

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

S

1

SENATE BILL 806

Short Title: Public Educ. Governance.

(Public)

Sponsors: Senator Conder.

Referred to: Constitution.

April 24, 1991

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CONSTITUTION TO CHANGE THE COMPOSITION OF THE STATE BOARD OF EDUCATION AND 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 7(1) of Article III of the Constitution reads as rewritten:

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

Sec. 2. 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. The General Assembly shall divide the State into eight educational districts. Of the appointive members of the Board, one shall be appointed from each of the eight educational districts and three shall be appointed from the State at large. five members appointed by the Governor, five members elected by the Senate, and five members elected by the House of

1 ~~Representatives. Appointments shall be for overlapping terms of eight years. four-year~~
2 ~~terms, except that the appointments of three members appointed by the Governor, two~~
3 ~~members elected by the Senate, and two members elected by the House of~~
4 ~~Representatives, in 1993, shall be for two-year terms. Appointments to fill vacancies~~
5 ~~shall be made by the Governor for the unexpired terms and shall not be subject to~~
6 ~~confirmation as provided by law. The General Assembly may authorize a member of~~
7 ~~the General Assembly, a member of the General Assembly after the expiration of his~~
8 ~~term but before his successor is qualified, a committee of the General Assembly, or a~~
9 ~~committee of the Senate or the House of Representatives, to fill vacancies in positions~~
10 ~~filled by the Senate or the House of Representatives.~~

11 (2) Superintendent of Public Instruction. The Superintendent of Public
12 Instruction shall be the secretary and chief administrative officer of the State Board of
13 Education. He shall be appointed by the State Board of Education and shall serve at the
14 pleasure of the State Board of Education."

15 Sec. 3. G.S. 115C-10 reads as rewritten:

16 "**§ 115C-10. Appointment of Board.**

17 The State Board of Education shall consist of ~~the Lieutenant Governor, the State~~
18 ~~Treasurer, and 11 members appointed by the Governor, subject to confirmation by the~~
19 ~~General Assembly in joint session. five members appointed by the Governor, five~~
20 ~~members elected by the Senate, and five members elected by the House of~~
21 ~~Representatives. Not more than one public school employee paid from State or local~~
22 ~~funds may serve as an appointive or elected member of the State Board of Education.~~
23 ~~No spouse of any public school employee paid from State or local funds and no~~
24 ~~employee of the Department of Public Instruction or his spouse, may shall serve as an~~
25 ~~appointive or elected member of the State Board of Education. Of the appointive~~
26 ~~members of the State Board of Education, one shall be appointed from each of the eight~~
27 ~~educational districts and three shall be appointed as members at large. Appointments~~
28 ~~shall be for terms of eight years and shall be made in four classes. four-year terms,~~
29 ~~except that the appointments of three members appointed by the Governor, two~~
30 ~~members elected by the Senate, and two members elected by the House of~~
31 ~~Representatives, in 1993, shall be for two-year terms.~~

32 The Senate and the House of Representatives, in electing members of the State
33 Board of Education, shall select from a slate of nominees made in each house as
34 provided by resolution of that house. In the event there is more than one individual who
35 is seeking nomination, the slate of nominees shall contain at least two nominations for
36 any vacancy. The Senate shall hold its election prior to the House of Representatives.

37 Appointments to fill vacancies in positions filled by the Governor shall be made by the
38 Governor for the unexpired terms and shall not be subject to confirmation. terms.
39 Appointments to fill vacancies in positions filled by the Senate shall be made by the
40 President Pro Tempore of the Senate when the General Assembly has adjourned a
41 regular session to a date certain, which date is more than 10 days after the date of
42 adjournment, after sine die adjournment of the regular session, or after the beginning of
43 the terms of members of the General Assembly but before convening of the regular
44 session; otherwise, the appointments shall be made by the Senate. Appointments to fill

1 vacancies in positions filled by the House of Representatives shall be made by the
2 Speaker of the House of Representatives when the General Assembly has adjourned a
3 regular session to a date certain, which date is more than 10 days after the date of
4 adjournment, after **sine die** adjournment of the regular session, or after the beginning of
5 the terms of members of the General Assembly but before convening of the regular
6 session; otherwise, the appointments shall be made by the House of Representatives.
7 The President Pro Tempore of the Senate and the Speaker of the House of
8 Representatives shall continue to exercise their authority to fill vacancies under this
9 section until each of their successors in office is selected.

10 ~~The Governor shall transmit to the presiding officers of the Senate and the House of~~
11 ~~Representatives, on or before the sixtieth legislative day of the General Assembly, the~~
12 ~~names of the persons appointed by him and submitted to the General Assembly for~~
13 ~~confirmation; thereafter, pursuant to joint resolution, the Senate and the House of~~
14 ~~Representatives shall meet in joint session for consideration of an action upon such~~
15 ~~appointments."~~

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

17 **"§ 115C-18. Election-Appointment of Superintendent of Public Instruction.**

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

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

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

39 ~~The election, term and induction into office of the Superintendent of Public~~
40 ~~Instruction shall be in accordance with the provisions of G.S. 147-4. appointed by the~~
41 ~~State Board of Education and shall serve at the pleasure of the State Board of~~
42 ~~Education."~~

43 Sec. 5. G.S. 143A-42 reads as rewritten:

1 **"§ 143A-42. Superintendent of Public Instruction; transfer of office and**
2 **Department of Public Instruction; powers and duties.**

3 The office of the Superintendent of Public Instruction, as provided for by ~~Article III,~~
4 ~~Sec. 7,~~ Article IX, Sec. 4(2), of the Constitution, and the Department of Public
5 Instruction are hereby transferred to the Department of Public Education. The
6 Superintendent of Public Instruction shall be the secretary and chief administrative
7 officer of the State Board of Education, and shall have such powers and duties as are
8 conferred by the Constitution, by the State Board of Education, Chapter 115C of the
9 General Statutes, and the laws of this State."

