

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 28

Short Title: School Governance Changes.

(Public)

Sponsors: Senator Conder.

Referred to: Education/Higher Education.

February 1, 1993

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CONSTITUTION TO CHANGE THE COMPOSITION OF THE STATE BOARD OF EDUCATION, TO MAKE THE SUPERINTENDENT OF PUBLIC INSTRUCTION AN APPOINTEE OF THE STATE BOARD OF EDUCATION, AND TO MAKE CORRESPONDING STATUTORY CHANGES.

The General Assembly of North Carolina enacts:

Section 1. Section 4 of Article IX of the Constitution reads as rewritten:

"Sec. 4. State Board of Education.

(1) **Board.** The State Board of Education shall consist of ~~the Lieutenant Governor, the Treasurer, and eleven members appointed by the Governor, subject to confirmation by the General Assembly in joint session,~~ six members appointed by the Governor, six members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, and six members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives. ~~The General Assembly shall divide the State into eight educational districts, of the appointive members of the Board, one shall be appointed elected from each of the eight educational districts and three shall be appointed from the State at large. Appointments~~ Terms shall be for overlapping terms of eight years, four years, except that three of the initial members appointed by the Governor, three of the initial members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, and three of the initial members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, shall serve for a two-

1 ~~year term. Appointments to fill vacancies shall be made by the Governor for the~~
2 ~~unexpired terms and shall not be subject to confirmation, as provided by law.~~

3 The Governor shall designate one member of the Board as chair for a term as chair
4 of two years."

5 Sec. 2. Section 4(2) of Article IX of the Constitution reads as rewritten:

6 "(2) **Superintendent of Public Instruction.** The Superintendent of Public
7 Instruction shall be the secretary and chief administrative officer of the State Board of
8 Education. He shall be appointed by the State Board of Education and shall serve at the
9 pleasure of the State Board of Education."

10 Sec. 3. Section 7(1) of Article III of the Constitution reads as rewritten:

11 "(1) **Officers.** A Secretary of State, an Auditor, a Treasurer, a ~~Superintendent of~~
12 ~~Public Instruction,~~ an Attorney General, a Commissioner of Agriculture, a Commissioner
13 of Labor, and a Commissioner of Insurance shall be elected by the qualified voters of
14 the State in 1972 and every four years thereafter, at the same time and places as
15 members of the General Assembly are elected. Their term of office shall be four years
16 and shall commence on the first day of January next after their election and continue
17 until their successors are elected and qualified."

18 Sec. 4. G.S. 115C-10 reads as rewritten:

19 "**§ 115C-10. Appointment of Board.**

20 (a) ~~The State Board of Education shall consist of the Lieutenant Governor, the~~
21 ~~State Treasurer, and 11 members appointed by the Governor, subject to confirmation by~~
22 ~~the General Assembly in joint session. six members appointed by the Governor, six~~
23 ~~members appointed by the General Assembly upon the recommendation of the~~
24 ~~President Pro Tempore of the Senate, and six members appointed by the General~~
25 ~~Assembly upon the recommendation of the Speaker of the House of Representatives.~~
26 ~~Not more than one public school employee paid from State or local funds may serve as~~
27 ~~an appointive member of the State Board of Education. No spouse of any public school~~
28 ~~employee paid from State or local funds and no employee of the Department of Public~~
29 ~~Instruction or his spouse, may serve as an appointive member of the State Board of~~
30 ~~Education. Of the appointive members of the State Board of Education, one shall be~~
31 ~~appointed from each of the eight educational districts and three shall be appointed as~~
32 ~~members at large. Appointments shall be for terms of eight years and shall be made in~~
33 ~~four classes. Appointments to fill vacancies shall be made by the Governor for the~~
34 ~~unexpired terms and shall not be subject to confirmation.~~

35 (b) Appointments shall be for four-year terms, except that the Governor shall
36 designate three of the initial members he appoints to serve for a two-year term, the
37 General Assembly shall designate three of the initial members it appoints upon the
38 recommendation of the President Pro Tempore of the Senate to serve for a two-year
39 term, and the General Assembly shall designate three of the initial members it appoints
40 upon the recommendation of the Speaker of the House of Representatives to serve for a
41 two-year term.

