

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 266

Short Title: Filling Vacancies in Local Office.

(Public)

Sponsors: Senator Clodfelter.

Referred to: Judiciary I.

March 9, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO STANDARDIZE THE PROCESS FOR FILLING OF VACANCIES IN LOCAL
3 OFFICES.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.(a)** G.S. 153A-27 is repealed.

6 **SECTION 1.(b)** G.S. 153A-27.1 reads as rewritten:

7 "**§ 153A-27.1. Vacancies on board of ~~commissioners in certain counties,~~ commissioners.**

8 (a) If a vacancy occurs on the board of commissioners, the remaining members of the
9 board shall appoint a qualified person to fill the vacancy. If the number of vacancies on the
10 board is such that a quorum of the board cannot be obtained, the chairman of the board shall
11 appoint enough members to make up a quorum, and the board shall then proceed to fill the
12 remaining vacancies. If the number of vacancies on the board is such that a quorum of the
13 board cannot be obtained and the office of chairman is vacant, the clerk of superior court of the
14 county shall fill the vacancies upon the request of any remaining member of the board or upon
15 the petition of any registered voters of the county.

16 (b) If the member being replaced was serving a two-year term, or if the member was
17 serving a four-year term and the vacancy occurs later than 60 days before the general election
18 held after the first two years of the term, the appointment to fill the vacancy is for the
19 remainder of the unexpired term. Otherwise, the term of the person appointed to fill the
20 vacancy extends to the first Monday in December next following the first general election held
21 more than 60 days after the day the vacancy occurs; at that general election, a person shall be
22 elected to the seat vacated for the remainder of the unexpired term.

23 (c) To be eligible for appointment to fill a vacancy, ~~a person must~~ if the person being
24 replaced was the nominee of a political party, the person must have been eligible to have filed
25 as a candidate of that party at the most recent election for that office. ~~(i) be a member of the~~
26 ~~same political party as the member being replaced, if that member was elected as the nominee~~
27 ~~of a political party, and (ii) be a resident of the same district as the member being replaced, if~~
28 ~~the county is divided into electoral districts. If the person being replaced was not the nominee~~
29 of a political party, then the person appointed to fill the vacancy must currently be eligible for
30 election to that office.

31 (d) If the member who vacated the seat was elected as a nominee of a political party,
32 the board of commissioners, the chairman of the board, or the clerk of superior court, as the
33 case may be, shall consult the county executive committee of the appropriate political party
34 before filling the vacancy, and if the party makes three or more unranked nominations, shall
35 appoint the person one of the persons recommended by the county executive committee of the
36 political party of which the commissioner being replaced was a member, if the party makes a
37 recommendation within 30 days of the occurrence of the vacancy. In order for the list to qualify



1 under this subsection, all nominees must be eligible for the office under subsection (c) of this
2 section. If the party makes fewer than three eligible nominations, the appointing authority may
3 appoint any person eligible under subsection (c) of this section.

4 (e) Whenever because of G.S. 153A-58(3)b. or because of any local act, only the
5 qualified voters of an area which is less than the entire county were eligible to vote in the
6 general election for the member whose seat is vacant, the appointing authority must accept the
7 recommendation only if the county executive committee restricted voting to committee
8 members who represent precincts all or part of which were within the territorial area of the
9 district of the county commissioner.

10 (f) The provisions of any local act which provides that a county executive committee of
11 a political party shall fill any vacancy on a board of county commissioners are repealed.

12 (g) ~~Counties subject to this section are not subject to G.S. 153A-27.~~

13 (h) ~~This section shall apply only in the following counties: Alamance, Alexander,~~
14 ~~Alleghany, Avery, Beaufort, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Carteret,~~
15 ~~Cherokee, Clay, Cleveland, Cumberland, Dare, Davidson, Davie, Forsyth, Graham, Guilford,~~
16 ~~Haywood, Henderson, Hyde, Jackson, Lee, Lincoln, Macon, Madison, McDowell,~~
17 ~~Mecklenburg, Moore, Pender, Polk, Randolph, Rockingham, Rutherford, Sampson, Stanly,~~
18 ~~Stokes, Transylvania, Wake, and Yancey."~~

19 **SECTION 1.(c)** Section 12 of Chapter 763 of the 1981 Session Laws is repealed.

