

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 321*

Short Title: GPAC/Public School Governance.

(Public)

Sponsors: (by request) Representatives G. Miller, Blue, Barnes, Diamont, Hackney, Hensley, H. Hunter, Nesbitt, and Robinson.

Referred to: Education.

February 25, 1993

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT A RECOMMENDATION OF THE GOVERNMENT PERFORMANCE AUDIT COMMITTEE TO AMEND THE CONSTITUTION TO CHANGE THE STATE BOARD OF EDUCATION APPOINTMENT PROCESS AND TO AUTHORIZE THE STATE BOARD OF EDUCATION TO APPOINT THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION.

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. The General Assembly shall divide the State into eight educational districts. Of the appointive members of the Board, 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 years. Appointments to fill vacancies shall be made by the Governor for the unexpired terms and shall not be subject to confirmation. The General Assembly shall provide by statute for the appointment of a State Board of Education. The General Assembly may, by statute, grant the Governor the authority to approve or reject any appointments to the Board made by the General Assembly.~~"

Sec. 2. Section 4(2) of Article IX of the 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

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

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

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

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

12 "**§ 115C-10. Appointment of Board.**

13 The State Board of Education shall consist of the following 15 members: a chair
14 appointed by the Governor, the Lieutenant Governor, the State Treasurer, and six
15 members appointed by the Governor, subject to confirmation by the General Assembly in
16 joint session. three members appointed by the General Assembly upon the
17 recommendation of the President Pro Tempore of the Senate, and three members
18 appointed by the General Assembly upon the recommendation of the Speaker of the
19 House of Representatives. Appointments made by the General Assembly shall be made
20 in accordance with G.S. 120-121, except that the members appointed by the General
21 Assembly shall be subject to approval or rejection by the Governor. In making
22 appointments, the Governor and the General Assembly shall take into account the
23 economic and geographic diversity of the State. Not more than one public school employee
24 paid from State or local funds may serve as an appointive member of the State Board of
25 Education. No spouse of any public school employee paid from State or local funds and no
26 employee of the Department of Public Instruction or his spouse, may serve as an appointive
27 member of the State Board of Education. Of the appointive members of the State Board of
28 Education, one shall be appointed from each of the eight educational districts and three shall be
29 appointed as members at large. Appointments shall be for terms of eight years and shall be
30 made in four classes. Appointments to fill vacancies shall be made by the Governor for the
31 unexpired terms and shall not be subject to confirmation.

32 ~~The Governor shall transmit to the presiding officers of the Senate and the House of~~
33 ~~Representatives, on or before the sixtieth legislative day of the General Assembly, the~~
34 ~~names of the persons appointed by him and submitted to the General Assembly for~~
35 ~~confirmation; thereafter, pursuant to joint resolution, the Senate and the House of~~
36 ~~Representatives shall meet in joint session for consideration of an action upon such~~
37 ~~appointments.~~

38 Appointments shall be made for staggered terms of four years, except that three
39 initial appointees shall serve one-year terms, three shall serve two-year terms, and three
40 shall serve three-year terms. The initial appointees, except for the chair, shall draw lots
41 to determine the length of their terms. The chair shall serve a four-year term. Initial
42 terms shall commence July 1, 1994.

43 Appointments to fill vacancies in positions filled by the Governor shall be made by the
44 Governor for the unexpired terms and shall not be subject to confirmation. terms.

1 Appointments to fill vacancies in positions filled by the General Assembly shall be
2 made in accordance with G.S. 120-122."

3 Sec. 5. G.S. 115C-65 is repealed.

4 Sec. 6. G.S. 143A-39 reads as rewritten:

5 **"§ 143A-39. Creation.**

6 There is hereby created a Department of Public Education. The head of the
7 Department of Public Education is the State Board of Education. Any provision of G.S.
8 143A-9 to the contrary notwithstanding, the appointment of the State Board of
9 Education shall be as prescribed in ~~Article IX, Sec. 4(1) of the Constitution.~~ G.S. 115C-
10 10."

11 Sec. 7. G.S. 120-123 is amended by adding a new subdivision to read:

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

13 Sec. 8. G.S. 115C-18 reads as rewritten:

14 **"§ 115C-18. ~~Election~~ Appointment of Superintendent of Public Instruction.**

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

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

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

36 ~~The election, term and induction into office of the Superintendent of Public~~
37 ~~Instruction shall be in accordance with the provisions of G.S. 147-4. appointed by the~~
38 ~~State Board of Education and shall serve at the pleasure of the State Board of~~
39 ~~Education."~~

40 Sec. 9. G.S. 115C-21(a) reads as rewritten:

41 "(a) Administrative Duties. – It shall be the duty of the Superintendent of Public
42 Instruction:

43 (1) To organize and establish a Department of Public Instruction which
44 shall include such divisions and departments as are necessary for

1 supervision and administration of the public school system, to
 2 administer the funds for the operation of the Department of Public
 3 Instruction, and to enter into contracts for the operations of the
 4 Department of Public Instruction.

