

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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SENATE DRS75014-LB-127 (02/10)

Short Title: Filling Vacancies in Local Office.

(Public)

Sponsors: Senator Clodfelter.

Referred to:

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5 SECTION 1.(a) G.S. 153A-27 is repealed.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



1 political party of which the commissioner being replaced was a member, if the party makes a  
2 recommendation within 30 days of the occurrence of the vacancy. In order for the list to qualify  
3 under this subsection, all nominees must be eligible for the office under subsection (c) of this  
4 section. If the party makes fewer than three eligible nominations, the appointing authority may  
5 appoint any person eligible under subsection (c) of this section.

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

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13 a political party shall fill any vacancy on a board of county commissioners are repealed.

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

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

21 **SECTION 1.(c)** Section 12 of Chapter 763 of the 1981 Session Laws is repealed.

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

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

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

39 **"§ 162-3. Sheriff may resign.**

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

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

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

45 **"§ 162-5.1. Vacancy filled in certain counties; duties performed by coroner or chief**  
46 **deputy.**

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

1 (b) If the sheriff were elected as a nominee of a political party, the board of  
2 commissioners shall consult the county executive committee of that political party before  
3 filling the vacancy, ~~and shall elect the person recommended by the county executive committee~~  
4 ~~of that party, if the party makes a recommendation within 30 days of the occurrence of the~~  
5 ~~vacancy, and if the party within 30 days of the occurrence of the vacancy makes three or more~~  
6 unranked nominations, shall appoint one of the persons recommended by that committee. In  
7 order for the list to qualify under this subsection, all nominees must be eligible for the office  
8 under this subsection. If the party makes fewer than three eligible nominations, the appointing  
9 authority may appoint any person eligible under this subsection.

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

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

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

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

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

29 **"§ 115C-37.1. Vacancies in offices of county boards elected on partisan basis in certain**  
30 **counties.**

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

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

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

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

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

51 **"§ 160A-63. Vacancies.**

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

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

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

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

41 **"§ 163-114. Filling vacancies among party nominees occurring after nomination and**  
 42 **before election.**

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

48 Position

49 President

Vacancy is to be filled by appointment of

|    |   |   |
|----|---|---|
| 1  | Vice President                            | national executive committee of                 |
| 2  |   | political party in which vacancy occurs         |
| 3  |   |   |
| 4  | Presidential elector or alternate elector | Vacancy is to be filled by appointment of       |
| 5  | Any elective State office                 | State executive committee of political          |
| 6  | United States Senator                     | party in which vacancy occurs                   |
| 7  |   |   |
| 8  | A district office, including:             | Appropriate district executive committee of     |
| 9  | Member of the United States House         | political party in which vacancy occurs         |
| 10 | of Representatives                        |   |
| 11 | District Attorney                         |   |
| 12 | State Senator in a multi-county           |   |
| 13 | senatorial district                       |   |
| 14 | Member of State House of                  |   |
| 15 | Representatives in a multi-county         |   |
| 16 | representative district                   |   |
| 17 |   |   |
| 18 | State Senator in a single-county          | County executive committee of political         |
| 19 | senatorial district                       | party in which vacancy occurs,                  |
| 20 | Member of State House of                  | provided, in the case of the State              |
| 21 | Representatives in a single-county        | Senator or State Representative in a            |
| 22 | representative district                   | single-county district <u>or of an elective</u> |
| 23 | Any elective county office                | <u>county district office</u> where not all the |
| 24 |   | county is located in that district, then in     |
| 25 |   | voting, only those members of the               |
| 26 |   | county executive committee who reside           |
| 27 |   | within the district shall vote                  |
| 28 |   |   |

29 The party executive making a nomination in accordance with the provisions of this section shall  
 30 certify the name of its nominee to the chairman of the board of elections, State or county, that  
 31 has jurisdiction over the ballot item under G.S. 163-182.4. If at the time a nomination is made  
 32 under this section the general election ballots have already been printed, the provisions of  
 33 G.S.163-165.3(c) shall apply. If a vacancy occurs in a nomination of a political party and that  
 34 vacancy arises from a cause other than death and the vacancy in nomination occurs more than  
 35 120 days before the general election, the vacancy in nomination may be filled under this section  
 36 only if the appropriate executive committee certifies the name of the nominee in accordance  
 37 with this paragraph at least 75 days before the general election.

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

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

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

1           **SECTION 7.** All local acts in conflict with this act are repealed to the extent of the  
2 conflict.  
3           **SECTION 8.** This act is effective when it becomes law but applies only to  
4 vacancies occurring after that date.