20 **SECTION 2.** G.S. 161-5(a1) reads as rewritten:

21 "(a1) When a vacancy occurs from any cause in the office of register of deeds, the board
22 of county commissioners shall fill such vacancy by the appointment of a successor for the
23 unexpired term, who shall qualify and give bond as required by law. If the register of deeds was
24 elected as the nominee of a political party, the board of county commissioners shall consult the
25 county executive committee of that political party before filling the vacancy and if the party
26 makes three or more unranked nominations, shall appoint the person one of the persons
27 recommended by that committee, if the party makes a recommendation within 30 days of the
28 occurrence of the vacancy. In order for the list to qualify under this subsection, all nominees
29 must be eligible for the office under this subsection. To be eligible for appointment to fill a
30 vacancy, if the person being replaced was elected as the nominee of a political party, the person
31 must have been eligible to have filed as a candidate of that party at the most recent election for
32 that office. If the party makes fewer than three eligible nominations, the appointing authority
33 may appoint any person eligible under this subsection. If the person being replaced was not the
34 nominee of a political party, then the person appointed to fill the vacancy must currently be
35 eligible for election to that office."

36 **SECTION 3.(a)** G.S. 162-3 reads as rewritten:

37 **"§ 162-3. Sheriff may resign.**

38 Every sheriff may vacate his office by resigning the same to the board of county
39 commissioners of his county; and thereupon the board may as provided by G.S. 162-5.1
40 proceed to elect another sheriff."

41 **SECTION 3.(b)** G.S. 162-5 is repealed.

42 **SECTION 3.(c)** G.S. 162-5.1 reads as rewritten:

43 **"§ 162-5.1. Vacancy filled in certain counties; duties performed by coroner or chief**
44 **deputy.**

45 (a) If any vacancy occurs in the office of sheriff, the coroner of the county shall execute
46 all process directed to the sheriff until the board shall elect a sheriff to supply the vacancy for
47 the residue of the term, who shall possess the same qualifications, enter into the same bond, and
48 be subject to removal, as the sheriff regularly elected.

49 (b) If the sheriff were elected as a nominee of a political party, the board of
50 commissioners shall consult the county executive committee of that political party before
51 filling the vacancy, ~~and shall elect the person recommended by the county executive committee~~

1 of that party, if the party makes a recommendation within 30 days of the occurrence of the
2 ~~vacancy~~, and if the party within 30 days of the occurrence of the vacancy makes three or more
3 unranked nominations, shall appoint one of the persons recommended by that committee. In
4 order for the list to qualify under this subsection, all nominees must be eligible for the office
5 under this subsection. If the party makes fewer than three eligible nominations, the appointing
6 authority may appoint any person eligible under this subsection.

7 To be eligible for appointment to fill a vacancy, if the person being replaced was elected as
8 the nominee of a political party, the person must have been eligible to have filed as a candidate
9 of that party at the most recent election for that office. If the person being replaced was not the
10 nominee of a political party, then the person appointed to fill the vacancy must currently be
11 eligible for election to that office.

12 (c) If the board should fail to fill such vacancy, the coroner shall continue to discharge
13 the duties of sheriff until it shall be filled.

14 (d) In those counties where the office of coroner has been abolished, the chief deputy
15 sheriff, or if there is no chief deputy, then the senior deputy in years of service, shall perform
16 all the duties of the sheriff until the county commissioners appoint some person to fill the
17 unexpired term. In all counties the regular deputy sheriffs shall, during the interim of the
18 vacancy, continue to perform their duties with full authority.

