

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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HOUSE DRH80114-MD-20B (2/1)

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

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Sponsors: Representatives Martin and Killian (Primary Sponsors).

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Referred to:

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A BILL TO BE ENTITLED

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

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  
26 leave or extension thereof shall operate to extend the term of office of any official  
27 beyond the period for which ~~he~~the official was elected or appointed. If, by reason of the

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

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 appointed  
18 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. The Governor's selection  
30 shall be all of the following:  
31 1. A resident of the legislative district represented by the  
32 legislator being temporarily replaced.  
33 2. A member of the same political party as the legislator  
34 being temporarily replaced.

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

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

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

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

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

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

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

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

15 **"§ 128-40. Leaves of absence for county ~~officials.~~officials for protracted illness or**  
16 **other reason.**

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

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

38 **"§ 128-41. Leaves of absence for municipal ~~officers.~~officials for protracted illness**  
39 **or other reason.**

40       Any elective or appointive municipal official may obtain leave of absence from ~~his~~  
41 ~~duties for military or naval service, protracted illness,~~the official's duties for protracted  
42 illness or other reason satisfactory to the governing body of the municipality, for such  
43 period as the governing body may designate. ~~Such~~The leave shall be obtained only  
44 upon application by the official and with the consent of the governing body. The official

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

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

17 **"§ 128-42. Leaves of absence for county or municipal officials for military or naval**  
18 **service.**

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

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

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

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

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

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

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

43 (1) On the third day after the last day of active duty status of the official  
44 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 becomes effective July 1, 2007.