

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

SESSION LAW 2007-432  
HOUSE BILL 671

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

The General Assembly of North Carolina enacts:

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

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

Any elective or appointive State official may obtain leave of absence from ~~his duties for military or naval service, protracted illness,~~the official's duties for protracted illness or other reason satisfactory to the Governor, for such period as the Governor may designate. Such ~~The~~ leave shall be obtained only upon application by the official and with the consent of the Governor. The official shall receive no salary during the period of leave unless the leave of absence is granted by reason of protracted illness, in which event the granting of a leave of absence shall not ~~operate to deprive any such~~deprive the official of the benefits of cumulative sick leave to which ~~he~~the official may be entitled under rules and regulations adopted pursuant to G.S. 143-37 or to which he may otherwise be entitled by law. The period of leave may be extended upon application to and with the approval of the Governor if the reason for the original leave still exists, and it may be shortened if the ~~said~~ reason shall unexpectedly terminate: Provided, that no leave or extension thereof shall operate to extend the term of office of any official beyond the period for which ~~he~~the official was elected or appointed. If, by reason of the length of the period of absence or the nature of the duties of the official, the Governor deems it necessary, the Governor may appoint any citizen of the State, without regard to residence or district, as ~~acting official or substitute~~a temporary replacement for the period of the official's leave of absence, such appointee to absence. This appointee shall have all the authority, duties, perquisites, and emoluments of his principal; the official temporarily replaced. The appointee shall possess all the qualifications required by law for holding the office for which the temporary replacement official is appointed."

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

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

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

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

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

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

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

- a. Leave of absence shall be obtained by filing a copy of the official's active duty orders with the clerk of the house of the General Assembly of which the official is a member.
- b. The Governor shall select a person to serve as the temporary replacement representative or senator. If the appropriate party executive committee recommends an eligible person within 14 days of the occurrence of the vacancy, the appointment shall be made under the same procedure as provided by G.S. 163-11. If a recommendation is not made on a timely basis, the Governor may appoint any person who is both:
  1. A resident of the legislative district represented by the legislator being temporarily replaced.
  2. A member of the same political party as the legislator being temporarily replaced.

In any case, the person appointed must be eligible to serve under Section 6 of Article II of the North Carolina Constitution if a senator or Section 7 of Article II of the North Carolina Constitution if a representative.

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

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

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

- (1) On the third day after the last day of active duty status of the official who is temporarily replaced.
- (2) The clerk of the appropriate house of the General Assembly receives written notice from the official who is temporarily replaced that the official is ready and able to resume the duties of his or her office.
- (3) The term of office of the official who is temporarily replaced expires."

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

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

Any elective or appointive county official may obtain leave of absence from ~~his duties for military or naval service, protracted illness,~~the official's duties for protracted illness or other reason satisfactory to the board of county commissioners of his county, for such period as the board of county commissioners may designate. ~~Such~~The leave shall be obtained only upon application by the official and with the consent of the board of county commissioners. The official shall receive no salary during the period of leave unless the leave of absence is granted by reason of protracted illness, in which event the granting of a leave of absence shall not ~~operate to deprive any such~~deprive the official of the benefits of any sick leave to which ~~he~~the official may be entitled by law. The

period of leave may be extended upon application to and with the approval of the board of county commissioners if the reason for the original leave still exists, and it may be shortened if the ~~said~~ reason shall unexpectedly terminate: Provided, that no leave or extension thereof shall operate to extend the term of office of any official beyond the period for which ~~he~~ the official was elected or appointed. If, by reason of the length of the period of absence or the nature of the duties of the official, the board of county commissioners deems it necessary, the board may appoint any qualified citizen of the county as ~~acting official or substitute~~ a temporary replacement for the period of the official's leave of absence, ~~such appointee to absence.~~ This appointee shall have all the authority, duties, perquisites, and emoluments of his principal ~~the official temporarily replaced.~~ The appointee shall possess all the qualifications required by law for holding the office for which the temporary replacement official is appointed."

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

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

Any elective or appointive municipal official may obtain leave of absence from ~~his duties for military or naval service, protracted illness,~~ the official's duties for protracted illness or other reason satisfactory to the governing body of the municipality, for such period as the governing body may designate. ~~Such~~ The leave shall be obtained only upon application by the official and with the consent of the governing body. The official shall receive no salary during the period of leave unless the leave of absence is granted by reason of protracted illness, in which event the granting of a leave of absence shall not operate to ~~deprive any such~~ deprive the official of the benefits of any sick leave to which ~~he~~ the official may be entitled by law. The period of leave may be extended upon application to and with the approval of the governing body of the municipality if the reason for the original leave still exists, and it may be shortened if the ~~said~~ reason shall unexpectedly terminate: Provided, that no leave or extension thereof shall operate to extend the term of office of any official beyond the period for which ~~he~~ the official was elected or appointed. If, by reason of the length of the period of absence or the nature of the duties of the official, the governing body deems it necessary, it may appoint any qualified citizen of the municipality as ~~acting official or substitute~~ a temporary replacement for the period of the official's leave of absence, ~~such appointee to absence.~~ This appointee shall have all the authority, duties, perquisites, and emoluments of his principal ~~the official temporarily replaced.~~ The appointee shall possess all the qualifications required by law for holding the office for which the temporary replacement official is appointed."

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

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

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

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

- (1) Leave of absence shall be obtained by placing a copy of the official's active duty orders with the clerk.
- (2) G.S. 128-41 shall govern the procedure for selecting a temporary replacement official if the official being temporarily replaced is a municipal official; otherwise, G.S. 128-40 shall govern.

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

(d) The appropriate authority under G.S. 128-40 or G.S. 128-41 shall appoint the temporary replacement to begin service on the date specified in writing by the official being temporarily replaced as the date the official will enter active military service, or as soon as practicable thereafter. A temporary replacement official shall have all the authority, duties, perquisites, and emoluments of the official temporarily replaced. The appointee shall possess all the qualifications required by law for holding the office for which the temporary replacement official is appointed.

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

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

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

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

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

**SECTION 6.** This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 2<sup>nd</sup> day of August, 2007.

s/ Marc Basnight  
President Pro Tempore of the Senate

s/ Joe Hackney  
Speaker of the House of Representatives

s/ Michael F. Easley  
Governor

Approved 11:01 a.m. this 23<sup>rd</sup> day of August, 2007