

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE DRS55376-LB-281 (03/13)

Short Title: Superintendent Appointive. (Public)

Sponsors: Senators Graham, and Clodfelter.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CONSTITUTION TO PROVIDE THAT THE SUPERINTENDENT OF PUBLIC INSTRUCTION SHALL BE APPOINTED BY THE GOVERNOR SUBJECT TO CONFIRMATION BY THE SENATE AND HOUSE OF REPRESENTATIVES.

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, after confirmation by joint resolution of the General Assembly, except the General Assembly may provide by law for interim appointments without confirmation. The Superintendent shall serve at the pleasure of 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. The amendments set out in Sections 1 and 2 of this act shall be submitted to the qualified voters of the State at a general election on November 6, 2007, which election shall be conducted under the laws then governing elections in the State.

1 Ballots, voting systems, or both may be used in accordance with Chapter 163 of the
2 General Statutes. The question to be used in the voting systems and ballots shall be:

3 "[] FOR [] AGAINST

4 Constitutional amendments to make the Superintendent of Public Instruction
5 an appointee of the Governor."

6 **SECTION 4.** If a majority of votes cast on the question are in favor of the
7 amendments set out in Sections 1 and 2 of this act, the State Board of Elections shall
8 certify the amendments to the Secretary of State. The Secretary of State shall enroll the
9 amendments so certified among the permanent records of that office. If a majority of
10 votes cast on the question are in favor of the amendments set out in Sections 1 and 2 of
11 this act, the amendments shall become effective the earlier of January 1, 2009, and the
12 date a vacancy occurs in the office of Superintendent of Public Instruction, and no
13 election shall be held for that office in 2008.

14 **SECTION 5.** G.S. 115C-18 reads as rewritten:

15 "**§ 115C-18. Election-Appointment of Superintendent of Public Instruction.**

16 (a) The Superintendent of Public Instruction shall be appointed by the Governor,
17 after confirmation by joint resolution of the General Assembly, except for interim
18 appointments without confirmation as provided by subsection (b) of this section. The
19 Superintendent shall serve at the pleasure of the Governor. The Governor shall submit
20 an initial nomination to the General Assembly no later than February 15, 2009, to serve
21 beginning April 1, 2009, provided that if a vacancy occurs between January 1, 2008,
22 and December 31, 2008, the Governor shall submit a nomination with 60 days of
23 occurrence of the vacancy. When any vacancy occurs at any other time, the Governor
24 shall submit a nomination to the General Assembly within 60 days of the vacancy.

25 (b) If at the time of occurrence of a vacancy, the General Assembly has not
26 convened the regular session, the regular session has adjourned sine die or for more than
27 10 days, the Governor may appoint an interim superintendent to serve until the 60th
28 calendar day after the General Assembly is again in regular session.

29 (c) No person whose nomination has been rejected by a negative floor vote in
30 either house may be appointed as interim superintendent, and if such person is serving
31 as interim superintendent at the time of the rejection, that person ceases to hold office
32 30 days later. ~~electd by the qualified voters of the State in 1972 and every four years~~
33 ~~thereafter at the same time and places as members of the General Assembly are elected.~~
34 ~~His term of office shall be four years and shall commence on the first day of January~~
35 ~~next after election and continue until his successor is elected and qualified.~~

36 ~~If the office of the Superintendent of Public Instruction is vacated by death,~~
37 ~~resignation, or otherwise, it shall be the duty of the Governor to appoint another to serve~~
38 ~~until his successor is elected and qualified. Every such vacancy shall be filled by~~
39 ~~election at the first election for members of the General Assembly that occurs more than~~
40 ~~30 days after the vacancy has taken place, and the person chosen shall hold the office~~
41 ~~for the remainder of the unexpired term fixed in Article III, Sec. 7 of the Constitution of~~
42 ~~North Carolina. When a vacancy occurs in the office and the term expires on the first~~
43 ~~day of January succeeding the next election for members of the General Assembly, the~~
44 ~~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
7 General 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."

10 **SECTION 6.** G.S. 147-3(c) reads as rewritten:

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

- 12 (1) A Governor;
- 13 (2) A Lieutenant Governor;
- 14 (3) Private secretary for the Governor;
- 15 (4) A Secretary of State;
- 16 (5) An Auditor;
- 17 (6) A Treasurer;
- 18 (7) An Attorney General;
- 19 ~~(8) A Superintendent of Public Instruction;~~
- 20 (9) The members of the Governor's Council;
- 21 (10) A Commissioner of Agriculture;
- 22 (11) A Commissioner of Labor;
- 23 (12) A Commissioner of Insurance."

24 **SECTION 7.** G.S. 147-4 reads as rewritten:

25 **"§ 147-4. Executive officers – election; term; induction into office.**

26 The executive department shall consist of a Governor, a Lieutenant Governor, a
27 Secretary of State, an Auditor, a Treasurer, ~~a Superintendent of Public Instruction,~~ an
28 Attorney General, a Commissioner of Agriculture, a Commissioner of Insurance, and a
29 Commissioner of Labor, who shall be elected for a term of four years, by the qualified
30 electors of the State, at the same time and places, and in the same manner, as members
31 of the General Assembly are elected. Their term of office shall commence on the first
32 day of January next after their election and continue until their successors are elected
33 and qualified. The persons having the highest number of votes, respectively, shall be
34 declared duly elected, but if two or more be equal and highest in votes for the same
35 office, then one of them shall be chosen by joint ballot of both houses of the General
36 Assembly. Contested elections shall be determined by a joint ballot of both houses of
37 the General Assembly in such manner as shall be prescribed by law."

