

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 441

Short Title: State School Superintendent Appointed. (Public)

Sponsors: Senators Lee, Hagan; Horton, Jordan, Lucas, Rand, and Shaw of Cumberland.

Referred to: Judiciary I.

March 13, 2001

A BILL TO BE ENTITLED

AN ACT TO MAKE THE SUPERINTENDENT OF PUBLIC INSTRUCTION AN APPOINTEE OF THE GOVERNOR AND TO MAKE CORRESPONDING STATUTORY CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. Section 4(2) of Article IX of the North Carolina Constitution reads as rewritten:

"(2) **Superintendent of Public Instruction.** The Superintendent of Public Instruction shall be the secretary and chief administrative officer of the State Board of Education. The Superintendent shall be appointed by the Governor, subject to confirmation by the General Assembly by joint resolution, for a term of four years. If a vacancy in the office occurs prior to the end of the term, the Governor shall appoint a Superintendent to serve on an interim basis pending confirmation by the General Assembly."

SECTION 2. Section 7(1) of Article III of the North Carolina 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."

SECTION 3. G.S. 115C-18 reads as rewritten:

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

The Superintendent of Public Instruction shall be appointed by the Governor, subject to confirmation by the General Assembly by joint resolution. The term of office of the

1 Superintendent shall be for four years, except that the first term of office shall begin
2 upon appointment of a candidate by the Governor and confirmation by the General
3 Assembly and shall end May 30, 2009. All subsequent terms shall begin on June 1 and
4 shall terminate four years later on May 30.

5 The Governor shall submit the name of the person to be appointed, for confirmation
6 by the General Assembly, to the President of the Senate and the Speaker of the House of
7 Representatives by April 15 of the year in which the Superintendent is to be appointed.
8 If a vacancy in the office occurs prior to the end of the term while the General
9 Assembly is in session, the Governor shall submit the name of a successor to the
10 President of the Senate and the Speaker of the House of Representatives within four
11 weeks after the vacancy occurs.

12 If a vacancy in the office occurs prior to the end of the term while the General
13 Assembly is not in session, the Governor shall appoint a Superintendent to serve on an
14 interim basis pending confirmation by the General Assembly.
15 ~~electd by the qualified voters of the State in 1972 and every four years thereafter at the~~
16 ~~same time and places as members of the General Assembly are elected. His term of~~
17 ~~office shall be four years and shall commence on the first day of January next after~~
18 ~~election and continue until his successor is elected and qualified.~~

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

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

35 ~~The election, term and induction into office of the Superintendent of Public~~
36 ~~Instruction shall be in accordance with the provisions of G.S. 147-4."~~

37 **SECTION 4.** G.S. 147-3(c) reads as rewritten:

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

- 39 (1) A Governor;
- 40 (2) A Lieutenant Governor;
- 41 (3) Private secretary for the Governor;
- 42 (4) A Secretary of State;
- 43 (5) An Auditor;
- 44 (6) A Treasurer;

- 1 (7) An Attorney General;
- 2 ~~(8) A Superintendent of Public Instruction;~~
- 3 (9) The members of the Governor's Council;
- 4 (10) A Commissioner of Agriculture;
- 5 (11) A Commissioner of Labor;
- 6 (12) A Commissioner of Insurance."

7 **SECTION 5.** G.S. 147-4 reads as rewritten:

8 **"§ 147-4. Executive officers – election; term; induction into office.**

9 The executive department shall consist of a Governor, a Lieutenant Governor, a
10 Secretary of State, an Auditor, a Treasurer, ~~a Superintendent of Public Instruction,~~ an
11 Attorney General, a Commissioner of Agriculture, a Commissioner of Insurance, and a
12 Commissioner of Labor, who shall be elected for a term of four years, by the qualified
13 electors of the State, at the same time and places, and in the same manner, as members
14 of the General Assembly are elected. Their term of office shall commence on the first
15 day of January next after their election and continue until their successors are elected
16 and qualified. The persons having the highest number of votes, respectively, shall be
17 declared duly elected, but if two or more be equal and highest in votes for the same
18 office, then one of them shall be chosen by joint ballot of both houses of the General
19 Assembly. Contested elections shall be determined by a joint ballot of both houses of
20 the General Assembly in such manner as shall be prescribed by law."