19 ~~This section shall apply only in the following counties: Alamance, Alexander, Alleghany,~~
20 ~~Avery, Beaufort, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Carteret, Cherokee, Clay,~~
21 ~~Cleveland, Davidson, Davie, Edgecombe, Forsyth, Gaston, Graham, Guilford, Haywood,~~
22 ~~Henderson, Hyde, Jackson, Lee, Lincoln, Madison, McDowell, Mecklenburg, Moore, New~~
23 ~~Hanover, Onslow, Pender, Polk, Randolph, Richmond, Rockingham, Rutherford, Sampson,~~
24 ~~Stanly, Stokes, Surry, Transylvania, Wake, and Yancey."~~

25 **SECTION 4.** G.S. 115C-37.1 reads as rewritten:

26 **"§ 115C-37.1. Vacancies in offices of county boards elected on partisan basis in certain**
27 **counties.**

28 (a) All vacancies in the membership of county boards of education which are elected by
29 public or local act on a partisan basis shall be filled by appointment of the person, board, or
30 commission specified in the act, except that if the act specifies that appointment shall be made
31 by a party executive committee, then the appointment shall be made instead by the remaining
32 members of the board.

33 (b) If the vacating member was elected as the nominee of a political party, then the
34 person, board, or commission required to fill the vacancy shall consult with the county
35 executive committee of that party and appoint the person recommended by that party executive
36 committee, if the party executive committee makes a recommendation within 30 days of the
37 occurrence of the vacancy.

38 (c) Whenever only the qualified voters of less than the entire county were eligible to
39 vote for the member whose seat is vacant (either because the county administrative unit was
40 less than countywide or only residents of certain areas of the administrative unit could vote in
41 the general election for a district seat), the appointing authority must accept the
42 recommendation only if the county executive committee restricted voting to committee
43 members who represent precincts all or part of which were within the territory of the vacating
44 school board member.

45 (d) ~~This section shall apply only in the following counties: Alleghany, Brunswick,~~
46 ~~Graham, New Hanover, Vance, and Washington."~~

47 **SECTION 5.** G.S. 160A-63 reads as rewritten:

48 **"§ 160A-63. Vacancies.**

49 A vacancy that occurs in an elective office of a city shall be filled by appointment of the
50 city council. If the term of the office expires immediately following the next regular city
51 election, or if the next regular city election will be held within 90 days after the vacancy occurs,

1 the person appointed to fill the vacancy shall serve the remainder of the unexpired term.
 2 Otherwise, a successor shall be elected at the next regularly scheduled city election that is held
 3 more than 90 days after the vacancy occurs, and the person appointed to fill the vacancy shall
 4 serve only until the elected successor takes office. The elected successor shall then serve the
 5 remainder of the unexpired term. If the number of vacancies on the council is such that a
 6 quorum of the council cannot be obtained, the mayor shall appoint enough members to make up
 7 a quorum, and the council shall then proceed to fill the remaining vacancies. If the number of
 8 vacancies on the council is such that a quorum of the council cannot be obtained and the office
 9 of mayor is vacant, the Governor may fill the vacancies upon the request of any remaining
 10 member of the council, or upon the petition of any five registered voters of the city. Vacancies
 11 in appointive offices shall be filled by the same authority that makes the initial appointment.
 12 This section shall not apply to vacancies in cities that have not held a city election, levied any
 13 taxes, or engaged in any municipal functions for a period of five years or more.

14 In cities whose elections are conducted on a partisan basis, ~~a person appointed to fill a~~
 15 ~~vacancy in an elective office shall be a member of the same political party as the person whom~~
 16 ~~he replaces if that person was elected as the nominee of a political party. the city council shall~~
 17 consult the county executive committee of that political party before filling the vacancy, and if
 18 the party within 30 days of the occurrence of the vacancy makes three or more unranked
 19 nominations, shall appoint one of the persons recommended by that committee. In order for the
 20 list to qualify under this subsection, all nominees must be eligible for the office under this
 21 subsection. If the party makes fewer than three eligible nominations, the appointing authority
 22 may appoint any person eligible under this subsection. For the office of mayor or an at-large
 23 member of the city council, the appointing authority must accept the recommendation only if
 24 the county executive committee restricted voting to committee members who represent
 25 precincts all or part of which were within the territorial area of the city. Whenever because of a
 26 court order, G.S. 160A-101(6), or because of any local act, only the qualified voters of an area
 27 which is less than the entire city were eligible to vote in the municipal general election for the
 28 member whose seat is vacant, the appointing authority must accept the recommendation only if
 29 the county executive committee restricted voting to committee members who represent
 30 precincts all or part of which were within the territorial area of the district of the city council
 31 member.