5 (2) To keep the public informed as to the problems and needs of the public
 6 schools by constant contact with all school administrators and
 7 teachers, by his personal appearance at public gatherings, and by
 8 information furnished to the press of the State.

9 (3) To report biennially to the Governor 30 days prior to each regular
 10 session of the General Assembly, such report to include information
 11 and statistics of the public schools, with recommendations for their
 12 improvement and for such changes in the school law as shall occur to
 13 him.

14 (4) To have printed and distributed such educational bulletins as he shall
 15 deem necessary for the professional improvement of teachers and for
 16 the cultivation of public sentiment for public education, and to have
 17 printed all forms necessary and proper for the administration of the
 18 Department of Public Instruction.

19 (5) To have under his direction, in his capacity as the ~~constitutional head of~~
 20 ~~the public school system,~~ chief administrative officer of the State Board
 21 of Education, all those matters relating to the supervision and
 22 administration of the public school system."

23 Sec. 10. G.S. 143A-42 reads as rewritten:

24 **"§ 143A-42. Superintendent of Public Instruction; transfer of office and**
 25 **Department of Public Instruction; powers and duties.**

26 The office of the Superintendent of Public Instruction, as provided for by ~~Article III,~~
 27 ~~Sec. 7,~~ Article IX, Sec. 4(2), of the Constitution, and the Department of Public
 28 Instruction are hereby transferred to the Department of Public Education. The
 29 Superintendent of Public Instruction shall be the secretary and chief administrative
 30 officer of the State Board of Education, and shall have such powers and duties as are
 31 conferred by the Constitution, by the State Board of Education, Chapter 115C of the
 32 General Statutes, and the laws of this State."

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

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

- 35 (1) A Governor;
- 36 (2) A Lieutenant Governor;
- 37 (3) Private secretary for the Governor;
- 38 (4) A Secretary of State;
- 39 (5) An Auditor;
- 40 (6) A Treasurer;
- 41 (7) An Attorney General;
- 42 ~~(8) A Superintendent of Public Instruction;~~
- 43 (9) The members of the Governor's Council;
- 44 (10) A Commissioner of Agriculture;

- 1 (11) A Commissioner of Labor;
2 (12) A Commissioner of Insurance."
3 Sec. 12. G.S. 147-4 reads as rewritten:

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

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

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

18 **"§ 147-11.1. Succession to office of Governor; Acting Governor.**

19 (a) Lieutenant Governor. –

- 20 (1) The Lieutenant Governor-elect shall become Governor upon the
21 failure of the Governor-elect to qualify. The Lieutenant Governor shall
22 become Governor upon the death, resignation, or removal from office
23 of the Governor. The further order of succession to the office of
24 Governor shall be prescribed by law. A successor shall serve for the
25 remainder of the term of the Governor whom he succeeds and until a
26 new Governor is elected and qualified.
- 27 (2) During the absence of the Governor from the State, or during the
28 physical or mental incapacity of the Governor to perform the duties of
29 his office, the Lieutenant Governor shall be Acting Governor. The
30 further order of succession as Acting Governor shall be prescribed by
31 law.

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

- 33 (1) If, by reason of failure to qualify, death, resignation, or removal from
34 office, there is neither a Governor nor a Lieutenant Governor to
35 discharge the powers and duties of the office of Governor, then the
36 President of the Senate shall, upon his resignation as President of the
37 Senate and as Senator, become Governor.
- 38 (2) If, at the time when under subdivision (1) of this subsection the
39 President of the Senate is to become Governor, there is no President of
40 the Senate, or the President of the Senate fails to qualify as Governor,
41 then the Speaker of the House of Representatives shall, upon his
42 resignation as Speaker and as Representative, become Governor.
- 43 (3) If, at the time when under subdivision (2) of this subsection the
44 Speaker of the House of Representatives is to become Governor, there

1 is no Speaker of the House of Representatives, or the Speaker of the
2 House of Representatives fails to qualify as Governor, then that officer
3 of the State of North Carolina who is highest on the following list, and
4 who is not under disability to serve as Governor, shall, upon his
5 resignation of the office which places him in the order of succession,
6 become Governor: Secretary of State, Auditor, Treasurer,
7 ~~Superintendent of Public Instruction~~, Attorney General, Commissioner of
8 Agriculture, Commissioner of Labor, and Commissioner of Insurance.