21 **SECTION 6.** G.S. 147-11.1 reads as rewritten:

22 **"§ 147-11.1. Succession to office of Governor; Acting Governor.**

23 (a) Lieutenant Governor. –

24 (1) The Lieutenant Governor-elect shall become Governor upon the
25 failure of the Governor-elect to qualify. The Lieutenant Governor shall
26 become Governor upon the death, resignation, or removal from office
27 of the Governor. The further order of succession to the office of
28 Governor shall be prescribed by law. A successor shall serve for the
29 remainder of the term of the Governor whom he succeeds and until a
30 new Governor is elected and qualified.

31 (2) During the absence of the Governor from the State, or during the
32 physical or mental incapacity of the Governor to perform the duties of
33 his office, the Lieutenant Governor shall be Acting Governor. The
34 further order of succession as Acting Governor shall be prescribed by
35 law.

36 (b) President of Senate, Speaker of the House and Other Officers. –

37 (1) If, by reason of failure to qualify, death, resignation, or removal from
38 office, there is neither a Governor nor a Lieutenant Governor to
39 discharge the powers and duties of the office of Governor, then the
40 President of the Senate shall, upon his resignation as President of the
41 Senate and as Senator, become Governor.

42 (2) If, at the time when under subdivision (1) of this subsection the
43 President of the Senate is to become Governor, there is no President of
44 the Senate, or the President of the Senate fails to qualify as Governor,

1 then the Speaker of the House of Representatives shall, upon his
2 resignation as Speaker and as Representative, become Governor.

- 3 (3) If, at the time when under subdivision (2) of this subsection the
4 Speaker of the House of Representatives is to become Governor, there
5 is no Speaker of the House of Representatives, or the Speaker of the
6 House of Representatives fails to qualify as Governor, then that officer
7 of the State of North Carolina who is highest on the following list, and
8 who is not under disability to serve as Governor, shall, upon his
9 resignation of the office which places him in the order of succession,
10 become Governor: Secretary of State, Auditor, Treasurer,
11 ~~Superintendent of Public Instruction~~, Attorney General, Commissioner
12 of Agriculture, Commissioner of Labor, and Commissioner of
13 Insurance.

14 (c) Acting Governor Generally. –

- 15 (1) If, by reason of absence from the State or physical or mental
16 incapacity, there is neither a Governor nor a Lieutenant Governor
17 qualified to discharge the powers and duties of the office of Governor,
18 then the President of the Senate shall become Acting Governor.

- 19 (2) If, at the time when under subdivision (1) of this subsection the
20 President of the Senate is to become Acting Governor, there is no
21 President of the Senate, or the President of the Senate fails to qualify
22 as Acting Governor, then the Speaker of the House of Representatives
23 shall become Acting Governor.

- 24 (3) If, at the time when under subdivision (2) of this subsection the
25 Speaker of the House of Representatives is to become Acting
26 Governor, there is no Speaker of the House of Representatives, or the
27 Speaker of the House of Representatives fails to qualify as Acting
28 Governor, then that officer of the State of North Carolina who is
29 highest on the following list, and who is not under disability to serve
30 as Acting Governor, shall become Acting Governor: Secretary of
31 State, Auditor, Treasurer, ~~Superintendent of Public Instruction~~,
32 Attorney General, Commissioner of Agriculture, Commissioner of
33 Labor, and Commissioner of Insurance.

