

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE DRH80151-LE-85A (03/02)

Short Title: Governance of Dep't of Public Instruction. (Public)

Sponsors: Representatives Holloway, Blackwell, Malone, and Elmore (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA CONSTITUTION TO CHANGE THE MEMBERSHIP OF THE STATE BOARD OF EDUCATION, TO CHANGE THE TERMS OF MEMBERS OF THE STATE BOARD OF EDUCATION, TO MAKE THE SUPERINTENDENT OF PUBLIC INSTRUCTION A MEMBER OF AND CHAIR OF THE STATE BOARD OF EDUCATION, TO AUTHORIZE THE GOVERNOR TO APPOINT THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION, AND TO MAKE CONFORMING CHANGES TO THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

PART I. AMEND THE CONSTITUTION TO CHANGE THE MEMBERSHIP OF THE STATE BOARD OF EDUCATION, TO CHANGE THE TERMS OF MEMBERS OF THE STATE BOARD OF EDUCATION, TO MAKE THE SUPERINTENDENT OF PUBLIC INSTRUCTION A MEMBER OF AND CHAIR OF THE STATE BOARD OF EDUCATION

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

"Sec. 4. State Board of Education.

(1) Board. The State Board of Education shall consist of the Superintendent of Public Instruction, the Lieutenant Governor, the Treasurer, and eleven-10 members appointed by the Governor, subject to confirmation by the General Assembly in joint session and four members appointed by the General Assembly.

The General Assembly shall divide the State into eight educational districts. Of the appointive members of the Board, members appointed by the Governor, one shall be appointed from each of the eight educational districts and three-two shall be appointed from the State at large. Appointments made by the Governor shall be subject to confirmation by the General Assembly in joint session.

Of the members of the Board elected by the General Assembly, two members shall be elected by simple resolution by the House of Representatives, and two members shall be elected by simple resolution by the Senate.

Appointments shall be for overlapping terms of eight-six years. Vacancies shall be filled by the appointing or electing authority for the unexpired term. Appointments to fill vacancies shall be made by the Governor for the unexpired terms and to fill vacancies shall not be subject to confirmation.

(2) Superintendent of Public Instruction. The Superintendent of Public Instruction shall be the secretary-chair and chief administrative officer of the State Board of Education."



* D R H 8 0 1 5 1 - L E - 8 5 A *

1 **SECTION 1.2.(a)** G.S. 115C-10 reads as rewritten:

2 "**§ 115C-10. Appointment of Board.**

3 The State Board of Education shall consist of the Superintendent of Public Instruction, the
4 Lieutenant Governor, the State Treasurer, and 1110 members appointed by the Governor,
5 subject to confirmation by the General Assembly in joint session, and four members appointed
6 by the General Assembly.

7 Appointments made by the Governor shall be subject to confirmation by the General
8 Assembly in joint session. Not No more than two public school employees paid from State or
9 local funds may serve as appointive members of the State Board of Education. Education
10 appointed by the Governor. No spouse of any public school employee paid from State or local
11 funds and no spouse of any employee of the Department of Public Instruction may serve as an
12 appointive a member of the State Board of Education. Education appointed by the Governor.
13 Of the appointive members of the State Board of Education, Education appointed by the
14 Governor, one shall be appointed from each of the eight educational districts and three two
15 shall be appointed as members at large. Appointments made by the Governor shall be for terms
16 of eight six years and shall be made in four classes.

17 Of the members of the Board elected by the General Assembly, two members shall be
18 elected by simple resolution by the House of Representatives, and two members shall be
19 elected by simple resolution by the Senate.

20 Appointments to fill vacancies shall be made by the Governor appointing or electing
21 authority for the unexpired terms and shall not be subject to confirmation terms. Appointments
22 made by the Governor to fill vacancies shall not be subject to confirmation.

23 The Governor shall transmit to the presiding officers of the Senate and the House of
24 Representatives, on or before the sixtieth legislative day of the General Assembly, the names of
25 the persons appointed by the Governor and submitted to the General Assembly for
26 confirmation; thereafter, pursuant to joint resolution, the Senate and the House of
27 Representatives shall meet in joint session for consideration of an action upon such
28 appointments."

29 **SECTION 1.2.(b)** To achieve staggered terms, one of the initial appointments
30 made by the House of Representatives shall be for a term of four years, and one of the initial
31 appointments made by the Senate shall be for a term of four years.

32 **SECTION 1.2.(c)** To implement the reduction in the number of appointments
33 made by the Governor, when the term of an at-large member appointed by the Governor
34 expires on March 31, 2015, that vacancy shall not be filled.

35 **SECTION 1.2.(d)** The terms of members appointed or elected on or after April 1,
36 2015, shall be for six years.

