

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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SENATE BILL 34

Short Title: Council of State Implementing Statute. (Public)

Sponsors: Senators Albertson; Apodaca, Clodfelter, Dorsett, Garrou, Holloman, Horton, Hoyle, Jenkins, Malone, Stevens, and Weinstein.

Referred to: Ways and Means.

February 2, 2005

A BILL TO BE ENTITLED

1  
2 AN ACT TO MAKE NECESSARY STATUTORY CHANGES TO IMPLEMENT A  
3 PROPOSED CONSTITUTIONAL AMENDMENT TO PROVIDE THAT THE  
4 ELECTED MEMBERS OF THE COUNCIL OF STATE ARE THE GOVERNOR,  
5 LIEUTENANT GOVERNOR, AUDITOR, TREASURER, AND ATTORNEY  
6 GENERAL.

7 The General Assembly of North Carolina enacts:

8       **SECTION 1.** G.S. 58-2-5 reads as rewritten:

9       "**§ 58-2-5. Commissioner's election and term of office.**

10       The chief officer of the Insurance Department shall be called the Commissioner of  
11 Insurance; whenever in the statutes of this State the words "Insurance Commissioner"  
12 appear, they shall be deemed to refer to and to be synonymous with the term  
13 "Commissioner of Insurance." He shall be ~~elected by the people in the manner~~  
14 ~~prescribed for the election of members of the General Assembly and State officers, and~~  
15 ~~the result of the election shall be declared in the same manner and at the same time as~~  
16 ~~the election of State officers is now declared. His term of office begins on the first day~~  
17 ~~of January next after his election, and is for four years or until his successor is elected~~  
18 ~~and qualified. If a vacancy occurs during the term, it shall be filled by the Governor for~~  
19 ~~the unexpired term.~~ appointed by the Governor."

20       **SECTION 2.** G.S. 95-2 reads as rewritten:

21       "**§ 95-2. Election of Commissioner; term; salary; vacancy.**

22       The Commissioner of Labor shall be ~~elected by the people in the same manner as is~~  
23 ~~provided for the election of the Secretary of State. The term of office of the~~  
24 ~~Commissioner of Labor shall be four years, and the~~ appointed by the Governor. The  
25 salary of the Commissioner of Labor shall be set by the General Assembly in the  
26 Current Operations Appropriations Act. Any vacancy in the office shall be filled by the  
27 Governor, until the next general election. The office of the Department of Labor shall be  
28 kept in the City of Raleigh and shall be provided for as are other public offices of the

1 State. In addition to the salary set by the General Assembly in the Current Operations  
2 Appropriations Act, longevity pay shall be paid on the same basis as is provided to  
3 employees of the State who are subject to the State Personnel Act."

4 **SECTION 3.** G.S. 106-10 reads as rewritten:

5 "**§ 106-10. Election; term; vacancy.**

6 The Commissioner of Agriculture shall be elected ~~at the general election for other~~  
7 ~~State officers, shall be voted for on the same ballot with such officers, and his term of~~  
8 ~~office shall be four years, and until his successor is elected and qualified. Any vacancy~~  
9 ~~in the office of such Commissioner shall be filled by the Governor, the appointee to~~  
10 ~~hold until the next regular election to the office and the qualification of his successor.~~  
11 appointed by the Governor."

12 **SECTION 4.** G.S. 115C-18 reads as rewritten:

13 "**§ 115C-18. Election of Superintendent of Public Instruction.**

14 The Superintendent of Public Instruction shall be elected ~~by the qualified voters of~~  
15 ~~the State in 1972 and every four years thereafter at the same time and places as~~  
16 ~~members of the General Assembly are elected. His term of office shall be four years and~~  
17 ~~shall commence on the first day of January next after election and continue until his~~  
18 ~~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. appointed by the~~  
37 Governor."

