

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE DRS85005-LEx-36 (2/4)

Short Title: Superintendent of Pub. Instruction Appointed. (Public)

Sponsors: Senator Gulley.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA CONSTITUTION 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."

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. ~~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. His term of office shall be four years and shall commence on the first day of January next after election and continue until his successor is elected and qualified.~~

1 ~~If the office of the Superintendent of Public Instruction is vacated by death,~~
2 ~~resignation, or otherwise, it shall be the duty of the Governor to appoint another to serve~~
3 ~~until his successor is elected and qualified. Every such vacancy shall be filled by~~
4 ~~election at the first election for members of the General Assembly that occurs more than~~
5 ~~30 days after the vacancy has taken place, and the person chosen shall hold the office~~
6 ~~for the remainder of the unexpired term fixed in Article III, Sec. 7 of the Constitution of~~
7 ~~North Carolina. When a vacancy occurs in the office and the term expires on the first~~
8 ~~day of January succeeding the next election for members of the General Assembly, the~~
9 ~~Governor shall appoint to fill the vacancy for the unexpired term of the office. Upon the~~
10 ~~occurrence of a vacancy in the office for any of the causes stated herein, the Governor~~
11 ~~may appoint an interim officer to perform the duties of that office until a person is~~
12 ~~appointed or elected pursuant to Article III, Sec. 7 of the Constitution of North Carolina~~
13 ~~to fill the vacancy and is qualified.~~

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

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

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

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

- 21 (1) A Governor;
- 22 (2) A Lieutenant Governor;
- 23 (3) Private secretary for the Governor;
- 24 (4) A Secretary of State;
- 25 (5) An Auditor;
- 26 (6) A Treasurer;
- 27 (7) An Attorney General;
- 28 ~~(8) A Superintendent of Public Instruction;~~
- 29 (9) The members of the Governor's Council;
- 30 (10) A Commissioner of Agriculture;
- 31 (11) A Commissioner of Labor;
- 32 (12) A Commissioner of Insurance."

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

34 "**§ 147-4. Executive officers – election; term; induction into office.**

35 The executive department shall consist of a Governor, a Lieutenant Governor, a
36 Secretary of State, an Auditor, a Treasurer, ~~a Superintendent of Public Instruction,~~ an
37 Attorney General, a Commissioner of Agriculture, a Commissioner of Insurance, and a
38 Commissioner of Labor, who shall be elected for a term of four years, by the qualified
39 electors of the State, at the same time and places, and in the same manner, as members
40 of the General Assembly are elected. Their term of office shall commence on the first
41 day of January next after their election and continue until their successors are elected
42 and qualified. The persons having the highest number of votes, respectively, shall be
43 declared duly elected, but if two or more be equal and highest in votes for the same
44 office, then one of them shall be chosen by joint ballot of both houses of the General

1 Assembly. Contested elections shall be determined by a joint ballot of both houses of
2 the General Assembly in such manner as shall be prescribed by law."

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

4 **"§ 147-11.1. Succession to office of Governor; Acting Governor.**

5 (a) Lieutenant Governor. –

6 (1) The Lieutenant Governor-elect shall become Governor upon the
7 failure of the Governor-elect to qualify. The Lieutenant Governor shall
8 become Governor upon the death, resignation, or removal from office
9 of the Governor. The further order of succession to the office of
10 Governor shall be prescribed by law. A successor shall serve for the
11 remainder of the term of the Governor whom he succeeds and until a
12 new Governor is elected and qualified.

13 (2) During the absence of the Governor from the State, or during the
14 physical or mental incapacity of the Governor to perform the duties of
15 his office, the Lieutenant Governor shall be Acting Governor. The
16 further order of succession as Acting Governor shall be prescribed by
17 law.

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

19 (1) If, by reason of failure to qualify, death, resignation, or removal from
20 office, there is neither a Governor nor a Lieutenant Governor to
21 discharge the powers and duties of the office of Governor, then the
22 President of the Senate shall, upon his resignation as President of the
23 Senate and as Senator, become Governor.

