

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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HOUSE BILL 671  
Committee Substitute Favorable 4/2/07

Short Title: Replacing Officials Called to Active Duty.

(Public)

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Sponsors:

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Referred to:

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March 15, 2007

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 TO CHANGE 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  
28 length of the period of absence or the nature of the duties of the official, the Governor  
29 deems it necessary, the Governor may appoint any citizen of the State, without regard to

1 residence or district, as ~~acting official or substitute~~ a temporary replacement for the  
2 period of the official's leave of absence, such appointee ~~to~~ absence. This appointee shall  
3 have all the authority, duties, perquisites, and emoluments of ~~his principal~~ the official  
4 temporarily replaced. The appointee shall possess all the qualifications required by law  
5 for holding the office for which the temporary replacement official is appointed."

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

8 **"§ 128-39A. Leaves of absence for State officials for military or naval service.**

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

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

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

19 a. Leave of absence shall be obtained by filing a copy of the  
20 official's active duty orders with the Office of the Governor.

21 b. G.S. 128-39 shall provide the procedure for selecting a  
22 temporary replacement official.

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

24 a. Leave of absence shall be obtained by filing a copy of the  
25 official's active duty orders with the clerk of the house of the  
26 General Assembly of which the official is a member.

27 b. The Governor shall select a person to serve as the temporary  
28 replacement representative or senator. The Governor's selection  
29 shall be all of the following:

30 1. A resident of the legislative district represented by the  
31 legislator being temporarily replaced.

32 2. A member of the same political party as the legislator  
33 being temporarily replaced.

34 The person selected must be qualified for office under Section 6  
35 of Article II of the North Carolina Constitution if a senator or  
36 Section 7 of Article II of the North Carolina Constitution if a  
37 representative.

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

41 (d) The Governor shall appoint the temporary replacement to begin service on  
42 the date specified in writing by the official being temporarily replaced as the date the  
43 official will enter active military service, or as soon as practicable thereafter. A

1 temporary replacement official shall have all the authority, duties, perquisites, and  
2 emoluments of the official temporarily replaced.

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

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

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

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

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

12 "**§ 128-40. Leaves of absence for county ~~officials.~~officials for protracted illness or**  
13 **other reason.**

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

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

36 "**§ 128-41. Leaves of absence for municipal ~~officers.~~officials for protracted illness**  
37 **or other reason.**

38 Any elective or appointive municipal official may obtain leave of absence from ~~his~~  
39 ~~duties for military or naval service, protracted illness,~~the official's duties for protracted  
40 illness or other reason satisfactory to the governing body of the municipality, for such  
41 period as the governing body may designate. ~~Such~~The leave shall be obtained only  
42 upon application by the official and with the consent of the governing body. The official  
43 shall receive no salary during the period of leave unless the leave of absence is granted  
44 by reason of protracted illness, in which event the granting of a leave of absence shall

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

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  
27 appointed 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. The  
41 appointee shall possess all the qualifications required by law for holding the office for  
42 which the temporary replacement official is appointed.

43 (e) The term of the temporary replacement official appointed under this section  
44 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 receives written notice from the official who is temporarily  
4           replaced that the official is ready and able to resume the duties of his  
5           or her office.  
6           (3) The term of office of the official who is temporarily replaced expires.  
7           (f) As used in this section, the term 'clerk' means the city clerk as defined in  
8           G.S. 160A-171 if the official being temporarily replaced is a municipal official and  
9           means the clerk to the board of county commissioners as defined in G.S. 153A-1(2) if  
10           the official being temporarily replaced is a county official."

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