



General Statutes Commission

300 N. Salisbury Street, Suite 401
Raleigh, NC 27603-5925
Tel. 919-733-6660 Fax 919-715-5459

Floyd M. Lewis
Revisor of Statutes

P. Bly Hall
Assistant Revisor of Statutes

MEMORANDUM

To: Senate Judiciary
From: General Statutes Commission
Re: HB 33 (Adjust GSC Membership)
Date: June 24, 2019

General Comments

This bill (i) removes an appointment to the General Statutes Commission (Commission) by the dean of the Charlotte School of Law because of the school's closure; (ii) deletes a provision that applied only to the original appointments to the Commission and is now obsolete; (iii) adjusts the beginning and ending dates of appointments to the Commission to align more closely with the Commission's work year; (iv) resolves ambiguous language dealing with vacancies on the Commission and clarifies what procedure applies; and (v) makes conforming amendments to these changes.

Specific Comments

Section 1 of this bill revises and updates G.S. 164-14, the statute that sets out the membership and terms of office of the Commission, to make four basic changes.

First, the bill amends G.S. 164-14(a) to eliminate the appointment to the Commission by the dean of the Charlotte School of Law and to reduce accordingly the total number of members of the Commission from 14 to 13. The Charlotte School of Law closed on August 11, 2017. The closure is permanent. The School's last appointee resigned on September 19, 2017, due to the School's closure. Pursuant to G.S. 164-14(d), the Governor appointed a new member to complete the unexpired portion of that person's term. Please note that this term expired on May 31 of this year.

Second, the bill repeals G.S. 164-14(b) as obsolete. The General Statutes Commission was created in 1945. Appointments are normally for two-year terms. G.S. 164-14(b) created special one-time, one-year terms for some of the original appointments, with the rest of the original members serving two-year terms, in order to stagger the terms. G.S. 164-14(b) dealt only with the terms of the original 1945 appointments and can be repealed.

Third, the bill amends G.S. 164-14(c) to change the starting date of members' terms from June 1 to September 1 and the ending date from May 31 to August 31 two years later. The change will better align the members' terms with the Commission's work year, which begins in September of one year and extends through June of the following year. The Commission normally meets monthly during that period. It does not meet in July or August. The result would allow new members to begin at the start of a work year rather than at the end of one.

The bill also (i) amends this subsection (G.S. 164-14(c)) to conform to the amendments in subsections (a) and (d) and the repeal of subsection (b), (ii) makes two technical amendments (inserts a missing "the" before "president of the North Carolina Bar Association" and removes two

uses of "such" as legalese), and (iii) deletes the last sentence. The last sentence requires reappointments or new appointments to be made by the date a term ends; the Commission is of the opinion that the sentence is no longer necessary in light of G.S. 164-14(f), which provides for existing members to hold over if no new appointment or reappointment has been made by that date.

Fourth, the bill amends G.S. 164-14(d) to resolve an apparent conflict between this subsection and subsection (f).

G.S. 164-14(d) provides in part that if an appointment is not made by June 1, a vacancy exists and the Governor may fill the vacancy; if no appointment is made by July 31 of that year, the Commission itself may make the appointment. This portion of subsection (d) appears to conflict with subsection (f), which is a hold-over provision enacted in 1967 (c. 17). If a member holds over at the end of the member's term, there is no vacancy. To the extent of a direct conflict between subsection (f) and the portion of subsection (d) in question, the later-enacted subsection (f) would control. It appears that the Commission and its staff have effectively read subsection (f) as controlling for some decades.

The proposed revision of G.S. 164-14(d) retains in modernized language the existing authorization for the original appointing authority to fill actual vacancies, that is, those that exist due to the death or resignation of a member or are due to some reason other than the expiration of the member's term. The revision also eliminates any default appointment by the Governor or the Commission itself, which is an unusual feature not commonly found in the statutes of other boards and commissions.

Section 2 is an effective date and applicability provision for the bill that (i) provides a postponed effective date of August 31, 2019, for the deletion of the appointment by the dean of the Charlotte School of Law, with the remainder of the bill being effective on becoming law, and (ii) provides for a two-month extension of the terms of the existing members to accommodate the change in the dates for the beginning and ending of members' terms.