



HOUSE BILL 119: Clarify Vacancy Elections - County Commission.

2017-2018 General Assembly

Committee:		Date:	August 30, 2017
Introduced by:		Prepared by:	Erika Churchill and Jessica Sammons, Staff Attorneys
Analysis of:	S.L. 2017-2		

OVERVIEW: *S.L. 2017-2 clarifies that, in the event of a vacancy during a four-year county board of commissioners' term, the length of the appointment to fill the vacancy is determined by the date of the next general election for county commissioner, not just a general election in which all precincts in that county are open on election day.*

This act became effective March 16, 2017, and applies to vacancy elections held on or after that date.

CURRENT LAW: Each county is governed by a board of commissioners. The county exercises its powers, duties, and privileges through its boards of commissioners. G.S. 153A-12. A county may alter the structure of its board of commissioners (i.e., the number of commissioners, their terms of office, the mode of election, selection of the chair) by following the requirements set out in G.S. 153A-58. Newly elected commissioners take office on the first Monday in December following their election. G.S. 153A-26. There are two statutory processes governing filling vacancies on the board of commissioners. Generally, counties are either subject to the method described in G.S. 153A-27 or the modified version described in G.S. 153A-27.1.

Selection of Appointee:

In both G.S. 153A-27 and G.S. 153A-27.1, when a vacancy on the board of commissioners occurs, the remaining members appoint a new member. If a quorum is not reached, the chair appoints enough new members to obtain a quorum, and then the board will fill remaining vacancies. If a quorum is not reached and the office of the chair is vacant, the clerk of superior court fills the vacancies upon the request of any remaining member or upon petition of registered voters in the county. If the departing member was elected as a political party nominee, the appointee must be a member of the same political party, and if the county is divided into electoral districts to elect commissioners, the appointee must reside in the same district as the departing nominee. Beyond that, there are a couple of key differences between the two statutes regarding the selection process:

G.S. 153A-27:

- If there is an insufficient number of members to obtain a quorum and no chair, the clerk of superior court must fill the vacancies upon request of any five registered voters.
- If the remaining members do not fill a vacancy within 60 days, the clerk of superior court must be immediately notified, and must then fill the vacancy within 10 days of notification.

Karen Cochrane-Brown
Director



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- If the departing member was originally elected as a nominee of a political party, whoever is filling the vacancy (either the board, chair, or the clerk of superior court) must consult the executive committee of the relevant political party before filling a vacancy, but are not required to follow that committee's recommendation.

G.S. 153A-27.1:

- If there is an insufficient number of members to obtain a quorum and no chair, the clerk of superior court must fill the vacancies upon request of any number of registered voters.
- If the departing member was originally elected as a nominee of a political party, whoever is filling the vacancy (either the board, chair, or the clerk of superior court) must appoint the nominee of the executive committee of the relevant political party if the recommendation is made within 30 days after the seat becomes vacant.

The main difference between the two processes is that for those counties subject to G.S. 153A-27.1, the appointing authority is bound by the recommendation of the relevant political party, if that recommendation is made within 30 days of the vacancy.¹

Length of Appointee's Term:

Both G.S. 153A-27 and G.S. 153A-27.1 have the same rules regarding the length of the appointee's term, regardless of who selects the appointee. How long the appointed commissioner will serve depends on the term of the vacating member and when the vacancy occurs during that term, summarized in the following chart:

Term of Vacating Member:	Term of Appointee:
Departing member was serving 2 year term and vacates office during the term.	Appointee will serve the remainder of unexpired term.
Departing member was serving 4 year term and vacates office later than 60 days before the next general election held after the first two years of the term.	Appointee will serve the remainder of unexpired term.
Departing member was serving 4 year term and vacates office more than 60 days before the next general election.	Appointee will serve until first Monday in December following the next general election. Person elected at next general election will serve for the remainder of the unexpired term.

BILL ANALYSIS: This act amends both G.S. 153A-27 and G.S. 153A-27.1 to clarify that the general election triggering an election to fill a vacancy is a general election in which county commissioners are elected, not just a general election in which all precincts in that county are open on election day.

EFFECTIVE DATE: This act became effective March 16, 2017, and applies to vacancy elections held on or after that date.

¹G.S. 153A-27.1 applies in the following counties: Alamance, Alexander, Alleghany, Avery, Beaufort, Brunswick, Buncombe, Burke, Caldwell, Carteret, Cherokee, Clay, Cleveland, Cumberland, Dare, Davidson, Davie, Forsyth, Graham, Guilford, Harnett, Haywood, Henderson, Hyde, Jackson, Lee, Lincoln, Macon, Madison, McDowell, Mecklenburg, Moore, Pender, Polk, Randolph, Rockingham, Rutherford, Sampson, Stanly, Stokes, Transylvania, and Yancey.