

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 44

Short Title: Special Legislative Elections.

(Public)

Sponsors: Representative Beall.

Referred to: Judiciary.

January 19, 1989

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A BILL TO BE ENTITLED

AN ACT TO ABROGATE THE COMMON LAW RULE THAT A PERSON ELECTED TO THE GENERAL ASSEMBLY MUST SERVE, AND TO PROVIDE THAT IN A CASE WHERE A PERSON RESIGNS BEFORE TAKING THE OATH OF OFFICE, OR WHERE THE SEAT IS DECLARED VACANT BY THE SENATE OR THE HOUSE OF REPRESENTATIVES AFTER AN ELECTION CONTEST, A SPECIAL ELECTION SHALL BE HELD TO FILL THE VACANCY.

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Whereas, the common law states that a person elected to office must assume that office; and

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Whereas, North Carolina codified that rule by passing Chapter 277, Laws of 1787, which has not been amended since and is codified as G.S. 120-6 and G.S. 120-7; and

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Whereas, the Congress of the United States rejected the common law rule in 1789 as bad law, and has not applied it since; and

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Whereas, if North Carolina abrogates the common law rule, a procedure must be found to fill the vacancy; and

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Whereas, until 1953, vacancies in the General Assembly were filled by special election, after nomination by the party executive committee, but the 1953 act providing for gubernatorial appointment applies to filling vacancies of a vacating member, but makes no provision for filling the seat of a person who dies or resigns before the convening of the session, or where a house vacates the result of the election under its constitutional power of judging the returns of the election, since in those cases a member-elect and not a member vacated a seat; Now, therefore,

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The General Assembly of North Carolina enacts:

1 Section 1. G.S. 120-6 reads as rewritten:

2 **"§ 120-6. Members to convene at appointed time and place.**

3 ~~Every~~ Except if the person resigns in advance of the convening of the session, every
4 person elected to represent any county or district in the General Assembly shall appear
5 at such time and place as may be appointed for the meeting thereof, on the first day, and
6 attend to the public business as occasion shall require."

7 Sec. 2. G.S. 120-7 reads as rewritten:

8 **"§ 120-7. Penalty for failure to discharge duty.**

9 If any member shall fail to appear, without having resigned as provided by G.S. 120-
10 6, or shall neglect to attend to the duties of his office, he shall forfeit and pay for not
11 appearing ten dollars (\$10.00), and two dollars (\$2.00) for every day he may be absent
12 from his duties during the session, to be deducted from his pay as a member; but a
13 majority of the members of either house of the General Assembly may remit such fines
14 and forfeitures, or any part thereof, where it shall appear that such member has been
15 prevented from attending to his duties by sickness or other sufficient cause."

16 Sec. 3. G.S. 163-11 reads as rewritten:

17 **"§ 163-11. Filling vacancies in the General Assembly.**

18 (a) If a vacancy shall occur in the General Assembly by death, resignation, or
19 otherwise than by expiration of term, but not including where the resignation is prior to
20 the convening of the session as provided by G.S. 120-6, and not including vacancies
21 declared by a house because of rejection of the returns of the election under Section 20
22 of Article II of the Constitution, the Governor shall immediately appoint for the
23 unexpired part of the term the person recommended by the political party executive
24 committee provided by this section. The Governor shall make the appointment within
25 seven days of receiving the recommendation of the appropriate committee. If the
26 Governor fails to make the appointment within the required period, he shall be
27 presumed to have made the appointment and the legislative body to which the appointee
28 was recommended is directed to seat the appointee as a member in good standing for the
29 duration of the unexpired term.

30 (a1) If the vacancy occurs because of a resignation prior to the convening of the
31 session as provided by G.S. 120-6, or when the vacancy is declared by a house because
32 of rejection of the returns of the election under Section 20 of Article II of the
33 Constitution, the vacancy shall be filled by special election in the district. Nominations
34 by political parties for the special election shall be made by the appropriate executive
35 committee as set out in subsections (b) through (d) of this section. The date of the
36 special election shall be set by the Governor. The Governor shall, in the call of the
37 election, promulgate a schedule for:

- 38 (1) Deadlines for such nominations;
- 39 (2) Nomination by petition under G.S. 163-122;
- 40 (3) Notice of write-in candidates under G.S. 163-123;
- 41 (4) Absentee voting;
- 42 (5) Notice of the election;
- 43 (6) The canvass by the State Board of Elections if the district includes
44 more than one county; and

1 (7) Any other appropriate matters.

2 Such call of the election shall be submitted by the Governor under Section 5 of the
3 Voting Rights Act where that act so requires.

4 (b) If the district consists solely of one county and includes all of that county, the
5 Governor shall appoint the person recommended by the county executive committee of
6 the political party with which the vacating member was affiliated when elected, it being
7 the party executive committee of the county which the vacating member was resident.

8 (c) If the district consists solely of one county but includes less than all of the
9 county, the Governor shall appoint the person recommended by the county executive
10 committee of the political party with which the vacating member was affiliated when
11 elected, it being the county executive committee of the county which the vacating
12 member was resident, provided that in voting only those county executive committee
13 members who reside in the district shall be eligible to vote.

14 (d) If the district consists of more than one county, the Governor shall appoint
15 for the unexpired portion of the term the person recommended by the State House of
16 Representatives district committee or the Senatorial district committee of the political
17 party with which the vacating member was affiliated when elected. In the case where all
18 of a county is included within a district, the county convention or county executive
19 committee of that political party shall elect or appoint at least one member from that
20 county to serve on the State House of Representatives district executive committee or
21 State Senatorial district executive committee. In the case where only part of a county is
22 included within a district, the county convention or county executive committee of that
23 political party shall elect or appoint at least one member from that county to serve on
24 the State House of Representatives district committee or the State Senatorial district
25 committee, but only the delegates to the county convention or the members of the
26 county executive committee who reside in the district may vote in electing the district
27 committee member. When the State House of Representatives district committee or the
28 State Senatorial district committee meets, a member shall be entitled to cast for his
29 county (or the part of his county within the district) one vote for each 300 persons or
30 major fraction thereof residing within that county, or in the case where less than the
31 whole county is in the district one vote for each 300 persons or major fraction thereof
32 residing in that part of the district within the county.

33 A county convention or county executive committee may elect more than one
34 member to the district committee but in the event that more than one member is selected
35 from that county, then each member shall cast an equal share of the votes allotted to the
36 county."

37 Sec. 4. This act applies to any vacancy occurring on or after January 1, 1989.