replacement official shall have all the authority, duties, perquisites, and
8 emoluments of the official temporarily replaced.

9 (e) The term of the temporary replacement official appointed under this section
10 shall terminate as soon as any of the following occurs:

11 (1) On the third day after the last day of active duty status of the official
12 who is temporarily replaced.

13 (2) The clerk of the appropriate house of the General Assembly receives
14 written notice from the official who is temporarily replaced that the
15 official is ready and able to resume the duties of his or her office.

16 (3) The term of office of the official who is temporarily replaced expires."

17 **SECTION 3.** G.S. 128-40 reads as rewritten:

18 **"§ 128-40. Leaves of absence for county ~~officials~~officials for protracted illness or**
19 **other reason.**

20 Any elective or appointive county official may obtain leave of absence from ~~his~~
21 ~~duties for military or naval service, protracted illness,~~the official's duties for protracted
22 illness or other reason satisfactory to the board of county commissioners of his county,
23 for such period as the board of county commissioners may designate. ~~Such~~The leave
24 shall be obtained only upon application by the official and with the consent of the board
25 of county commissioners. The official shall receive no salary during the period of leave
26 unless the leave of absence is granted by reason of protracted illness, in which event the
27 granting of a leave of absence shall not ~~operate to deprive any such~~deprive the official
28 of the benefits of any sick leave to which ~~he~~the official may be entitled by law. The
29 period of leave may be extended upon application to and with the approval of the board
30 of county commissioners if the reason for the original leave still exists, and it may be
31 shortened if the ~~said~~ reason shall unexpectedly terminate: Provided, that no leave or
32 extension thereof shall operate to extend the term of office of any official beyond the
33 period for which ~~he~~the official was elected or appointed. If, by reason of the length of
34 the period of absence or the nature of the duties of the official, the board of county
35 commissioners deems it necessary, the board may appoint any qualified citizen of the
36 county as ~~acting official or substitute~~a temporary replacement for the period of the
37 official's leave of absence, ~~such appointee to~~absence. This appointee shall have all the
38 authority, duties, perquisites, and emoluments of ~~his principal~~the official temporarily
39 replaced."

40 **SECTION 4.** G.S. 128-41 reads as rewritten:

41 **"§ 128-41. Leaves of absence for municipal ~~officers~~officials for protracted illness**
42 **or other reason.**

43 Any elective or appointive municipal official may obtain leave of absence from ~~his~~
44 ~~duties for military or naval service, protracted illness,~~the official's duties for protracted

1 illness or other reason satisfactory to the governing body of the municipality, for such
2 period as the governing body may designate. ~~Such~~ The leave shall be obtained only
3 upon application by the official and with the consent of the governing body. The official
4 shall receive no salary during the period of leave unless the leave of absence is granted
5 by reason of protracted illness, in which event the granting of a leave of absence shall
6 not ~~operate to deprive any such~~ deprive the official of the benefits of any sick leave to
7 which ~~he~~ the official may be entitled by law. The period of leave may be extended upon
8 application to and with the approval of the governing body of the municipality if the
9 reason for the original leave still exists, and it may be shortened if the ~~said~~ reason shall
10 unexpectedly terminate: Provided, that no leave or extension thereof shall operate to
11 extend the term of office of any official beyond the period for which ~~he~~ the official was
12 elected or appointed. If, by reason of the length of the period of absence or the nature of
13 the duties of the official, the governing body deems it necessary, it may appoint any
14 qualified citizen of the municipality as ~~acting official or substitute~~ a temporary
15 replacement for the period of the official's leave of absence, ~~such appointee to~~ absence.
16 This appointee shall have all the authority, duties, perquisites, and emoluments of ~~his~~
17 principal the official temporarily replaced."

18 **SECTION 5.** Chapter 128 of the General Statutes is amended by adding a
19 new section to read:

20 **"§ 128-42. Leaves of absence for county or municipal officials for military or naval**
21 **service.**

22 (a) Any elective or appointive county or municipal official may obtain leave of
23 absence from the official's duties when the official enters active duty in the armed forces
24 of the United States or the North Carolina National Guard as a result of being
25 voluntarily or involuntarily activated, drafted, or otherwise called to duty. The official
26 shall receive no salary during the period of leave. No vacancy is created by a county or
27 municipal official obtaining a leave of absence under this section.

28 (b) If the official will be on active duty for a period of at least 30 days, a leave of
29 absence may be obtained and a temporary replacement for the official may be appointed
30 in the following manner:

31 (1) Leave of absence shall be obtained by placing a copy of the official's
32 active duty orders with the clerk.

33 (2) G.S. 128-41 shall govern the procedure for selecting a temporary
34 replacement official if the official being temporarily replaced is a
35 municipal official, otherwise, G.S. 128-40 shall govern.

36 (c) If the official will be on active duty for a period of less than 30 days, a
37 temporary replacement official shall not be appointed, even if a leave of absence is
38 obtained.

39 (d) The appropriate authority under G.S. 128-40 or G.S. 128-41 shall appoint the
40 temporary replacement to begin service on the date specified in writing by the official
41 being temporarily replaced as the date the official will enter active military service, or
42 as soon as practicable thereafter. A temporary replacement official shall have all the
43 authority, duties, perquisites, and emoluments of the official temporarily replaced.

1 (e) The term of the temporary replacement official appointed under this section
2 shall terminate as soon as any of the following occurs:

3 (1) On the third day after the last day of active duty status of the official
4 who is temporarily replaced.

5 (2) The clerk receives written notice from the official who is temporarily
6 replaced that the official is ready and able to resume the duties of his
7 or her office.

8 (3) The term of office of the official who is temporarily replaced expires.

9 (f) As used in this section, the term 'clerk' means the city clerk as defined in
10 G.S. 160A-171 if the official being temporarily replaced is a municipal official, and
11 means the clerk to the board of county commissioners as defined in G.S. 153A-1(2) if
12 the official being temporarily replaced is a county official."

13 **SECTION 6.** This act becomes effective July 1, 2007.