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(Public)

Sponsors:

Referred to:

January 26, 1995

A BILL TO BE ENTITLED

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

"(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.~~ eleven members appointed by the Governor, three members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, and three 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,~~ Governor's eleven appointees, one shall be appointed from each of the eight educational districts and three shall be appointed from the State at large. Appointments shall be for overlapping terms of ~~eight~~ four years. The General Assembly

1 may provide by statute for any qualifications of Board members and any limitation on the  
2 number of terms a member may serve on the Board. Appointments to fill vacancies shall  
3 be made by the Governor for the unexpired terms and shall not be subject to confirmation. as  
4 provided by law.

5 The Governor shall designate one member of the Board as chair."

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

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

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

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

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

20 "**§ 115C-10. Appointment of Board.**

21 (a) The State Board of Education shall consist of the Lieutenant Governor, the  
22 State Treasurer, ~~and eleven~~ members appointed by the Governor, three members  
23 appointed by the General Assembly upon the recommendation of the President Pro  
24 Tempore of the Senate in accordance with G.S. 120-121, one of which shall be upon the  
25 recommendation of the Senate Minority Leader to the President Pro Tempore, and three  
26 members appointed by the General Assembly upon the recommendation of the Speaker  
27 of the House of Representatives in accordance with G.S. 120-121, one of which shall be  
28 upon the recommendation of the House Minority Leader to the Speaker. ~~Governor, subject~~  
29 to confirmation by the General Assembly in joint session. ~~Not~~ The Governor may appoint no  
30 more than one public school employee paid from State or local funds ~~may to~~ serve as an  
31 appointive member of the State Board of Education. ~~The General Assembly shall not~~  
32 appoint any public school employees paid from State or local funds to serve as appointive  
33 members of the State Board of Education. ~~No spouse of any public school employee paid~~  
34 from State or local funds and no ~~No~~ employee of the Department of Public Instruction or his  
35 spouse, may serve as an appointive member of the State Board of Education. ~~Of the~~  
36 appointive members of the State Board of Education, one shall be appointed ~~Of the Governor's~~  
37 eleven appointments, one shall be appointed from each of the eight educational districts  
38 and three shall be appointed as members at large. ~~Appointments shall be for terms of eight~~  
39 years and shall be made in four classes. ~~Appointments to fill vacancies shall be made by the~~  
40 Governor for the unexpired terms and shall not be subject to confirmation.

41 (b) All initial terms shall begin July 1, 1996. The eight initial members appointed  
42 by the Governor, one from each of the eight educational districts, shall serve terms

1 ending February 28, 1997. The remainder of the initial appointive members shall serve  
2 for terms ending February 28, 1999. All subsequent terms shall be for four years.

3 No member shall serve more than two full four-year terms in succession. Resignation  
4 from a term of office does not constitute a break in service for the purpose of this  
5 subsection. Members appointed for a term to begin July 1, 1996, may be reappointed for  
6 two additional successive terms.

7 (c) Appointments to fill vacancies in positions filled by the Governor shall be  
8 made by the Governor for the unexpired terms. Appointments by the General Assembly  
9 shall be made in accordance with G.S. 120-121, and appointments to fill vacancies in  
10 those positions shall be made in accordance with G.S. 120-122.

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

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

18 "(a) Presiding Officer. – The Governor shall select one member of the Board to  
19 serve as chair. The chair shall serve at the pleasure of the Governor. The State Board of  
20 Education shall elect from its membership a chairman and vice-chairman. A majority of  
21 the Board shall constitute a quorum for the transaction of business. Per diem and  
22 expenses of the appointive members of the Board shall be provided by the General  
23 Assembly. The chairman of the Board shall preside at all meetings of the Board. In the  
24 absence of the chairman, the vice-chairman shall preside; in the absence of both the  
25 chairman and the vice-chairman, the Board shall name one of its own members as  
26 chairman pro tempore."