10 Sec. 6. G.S. 147-3(c) reads as rewritten:

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

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

24 Sec. 7. G.S. 147-4 reads as rewritten:

25 **"§ 147-4. Executive officers – election; term; induction into office.**

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

38 Sec. 8. G.S. 147-11.1 reads as rewritten:

39 **"§ 147-11.1. Succession to office of Governor; Acting Governor.**

40 (a) Lieutenant Governor. –

- 41 (1) The Lieutenant Governor-elect shall become Governor upon the
42 failure of the Governor-elect to qualify. The Lieutenant Governor shall
43 become Governor upon the death, resignation, or removal from office
44 of the Governor. The further order of succession to the office of

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

1 highest on the following list, and who is not under disability to serve
2 as Acting Governor, shall become Acting Governor: Secretary of
3 State, Auditor, Treasurer, ~~Superintendent of Public Instruction~~, Attorney
4 General, Commissioner of Agriculture, Commissioner of Labor, and
5 Commissioner of Insurance.

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

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

14 (2) If his tenure as Acting Governor is founded in whole or in part upon
15 the physical or mental incapacity of the Governor or Lieutenant
16 Governor, then he shall act only until the removal of the incapacity of
17 the Governor or Lieutenant Governor.

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

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

26 Sec. 9. G.S. 163-1 is amended by deleting the entry in the table for
27 "Superintendent of Public Instruction".

28 Sec. 10. G.S. 163-1 is amended by deleting the entry in the table for
29 "Superintendent of Public Instruction".

30 Sec. 11. G.S. 163-8 reads as rewritten:

31 "**§ 163-8. Filling vacancies in State executive offices.**

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

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

6 Sec. 12. G.S. 163-278.27 reads as rewritten:

7 **"§ 163-278.27. Penalty for violations; duty to report and prosecute.**

8 (a) Any individual, candidate, political committee, referendum committee,
9 treasurer, person or media who violates the provisions of G.S. 163-278.7, 163-278.8,
10 163-278.9, 163-278.10, 163-278.11, 163-278.12, 163-278.14, 163-278.16, 163-278.17,
11 163-278.18, 163-278.40A, 163-278.40B, 163-278.40C, 163-278.40D or 163-278.40E is
12 guilty of a misdemeanor.

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

- 16 (1) In the case of a candidate for nomination or election to the State Senate
17 or State House of Representatives: report to the district attorney of the
18 prosecutorial district in which the candidate for nomination or election
19 resides;
- 20 (2) In the case of a candidate for nomination or election to the office of
21 Governor, Lieutenant Governor, Secretary of State, State Auditor,
22 State Treasurer, ~~State Superintendent of Public Instruction~~, State Attorney
23 General, State Commissioner of Agriculture, State Commissioner of
24 Labor, State Commissioner of Insurance, and all other State elective
25 offices, Justice of the Supreme Court, Judge of the Court of Appeals,
26 judge of a superior court, judge of a district court, and district attorney
27 of the superior court: report to the district attorney of the prosecutorial
28 district in which Wake County is located;
- 29 (3) In the case of an individual other than a candidate, including, without
30 limitation, violations by members of political committees, referendum
31 committees or treasurers: report to the district attorney of the
32 prosecutorial district in which the individual resides; and
- 33 (4) In the case of a person or any group of individuals: report to the
34 district attorney or district attorneys of the prosecutorial district or
35 districts in which any of the officers, directors, agents, employees or
36 members of the person or group reside.

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

40 Sec. 13. The amendments set out in Sections 1 and 2 of this act shall be
41 submitted to the qualified voters of the State at the general election on November 5,
42 1991, which election shall be conducted under the laws then governing elections in the
43 State. At that election, each qualified voter desiring to vote shall be provided a ballot on
44 which shall be printed the following:

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

4 [] AGAINST Constitutional amendments to change the composition of
5 the State Board of Education and to make the Superintendent of Public
6 Instruction an appointee of the State Board of Education."

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

12 Notwithstanding the foregoing provisions of this section, voting machines
13 may be used in accordance with rules and regulations prescribed by the State Board of
14 Elections.

15 Sec. 14. If a majority of votes cast thereon are in favor of the amendments set
16 out in Sections 1 and 2 of this act, the State Board of Elections shall certify the
17 amendments to the Secretary of State, who shall enroll the amendments so certified
18 among the permanent records of his office, and the amendments become effective upon
19 such certification, except that:

20 (1) Such amendments do not affect the manner of filling vacancies of the
21 Superintendent of Public Instruction for the term that commenced
22 January 1, 1989;

23 (2) The term of office of the Superintendent of Public Instruction for the
24 term that commenced January 1, 1989, is extended until March 31,
25 1993, and he shall continue to serve on the Council of State until that
26 date; and

27 (3) The term of office of all members of the State Board of Education who
28 were appointed or elected to the State Board of Education prior to
29 March 31, 1993, and the terms of the Lieutenant Governor and the
30 Treasurer on the State Board of Education, shall expire on March 31,
31 1993.

32 Sec. 15. Sections 3 through 12 of this act become effective only if the
33 constitutional amendments set out in Sections 1 and 2 of this act are approved by the
34 voters. If the constitutional amendments are approved by the voters, sections 3 through
35 12 of this act shall become effective March 31, 1993: Provided, however, the Senate
36 and the House of Representatives may elect members to the State Board of Education in
37 accordance with G.S. 115C-10, prior to March 31, 1993, for terms of office beginning
38 April 1, 1993.

39 Sec. 16. This act is effective upon ratification.