

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 671
Committee Substitute Favorable 4/2/07
Senate State & Local Government Committee Substitute Adopted 7/25/07

Short Title: Replacing Officials Called to Active Duty.

(Public)

Sponsors:

Referred to:

March 15, 2007

A BILL TO BE ENTITLED

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

1 deems it necessary, the Governor may appoint any citizen of the State, without regard to
2 residence or district, as ~~acting official or substitute~~ a temporary replacement for the
3 period of the official's leave of absence, ~~such appointee to absence~~. This appointee shall
4 have all the authority, duties, perquisites, and emoluments of ~~his principal~~ the official
5 temporarily replaced. The appointee shall possess all the qualifications required by law
6 for holding the office for which the temporary replacement official is appointed."

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

9 **"§ 128-39A. Leaves of absence for State officials for military or naval service.**

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

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

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

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

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

- 25 a. Leave of absence shall be obtained by filing a copy of the
26 official's active duty orders with the clerk of the house of the
27 General Assembly of which the official is a member.
28 b. The Governor shall select a person to serve as the temporary
29 replacement representative or senator under the same procedure
30 as provided by G.S. 163-11. The person selected must be
31 qualified for office under Section 6 of Article II of the North
32 Carolina Constitution if a senator or Section 7 of Article II of
33 the North Carolina Constitution if a representative.

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

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

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

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

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

8 "**§ 128-40. Leaves of absence for county ~~officials.~~officials for protracted illness or**
9 **other reason.**

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

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

32 "**§ 128-41. Leaves of absence for municipal ~~officers.~~officials for protracted illness**
33 **or other reason.**

34 Any elective or appointive municipal official may obtain leave of absence from ~~his~~
35 ~~duties for military or naval service, protracted illness,~~the official's duties for protracted
36 illness or other reason satisfactory to the governing body of the municipality, for such
37 period as the governing body may designate. ~~Such~~The leave shall be obtained only
38 upon application by the official and with the consent of the governing body. The official
39 shall receive no salary during the period of leave unless the leave of absence is granted
40 by reason of protracted illness, in which event the granting of a leave of absence shall
41 not ~~operate to deprive any such~~deprive the official of the benefits of any sick leave to
42 which ~~he~~the official may be entitled by law. The period of leave may be extended upon
43 application to and with the approval of the governing body of the municipality if the
44 reason for the original leave still exists, and it may be shortened if the ~~said~~ reason shall

1 unexpectedly terminate: Provided, that no leave or extension thereof shall operate to
2 extend the term of office of any official beyond the period for which ~~he~~the official was
3 elected or appointed. If, by reason of the length of the period of absence or the nature of
4 the duties of the official, the governing body deems it necessary, it may appoint any
5 qualified citizen of the municipality as ~~acting official or substitute~~a temporary
6 replacement for the period of the official's leave of absence, such appointee to absence.
7 This appointee shall have all the authority, duties, perquisites, and emoluments of his
8 principal~~the official~~ temporarily replaced. The appointee shall possess all the
9 qualifications required by law for holding the office for which the temporary
10 replacement official is appointed."

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

13 **§ 128-42. Leaves of absence for county or municipal officials for military or naval**
14 **service.**

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

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

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

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

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

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

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

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

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

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

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

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