42 (c) Appointments to fill vacancies in positions filled by the Governor shall be
43 made by the Governor for the unexpired terms. Appointments by the General Assembly

1 shall be made in accordance with G.S. 120-121, and appointments to fill vacancies in
2 those positions shall be made in accordance with G.S. 120-122.

3 ~~The Governor shall transmit to the presiding officers of the Senate and the House of~~
4 ~~Representatives, on or before the sixtieth legislative day of the General Assembly, the~~
5 ~~names of the persons appointed by him and submitted to the General Assembly for~~
6 ~~confirmation; thereafter, pursuant to joint resolution, the Senate and the House of~~
7 ~~Representatives shall meet in joint session for consideration of an action upon such~~
8 ~~appointments."~~

9 Sec. 5. G.S. 115C-11(a) reads as rewritten:

10 "(a) Presiding Officer. – The Governor shall select from the membership of the
11 State Board of Education a chairman to serve for a term of two years. ~~The State Board~~
12 ~~of Education shall elect from its membership a chairman and vice-chairman. A majority~~
13 ~~of the Board shall constitute a quorum for the transaction of business. Per diem and~~
14 ~~expenses of the appointive members of the Board shall be provided by the General~~
15 ~~Assembly. The chairman of the Board shall preside at all meetings of the Board. In the~~
16 ~~absence of the chairman, the vice-chairman shall preside; in the absence of both the~~
17 ~~chairman and the vice-chairman, the Board shall name one of its own members as~~
18 ~~chairman pro tempore."~~

19 Sec. 6. G.S. 115C-18 reads as rewritten:

20 **"§ 115C-18. Election-Appointment of Superintendent of Public Instruction.**

21 ~~The Superintendent of Public Instruction shall be elected by the qualified voters of~~
22 ~~the State in 1972 and every four years thereafter at the same time and places as~~
23 ~~members of the General Assembly are elected. His term of office shall be four years and~~
24 ~~shall commence on the first day of January next after election and continue until his~~
25 ~~successor is elected and qualified.~~

26 ~~If the office of the Superintendent of Public Instruction is vacated by death,~~
27 ~~resignation, or otherwise, it shall be the duty of the Governor to appoint another to serve~~
28 ~~until his successor is elected and qualified. Every such vacancy shall be filled by~~
29 ~~election at the first election for members of the General Assembly that occurs more than~~
30 ~~30 days after the vacancy has taken place, and the person chosen shall hold the office~~
31 ~~for the remainder of the unexpired term fixed in Article III, Sec. 7 of the Constitution of~~
32 ~~North Carolina. When a vacancy occurs in the office and the term expires on the first~~
33 ~~day of January succeeding the next election for members of the General Assembly, the~~
34 ~~Governor shall appoint to fill the vacancy for the unexpired term of the office. Upon the~~
35 ~~occurrence of a vacancy in the office for any of the causes stated herein, the Governor~~
36 ~~may appoint an interim officer to perform the duties of that office until a person is~~
37 ~~appointed or elected pursuant to Article III, Sec. 7 of the Constitution of North Carolina~~
38 ~~to fill the vacancy and is qualified.~~

39 ~~The time of the election of the Superintendent of Public Instruction shall be in~~
40 ~~accordance with the provisions of Article 1 of Subchapter I of Chapter 163 of the~~
41 ~~General Statutes.~~

42 ~~The election, term and induction into office of the Superintendent of Public~~
43 ~~Instruction shall be in accordance with the provisions of G.S. 147-4. appointed by the~~