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

28 "**§ 115C-18. Election—Appointment of Superintendent of Public Instruction.**  
29 **Instruction; salary.**

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

35 ~~If the office of the Superintendent of Public Instruction is vacated by death,~~  
36 ~~resignation, or otherwise, it shall be the duty of the Governor to appoint another to serve~~  
37 ~~until his successor is elected and qualified. Every such vacancy shall be filled by election~~  
38 ~~at the first election for members of the General Assembly that occurs more than 30 days~~  
39 ~~after the vacancy has taken place, and the person chosen shall hold the office for the~~  
40 ~~remainder of the unexpired term fixed in Article III, Sec. 7 of the Constitution of North~~  
41 ~~Carolina. When a vacancy occurs in the office and the term expires on the first day of~~  
42 ~~January succeeding the next election for members of the General Assembly, the~~  
43 ~~Governor shall appoint to fill the vacancy for the unexpired term of the office. Upon the~~

1 occurrence of a vacancy in the office for any of the causes stated herein, the Governor  
2 may appoint an interim officer to perform the duties of that office until a person is  
3 appointed or elected pursuant to Article III, Sec. 7 of the Constitution of North Carolina  
4 to fill the vacancy and is qualified.

5 The time of the election of the Superintendent of Public Instruction shall be in  
6 accordance with the provisions of Article 1 of Subchapter I of Chapter 163 of the General  
7 Statutes.

8 The election, term and induction into office of the Superintendent of Public  
9 Instruction shall be in accordance with the provisions of G.S. 147-4, appointed by the  
10 State Board of Education and shall serve at the pleasure of the State Board of Education.  
11 The salary of the Superintendent shall be set by the State Board of Education."

12 Sec. 7. G.S. 115C-19 reads as rewritten:

13 **"§ 115C-19. Chief administrative officer of the State Board of Education.**

14 As provided in Article IX, Sec. 4(2) of the North Carolina Constitution, the  
15 Superintendent of Public Instruction shall be the secretary and chief administrative  
16 officer of the State Board of Education. The Superintendent of Public Instruction shall  
17 administer the policies adopted by the State Board of Education. The Board shall define the  
18 specific duties of the Superintendent as secretary and chief administrative officer of the  
19 Board. The Superintendent of Public Instruction shall perform these duties and any other  
20 duties that the Board may assign to the Superintendent."

21 Sec. 8. G.S. 115C-20 is repealed.

22 Sec. 9. G.S. 115C-21 is repealed.

23 Sec. 10. G.S. 120-123 is amended by adding a new subdivision to read:

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

25 Sec. 11. G.S. 147-3(c) reads as rewritten:

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

27 (1) A Governor;

28 (2) A Lieutenant Governor;

29 (3) Private secretary for the Governor;

30 (4) A Secretary of State;

31 (5) An Auditor;

32 (6) A Treasurer;

33 (7) An Attorney General;

34 ~~(8) A Superintendent of Public Instruction;~~

35 (9) The members of the Governor's Council;

36 (10) A Commissioner of Agriculture;

37 (11) A Commissioner of Labor;

38 (12) A Commissioner of Insurance."

39 Sec. 12. G.S. 147-4 reads as rewritten:

40 **"§ 147-4. Executive officers – election; term; induction into office.**

41 The executive department shall consist of a Governor, a Lieutenant Governor, a  
42 Secretary of State, an Auditor, a Treasurer, ~~a Superintendent of Public Instruction,~~ an  
43 Attorney General, a Commissioner of Agriculture, a Commissioner of Insurance, and a

1 Commissioner of Labor, who shall be elected for a term of four years, by the qualified  
2 electors of the State, at the same time and places, and in the same manner, as members of  
3 the General Assembly are elected. Their term of office shall commence on the first day of  
4 January next after their election and continue until their successors are elected and  
5 qualified. The persons having the highest number of votes, respectively, shall be declared  
6 duly elected, but if two or more be equal and highest in votes for the same office, then  
7 one of them shall be chosen by joint ballot of both houses of the General Assembly.  
8 Contested elections shall be determined by a joint ballot of both houses of the General  
9 Assembly in such manner as shall be prescribed by law."

