

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 133

Short Title: Elect the State Board of Education. (Public)

Sponsors: Representatives Elmore, Conrad, and Bert Jones (Primary Sponsors).

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Elections and Ethics Law

February 20, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE NORTH CAROLINA CONSTITUTION TO PROVIDE FOR THE
3 ELECTION OF THE STATE BOARD OF EDUCATION.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.1.** Section 4 of Article IX of the North Carolina Constitution reads as
6 rewritten:

7 "**Sec. 4. State Board of Education.**

8 (1) Board. The State Board of Education shall consist of a chair appointed by the
9 Governor, the Lieutenant Governor, the Treasurer, and eleven members appointed by the
10 Governor, subject to confirmation by the General Assembly in joint session. The General
11 Assembly shall divide the State into eight educational districts. Of the appointive members of the
12 Board, one shall be appointed from each of the eight educational districts and three shall be
13 appointed from the State at large. Appointments shall be for overlapping terms of eight years.
14 Appointments to fill vacancies shall be made by the Governor for the unexpired terms and shall
15 not be subject to confirmation.the Superintendent of Public Instruction, and a number of elected
16 members equal to the membership of the United States House of Representatives apportioned to
17 the State by federal law.

18 (2) Superintendent of Public Instruction. The Superintendent of Public ~~Instruction~~
19 Instruction, in addition to voting membership on the State Board of Education, shall be the
20 secretary and chief administrative officer of the State Board of Education.

21 (3) Chair. The chair of the State Board of Education appointed by the Governor shall serve
22 a four-year term. The chair shall vote only in the event of a tie. The Governor shall appoint any
23 vacancy for the chair.

24 (4) Elected Members. Members elected to the State Board of Education shall be elected
25 from the districts established by the General Assembly for members of the United States House of
26 Representatives. Elected members shall serve staggered four-year terms in the manner prescribed
27 by law. Vacancies shall be filled in the manner prescribed by law."

28 **SECTION 1.2.** The amendment set out in Section 1.1 of this act shall be submitted to
29 the qualified voters of the State at a statewide election held on the date of the first primary in 2018,
30 which election shall be conducted under the laws then governing elections in the State. Ballots,
31 voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The
32 question to be used in the voting systems and ballots shall be:

33 "[] FOR [] AGAINST

34 Constitutional amendment to elect the majority of the membership of the State Board
35 of Education from the same districts used for Congressional elections, to make the Superintendent



1 of Public Instruction a voting member of the State Board of Education, to eliminate the State
2 Treasurer as a member of the State Board of Education, to require the Governor to appoint the
3 chair of the State Board of Education and provide that the chair votes only in the event of a tie, to
4 eliminate the requirement that the General Assembly confirm appointments to the State Board of
5 Education by the Governor, and to reduce the term of office for elected and appointed members to
6 four years."

7 **SECTION 1.3.** If a majority of votes cast on the question are in favor of the
8 amendment set out in Section 1.1 of this act, the State Board of Elections shall certify the
9 amendment to the Secretary of State. The Secretary of State shall enroll the amendment so
10 certified among the permanent records of that office. The amendment set out in Section 1.1 of this
11 act becomes effective January 1, 2021, and elected members of the State Board of Education shall
12 be elected from Congressional districts at the general election held in 2020. The terms of all
13 appointed members of the State Board of Education serving on March 31, 2021, shall expire on
14 that date.

15 **SECTION 2.(a)** G.S. 115C-10 reads as rewritten:

16 "**§ 115C-10. Appointment Composition and election of Board.**

17 (a) Composition. – The State Board of Education shall consist of a chair appointed by the
18 Governor, the Lieutenant Governor, the State Treasurer, and 11 members appointed by the
19 Governor, subject to confirmation by the General Assembly in joint session. Not more than two
20 public school employees paid from State or local funds may serve as appointive members of the
21 State Board of Education. No spouse of any public school employee paid from State or local funds
22 and no spouse of any employee of the Department of Public Instruction may serve as an
23 appointive member of the State Board of Education. Of the appointive members of the State Board
24 of Education, one shall be appointed from each of the eight educational districts and three shall be
25 appointed as members at large. Appointments shall be for terms of eight years and shall be made
26 in four classes. Appointments to fill vacancies shall be made by the Governor for the unexpired
27 terms and shall not be subject to confirmation. the State Superintendent of Public Instruction, and a
28 number of elected members equal to the membership of the United States House of
29 Representatives apportioned to the State by federal law.