1 State Board of Education and shall serve at the pleasure of the State Board of
2 Education."

3 Sec. 7. G.S. 115C-21(a) reads as rewritten:

4 "(a) Administrative Duties. – It shall be the duty of the Superintendent of Public
5 Instruction:

- 6 (1) To organize and establish a Department of Public Instruction which
7 shall include such divisions and departments as are necessary for
8 supervision and administration of the public school system, to
9 administer the funds for the operation of the Department of Public
10 Instruction, and to enter into contracts for the operations of the
11 Department of Public Instruction.
- 12 (2) To keep the public informed as to the problems and needs of the public
13 schools by constant contact with all school administrators and
14 teachers, by his personal appearance at public gatherings, and by
15 information furnished to the press of the State.
- 16 (3) To report biennially to the Governor 30 days prior to each regular
17 session of the General Assembly, such report to include information
18 and statistics of the public schools, with recommendations for their
19 improvement and for such changes in the school law as shall occur to
20 him.
- 21 (4) To have printed and distributed such educational bulletins as he shall
22 deem necessary for the professional improvement of teachers and for
23 the cultivation of public sentiment for public education, and to have
24 printed all forms necessary and proper for the administration of the
25 Department of Public Instruction.
- 26 (5) To have under his direction, in his capacity as the ~~constitutional head of~~
27 ~~the public school system,~~ chief administrative officer of the State Board
28 of Education, all those matters relating to the supervision and
29 administration of the public school system.
- 30 (6) To create a special fund within the Department of Public Instruction to
31 manage funds received as grants from nongovernmental sources in
32 support of public education. The Superintendent may accept grants and
33 gifts from corporations and other sources made in support of public
34 education and may hold and disburse such funds, in accordance with
35 the purposes, conditions, and limitations associated with such grants
36 and gifts. Any special fund created pursuant to this subdivision shall
37 be subject to audit by the State Auditor."

38 Sec. 8. G.S. 115C-65 is repealed.

39 Sec. 9. G.S. 143A-42 reads as rewritten:

40 "**§ 143A-42. Superintendent of Public Instruction; transfer of office and**
41 **Department of Public Instruction; powers and duties.**

42 The office of the Superintendent of Public Instruction, as provided for by ~~Article III,~~
43 ~~Sec. 7,~~ Article IX, Sec. 4(2), of the Constitution, and the Department of Public
44 Instruction are hereby transferred to the Department of Public Education. The

1 Superintendent of Public Instruction shall be the secretary and chief administrative
2 officer of the State Board of Education, and shall have such powers and duties as are
3 conferred by the Constitution, by the State Board of Education, Chapter 115C of the
4 General Statutes, and the laws of this State."

5 Sec. 10. G.S. 147-3(c) reads as rewritten:

6 "(c) The general civil executive officers of this State are as follows:

- 7 (1) A Governor;
- 8 (2) A Lieutenant Governor;
- 9 (3) Private secretary for the Governor;
- 10 (4) A Secretary of State;
- 11 (5) An Auditor;
- 12 (6) A Treasurer;
- 13 (7) An Attorney General;
- 14 ~~(8) A Superintendent of Public Instruction;~~
- 15 (9) The members of the Governor's Council;
- 16 (10) A Commissioner of Agriculture;
- 17 (11) A Commissioner of Labor;
- 18 (12) A Commissioner of Insurance."

19 Sec. 11. G.S. 147-4 reads as rewritten:

20 **"§ 147-4. Executive officers – election; term; induction into office.**

21 The executive department shall consist of a Governor, a Lieutenant Governor, a
22 Secretary of State, an Auditor, a Treasurer, ~~a Superintendent of Public Instruction,~~ an
23 Attorney General, a Commissioner of Agriculture, a Commissioner of Insurance, and a
24 Commissioner of Labor, who shall be elected for a term of four years, by the qualified
25 electors of the State, at the same time and places, and in the same manner, as members
26 of the General Assembly are elected. Their term of office shall commence on the first
27 day of January next after their election and continue until their successors are elected
28 and qualified. The persons having the highest number of votes, respectively, shall be
29 declared duly elected, but if two or more be equal and highest in votes for the same
30 office, then one of them shall be chosen by joint ballot of both houses of the General
31 Assembly. Contested elections shall be determined by a joint ballot of both houses of
32 the General Assembly in such manner as shall be prescribed by law."