37 **SECTION 1.3.** G.S. 115C-11(a) reads as rewritten:

38 "(a) Presiding Officer. – The Superintendent of Public Instruction shall serve as chair of
39 the State Board of Education. The State Board of Education shall elect from its membership a
40 chairman and vice chairman, vice-chair and a secretary. A majority of the Board shall
41 constitute a quorum for the transaction of business. Per diem and expenses of the appointive
42 members of the Board shall be provided by the General Assembly. The chairman chair of the
43 Board shall preside at all meetings of the Board. In the absence of the chairman, chair, the
44 vice chairman vice-chair shall preside; in the absence of both the chairman chair and the
45 vice chairman, vice-chair, the Board shall name one of its own members as chairman chair pro
46 tempore."

47 **SECTION 1.4.** G.S. 115C-19 reads as rewritten:

48 "**§ 115C-19. Chief administrative officer of the State Board of Education.**

49 As provided in Article IX, Sec. 4(2) of the North Carolina Constitution, the Superintendent
50 of Public Instruction shall be the secretary chair and chief administrative officer of the State
51 Board of Education. As secretary chair and chief administrative officer of the State Board of

1 Education, the Superintendent manages on a day-to-day basis the administration of the free
2 public school system, subject to the direction, control, and approval of the State Board. Subject
3 to the direction, control, and approval of the State Board of Education, the Superintendent of
4 Public Instruction shall carry out the duties prescribed under G.S. 115C-21."

5 **SECTION 1.5.** G.S. 115C-21 reads as rewritten:

6 **"§ 115C-21. Powers and duties generally.**

7 (a) Administrative Duties. – Subject to the direction, control, and approval of the State
8 Board of Education, it shall be the duty of the Superintendent of Public Instruction:

9 (1) To organize and establish a Department of Public Instruction which shall
10 include such divisions and departments as the State Board considers
11 necessary for supervision and administration of the public school system. All
12 appointments of administrative and supervisory personnel to the staff of the
13 Department of Public Instruction are subject to the approval of the State
14 Board of Education, which may terminate these appointments for cause in
15 conformity with Chapter 126 of the General Statutes, the State Personnel
16 System.

17 (2) To keep the public informed as to the problems and needs of the public
18 schools by constant contact with all school administrators and teachers, by
19 personal appearance at public gatherings, and by information furnished to
20 the press of the State.

21 (3) To report biennially to the Governor 30 days prior to each regular session of
22 the General Assembly, such report to include information and statistics of
23 the public schools, with recommendations for their improvement and for
24 changes in the school law.

25 (4) To have printed and distributed such educational bulletins as are necessary
26 for the professional improvement of teachers and for the cultivation of
27 public sentiment for public education, and to have printed all forms
28 necessary and proper for the administration of the Department of Public
29 Instruction.

30 (5) To manage all those matters relating to the supervision and administration of
31 the public school system that the State Board delegates to the Superintendent
32 of Public Instruction.

33 (6) To create a special fund within the Department of Public Instruction to
34 manage funds received as grants from nongovernmental sources in support
35 of public education. Effective July 1, 1995, this special fund is transferred to
36 the State Board of Education and shall be administered by the State Board in
37 accordance with G.S. 115C-410.

38 (7) Repealed by Session Laws 1995, c. 72, s. 2.

39 (b) Duties as ~~Secretary-Chair~~ to the State Board of Education. – Subject to the direction,
40 control, and approval of the State Board of Education, it shall be the duty of the Superintendent
41 of Public Instruction:

42 (1) To administer through the Department of Public Instruction, the instructional
43 policies established by the Board.

44 (1a) Repealed by Session Laws 1995, c. 72, s. 2.

45 (2) To keep the Board informed regarding developments in the field of public
46 education.

47 (3) To make recommendations to the Board with regard to the problems and
48 needs of education in North Carolina.

49 (4) To make available to the public schools a continuous program of
50 comprehensive supervisory services.

- 1 (5) To collect and organize information regarding the public schools, on the
2 basis of which he shall furnish the Board such tabulations and reports as may
3 be required by the Board.
- 4 (6) To communicate to the public school administrators all information and
5 instructions regarding instructional policies and procedures adopted by the
6 Board.
- 7 (7) To have custody of the official seal of the Board and to attest all deeds,
8 leases, or written contracts executed in the name of the Board. All deeds of
9 conveyance, leases, and contracts affecting real estate, title to which is held
10 by the Board, and all contracts of the Board required to be in writing and
11 under seal, shall be executed in the name of the Board by the ~~chairman~~chair
12 and attested by the secretary; and proof of the execution, if required or
13 desired, may be had as provided by law for the proof of corporate
14 instruments.
- 15 (8) To ~~attend all meetings of the Board and to keep~~ ensure that the secretary
16 keeps the minutes of the proceedings of the Board in a well-bound and
17 suitable book, which minutes shall be approved by the Board prior to its
18 adjournment; and, as soon thereafter as possible, ~~to furnish~~ furnishes to each
19 member of the Board a copy of said minutes.
- 20 (9) To perform such other duties as the Board may assign to him from time to
21 time."