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

35 (b) Appointed Chair. – The chair of the State Board of Education appointed by the
36 Governor shall serve a four-year term beginning April 1 of the year immediately following the
37 gubernatorial election. The chair shall vote only in the event of a tie. The Governor shall appoint
38 any vacancy in the office of chair.

39 (c) Elected Members. – Members elected to the State Board of Education shall be elected
40 from the districts established by the General Assembly for members of the United States House of
41 Representatives in Article 17 of Chapter 163 of the General Statutes. Elected members shall serve
42 staggered four-year terms. Members elected from odd-numbered Congressional districts shall be
43 elected in 2020 and every four years thereafter for a four-year term beginning April 1 of the
44 following year. Members elected from even-numbered Congressional districts shall be elected in
45 2020 for a two-year term beginning April 1 of the following year and shall be elected in 2022 and
46 every four years thereafter for a four-year term beginning April 1 of the following year. Members
47 shall be elected and vacancies in office filled as provided in Chapter 163 of the General Statutes."

48 **SECTION 2.(b)** G.S. 115C-11(a) reads as rewritten:

49 "(a) ~~Presiding Officer.~~Organization of Board. – The State Board of Education shall elect
50 from its membership a ~~chairman and vice chairman.~~vice-chair. A majority of the Board shall
51 constitute a quorum for the transaction of business. Per diem and expenses of the appointive and

1 ~~elect~~ members of the Board shall be provided by the General Assembly. The ~~chairman-chair~~ of
 2 the Board shall preside at all meetings of the Board. In the absence of the ~~chairman,chair~~, the
 3 ~~vice-chairman-vice-chair~~ shall preside; in the absence of both the ~~chairman-chair~~ and the
 4 ~~vice-chairman,vice-chair~~, the Board shall name one of its own members as ~~chairman-pro~~
 5 ~~tempore,chair~~."

6 **SECTION 3.(a)** G.S. 163-1 reads as rewritten:

7 **"§ 163-1. Time of regular elections and primaries.**

8 ...

9 (d) If primaries for the State Senate or State House of Representatives are temporarily
 10 moved from the date provided in subsection (b) of this section for any election year, all primaries
 11 shall be held on the same day.

| 12 OFFICE | JURISDICTION | DATE OF ELECTION | TERM OF OFFICE |
|---|--------------|--|---|
| 13 Governor | State | Tuesday next after the 14 first Monday in November 15 1968 and every four years 16 thereafter | Four years, from 17 first day of January 18 next after election |
| 18 Lieutenant 19 Governor | State | Tuesday next after the 20 first Monday in November 21 1968 and every four years 22 thereafter | Four years, from 23 first day of January 24 next after election |
| 23 Secretary of 24 State | State | Tuesday next after the 25 first Monday in November 26 1968 and every four years 27 thereafter | Four years, from 28 first day of January 29 next after election |
| 28 Auditor | State | Tuesday next after the 29 first Monday in November 30 1968 and every four years 31 thereafter | Four years, from 32 first day of January 33 next after election |
| 33 Treasurer | State | Tuesday next after the 34 first Monday in November 35 1968 and every four years 36 thereafter | Four years, from 37 first day of January 38 next after election |
| 38 Superintendent 39 of Public 40 Instruction | State | Tuesday next after the 41 first Monday in November 42 1968 and every four years 43 thereafter | Four years, from 44 first day of January 45 next after election |
| 42 Attorney 43 General | State | Tuesday next after the 44 first Monday in November 45 1968 and every four years 46 thereafter | Four years, from 47 first day of January 48 next after election |
| 48 Commissioner 49 of Agriculture | State | Tuesday next after the 50 first Monday in November 51 1968 and every four years thereafter | Four years, from first day of January next after election |

| | | | | |
|----|-----------------------|----------------------|------------------------------------|----------------------------|
| 1 | | | | |
| 2 | Commissioner | State | Tuesday next after the | Four years, from |
| 3 | of Labor | | first Monday in November | first day of January |
| 4 | | | 1968 and every four years | next after election |
| 5 | | | thereafter | |
| 6 | | | | |
| 7 | Commissioner | State | Tuesday next after the | Four years, from |
| 8 | of Insurance | | first Monday in November | first day of January |
| 9 | | | 1968 and every four years | next after election |
| 10 | | | thereafter | |
| 11 | | | | |
| 12 | <u>State Board of</u> | <u>Congressional</u> | <u>At the regular election for</u> | <u>Four years, from</u> |
| 13 | <u>Education</u> | <u>district</u> | <u>members of the General</u> | <u>first day of April</u> |
| 14 | <u>Member</u> | | <u>Assembly immediately</u> | <u>next after election</u> |
| 15 | | | <u>preceding the termination</u> | |
| 16 | | | <u>of each regular term</u> | |
| 17 |" | | | |