33 Sec. 12. G.S. 147-11.1 reads as rewritten:

34 **"§ 147-11.1. Succession to office of Governor; Acting Governor.**

35 (a) Lieutenant Governor. –

- 36 (1) The Lieutenant Governor-elect shall become Governor upon the
37 failure of the Governor-elect to qualify. The Lieutenant Governor shall
38 become Governor upon the death, resignation, or removal from office
39 of the Governor. The further order of succession to the office of
40 Governor shall be prescribed by law. A successor shall serve for the
41 remainder of the term of the Governor whom he succeeds and until a
42 new Governor is elected and qualified.
- 43 (2) During the absence of the Governor from the State, or during the
44 physical or mental incapacity of the Governor to perform the duties of

- 1 his office, the Lieutenant Governor shall be Acting Governor. The
2 further order of succession as Acting Governor shall be prescribed by
3 law.
- 4 (b) President of Senate, Speaker of the House and Other Officers. –
- 5 (1) If, by reason of failure to qualify, death, resignation, or removal from
6 office, there is neither a Governor nor a Lieutenant Governor to
7 discharge the powers and duties of the office of Governor, then the
8 President of the Senate shall, upon his resignation as President of the
9 Senate and as Senator, become Governor.
- 10 (2) If, at the time when under subdivision (1) of this subsection the
11 President of the Senate is to become Governor, there is no President of
12 the Senate, or the President of the Senate fails to qualify as Governor,
13 then the Speaker of the House of Representatives shall, upon his
14 resignation as Speaker and as Representative, become Governor.
- 15 (3) If, at the time when under subdivision (2) of this subsection the
16 Speaker of the House of Representatives is to become Governor, there
17 is no Speaker of the House of Representatives, or the Speaker of the
18 House of Representatives fails to qualify as Governor, then that officer
19 of the State of North Carolina who is highest on the following list, and
20 who is not under disability to serve as Governor, shall, upon his
21 resignation of the office which places him in the order of succession,
22 become Governor: Secretary of State, Auditor, Treasurer,
23 ~~Superintendent of Public Instruction,~~ Attorney General, Commissioner of
24 Agriculture, Commissioner of Labor, and Commissioner of Insurance.
- 25 (c) Acting Governor Generally. –
- 26 (1) If, by reason of absence from the State or physical or mental
27 incapacity, there is neither a Governor nor a Lieutenant Governor
28 qualified to discharge the powers and duties of the office of Governor,
29 then the President of the Senate shall become Acting Governor.
- 30 (2) If, at the time when under subdivision (1) of this subsection the
31 President of the Senate is to become Acting Governor, there is no
32 President of the Senate, or the President of the Senate fails to qualify
33 as Acting Governor, then the Speaker of the House of Representatives
34 shall become Acting Governor.
- 35 (3) If, at the time when under subdivision (2) of this subsection the
36 Speaker of the House of Representatives is to become Acting
37 Governor, there is no Speaker of the House of Representatives, or the
38 Speaker of the House of Representatives fails to qualify as Acting
39 Governor, then that officer of the State of North Carolina who is
40 highest on the following list, and who is not under disability to serve
41 as Acting Governor, shall become Acting Governor: Secretary of
42 State, Auditor, Treasurer, ~~Superintendent of Public Instruction,~~ Attorney
43 General, Commissioner of Agriculture, Commissioner of Labor, and
44 Commissioner of Insurance.

