

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S

2

SENATE BILL 5

Judiciary I/Constitution Committee Substitute Adopted 2/8/95

Short Title: School Governance Changes.

(Public)

Sponsors:

Referred to:

January 26, 1995

A BILL TO BE ENTITLED

1 AN ACT TO AMEND THE CONSTITUTION TO CHANGE THE COMPOSITION OF
2 THE STATE BOARD OF EDUCATION AND MAKE THE SUPERINTENDENT
3 OF PUBLIC INSTRUCTION AN APPOINTEE OF THE STATE BOARD OF
4 EDUCATION, AND TO MAKE CORRESPONDING STATUTORY CHANGES.
5

6 The General Assembly of North Carolina enacts:

7 Section 1. Section 4(1) of Article IX of the Constitution reads as rewritten:

8 "(1) **Board.** The State Board of Education shall consist of the Lieutenant
9 Governor, the Treasurer, ~~and eleven members appointed by the Governor, subject to~~
10 ~~confirmation by the General Assembly in joint session.~~ nine members appointed by the
11 Governor, four members appointed by the General Assembly upon the recommendation
12 of the President Pro Tempore of the Senate, and four members appointed by the General
13 Assembly upon the recommendation of the Speaker of the House of Representatives. The
14 General Assembly shall divide the State into eight educational districts. Of the ~~appointive~~
15 ~~members of the Board, Governor's nine appointees,~~ one shall be appointed from each of the
16 eight educational districts and ~~three~~ one shall be appointed from the State at large.
17 Appointments shall be for overlapping terms of ~~eight~~ four years. The General Assembly
18 may provide by statute for any qualifications of Board members and any limitation on the
19 number of terms a member may serve on the Board. Appointments to fill vacancies shall

1 be made by the Governor for the unexpired terms and shall not be subject to confirmation, as
2 provided by law.

3 The Governor shall designate one member of the Board as chair for a term as chair of
4 two years."

5 Sec. 2. Section 4(2) of Article IX of the Constitution reads as rewritten:

6 "(2) **Superintendent of Public Instruction.** The Superintendent of Public
7 Instruction shall be the secretary and chief administrative officer of the State Board of
8 Education. The Superintendent shall be appointed by the State Board of Education and
9 shall serve at the pleasure of the State Board of Education."

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

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

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

19 "**§ 115C-10. Appointment of Board.**

20 (a) The State Board of Education shall consist of the Lieutenant Governor, the
21 State Treasurer, and ~~11~~ nine members appointed by the Governor, four members
22 appointed by the General Assembly upon the recommendation of the President Pro
23 Tempore of the Senate in accordance with G.S. 120-121, and four members appointed by
24 the General Assembly upon the recommendation of the Speaker of the House of
25 Representatives in accordance with G.S. 120-121. ~~Governor, subject to confirmation by the~~
26 General Assembly in joint session. ~~Not~~ The Governor may appoint no more than one public
27 school employee paid from State or local funds ~~may to~~ serve as an appointive member of
28 the State Board of Education. The General Assembly shall not appoint any public school
29 employees paid from State or local funds to serve as appointive members of the State
30 Board of Education. No spouse of any public school employee paid from State or local funds
31 and ~~no~~ No employee of the Department of Public Instruction ~~or his spouse,~~ may serve as
32 an appointive member of the State Board of Education. ~~Of the appointive members of the~~
33 State Board of Education, ~~one shall be appointed~~ Of the Governor's nine appointments, one
34 shall be appointed from each of the eight educational districts and ~~three~~ one shall be
35 appointed as ~~members~~ a member at large. Appointments shall be for terms of eight years and
36 shall be made in four classes. ~~Appointments to fill vacancies shall be made by the Governor for~~
37 the unexpired terms and shall not be subject to confirmation.

38 (b) All initial terms shall begin July 1, 1996. Four of the initial members
39 appointed by the Governor, two of the initial members appointed by the General
40 Assembly upon the recommendation of the President Pro Tempore of the Senate in
41 accordance with G.S. 120-121, and two of the initial members appointed by the General
42 Assembly upon the recommendation of the Speaker of the House of Representatives in
43 accordance with G.S. 120-121, shall serve for terms ending February 28, 1997. The

1 remainder of the initial appointive members shall serve for terms ending February 28,
2 1999. All subsequent terms shall be for four years.

3 No member shall serve more than two full four-year terms in succession. Resignation
4 from a term of office does not constitute a break in service for the purpose of this
5 subsection. Members appointed for a term to begin July 1, 1996, may be reappointed for
6 two additional successive terms.

7 (c) Appointments to fill vacancies in positions filled by the Governor shall be
8 made by the Governor for the unexpired terms. Appointments by the General Assembly
9 shall be made in accordance with G.S. 120-121, and appointments to fill vacancies in
10 those positions shall be made in accordance with G.S. 120-122.