18 **SECTION 3.(b)** Notwithstanding G.S. 163-1, as amended by subsection (a) of this
 19 section, members elected in 2020 from even-numbered Congressional districts shall serve for a
 20 two-year term beginning April 1 of the following year.

21 **SECTION 3.(c)** Article 2 of Chapter 163 of the General Statutes is amended by
 22 adding a new section to read:

23 **"§ 163-14. Filling vacancy in the State Board of Education.**

24 (a) If a vacancy shall occur among the elected members of the State Board of Education by
 25 death, resignation, or otherwise than by expiration of term, the Governor shall immediately
 26 appoint the person recommended by the political party executive committee provided by this
 27 section to serve until the vacating member's successor is elected and qualified. Each such vacancy
 28 shall be filled by election at the first election for members of the General Assembly that occurs
 29 more than 60 days after the vacancy has taken place, and the person chosen shall hold the office
 30 for the remainder of the unexpired four-year term. However, if the term expires on the first day of
 31 April succeeding the next election for members of the General Assembly, the Governor shall
 32 appoint to fill the vacancy for the unexpired term of the office. The Governor shall make the
 33 appointment within seven days of receiving the recommendation of the committee. If the
 34 Governor fails to make the appointment within the required period, the Governor shall be
 35 presumed to have made the appointment and the State Board of Education is directed to seat the
 36 appointee as a member in good standing.

37 (b) The Governor shall appoint for the unexpired portion of the term the person
 38 recommended by the Congressional district committee of the political party with which the
 39 vacating member was affiliated when elected. In the case where all of a county is included within
 40 a Congressional district, the county convention or county executive committee of that political
 41 party shall elect or appoint at least one member from that county to serve on the Congressional
 42 district executive committee. In the case where only part of a county is included within a
 43 Congressional district, the county convention or county executive committee of that political party
 44 shall elect or appoint at least one member from that county to serve on the Congressional district
 45 committee, but only the delegates to the county convention or the members of the county
 46 executive committee who reside in the district may vote in electing the district committee member.
 47 When the Congressional district committee meets, a member shall be entitled to cast for his or her
 48 county (or the part of his or her county within the district) one vote for each 300 persons or major
 49 fraction thereof residing within that county, or in the case where less than the whole county is in
 50 the district, one vote for each 300 persons or major fraction thereof residing in that part of the
 51 district within the county.

1 A county convention or county executive committee may elect more than one member to the
 2 Congressional district committee, but in the event that more than one member is selected from that
 3 county, each member shall cast an equal share of the votes allotted to the county.

4 (c) No person is eligible for appointment to fill a vacancy in the State Board of Education
 5 under this section, unless that person would have been qualified to vote as an elector for that office
 6 if an election were to be held on the date of appointment. This section is intended to implement the
 7 provisions of Section 8 of Article VI of the North Carolina Constitution."

8 **SECTION 3.(d)** G.S. 163-106(c) reads as rewritten:

9 "(c) Time for Filing Notice of Candidacy. – Candidates seeking party primary nominations
 10 for the following offices shall file their notice of candidacy with the State Board of Elections no
 11 earlier than 12:00 noon on the second Monday in February and no later than 12:00 noon on the
 12 last business day in February preceding the primary:

- 13 Governor
- 14 Lieutenant Governor
- 15 All State executive officers
- 16 United States Senators
- 17 Members of the House of Representatives of the United States
- 18 Members of the State Board of Education
- 19 District attorneys

20 Candidates seeking party primary nominations for the following offices shall file their notice
 21 of candidacy with the county board of elections no earlier than 12:00 noon on the second Monday
 22 in February and no later than 12:00 noon on the last business day in February preceding the
 23 primary:

- 24 State Senators
- 25 Members of the State House of Representatives
- 26 All county offices."