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

- 38 (1) If his tenure as Acting Governor is founded in whole or in part upon
39 the absence of both the Governor and Lieutenant Governor from the
40 State, then he shall act only until the Governor or Lieutenant Governor
41 returns to the State; and

- 42 (2) If his tenure as Acting Governor is founded in whole or in part upon
43 the physical or mental incapacity of the Governor or Lieutenant

1 Governor, then he shall act only until the removal of the incapacity of
2 the Governor or Lieutenant Governor.

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

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

11 **SECTION 7.** G.S. 163-1 is amended by deleting the entries in the table for
12 "Superintendent of Public Instruction".

13 **SECTION 8.** G.S. 163-8 reads as rewritten:

14 **"§ 163-8. Filling vacancies in State executive offices.**

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

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

33 **SECTION 9.** G.S. 163-278.27(b) reads as rewritten:

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

37 (1) In the case of a candidate for nomination or election to the State Senate
38 or State House of Representatives: report to the district attorney of the
39 prosecutorial district in which the candidate for nomination or election
40 resides;

41 (2) In the case of a candidate for nomination or election to the office of
42 Governor, Lieutenant Governor, Secretary of State, State Auditor,
43 State Treasurer, ~~State Superintendent of Public Instruction,~~ State
44 Attorney General, State Commissioner of Agriculture, State

1 Commissioner of Labor, State Commissioner of Insurance, and all
2 other State elective offices, Justice of the Supreme Court, Judge of the
3 Court of Appeals, judge of a superior court, judge of a district court,
4 and district attorney of the superior court: report to the district attorney
5 of the prosecutorial district in which Wake County is located;

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

10 (4) In the case of a person or any group of individuals: report to the
11 district attorney or district attorneys of the prosecutorial district or
12 districts in which any of the officers, directors, agents, employees or
13 members of the person or group reside."

14 **SECTION 10.** The amendments set out in Sections 1 and 2 of this act shall
15 be submitted to the qualified voters of the State at a statewide general election on
16 November 5, 2002, which election shall be conducted under the laws then governing
17 elections in the State. Ballots, voting systems, or both may be used in accordance with
18 Chapter 163 of the General Statutes. The question to be used in the voting systems and
19 ballots shall be:

20 "[] FOR [] AGAINST

21 Constitutional amendments to make the Superintendent of Public Instruction an
22 appointee of the Governor, subject to confirmation by the General Assembly, rather
23 than an elected position."

24 **SECTION 11.** If a majority of votes cast on the question are in favor of the
25 amendments set out in Sections 1 and 2 of this act, the State Board of Elections shall
26 certify the amendments to the Secretary of State. The Secretary of State shall enroll the
27 amendments so certified among the permanent records of that office. The amendments
28 set out in Sections 1 and 2 of this act shall become effective the later of January 1, 2005,
29 and the date that those sections are precleared under section 5 of the Voting Rights Act
30 of 1965, except that:

31 (1) The term of office of the first Superintendent appointed pursuant to
32 Sections 1 and 2 of this act shall begin upon appointment of a
33 candidate by the Governor and confirmation by the General Assembly
34 and shall end May 30, 2009. All subsequent terms shall begin on June
35 1 and shall terminate four years later on May 30; and

36 (2) The person holding the office of Superintendent of Public Instruction
37 on December 31, 2004, shall hold over in that office until a successor
38 is appointed, confirmed by the General Assembly, and qualified.

39 **SECTION 12.** Sections 3 through 9 of this act become effective only if the
40 voters approve the constitutional amendments set out in Sections 1 and 2 of this act. If
41 the voters approve the constitutional amendments:

42 (1) Sections 3 through 9 of this act shall become effective on the later of
43 January 1, 2005, and the date that those sections are precleared under
44 section 5 of the Voting Rights Act of 1965.

- 1 (2) There shall be no election for the office of Superintendent of Public
2 Instruction in the year 2004.
- 3 (3) The person holding the office of Superintendent of Public Instruction
4 on December 31, 2004, shall hold over in that office until a successor
5 is appointed, confirmed by the General Assembly, and qualified.
- 6 **SECTION 13.** This act is effective when it becomes law.