38 **SECTION 5.** G.S. 147-3(c) reads as rewritten:

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

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

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

8 **SECTION 6.** G.S. 147-4 reads as rewritten:

9 **"§ 147-4. Executive officers – election; term; induction into office.**

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

23 **SECTION 7.** G.S. 147-11.1(b) and (c) read as rewritten:

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

- 25 (1) If, by reason of failure to qualify, death, resignation, or removal from  
26 office, there is neither a Governor nor a Lieutenant Governor to  
27 discharge the powers and duties of the office of Governor, then the  
28 President of the Senate shall, upon his resignation as President of the  
29 Senate and as Senator, become Governor.
- 30 (2) If, at the time when under subdivision (1) of this subsection the  
31 President of the Senate is to become Governor, there is no President of  
32 the Senate, or the President of the Senate fails to qualify as Governor,  
33 then the Speaker of the House of Representatives shall, upon his  
34 resignation as Speaker and as Representative, become 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 Governor, there  
37 is no Speaker of the House of Representatives, or the Speaker of the  
38 House of Representatives fails to qualify as Governor, then that officer  
39 of the State of North Carolina who is highest on the following list, and  
40 who is not under disability to serve as Governor, shall, upon his  
41 resignation of the office which places him in the order of succession,  
42 become Governor: Secretary of State, Auditor, Treasurer,  
43 ~~Superintendent of Public Instruction, Attorney General, Commissioner~~

1 of ~~Agriculture, Commissioner of Labor, and Commissioner of~~  
2 ~~Insurance, and Attorney General.~~

3 (c) Acting Governor Generally. –

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

8 (2) If, at the time when under subdivision (1) of this subsection the  
9 President of the Senate is to become Acting Governor, there is no  
10 President of the Senate, or the President of the Senate fails to qualify  
11 as Acting Governor, then the Speaker of the House of Representatives  
12 shall become Acting Governor.

13 (3) If, at the time when under subdivision (2) of this subsection the  
14 Speaker of the House of Representatives is to become Acting  
15 Governor, there is no Speaker of the House of Representatives, or the  
16 Speaker of the House of Representatives fails to qualify as Acting  
17 Governor, then that officer of the State of North Carolina who is  
18 highest on the following list, and who is not under disability to serve  
19 as Acting Governor, shall become Acting Governor: Secretary of  
20 State, Auditor, Treasurer, ~~Superintendent of Public Instruction,~~  
21 ~~Attorney General, Commissioner of Agriculture, Commissioner of~~  
22 ~~Labor, and Commissioner of Insurance, and Attorney General."~~

23 **SECTION 8.** G.S. 163-1 is amended by deleting the entries in the table for  
24 "Superintendent of Public Instruction", "Commissioner of Insurance", "Commissioner  
25 of Labor", and "Commissioner of Agriculture".

26 **SECTION 9.** G.S. 163-8 reads as rewritten:

27 **"§ 163-8. Filling vacancies in State executive offices.**

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

41 Upon the occurrence of a vacancy in the office of any one of these officers for any  
42 of the causes stated in the preceding paragraph, the Governor may appoint an acting  
43 officer to perform the duties of that office until a person is appointed or elected pursuant

1 to this section and Article III, Section 7 of the State Constitution, to fill the vacancy and  
2 is qualified."

3 **SECTION 10.** G.S. 163-278.27(b)(2) reads as rewritten:

4 "(2) In the case of a candidate for nomination or election to the office of  
5 Governor, Lieutenant Governor, Secretary of State, State Auditor,  
6 State Treasurer, ~~State Superintendent of Public Instruction, State~~  
7 ~~Attorney General, State Commissioner of Agriculture, State~~  
8 ~~Commissioner of Labor, State Commissioner of Insurance,~~ and all  
9 other State elective offices, Justice of the Supreme Court, Judge of the  
10 Court of Appeals, judge of a superior court, judge of a district court,  
11 and district attorney of the superior court: report to the district attorney  
12 of the prosecutorial district in which Wake County is located;".

13 **SECTION 11.** This act becomes effective only if AN ACT TO PROVIDE  
14 THAT THE ELECTED MEMBERS OF THE COUNCIL OF STATE ARE THE  
15 GOVERNOR, LIEUTENANT GOVERNOR, AUDITOR, TREASURER, AND  
16 ATTORNEY GENERAL is approved by the qualified voters as provided in that act.

17 **SECTION 12.** This act is effective when it becomes law.