27 **SECTION 3.(e)** G.S. 163-107(a) reads as rewritten:

28 "(a) Fee Schedule. – At the time of filing a notice of candidacy, each candidate shall pay to
 29 the board of elections with which ~~he~~the candidate files under the provisions of G.S. 163-106 a
 30 filing fee for the office ~~he~~the candidate seeks in the amount specified in the following tabulation:

| 32 Office Sought | 32 Amount of Filing Fee |
|--|--|
| 33 Governor | 33 One percent (1%) of the annual salary of the |
| | 34 office sought |
| 35 Lieutenant Governor | 35 One percent (1%) of the annual salary of the |
| | 36 office sought |
| 37 All State executive offices | 37 One percent (1%) of the annual salary of the |
| | 38 office sought |
| 39 All District Attorneys of the General | 39 One percent (1%) of the annual salary of |
| 40 Court of Justice | 40 the office sought |
| 41 United States Senator | 41 One percent (1%) of the annual salary of the |
| | 42 office sought |
| 43 Members of the United States House | 43 One percent (1%) of the annual salary of |
| 44 of Representatives | 44 the office sought |
| 45 State Senator | 45 One percent (1%) of the annual salary of the |
| | 46 office sought |
| 47 Member of the State House of | 47 One percent (1%) of the annual salary of |
| 48 Representatives | 48 the office sought |
| 49 <u>Member of the State Board of</u> | 49 <u>One percent (1%) of the prior year average</u> |
| 50 <u>Education</u> | 50 <u>annual per diem of the office sought</u> |

1 All county offices not compensated by fees One percent (1%) of the annual salary of the
 2 office sought
 3 All county offices compensated partly One percent (1%) of the first annual
 4 by salary and partly by fees salary to be received (exclusive of fees)

5 The salary of any office that is the basis for calculating the filing fee is the starting salary for
 6 the office, rather than the salary received by the incumbent, if different. If no starting salary can be
 7 determined for the office, then the salary used for calculation is the salary of the incumbent, as of
 8 January 1 of the election year."

9 **SECTION 3.(f)** G.S. 163-107.1(c) reads as rewritten:

10 "(c) County, Municipal and District Primaries. – If the candidate is seeking one of the
 11 offices set forth in G.S. 163-106(c) but which is not listed in subsection (b) of this section, or a
 12 municipal or any other office requiring a partisan primary which is not set forth in G.S. 163-106(c)
 13 or (d), he shall file a written petition with the appropriate board of elections no later than 12:00
 14 noon on Monday preceding the filing deadline before the primary. The petition shall be signed by
 15 five percent (5%) of the registered voters of the election area in which the office will be voted for,
 16 who are affiliated with the same political party in whose primary the candidate desires to run, or in
 17 the alternative, the petition shall be signed by no less than 200 registered voters regardless of said
 18 voter's political party affiliation, whichever requirement is greater. The board of elections shall
 19 verify the names on the petition, and if the petition is found to be sufficient, the candidate's name
 20 shall be printed on the appropriate primary ballot. Petitions for candidates for member of the U.S.
 21 House of Representatives, member of the State Board of Education, District Attorney, and
 22 members of the State House of Representatives from multi-county districts or members of the
 23 State Senate from multi-county districts must be presented to the county board of elections for
 24 verification at least 15 days before the petition is due to be filed with the State Board of Elections,
 25 and such petition must be filed with the State Board of Elections no later than 12:00 noon on
 26 Monday preceding the filing deadline. The State Board of Elections may adopt rules to implement
 27 this section and to provide standard petition forms."

28 **SECTION 3.(g)** G.S. 163-111(c)(1) reads as rewritten:

29 "(1) A candidate who is apparently entitled to demand a second primary, according
 30 to the unofficial results, for one of the following offices listed below, and
 31 desiring to do so, shall file a request for a second primary in writing with the
 32 Executive Director of the State Board of Elections no later than 12:00 noon on
 33 the ninth day (including Saturdays and Sundays) following the date on which
 34 the primary was conducted, and such request shall be subject to the certification
 35 of the official results by the State Board of Elections. If the vote certification by
 36 the State Board of Elections determines that a candidate who was not originally
 37 thought to be eligible to call for a second primary is in fact eligible to call for a
 38 second primary, the Executive Director of the State Board of Elections shall
 39 immediately notify such candidate and permit him to exercise any options
 40 available to him within a 48-hour period following the notification:

- 41 ~~Governor, Governor.~~
- 42 Lieutenant ~~Governor, Governor.~~
- 43 All State executive ~~officers, officers.~~
- 44 District Attorneys of the General Court of ~~Justice, Justice.~~
- 45 United States ~~Senators, Senators.~~
- 46 Members of the State Board of Education.
- 47 Members of the United States House of
 48 ~~Representatives, Representatives.~~
- 49 State Senators in multi-county senatorial ~~districts, and districts.~~
- 50 Members of the State House of Representatives in multi-county
 51 representative districts."