11 ~~The Governor shall transmit to the presiding officers of the Senate and the House of~~
12 ~~Representatives, on or before the sixtieth legislative day of the General Assembly, the~~
13 ~~names of the persons appointed by him and submitted to the General Assembly for~~
14 ~~confirmation; thereafter, pursuant to joint resolution, the Senate and the House of~~
15 ~~Representatives shall meet in joint session for consideration of an action upon such~~
16 ~~appointments."~~

17 Sec. 5. G.S. 115C-11(a) reads as rewritten:

18 "(a) Presiding Officer. – The Governor shall select one member of the Board to
19 serve as chair. The chair shall serve at the pleasure of the Governor. The State Board of
20 Education shall elect from its membership a chairman and vice-chairman. A majority of
21 the Board shall constitute a quorum for the transaction of business. Per diem and
22 expenses of the appointive members of the Board shall be provided by the General
23 Assembly. The chairman of the Board shall preside at all meetings of the Board. In the
24 absence of the chairman, the vice-chairman shall preside; in the absence of both the
25 chairman and the vice-chairman, the Board shall name one of its own members as
26 chairman pro tempore."

27 Sec. 6. G.S. 115C-18 reads as rewritten:

28 "**§ 115C-18. Election–Appointment of Superintendent of Public Instruction.**
29 **Instruction; salary.**

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

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

12 Sec. 7. G.S. 115C-19 reads as rewritten:

13 **"§ 115C-19. Chief administrative officer of the State Board of Education.**

14 As provided in Article IX, Sec. 4(2) of the North Carolina Constitution, the
15 Superintendent of Public Instruction shall be the secretary and chief administrative
16 officer of the State Board of Education. The Superintendent of Public Instruction shall
17 administer the policies adopted by the State Board of Education. The Board shall define the
18 specific duties of the Superintendent as secretary and chief administrative officer of the
19 Board. The Superintendent of Public Instruction shall perform these duties and any other
20 duties that the Board may assign to the Superintendent."

21 Sec. 8. G.S. 115C-20 is repealed.

22 Sec. 9. G.S. 115C-21 is repealed.

23 Sec. 10. G.S. 120-123 is amended by adding a new subdivision to read:

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

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

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

27 (1) A Governor;

28 (2) A Lieutenant Governor;

29 (3) Private secretary for the Governor;

30 (4) A Secretary of State;

31 (5) An Auditor;

32 (6) A Treasurer;

33 (7) An Attorney General;

34 ~~(8) A Superintendent of Public Instruction;~~

35 (9) The members of the Governor's Council;

36 (10) A Commissioner of Agriculture;

37 (11) A Commissioner of Labor;

38 (12) A Commissioner of Insurance."

39 Sec. 12. G.S. 147-4 reads as rewritten:

40 **"§ 147-4. Executive officers – election; term; induction into office.**

41 The executive department shall consist of a Governor, a Lieutenant Governor, a
42 Secretary of State, an Auditor, a Treasurer, ~~a Superintendent of Public Instruction,~~ an
43 Attorney General, a Commissioner of Agriculture, a Commissioner of Insurance, and a

1 Commissioner of Labor, who shall be elected for a term of four years, by the qualified
2 electors of the State, at the same time and places, and in the same manner, as members of
3 the General Assembly are elected. Their term of office shall commence on the first day of
4 January next after their election and continue until their successors are elected and
5 qualified. The persons having the highest number of votes, respectively, shall be declared
6 duly elected, but if two or more be equal and highest in votes for the same office, then
7 one of them shall be chosen by joint ballot of both houses of the General Assembly.
8 Contested elections shall be determined by a joint ballot of both houses of the General
9 Assembly in such manner as shall be prescribed by law."

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

11 **"§ 147-11.1. Succession to office of Governor; Acting Governor.**

12 (a) Lieutenant Governor. –

13 (1) The Lieutenant Governor-elect shall become Governor upon the failure
14 of the Governor-elect to qualify. The Lieutenant Governor shall become
15 Governor upon the death, resignation, or removal from office of the
16 Governor. The further order of succession to the office of Governor
17 shall be prescribed by law. A successor shall serve for the remainder of
18 the term of the Governor whom he succeeds and until a new Governor is
19 elected and qualified.

20 (2) During the absence of the Governor from the State, or during the
21 physical or mental incapacity of the Governor to perform the duties of
22 his office, the Lieutenant Governor shall be Acting Governor. The
23 further order of succession as Acting Governor shall be prescribed by
24 law.

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

26 (1) If, by reason of failure to qualify, death, resignation, or removal from
27 office, there is neither a Governor nor a Lieutenant Governor to
28 discharge the powers and duties of the office of Governor, then the
29 President of the Senate shall, upon his resignation as President of the
30 Senate and as Senator, become Governor.

31 (2) If, at the time when under subdivision (1) of this subsection the
32 President of the Senate is to become Governor, there is no President of
33 the Senate, or the President of the Senate fails to qualify as Governor,
34 then the Speaker of the House of Representatives shall, upon his
35 resignation as Speaker and as Representative, become Governor.