22 **SECTION 1.6.** G.S. 115C-296.6 reads as rewritten:

23 **"§ 115C-296.6. Composition of board of trustees; terms; officers.**

- 24 (a) The NCCAT Board of Trustees shall be composed of the following membership:
- 25 (1) Two ex officio members: the ~~Chairman~~Chair and the ~~Vice-Chair~~Vice-Chair of the
26 State Board of Education and the ~~State Superintendent of Public Instruction~~
27 or their designees;
- 28 (2) Two members appointed by the General Assembly upon the
29 recommendation of the President Pro Tempore of the Senate;
- 30 (3) Two members appointed by the General Assembly upon the
31 recommendation of the Speaker of the House of Representatives; and
- 32 (4) Eight members appointed by the Governor, one from each of the eight
33 educational regions.

34 The appointing authorities shall give consideration to assuring, through Board membership, the
35 statewide mission of NCCAT.

36 (b) Members of the NCCAT Board of Trustees shall serve four-year terms. Members
37 may serve two consecutive four-year terms. The Board shall elect a new chair every two years
38 from its membership. The chair may serve two consecutive two-year terms as chair.

39 (c) The chief administrative officer of NCCAT shall be an executive director who shall
40 be appointed by the NCCAT Board of Trustees."

41 **SECTION 1.7.** G.S. 143A-44.3 reads as rewritten:

42 **"§ 143A-44.3. Superintendent of Public Instruction; creation; transfer of powers and
43 duties.**

44 The office of the Superintendent of Public Instruction, as provided for by Article III,
45 Section 7 of the Constitution, and the Department of Public Instruction are transferred to the
46 Department of Public Instruction. The Superintendent of Public Instruction shall be the
47 ~~Secretary~~Chair and Chief Administrative Officer of the State Board of Education, and shall
48 have all powers and duties conferred by the Constitution, by the State Board of Education,
49 Chapter 115C of the General Statutes, and the laws of this State."

50 **SECTION 1.8.(a)** Chapter 115C of the General Statutes is amended by deleting the
51 word "chairman" wherever it appears and substituting "chair."

1 ~~Assembly that occurs more than 30 days after the vacancy has taken place, and the person~~
 2 ~~chosen shall hold the office for the remainder of the unexpired term fixed in Article III, Sec. 7~~
 3 ~~of the Constitution of North Carolina. When a vacancy occurs in the office and the term expires~~
 4 ~~on the first day of January succeeding the next election for members of the General Assembly,~~
 5 ~~the Governor shall appoint to fill the vacancy for the unexpired term of the office. Upon the~~
 6 ~~occurrence of a vacancy in the office for any of the causes stated herein, the Governor may~~
 7 ~~appoint an interim officer to perform the duties of that office until a person is appointed or~~
 8 ~~elected pursuant to Article III, Sec. 7 of the Constitution of North Carolina to fill the vacancy~~
 9 ~~and is qualified.~~

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

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

14 **SECTION 2.4.** G.S. 143A-44.3 reads as rewritten:

15 **"§ 143A-44.3. Superintendent of Public Instruction; creation; transfer of powers and**
 16 **duties.**

17 The office of the Superintendent of Public Instruction, as provided for by ~~Article III,~~
 18 ~~Section 7~~Section 4(2) of Article IX of the Constitution, and the Department of Public
 19 Instruction are transferred to the Department of Public Instruction. The Superintendent of
 20 Public Instruction shall be the Secretary and Chief Administrative Officer of the State Board of
 21 Education, and shall have all powers and duties conferred by the Constitution, by the State
 22 Board of Education, Chapter 115C of the General Statutes, and the laws of this State."

23 **SECTION 2.5.** G.S. 147-4 reads as rewritten:

24 **"§ 147-4. Executive officers – election; term; induction into office.**

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

36 **SECTION 2.6.** G.S. 147-11.1 reads as rewritten:

37 **"§ 147-11.1. Succession to office of Governor; Acting Governor.**

38 ...

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

40 (1) If, by reason of failure to qualify, death, resignation, or removal from office,
 41 there is neither a Governor nor a Lieutenant Governor to discharge the
 42 powers and duties of the office of Governor, then the President of the Senate
 43 shall, upon ~~his~~ resignation as President of the Senate and as Senator, become
 44 Governor.

45 (2) If, at the time when under subdivision (1) of this subsection the President of
 46 the Senate is to become Governor, there is no President of the Senate, or the
 47 President of the Senate fails to qualify as Governor, then the Speaker of the
 48 House of Representatives shall, upon ~~his~~ resignation as Speaker and as
 49 Representative, become Governor.