1 **SECTION 3.(h)** G.S. 163-114 reads as rewritten:
 2 "**§ 163-114. Filling vacancies among party nominees occurring after nomination and before**
 3 **election.**

4 If any person nominated as a candidate of a political party for one of the offices listed below
 5 (either in a primary or convention or by virtue of having no opposition in a primary) dies, resigns,
 6 or for any reason becomes ineligible or disqualified before the date of the ensuing general election,
 7 the vacancy shall be filled by appointment according to the following instructions:

| | | |
|----|---|---|
| 8 | | |
| 9 | Position | |
| 10 | President | Vacancy is to be filled by appointment of |
| 11 | Vice President | national executive committee of |
| 12 | | political party in which vacancy occurs |
| 13 | | |
| 14 | Presidential elector or alternate elector | Vacancy is to be filled by appointment of |
| 15 | Any elective State office | State executive committee of political |
| 16 | United States Senator | party in which vacancy occurs |
| 17 | | |
| 18 | A district office, including: | Appropriate district executive committee of |
| 19 | Member of the United States House | political party in which vacancy occurs |
| 20 | of Representatives | |
| 21 | <u>Member of the State Board of</u> | |
| 22 | <u>Education</u> | |
| 23 | District Attorney | |
| 24 | State Senator in a multi-county | |
| 25 | senatorial district | |
| 26 | Member of State House of | |
| 27 | Representatives in a multi-county | |
| 28 | representative district | |
| 29 | | |
| 30 | State Senator in a single-county | County executive committee of political |
| 31 | senatorial district | party in which vacancy occurs, |
| 32 | Member of State House of | provided, in the case of the State |
| 33 | Representatives in a single-county | Senator or State Representative in a |
| 34 | representative district | single-county district where not all the |
| 35 | Any elective county office | county is located in that district, then in |
| 36 | | voting, only those members of the |
| 37 | | county executive committee who reside |
| 38 | | within the district shall vote |
| 39 | | |

40 The party executive making a nomination in accordance with the provisions of this section shall
 41 certify the name of its nominee to the chairman of the board of elections, State or county, that has
 42 jurisdiction over the ballot item under G.S. 163-182.4. If at the time a nomination is made under
 43 this section the general election ballots have already been printed, the provisions of
 44 G.S.163-165.3(c) shall apply. If a vacancy occurs in a nomination of a political party and that
 45 vacancy arises from a cause other than death and the vacancy in nomination occurs more than 120
 46 days before the general election, the vacancy in nomination may be filled under this section only if
 47 the appropriate executive committee certifies the name of the nominee in accordance with this
 48 paragraph at least 75 days before the general election.

49 In a county not all of which is located in one congressional district, in choosing the
 50 congressional district executive committee member or members from that area of the county, only

1 the county convention delegates or county executive committee members who reside within the
2 area of the county which is within the congressional district may vote.

3 In a county which is partly in a multi-county senatorial district or which is partly in a
4 multi-county House of Representatives district, in choosing that county's member or members of
5 the senatorial district executive committee or House of Representatives district executive
6 committee for the multi-county district, only the county convention delegates or county executive
7 committee members who reside within the area of the county which is within that multi-county
8 district may vote.

9 An individual whose name appeared on the ballot in a primary election preliminary to the
10 general election shall not be eligible to be nominated to fill a vacancy in the nomination of another
11 party for the same office in the same year."

12 **SECTION 4.** If a majority of votes cast on the question are in favor of the amendment
13 set out in Section 1.1 of this act and the State Board of Elections certifies the amendment to the
14 Secretary of State, Section 2 of this act becomes effective April 1, 2021, and Section 3 of this act
15 becomes effective January 1, 2020, and applies to elections conducted on and after that date.
16 Except as otherwise provided, the remainder of this act is effective when it becomes law.