9 (c) Acting Governor Generally. –

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

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

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

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

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

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

41 (e) Officers to Which Subsections (b), (c) and (d) Applicable. – Subsections (b),
42 (c), and (d) of this section shall apply only to such officers as are eligible to the office of
43 Governor under the Constitution of North Carolina, and only to officers who are not

1 under impeachment by the House of Representatives at the time they are to become
2 Governor or Acting Governor.

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

6 Sec. 14. G.S. 163-1 is amended by deleting the entry in the table for
7 "Superintendent of Public Instruction".

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

9 **"§ 163-8. Filling vacancies in State executive offices.**

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

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

28 Sec. 16. G.S. 163-278.27 reads as rewritten:

29 **"§ 163-278.27. Penalty for violations; duty to report and prosecute.**

30 (a) Any individual, candidate, political committee, referendum committee,
31 treasurer, person or media who violates the provisions of G.S. 163-278.7, 163-278.8,
32 163-278.9, 163-278.10, 163-278.11, 163-278.12, 163-278.14, 163-278.16, 163-278.17,
33 163-278.18, 163-278.40A, 163-278.40B, 163-278.40C, 163-278.40D or 163-278.40E is
34 guilty of a misdemeanor.

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

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

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

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

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

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

15 (c) Upon receipt of such a report from the Board, the appropriate district attorney
16 shall prosecute the individual or persons alleged to have violated a section or sections of
17 this Article."

18 Sec. 17. The amendments set out in Sections 1 through 3 of this act shall be
19 submitted to the qualified voters of the State on November 2, 1993, which election shall
20 be conducted under the laws then governing elections in the State. At that election, each
21 qualified voter desiring to vote shall be provided a ballot on which shall be printed the
22 following:

23 "[] FOR constitutional amendments to change the method of appointing
24 the State Board of Education and to make the Superintendent of Public
25 Instruction an appointee of the State Board of Education.

26 [] AGAINST constitutional amendments to change the method of
27 appointing the State Board of Education and to make the
28 Superintendent of Public Instruction an appointee of the State Board of
29 Education."

30 Those qualified voters favoring the amendments set out in Sections 1
31 through 3 of this act shall vote by making an X or a check mark in the square beside the
32 statement beginning "FOR", and those qualified voters opposed to those amendments
33 shall vote by making an X or check mark in the square beside the statement beginning
34 "AGAINST".

35 Notwithstanding the foregoing provisions of this section, voting machines
36 may be used in accordance with rules and regulations prescribed by the State Board of
37 Elections.

38 Sec. 18. If a majority of votes cast thereon are in favor of the amendments set
39 out in Sections 1 through 3 of this act, the State Board of Elections shall certify the
40 amendments to the Secretary of State, who shall enroll the amendments so certified
41 among the permanent records of his office, and the amendments shall become effective
42 as follows:

43 (1) The amendment set out in Section 1 of this act shall become effective
44 upon such certification except that the term of office of all members of

1 the State Board of Education who were appointed to the State Board of
2 Education prior to July 1, 1994, and were serving as members on June
3 30, 1991, shall expire on July 1, 1994.

4 (2) The amendments set out in Sections 2 and 3 of this act shall
5 become effective on the earlier of January 1, 1997, and the date that
6 a vacancy occurs in the office of Superintendent of Public
7 Instruction, except that there shall be no election held to fill the
8 office of Superintendent for a term beginning on or after December
9 31, 1996.

10 Sec. 19. Sections 4 through 16 of this act become effective only if the
11 constitutional amendments set out in Sections 1 through 3 of this act are approved by
12 the voters. If the constitutional amendments are approved by the voters:

13 (1) Sections 4 through 7 of this act shall become effective July 1, 1994:
14 Provided, however, the General Assembly and the Governor may
15 appoint members to the State Board of Education in accordance with
16 Section 4 of this act, prior to July 1, 1994, for terms of office
17 beginning July 1, 1994.

18 (2) Sections 8 through 16 of this act shall become effective the earlier of
19 January 1, 1997, and the date that a vacancy occurs in the office of
20 Superintendent of Public Instruction, except that there shall be no
21 election held to fill the office of Superintendent for a term beginning
22 on or after December 31, 1996.

23 Sec. 20. This act is effective upon ratification.