24 (2) If, at the time when under subdivision (1) of this subsection the
25 President of the Senate is to become Governor, there is no President of
26 the Senate, or the President of the Senate fails to qualify as Governor,
27 then the Speaker of the House of Representatives shall, upon his
28 resignation as Speaker and as Representative, become Governor.

29 (3) If, at the time when under subdivision (2) of this subsection the
30 Speaker of the House of Representatives is to become Governor, there
31 is no Speaker of the House of Representatives, or the Speaker of the
32 House of Representatives fails to qualify as Governor, then that officer
33 of the State of North Carolina who is highest on the following list, and
34 who is not under disability to serve as Governor, shall, upon his
35 resignation of the office which places him in the order of succession,
36 become Governor: Secretary of State, Auditor, Treasurer,
37 ~~Superintendent of Public Instruction~~, Attorney General, Commissioner
38 of Agriculture, Commissioner of Labor, and Commissioner of
39 Insurance.

40 (c) Acting Governor Generally. –

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

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

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

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

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

24 (2) If his tenure as Acting Governor is founded in whole or in part upon
25 the physical or mental incapacity of the Governor or Lieutenant
26 Governor, then he shall act only until the removal of the incapacity of
27 the Governor or Lieutenant Governor.

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

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

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

38 **SECTION 8.** G.S. 163-8 reads as rewritten:
39 **"§ 163-8. Filling vacancies in State executive offices.**

40 If the office of Governor or Lieutenant Governor shall become vacant, the
41 provisions of G.S. 147-11.1 shall apply. If the office of any of the following officers
42 shall be vacated by death, resignation, or otherwise than by expiration of term, it shall
43 be the duty of the Governor to appoint another to serve until his successor is elected and
44 qualified: Secretary of State, Auditor, Treasurer, ~~Superintendent of Public Instruction,~~

1 Attorney General, Commissioner of Agriculture, Commissioner of Labor, and
2 Commissioner of Insurance. Each such vacancy shall be filled by election at the first
3 election for members of the General Assembly that occurs more than 60 days after the
4 vacancy has taken place, and the person chosen shall hold the office for the remainder
5 of the unexpired four-year term: Provided, that when a vacancy occurs in any of the
6 offices named in this section and the term expires on the first day of January succeeding
7 the next election for members of the General Assembly, the Governor shall appoint to
8 fill the vacancy for the unexpired term of the office.

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

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

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

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

39 **SECTION 10.** The amendments set out in Sections 1 and 2 of this act shall
40 be submitted to the qualified voters of the State at a statewide general election on
41 November 4, 2003, which election shall be conducted under the laws then governing
42 elections in the State. Ballots, voting systems, or both may be used in accordance with
43 Chapter 163 of the General Statutes. The question to be used in the voting systems and
44 ballots shall be:

1 " FOR AGAINST
2 Constitutional amendments to make the Superintendent of Public Instruction
3 an appointee of the Governor."

4 **SECTION 11.** If a majority of votes cast on the question are in favor of the
5 amendments set out in Sections 1 and 2 of this act, the State Board of Elections shall
6 certify the amendments to the Secretary of State. The Secretary of State shall enroll the
7 amendments so certified among the permanent records of that office. The amendments
8 set out in Sections 1 and 2 of this act shall become effective the earlier of January 1,
9 2005, and the date that a vacancy occurs in the office of Superintendent of Public
10 Instruction.

11 **SECTION 12.** Sections 3 through 9 of this act become effective only if the
12 voters approve the constitutional amendments set out in Sections 1 and 2 of this act. If
13 the voters approve the constitutional amendments, Sections 3 through 9 of this act shall
14 become effective on the earlier of January 1, 2005, and the date that a vacancy occurs in
15 the office of Superintendent of Public Instruction.

16 **SECTION 13.** This act is effective when it becomes law.