

NORTH CAROLINA GENERAL ASSEMBLY
1979 SESSION

CHAPTER 852
HOUSE BILL 771

AN ACT TO PROVIDE THE PROCEDURES FOR FILLING VACANCIES ON THE
DURHAM CITY COUNCIL.

The General Assembly of North Carolina enacts:

Section 1. Section 13 of the Charter of the City of Durham, as it appears in Section 1 of Chapter 671, Session Laws of 1975, is repealed.

Sec. 2. The Charter of the City of Durham, as it appears in Section 1 of Chapter 671, Session Laws of 1975, is amended by adding new sections to read:

"§ 13.1. **Council to judge elections.** – The City Council shall be the judge of the election and qualifications of its members.

"§ 13.2. **Vacancies in office of Mayor or member of City Council.** – (a) For the purpose of this section, the word 'vacancy' also includes a refusal or failure to qualify for office.

(b) If a vacancy occurs in the office of Mayor, the City Council shall, except as provided in subsection (d) of this section, within 60 days of the vacancy, choose some qualified person for Mayor for the unexpired portion of the term.

(c) If a vacancy occurs in the office of Council member, the City Council shall, except as provided in subsection (d) of this section, within 60 days of the vacancy, choose some qualified person to fill the place of such Council member for the remainder of the unexpired term.

If the vacancy to be filled occurs in a seat occupied by a Council member elected from a ward, then such person chosen to fill such vacancy shall reside in the ward from which the Council member whose place is to be filled was nominated.

(d) If the Council fails to choose some qualified person within 60 days after the vacancy occurs, it may not fill the vacancy by appointment, but shall call a special election under the provisions of Section 13.3 of this Chapter, provided that if the vacancy occurs after the first day of June in the year in which the term is to expire, the Council need not call a special election.

"§ 13.3. **Special election to fill vacancies.** – (a) If the City Council is required to call a special election under the provisions of Section 13.2 of this Charter, it shall follow the procedures of this section.

(b) The special election shall be called and conducted in accordance with G.S. 163-287, except as otherwise provided in this section.

(c) The Council shall within seven days of the expiration of the 60 day period provided in Section 13.2(d) of this Charter adopt a resolution calling a special election.

Such special election may be held on the same date as any county or State or municipal primary, or general election, referendum or special election, but may not otherwise be held within the period beginning 30 days before and ending 30 days after the date of any such election, primary, special election, or referendum.

(d) If the City Council calls a special election to be held at the time of the regularly scheduled elections for municipal officials, the special election shall be conducted according to the rules, regulations and procedures established for such regular elections by Subchapter IX of Chapter 163 of the General Statutes of North Carolina. The election shall be conducted according to the nonpartisan primary and election method. If the City Council elects to change the method of determining the results of the regular municipal elections, the special election shall be conducted according to the method chosen by the City Council.

(e) If the City Council calls for a special election to be held at any time other than the time of the regularly scheduled elections for municipal officials, the election shall be conducted according to the rules, regulations and procedures established for special elections by G.S. 163-287 and by the remainder of Chapter 163 of the General Statutes of North Carolina, as modified by the following provisions:

- (1) The election shall be conducted and the results of the election determined in accordance with the nonpartisan plurality method of election set out in G.S. 163-292.
- (2) Candidates may file their notices of candidacy during the time prescribed by G.S. 163-294.2.
- (3) The filing fee in the special election shall be the same as that most recently fixed by the City Council pursuant to G.S. 163-294.2(e) for the regularly scheduled election for municipal officials."

Sec. 3. Section 11 of the Charter of the City of Durham, as it appears in Section 1 of Chapter 671, Session Laws of 1975, is amended in subdivision 3 by deleting the words "Every ordinance, resolution or action having the effect of an ordinance or resolution shall require on its passage seven affirmative votes", and inserting in lieu thereof the words: "Every ordinance, resolution or action having the effect of an ordinance or resolution shall require seven affirmative votes, and no person shall be appointed to fill a vacancy as Mayor or member of the Council except by seven or more votes in favor of that person".

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 8th day of June, 1979.