



HOUSE BILL 387: Flexibility in Filling Vacancies/Durham.

2021-2022 General Assembly

Committee:		Date:	May 6, 2021
Introduced by:	Reps. Hawkins, Alston, Reives	Prepared by:	Jessica Sammons
Analysis of:	Fourth Edition		Staff Attorney

OVERVIEW: *House Bill 387 would amend the Charter of the City of Durham to allow the City Council to have 120 days, rather than 60 days, to appoint a qualified person to fill a vacancy in the office of Mayor or City Council member before being required to call a special election.*

[As introduced, this bill was identical to S269, as introduced by Sens. Murdock, Woodard, which is currently in House Rules, Calendar, and Operations of the House.]

CURRENT LAW: According to the charter of the City of Durham, if a vacancy, which includes a refusal or failure to qualify for office, occurs in the office of the Mayor or membership on the City Council, the City Council must choose a qualified person within 60 days to fill the vacancy for the remainder of the unexpired term. If a vacating City Council member was elected from a ward, the person chosen to fill the vacancy must reside in the same ward as the vacating member.

If the City Council does not appoint a person to fill the vacancy within 60 days, the City Council is not able to fill the vacancy by appointment, and must call a special election by adopting a resolution within seven days of the expiration of the 60 day period. However, if the vacancy occurs after the first day of June in the year in which the term is to expire, the City Council is not required to call a special election. The special election may be held on the same date as any county, State, or municipal primary or general election, referendum, or special election, but may not be held 30 days before or 30 days after any election, primary, special election, or referendum.

G.S. 160A-63 contains a statutory process for filling vacancies in elected municipal offices, which generally requires a vacancy to be filled by appointment of the remaining city council members. When there is a conflict between the general law and a city charter regarding the powers and duties of city officials, "the two procedures may be used as alternatives, and a city may elect to follow either one." G.S. 160A-3(a).

BILL ANALYSIS: House Bill 387 would amend the charter of the City of Durham to modify the method for filling vacancies in the office of Mayor or City Council. The City Council would have the option to appoint a qualified person to fill the vacancy for the remainder of the unexpired term within 120 days of the vacancy occurring. Within that 120 day period, the City Council would also have the option to call for a special election to fill the vacancy for the remainder of the unexpired term.

If no appointment is made within 120 days of the vacancy occurring, the City Council would no longer be able to fill the vacancy by appointment, and would be required to call a special election to fill the vacancy within seven days of the expiration of the 120 day period.

If another election is already scheduled to be held with the 120 day period, and if there are at least 10 days prior to the date by which mail-in absentee ballots must be available for voting for that scheduled election,

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the City Council would be required to call for a special election to fill the vacancy for the remainder of the unexpired term to coincide with that special election.

EFFECTIVE DATE: Effective when it becomes law.