

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 74

Short Title: Appt'd. Sup't. of Pub. Instruction.

(Public)

Sponsors: Senators Cochrane, Simpson, Little, Kincaid, Davis, Clark, Hartsell, Smith, Foxx; Carpenter, Ledbetter, and Allran.

Referred to: Judiciary I/Constitution.

January 30, 1995

A BILL TO BE ENTITLED

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

4 The General Assembly of North Carolina enacts:

5 Section 1. 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. The Superintendent shall be appointed by the State Board of Education and
9 shall serve at the pleasure of the State Board of Education."

10 Sec. 2. 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 the
14 State in 1972 and every four years thereafter, at the same time and places as members of
15 the General Assembly are elected. Their term of office shall be four years and shall
16 commence on the first day of January next after their election and continue until their
17 successors are elected and qualified."

18 Sec. 3. G.S. 115C-18 reads as rewritten:
19

1 **"§ 115C-18. Election—Appointment of Superintendent of Public Instruction.**
2 **Instruction; salary.**

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

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

21 The time of the election of the Superintendent of Public Instruction shall be in
22 accordance with the provisions of Article 1 of Subchapter I of Chapter 163 of the General
23 Statutes.

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

28 Sec. 4. G.S. 115C-20 is repealed.

29 Sec. 5. G.S. 115C-21 is repealed.

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

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

32 (1) A Governor;

33 (2) A Lieutenant Governor;

34 (3) Private secretary for the Governor;

35 (4) A Secretary of State;

36 (5) An Auditor;

37 (6) A Treasurer;

38 (7) An Attorney General;

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

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

41 (10) A Commissioner of Agriculture;

42 (11) A Commissioner of Labor;

43 (12) A Commissioner of Insurance."

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

2 **"§ 147-4. Executive officers – election; term; induction into office.**

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

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

16 **"§ 147-11.1. Succession to office of Governor; Acting Governor.**

17 (a) Lieutenant Governor. –

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

25 (2) During the absence of the Governor from the State, or during the
26 physical or mental incapacity of the Governor to perform the duties of
27 his office, the Lieutenant Governor shall be Acting Governor. The
28 further order of succession as Acting Governor shall be prescribed by
29 law.

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

31 (1) If, by reason of failure to qualify, death, resignation, or removal from
32 office, there is neither a Governor nor a Lieutenant Governor to
33 discharge the powers and duties of the office of Governor, then the
34 President of the Senate shall, upon his resignation as President of the
35 Senate and as Senator, become Governor.

36 (2) If, at the time when under subdivision (1) of this subsection the
37 President of the Senate is to become Governor, there is no President of
38 the Senate, or the President of the Senate fails to qualify as Governor,
39 then the Speaker of the House of Representatives shall, upon his
40 resignation as Speaker and as Representative, become Governor.

41 (3) If, at the time when under subdivision (2) of this subsection the Speaker
42 of the House of Representatives is to become Governor, there is no
43 Speaker of the House of Representatives, or the Speaker of the House of

1 Representatives fails to qualify as Governor, then that officer of the
2 State of North Carolina who is highest on the following list, and who is
3 not under disability to serve as Governor, shall, upon his resignation of
4 the office which places him in the order of succession, become
5 Governor: Secretary of State, Auditor, Treasurer, ~~Superintendent of~~
6 ~~Public Instruction,~~ Attorney General, Commissioner of Agriculture,
7 Commissioner of Labor, and Commissioner of Insurance.

8 (c) Acting Governor Generally. –

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

13 (2) If, at the time when under subdivision (1) of this subsection the
14 President of the Senate is to become Acting Governor, there is no
15 President of the Senate, or the President of the Senate fails to qualify as
16 Acting Governor, then the Speaker of the House of Representatives
17 shall become Acting Governor.

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

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

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

35 (2) If his tenure as Acting Governor is founded in whole or in part upon the
36 physical or mental incapacity of the Governor or Lieutenant Governor,
37 then he shall act only until the removal of the incapacity of the
38 Governor or Lieutenant Governor.

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

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

4 Sec. 9. G.S. 163-1 is amended by deleting the entries in the table for
5 "Superintendent of Public Instruction".

6 Sec. 10. G.S. 163-8 reads as rewritten:

7 **"§ 163-8. Filling vacancies in State executive offices.**

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

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

26 Sec. 11. G.S. 163-278.27(b) reads as rewritten:

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

30 (1) In the case of a candidate for nomination or election to the State Senate
31 or State House of Representatives: report to the district attorney of the
32 prosecutorial district in which the candidate for nomination or election
33 resides;

34 (2) In the case of a candidate for nomination or election to the office of
35 Governor, Lieutenant Governor, Secretary of State, State Auditor, State
36 Treasurer, ~~State Superintendent of Public Instruction,~~ State Attorney
37 General, State Commissioner of Agriculture, State Commissioner of
38 Labor, State Commissioner of Insurance, and all other State elective
39 offices, Justice of the Supreme Court, Judge of the Court of Appeals,
40 judge of a superior court, judge of a district court, and district attorney
41 of the superior court: report to the district attorney of the prosecutorial
42 district in which Wake County is located;

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

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

9 Sec. 12. Notwithstanding G.S. 163-107(c), in 1996 only, if at the time filing of
10 notices for candidacy for the office of Superintendent of Public Instruction is to open
11 under G.S. 163-106(c), the provisions of this act that provide that that office is no longer
12 elective have not been approved under Section 5 of the Voting Rights Act of 1965, then
13 notices of candidacy for that office shall not be filed with the State Board of Elections
14 earlier than the third Monday in January.

15 Sec. 13. The amendments set out in Sections 1 and 2 of this act shall be
16 submitted to the qualified voters of the State at a statewide general election on November
17 7, 1995, which election shall be conducted under the laws then governing elections in the
18 State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of
19 the General Statutes. The question to be used in the voting systems and ballots shall be:

20 **"[] FOR [] AGAINST**

21 Constitutional amendments to make the Superintendent of Public Instruction
22 an appointee of the State Board of Education."

23 Sec. 14. If a majority of votes cast on the question are in favor of the
24 amendments set out in Sections 1 and 2 of this act, the State Board of Elections shall
25 certify the amendments to the Secretary of State. The Secretary of State shall enroll the
26 amendments so certified among the permanent records of that office. The amendments
27 shall become effective the later of January 1, 1997, and the date that those sections are
28 precleared under Section 5 of the Voting Rights Act of 1965. If because of the date of
29 preclearance of those sections under Section 5 of the Voting Rights Act of 1965, an
30 election is conducted in 1996 for the office of Superintendent of Public Instruction, the
31 results of that election are vacated. If the amendments become effective after January 1,
32 1997, the term of office of the person then holding that office is terminated on the
33 effective date.

34 Sec. 15. Sections 3 through 11 of this act become effective only if the
35 constitutional amendments set out in Sections 1 and 2 of this act are approved by the
36 voters. If the constitutional amendments are approved by the voters, Sections 3 through
37 11 of this act shall become effective on the later of January 1, 1997, and the date that
38 those sections are precleared under Section 5 of the Voting Rights Act of 1965. If
39 because of the date of preclearance of those sections under Section 5 of the Voting Rights
40 Act of 1965, an election is conducted in 1996 for the office of Superintendent of Public
41 Instruction, the results of that election are vacated. If the amendments become effective
42 after January 1, 1997, the term of office of the person then holding that office is
43 terminated on the effective date.

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