10 Sec. 13. G.S. 147-11.1 reads as rewritten:

11 **"§ 147-11.1. Succession to office of Governor; Acting Governor.**

12 (a) Lieutenant Governor. –

13 (1) The Lieutenant Governor-elect shall become Governor upon the failure  
14 of the Governor-elect to qualify. The Lieutenant Governor shall become  
15 Governor upon the death, resignation, or removal from office of the  
16 Governor. The further order of succession to the office of Governor  
17 shall be prescribed by law. A successor shall serve for the remainder of  
18 the term of the Governor whom he succeeds and until a new Governor is  
19 elected and qualified.

20 (2) During the absence of the Governor from the State, or during the  
21 physical or mental incapacity of the Governor to perform the duties of  
22 his office, the Lieutenant Governor shall be Acting Governor. The  
23 further order of succession as Acting Governor shall be prescribed by  
24 law.

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

26 (1) If, by reason of failure to qualify, death, resignation, or removal from  
27 office, there is neither a Governor nor a Lieutenant Governor to  
28 discharge the powers and duties of the office of Governor, then the  
29 President of the Senate shall, upon his resignation as President of the  
30 Senate and as Senator, become Governor.

31 (2) If, at the time when under subdivision (1) of this subsection the  
32 President of the Senate is to become Governor, there is no President of  
33 the Senate, or the President of the Senate fails to qualify as Governor,  
34 then the Speaker of the House of Representatives shall, upon his  
35 resignation as Speaker and as Representative, become Governor.

36 (3) If, at the time when under subdivision (2) of this subsection the Speaker  
37 of the House of Representatives is to become Governor, there is no  
38 Speaker of the House of Representatives, or the Speaker of the House of  
39 Representatives fails to qualify as Governor, then that officer of the  
40 State of North Carolina who is highest on the following list, and who is  
41 not under disability to serve as Governor, shall, upon his resignation of  
42 the office which places him in the order of succession, become  
43 Governor: Secretary of State, Auditor, Treasurer, ~~Superintendent of~~

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

3       (c)   Acting Governor Generally. —

4           (1)   If, by reason of absence from the State or physical or mental incapacity,  
5           there is neither a Governor nor a Lieutenant Governor qualified to  
6           discharge the powers and duties of the office of Governor, then the  
7           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 as  
11          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 Speaker  
14          of the House of Representatives is to become Acting Governor, there is  
15          no Speaker of the House of Representatives, or the Speaker of the  
16          House of Representatives fails to qualify as Acting Governor, then that  
17          officer of the State of North Carolina who is highest on the following  
18          list, and who is not under disability to serve as Acting Governor, shall  
19          become Acting Governor: Secretary of State, Auditor, Treasurer,  
20          ~~Superintendent of Public Instruction~~,—Attorney General, Commissioner of  
21          Agriculture, Commissioner of Labor, and Commissioner of Insurance.

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

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

30           (2)   If his tenure as Acting Governor is founded in whole or in part upon the  
31           physical or mental incapacity of the Governor or Lieutenant Governor,  
32           then he shall act only until the removal of the incapacity of the  
33           Governor or Lieutenant Governor.

34       (e)   Officers to Which Subsections (b), (c) and (d) Applicable. — Subsections (b),  
35       (c), and (d) of this section shall apply only to such officers as are eligible to the office of  
36       Governor under the Constitution of North Carolina, and only to officers who are not  
37       under impeachment by the House of Representatives at the time they are to become  
38       Governor or Acting Governor.

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

42           Sec. 14. G.S. 163-1 is amended by deleting the entries in the table for  
43       "Superintendent of Public Instruction".