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

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

(c) Acting Governor Generally. –

- (1) If, by reason of absence from the State or physical or mental incapacity, there is neither a Governor nor a Lieutenant Governor qualified to discharge the powers and duties of the office of Governor, then the President of the Senate shall become Acting Governor.
- (2) If, at the time when under subdivision (1) of this subsection the President of the Senate is to become Acting Governor, there is no President of the Senate, or the President of the Senate fails to qualify as Acting Governor, then the Speaker of the House of Representatives shall become Acting Governor.
- (3) If, at the time when under subdivision (2) of this subsection the Speaker of the House of Representatives is to become Acting Governor, there is no Speaker of the House of Representatives, or the Speaker of the House of Representatives fails to qualify as Acting Governor, then that officer of the State of North Carolina who is highest on the following list, and who is not under disability to serve as Acting Governor, shall become Acting Governor: Secretary of State, Auditor, Treasurer, ~~Superintendent of Public Instruction~~, Attorney General, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance.

...."

SECTION 2.7. G.S. 163-1(d) reads as rewritten:

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

OFFICE	JURISDICTION	DATE OF ELECTION	TERM OF OFFICE
Governor	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Lieutenant Governor	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Secretary of State	State	Tuesday next after the first Monday in November 1968 and every four years thereafter	Four years, from first day of January next after election
Auditor	State	Tuesday next after the first Monday in November 1968	Four years, from first day of January next

1			and every four	after election
2			years thereafter	
3	Treasurer	State	Tuesday next after	Four years, from
4			the first Monday	first day of
5			in November 1968	January next
6			and every four	after election
7			years thereafter	
8	Superinten-	State	Tuesday next after	Four years, from
9	dent of		the first Monday	first day of
10	Public		in November 1968	January next
11	Instruction		and every four	after election
12			years thereafter	
13				
14				

SECTION 2.8. G.S. 163-8 reads as rewritten:

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

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

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

SECTION 2.9. G.S. 163-278.27(b)(2) reads as rewritten:

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

SECTION 2.10. G.S. 163-278.95 reads as rewritten:

"§ 163-278.95. Purpose and establishment of Voter-Owned Elections Act.

The purpose of this Article is to ensure the vitality and fairness of democratic elections in North Carolina to the end that any eligible citizen of this State can realistically choose to seek and run for public office. It is also the purpose of this Article to protect the constitutional rights of voters and candidates from the detrimental effects of increasingly large amounts of money being raised and spent in North Carolina to influence the outcome of elections. It is essential to the public interest that the potential for corruption or the appearance of corruption is minimized and that the equal and meaningful participation of all citizens in the democratic process is ensured. Accordingly, this Article establishes the North Carolina Voter-Owned Elections Fund

1 as an alternative source of campaign financing for candidates who obtain a sufficient number of
2 qualifying contributions from registered voters and who voluntarily accept strict fund-raising
3 and spending limits. This Article is available to candidates for the Council of State offices of
4 ~~Auditor, Superintendent of Public Instruction, Auditor~~ and Commissioner of Insurance in
5 elections to be held in 2008 and thereafter."

6 **SECTION 2.11.** G.S. 163-278.96(12) reads as rewritten:

7 "(12) Office. – The Council of State offices of ~~Auditor, Superintendent of Public~~
8 ~~Instruction, Auditor~~ and Commissioner of Insurance."

9 **SECTION 2.12.** The amendments set out in Sections 2.1 and 2.2 of this act shall be
10 submitted to the qualified voters of the State at a statewide election to be conducted on
11 November 4, 2014, which election shall be conducted under the laws then governing elections
12 in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of
13 the General Statutes. The question to be used in the voting systems and ballots shall be:

14 "[] FOR [] AGAINST

15 Constitutional amendments to make the Superintendent of Public Instruction a
16 position appointed by the Governor."

17 **SECTION 2.13.** If a majority of votes cast on the question are in favor of the
18 amendments set out in Sections 2.1 and 2.2 of this act, the State Board of Elections shall certify
19 the amendments to the Secretary of State. The Secretary of State shall enroll the amendments
20 so certified among the permanent records of that office. The amendments set out in Sections 1
21 and 2 of this act shall become effective January 1, 2017, except that there shall be no election
22 held to fill the office of Superintendent of Public Instruction for a term beginning on or after
23 December 31, 2016.

24 **SECTION 2.14.** Sections 2.3 through 2.11 of this act become effective only if the
25 qualified voters approve the constitutional amendments set out in Sections 2.1 and 2.2 of this
26 act. If the voters approve the constitutional amendments, Sections 2.3 through 2.11 of this act
27 become effective January 1, 2017. The remainder of this act is effective when the act becomes
28 law.

29
30 **PART III. EFFECTIVE DATE**

31 **SECTION 3.** Except as otherwise provided, this act is effective when it becomes
32 law.