32 To be eligible for appointment to fill a vacancy, if the person being replaced was elected as
 33 the nominee of a political party, the person shall have been eligible to have filed as a candidate
 34 of that party at the most recent election for that office. If the person being replaced was not the
 35 nominee of a political party, then the person appointed to fill the vacancy must currently be
 36 eligible for election to that office."

37 **SECTION 6.** G.S. 163-114 reads as rewritten:

38 **"§ 163-114. Filling vacancies among party nominees occurring after nomination and**
 39 **before election.**

40 If any person nominated as a candidate of a political party for one of the offices listed
 41 below (either in a primary or convention or by virtue of having no opposition in a primary)
 42 dies, resigns, or for any reason becomes ineligible or disqualified before the date of the ensuing
 43 general election, the vacancy shall be filled by appointment according to the following
 44 instructions:

45
 46 Position

47
 48 President
 49 Vice President

Vacancy is to be filled by appointment of
 national executive committee of
 political party in which vacancy occurs

<p>1 Presidential elector or alternate elector 2 Any elective State office 3 United States Senator 4 5 A district office, including: 6 Member of the United States House 7 of Representatives 8 District Attorney 9 State Senator in a multi-county 10 senatorial district 11 Member of State House of 12 Representatives in a multi-county 13 representative district 14 15 State Senator in a single-county 16 senatorial district 17 Member of State House of 18 Representatives in a single-county 19 representative district 20 Any elective county office 21 22 23 24 25</p>	<p>Vacancy is to be filled by appointment of State executive committee of political party in which vacancy occurs Appropriate district executive committee of political party in which vacancy occurs County executive committee of political party in which vacancy occurs, provided, in the case of the State Senator or State Representative in a single-county district <u>or of an elective</u> <u>county district office</u> where not all the county is located in that district, then in voting, only those members of the county executive committee who reside within the district shall vote</p>
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26 The party executive making a nomination in accordance with the provisions of this section shall
 27 certify the name of its nominee to the chairman of the board of elections, State or county, that
 28 has jurisdiction over the ballot item under G.S. 163-182.4. If at the time a nomination is made
 29 under this section the general election ballots have already been printed, the provisions of
 30 G.S.163-165.3(c) shall apply. If a vacancy occurs in a nomination of a political party and that
 31 vacancy arises from a cause other than death and the vacancy in nomination occurs more than
 32 120 days before the general election, the vacancy in nomination may be filled under this section
 33 only if the appropriate executive committee certifies the name of the nominee in accordance
 34 with this paragraph at least 75 days before the general election.

35 In a county not all of which is located in one congressional district, in choosing the
 36 congressional district executive committee member or members from that area of the county,
 37 only the county convention delegates or county executive committee members who reside
 38 within the area of the county which is within the congressional district may vote.

39 In a county which is partly in a multi-county senatorial district or which is partly in a
 40 multi-county House of Representatives district, in choosing that county's member or members
 41 of the senatorial district executive committee or House of Representatives district executive
 42 committee for the multi-county district, only the county convention delegates or county
 43 executive committee members who reside within the area of the county which is within that
 44 multi-county district may vote.

45 An individual whose name appeared on the ballot in a primary election preliminary to the
 46 general election shall not be eligible to be nominated to fill a vacancy in the nomination of
 47 another party for the same office in the same year."

48 **SECTION 7.** All local acts in conflict with this act are repealed to the extent of the
 49 conflict.

50 **SECTION 8.** This act is effective when it becomes law but applies only to
 51 vacancies occurring after that date.