1 (d) Governor Serving under Subsection (c). – An individual serving as Acting
2 Governor under subsection (c) of this section shall continue to act for the remainder of
3 the term of the Governor whom he succeeds and until a new Governor is elected and
4 qualified, except that:

5 (1) If his tenure as Acting Governor is founded in whole or in part upon
6 the absence of both the Governor and Lieutenant Governor from the
7 State, then he shall act only until the Governor or Lieutenant Governor
8 returns to the State; and

9 (2) If his tenure as Acting Governor is founded in whole or in part upon
10 the physical or mental incapacity of the Governor or Lieutenant
11 Governor, then he shall act only until the removal of the incapacity of
12 the Governor or Lieutenant Governor.

13 (e) Officers to Which Subsections (b), (c) and (d) Applicable. – Subsections (b),
14 (c), and (d) of this section shall apply only to such officers as are eligible to the office of
15 Governor under the Constitution of North Carolina, and only to officers who are not
16 under impeachment by the House of Representatives at the time they are to become
17 Governor or Acting Governor.

18 (f) Compensation of Acting Governor. – During the period that any individual
19 serves as Acting Governor under subsection (c) of this section, his compensation shall
20 be at the rate then provided by law in the case of the Governor."

21 Sec. 13. G.S. 163-1 is amended by deleting the entries in the table for
22 "Superintendent of Public Instruction".

23 Sec. 14. G.S. 163-8 reads as rewritten:

24 **"§ 163-8. Filling vacancies in State executive offices.**

25 If the office of Governor or Lieutenant Governor shall become vacant, the
26 provisions of G.S. 147-11.1 shall apply. If the office of any of the following officers
27 shall be vacated by death, resignation, or otherwise than by expiration of term, it shall
28 be the duty of the Governor to appoint another to serve until his successor is elected and
29 qualified: Secretary of State, Auditor, Treasurer, ~~Superintendent of Public Instruction,~~
30 Attorney General, Commissioner of Agriculture, Commissioner of Labor, and
31 Commissioner of Insurance. Each such vacancy shall be filled by election at the first
32 election for members of the General Assembly that occurs more than 60 days after the
33 vacancy has taken place, and the person chosen shall hold the office for the remainder
34 of the unexpired four-year term: Provided, that when a vacancy occurs in any of the
35 offices named in this section and the term expires on the first day of January succeeding
36 the next election for members of the General Assembly, the Governor shall appoint to
37 fill the vacancy for the unexpired term of the office.

38 Upon the occurrence of a vacancy in the office of any one of these officers for any
39 of the causes stated in the preceding paragraph, the Governor may appoint an acting
40 officer to perform the duties of that office until a person is appointed or elected pursuant
41 to this section and Article III, Section 7 of the State Constitution, to fill the vacancy and
42 is qualified."

43 Sec. 15. G.S. 163-278.27 reads as rewritten:

44 **"§ 163-278.27. Penalty for violations; duty to report and prosecute.**

1 (a) Any individual, candidate, political committee, referendum committee,
2 treasurer, person or media who violates the provisions of G.S. 163-278.7, 163-278.8,
3 163-278.9, 163-278.10, 163-278.11, 163-278.12, 163-278.14, 163-278.16, 163-278.17,
4 163-278.18, 163-278.40A, 163-278.40B, 163-278.40C, 163-278.40D or 163-278.40E is
5 guilty of a misdemeanor.

6 (b) Whenever the Board has knowledge of or has reason to believe there has been
7 a violation of any section of this Article, it shall report that fact, together with
8 accompanying details, to the following prosecuting authorities:

9 (1) In the case of a candidate for nomination or election to the State Senate
10 or State House of Representatives: report to the district attorney of the
11 prosecutorial district in which the candidate for nomination or election
12 resides;

13 (2) In the case of a candidate for nomination or election to the office of
14 Governor, Lieutenant Governor, Secretary of State, State Auditor,
15 State Treasurer, ~~State Superintendent of Public Instruction~~, State Attorney
16 General, State Commissioner of Agriculture, State Commissioner of
17 Labor, State Commissioner of Insurance, and all other State elective
18 offices, Justice of the Supreme Court, Judge of the Court of Appeals,
19 judge of a superior court, judge of a district court, and district attorney
20 of the superior court: report to the district attorney of the prosecutorial
21 district in which Wake County is located;