1           Sec. 15. G.S. 163-8 reads as rewritten:

2 **"§ 163-8. Filling vacancies in State executive offices.**

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

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

21           Sec. 16. G.S. 163-278.27(b) reads as rewritten:

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

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

1           which any of the officers, directors, agents, employees or members of  
2           the person or group reside."

3           Sec. 17. Notwithstanding G.S. 163-107(c), in 1996 only, if at the time filing of  
4 notices for candidacy for the office of Superintendent of Public Instruction is to open  
5 under G.S. 163-106(c), the provisions of this act that provide that that office is no longer  
6 elective have not been approved under Section 5 of the Voting Rights Act of 1965, then  
7 notices of candidacy for that office shall not be filed with the State Board of Elections  
8 earlier than the third Monday in January.

9           Sec. 18. The amendments set out in Sections 1, 2, and 3 of this act shall be  
10 submitted to the qualified voters of the State at a statewide general election on November  
11 7, 1995, which election shall be conducted under the laws then governing elections in the  
12 State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of  
13 the General Statutes. The question to be used in the voting systems and ballots shall be:

14   **"[ ] FOR [ ] AGAINST**

15           Constitutional amendments to make the Superintendent of Public Instruction  
16 an appointee of the State Board of Education, rather than an elected position, to change  
17 the composition of the State Board of Education, and to change the length of terms for  
18 members of the State Board of Education."

19           Sec. 19. If a majority of votes cast on the question are in favor of the  
20 amendments set out in Sections 1, 2, and 3 of this act, the State Board of Elections shall  
21 certify the amendments to the Secretary of State. The Secretary of State shall enroll the  
22 amendments so certified among the permanent records of that office. The amendments  
23 shall become effective as follows:

24           (1) The amendment set out in Section 1 of this act shall become effective  
25 upon such certification except that the term of office of all members of  
26 the State Board of Education who were appointed to the State Board of  
27 Education prior to July 1, 1996, and were serving as members on June  
28 30, 1996, shall expire on July 1, 1996. The initial overlapping term  
29 beginning July 1, 1996, for members of the State Board of Education  
30 shall be as follows: The eight initial members appointed by the  
31 Governor, one from each of the eight educational districts, shall serve  
32 for terms ending February 28, 1997, and the remainder of the initial  
33 appointive members shall serve for terms ending February 28, 1999.  
34 All subsequent terms shall be for four years.

35           (2) The amendments set out in Sections 2 and 3 of this act shall  
36 become effective the later of January 1, 1997, and the date that those  
37 sections are precleared under Section 5 of the Voting Rights Act of  
38 1965. If because of the date of preclearance of those sections under  
39 Section 5 of the Voting Rights Act of 1965, an election is conducted  
40 in 1996 for the office of Superintendent of Public Instruction, the  
41 results of that election are vacated. If the amendments become  
42 effective after January 1, 1997, the term of office of the person then  
43 holding that office is terminated on the effective date.



1           Sec. 20. Sections 4 through 16 of this act become effective only if the  
2 constitutional amendments set out in Sections 1, 2, and 3 of this act are approved by the  
3 voters. If the constitutional amendments are approved by the voters:

4           (1) Sections 4, 5, and 10 of this act shall become effective July 1, 1996:  
5           Provided, however, the General Assembly and the Governor may  
6           appoint members to the State Board of Education in accordance with  
7           Section 4 of this act, prior to July 1, 1996, for terms of office beginning  
8           July 1, 1996.

9           (2) Sections 6, 7, 8, 9, and 11 through 16 of this act shall become effective  
10           on the later of January 1, 1997, and the date that those sections are  
11           precleared under Section 5 of the Voting Rights Act of 1965. If because  
12           of the date of preclearance of those sections under Section 5 of the  
13           Voting Rights Act of 1965, an election is conducted in 1996 for the  
14           office of Superintendent of Public Instruction, the results of that election  
15           are vacated. If the amendments become effective after January 1, 1997,  
16           the term of office of the person then holding that office is terminated on  
17           the effective date.

18           Sec. 21. This act is effective upon ratification.