38 **SECTION 8.** G.S. 147-11.1 reads as rewritten:

39 **"§ 147-11.1. Succession to office of Governor; Acting Governor.**

40 (a) Lieutenant Governor. –

- 41 (1) The Lieutenant Governor-elect shall become Governor upon the
42 failure of the Governor-elect to qualify. The Lieutenant Governor shall
43 become Governor upon the death, resignation, or removal from office
44 of the Governor. The further order of succession to the office of

- 1 Governor shall be prescribed by law. A successor shall serve for the
2 remainder of the term of the Governor whom he succeeds and until a
3 new Governor is elected and qualified.
- 4 (2) During the absence of the Governor from the State, or during the
5 physical or mental incapacity of the Governor to perform the duties of
6 his office, the Lieutenant Governor shall be Acting Governor. The
7 further order of succession as Acting Governor shall be prescribed by
8 law.
- 9 (b) President of Senate, Speaker of the House and Other Officers. –
- 10 (1) If, by reason of failure to qualify, death, resignation, or removal from
11 office, there is neither a Governor nor a Lieutenant Governor to
12 discharge the powers and duties of the office of Governor, then the
13 President of the Senate shall, upon his resignation as President of the
14 Senate and as Senator, become Governor.
- 15 (2) If, at the time when under subdivision (1) of this subsection the
16 President of the Senate is to become Governor, there is no President of
17 the Senate, or the President of the Senate fails to qualify as Governor,
18 then the Speaker of the House of Representatives shall, upon his
19 resignation as Speaker and as Representative, become Governor.
- 20 (3) If, at the time when under subdivision (2) of this subsection the
21 Speaker of the House of Representatives is to become Governor, there
22 is no Speaker of the House of Representatives, or the Speaker of the
23 House of Representatives fails to qualify as Governor, then that officer
24 of the State of North Carolina who is highest on the following list, and
25 who is not under disability to serve as Governor, shall, upon his
26 resignation of the office which places him in the order of succession,
27 become Governor: Secretary of State, Auditor, Treasurer,
28 ~~Superintendent of Public Instruction~~, Attorney General, Commissioner
29 of Agriculture, Commissioner of Labor, and Commissioner of
30 Insurance.
- 31 (c) Acting Governor Generally. –
- 32 (1) If, by reason of absence from the State or physical or mental
33 incapacity, there is neither a Governor nor a Lieutenant Governor
34 qualified to discharge the powers and duties of the office of Governor,
35 then the President of the Senate shall become Acting Governor.
- 36 (2) If, at the time when under subdivision (1) of this subsection the
37 President of the Senate is to become Acting Governor, there is no
38 President of the Senate, or the President of the Senate fails to qualify
39 as Acting Governor, then the Speaker of the House of Representatives
40 shall become Acting Governor.
- 41 (3) If, at the time when under subdivision (2) of this subsection the
42 Speaker of the House of Representatives is to become Acting
43 Governor, there is no Speaker of the House of Representatives, or the
44 Speaker of the House of Representatives fails to qualify as Acting

1 Governor, then that officer of the State of North Carolina who is
2 highest on the following list, and who is not under disability to serve
3 as Acting Governor, shall become Acting Governor: Secretary of
4 State, Auditor, Treasurer, ~~Superintendent of Public Instruction,~~
5 Attorney General, Commissioner of Agriculture, Commissioner of
6 Labor, and Commissioner of Insurance.

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

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

15 (2) If his tenure as Acting Governor is founded in whole or in part upon
16 the physical or mental incapacity of the Governor or Lieutenant
17 Governor, then he shall act only until the removal of the incapacity of
18 the Governor or Lieutenant Governor.

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

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

27 **SECTION 9.** G.S. 163-1 is amended by deleting the entries in the table for
28 "Superintendent of Public Instruction".

29 **SECTION 10.** G.S. 163-8 reads as rewritten:
30 **"§ 163-8. Filling vacancies in State executive offices.**

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

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

6 **SECTION 11.** G.S. 163-278.27(b) reads as rewritten:

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

10 (1) In the case of a candidate for nomination or election to the State Senate
11 or State House of Representatives: report to the district attorney of the
12 prosecutorial district in which the candidate for nomination or election
13 resides;

14 (2) In the case of a candidate for nomination or election to the office of
15 Governor, Lieutenant Governor, Secretary of State, State Auditor,
16 State Treasurer, ~~State Superintendent of Public Instruction,~~ State
17 Attorney General, State Commissioner of Agriculture, State
18 Commissioner of Labor, State Commissioner of Insurance, and all
19 other State elective offices, Justice of the Supreme Court, Judge of the
20 Court of Appeals, judge of a superior court, judge of a district court,
21 and district attorney of the superior court: report to the district attorney
22 of the prosecutorial district in which Wake County is located;

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

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

31 **SECTION 12.** Sections 5 through 11 of this act become effective only if the
32 voters approve the constitutional amendments set out in Sections 1 and 2 of this act. If
33 the voters approve the constitutional amendments, Sections 5 through 11 of this act shall
34 become effective the earlier of January 1, 2009, and the date a vacancy occurs in the
35 office of Superintendent of Public Instruction, and no election shall be held for that
36 office in 2008.

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