36 (3) If, at the time when under subdivision (2) of this subsection the Speaker
37 of the House of Representatives is to become Governor, there is no
38 Speaker of the House of Representatives, or the Speaker of the House of
39 Representatives fails to qualify as Governor, then that officer of the
40 State of North Carolina who is highest on the following list, and who is
41 not under disability to serve as Governor, shall, upon his resignation of
42 the office which places him in the order of succession, become
43 Governor: Secretary of State, Auditor, Treasurer, ~~Superintendent of~~

1 ~~Public Instruction~~,—Attorney General, Commissioner of Agriculture,
2 Commissioner of Labor, and Commissioner of Insurance.

3 (c) Acting Governor Generally. —

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

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

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

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

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

30 (2) If his tenure as Acting Governor is founded in whole or in part upon the
31 physical or mental incapacity of the Governor or Lieutenant Governor,
32 then he shall act only until the removal of the incapacity of the
33 Governor or Lieutenant Governor.

34 (e) Officers to Which Subsections (b), (c) and (d) Applicable. — Subsections (b),
35 (c), and (d) of this section shall apply only to such officers as are eligible to the office of
36 Governor under the Constitution of North Carolina, and only to officers who are not
37 under impeachment by the House of Representatives at the time they are to become
38 Governor or Acting Governor.

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

42 Sec. 14. G.S. 163-1 is amended by deleting the entries in the table for
43 "Superintendent of Public Instruction".

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

2 **"§ 163-8. Filling vacancies in State executive offices.**

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

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

21 Sec. 16. G.S. 163-278.27(b) reads as rewritten:

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

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

1 which any of the officers, directors, agents, employees or members of
2 the person or group reside."

3 Sec. 17. Notwithstanding G.S. 163-107(c), in 1996 only, if at the time filing of
4 notices for candidacy for the office of Superintendent of Public Instruction is to open
5 under G.S. 163-106(c), the provisions of this act that provide that that office is no longer
6 elective have not been approved under Section 5 of the Voting Rights Act of 1965, then
7 notices of candidacy for that office shall not be filed with the State Board of Elections
8 earlier than the third Monday in January.

9 Sec. 18. The amendments set out in Sections 1, 2, and 3 of this act shall be
10 submitted to the qualified voters of the State at a statewide general election on November
11 7, 1995, which election shall be conducted under the laws then governing elections in the
12 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 change the composition of the State Board of
16 Education, to change the length of terms for members of the State Board of Education,
17 and to make the Superintendent of Public Instruction an appointee of the State Board of
18 Education."

19 Sec. 19. If a majority of votes cast on the question are in favor of the
20 amendments set out in Sections 1, 2, and 3 of this act, the State Board of Elections shall
21 certify the amendments to the Secretary of State. The Secretary of State shall enroll the
22 amendments so certified among the permanent records of that office. The amendments
23 shall become effective as follows:

24 (1) The amendment set out in Section 1 of this act shall become effective
25 upon such certification except that the term of office of all members of
26 the State Board of Education who were appointed to the State Board of
27 Education prior to July 1, 1996, and were serving as members on June
28 30, 1996, shall expire on July 1, 1996. The initial overlapping term
29 beginning July 1, 1996, for members of the State Board of Education
30 shall be as follows: Four of the initial members appointed by the
31 Governor, two of the initial members appointed by the General
32 Assembly upon the recommendation of the President Pro Tempore of
33 the Senate, and two of the initial members appointed by the General
34 Assembly upon the recommendation of the Speaker of the House of
35 Representatives, shall serve for terms ending February 28, 1997, and the
36 remainder of the initial appointive members shall serve for terms ending
37 February 28, 1999. All subsequent terms shall be for four years.

38 (2) The amendments set out in Sections 2 and 3 of this act shall
39 become effective the later of January 1, 1997, and the date that those
40 sections are precleared under Section 5 of the Voting Rights Act of
41 1965. If because of the date of preclearance of those sections under
42 Section 5 of the Voting Rights Act of 1965, an election is conducted
43 in 1996 for the office of Superintendent of Public Instruction, the

1 results of that election are vacated. If the amendments become
2 effective after January 1, 1997, the term of office of the person then
3 holding that office is terminated on the effective date.

4 Sec. 20. Sections 4 through 16 of this act become effective only if the
5 constitutional amendments set out in Sections 1, 2, and 3 of this act are approved by the
6 voters. If the constitutional amendments are approved by the voters:

7 (1) Sections 4, 5, and 10 of this act shall become effective July 1, 1996:
8 Provided, however, the General Assembly and the Governor may
9 appoint members to the State Board of Education in accordance with
10 Section 4 of this act, prior to July 1, 1996, for terms of office beginning
11 July 1, 1996.

12 (2) Sections 6, 7, 8, 9, and 11 through 16 of this act shall become effective
13 on the later of January 1, 1997, and the date that those sections are
14 precleared under Section 5 of the Voting Rights Act of 1965. If because
15 of the date of preclearance of those sections under Section 5 of the
16 Voting Rights Act of 1965, an election is conducted in 1996 for the
17 office of Superintendent of Public Instruction, the results of that election
18 are vacated. If the amendments become effective after January 1, 1997,
19 the term of office of the person then holding that office is terminated on
20 the effective date.

21 Sec. 21. This act is effective upon ratification.