22 (3) In the case of an individual other than a candidate, including, without
23 limitation, violations by members of political committees, referendum
24 committees or treasurers: report to the district attorney of the
25 prosecutorial district in which the individual resides; and

26 (4) In the case of a person or any group of individuals: report to the
27 district attorney or district attorneys of the prosecutorial district or
28 districts in which any of the officers, directors, agents, employees or
29 members of the person or group reside.

30 (c) Upon receipt of such a report from the Board, the appropriate district attorney
31 shall prosecute the individual or persons alleged to have violated a section or sections of
32 this Article."

33 Sec. 16. G.S. 120-123 is amended by adding a new subdivision to read:

34 "(60) The State Board of Education, as established in G.S. 115C-10."

35 Sec. 17. The amendments set out in Sections 1, 2, and 3 of this act shall be
36 submitted to the qualified voters of the State at an election to be held at the same time as
37 the next statewide primary, general, or special election, whichever occurs first, which
38 election shall be conducted under the laws then governing elections in the State. At that
39 election, each qualified voter desiring to vote shall be provided a ballot on which shall
40 be printed the following:

41 "[] FOR constitutional amendments to change the composition of the State
42 Board of Education and to make the Superintendent of Public
43 Instruction an appointee of the State Board of Education.

1 [] AGAINST constitutional amendments to change the composition of
2 the State Board of Education and to make the Superintendent of Public
3 Instruction an appointee of the State Board of Education."

4 Those qualified voters favoring the amendments set out in Sections 1, 2,
5 and 3 of this act shall vote by making an "X" or a check mark in the square beside the
6 statement beginning "FOR", and those qualified voters opposed to those amendments
7 shall vote by making an "X" or check mark in the square beside the statement beginning
8 "AGAINST".

9 Notwithstanding the foregoing provisions of this section, voting machines
10 may be used in accordance with rules prescribed by the State Board of Elections.

11 Sec. 18. If a majority of votes cast thereon are in favor of the amendments set
12 out in Sections 1, 2, and 3 of this act, the State Board of Elections shall certify the
13 amendments to the Secretary of State, who shall enroll the amendments so certified
14 among the permanent records of his office, and the amendments shall become effective
15 as follows:

16 (1) The amendment set out in Section 1 of this act shall become effective
17 upon such certification except that the term of office of all members of
18 the State Board of Education who were appointed to the State Board of
19 Education prior to July 1, 1995, and were serving as members on June
20 30, 1995, shall expire on July 1, 1995.

21 (2) The amendments set out in Sections 2 and 3 of this act shall
22 become effective on the earlier of January 1, 1997, and the date that
23 a vacancy occurs in the office of Superintendent of Public
24 Instruction, except that there shall be no election held to fill the
25 office of Superintendent for a term beginning on or after December
26 31, 1996.

27 Sec. 19. Sections 4 through 15 of this act become effective only if the
28 constitutional amendments set out in Sections 1, 2, and 3 of this act are approved by the
29 voters. If the constitutional amendments are approved by the voters:

30 (1) Sections 4 and 8 of this act shall become effective July 1, 1995:
31 Provided, however, the General Assembly and the Governor may
32 appoint members to the State Board of Education in accordance with
33 Section 4 of this act, prior to July 1, 1995, for terms of office
34 beginning July 1, 1995.

35 (2) Sections 5 through 7 and 9 through 15 of this act shall become
36 effective the earlier of January 1, 1997, and the date that a vacancy
37 occurs in the office of Superintendent of Public Instruction, except that
38 there shall be no election held to fill the office of Superintendent for a
39 term beginning on or after December 31, 1996.

40 Sec. 20. This act is effective upon ratification.