

GENERAL ASSEMBLY OF NORTH CAROLINA

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SENATE BILL 5

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(Public)

Sponsors:

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January 26, 1995

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

"(1) **Board.** The State Board of Education shall consist of the Lieutenant Governor, the Treasurer, and ~~eleven members appointed by the Governor, subject to confirmation by the General Assembly in joint session.~~ eleven members appointed by the Governor, three members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, and three members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives. The General Assembly shall divide the State into eight educational districts. Of the ~~appointive members of the Board,~~ Governor's eleven appointees, one shall be appointed from each of the eight educational districts and three shall be appointed from the State at large. Appointments shall be for overlapping terms of ~~eight~~ four years. The General Assembly may provide by statute for any qualifications of Board members and any limitation on the

1 number of terms a member may serve on the Board. Appointments to fill vacancies shall  
2 be made by the Governor for the unexpired terms and shall not be subject to confirmation, as  
3 provided by law.

4 The Governor shall designate one member of the Board as chair."

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

40 (b) All initial terms shall begin July 1, 1996. The eight initial members appointed  
41 by the Governor, one from each of the eight educational districts, shall serve terms  
42 ending February 28, 1997. The remainder of the initial appointive members shall serve  
43 for terms ending February 28, 1999. All subsequent terms shall be for four years.

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

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

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

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

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

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

26 "**§ 115C-18. Election—Appointment of Superintendent of Public Instruction.**  
27 **Instruction; salary.**

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

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

1 appointed or elected pursuant to Article III, Sec. 7 of the Constitution of North Carolina  
2 to fill the vacancy and is qualified.

3 The time of the election of the Superintendent of Public Instruction shall be in  
4 accordance with the provisions of Article 1 of Subchapter I of Chapter 163 of the General  
5 Statutes.

6 The election, term and induction into office of the Superintendent of Public  
7 Instruction shall be in accordance with the provisions of G.S. 147-4, appointed by the  
8 State Board of Education and shall serve at the pleasure of the State Board of Education.  
9 The salary of the Superintendent shall be set by the State Board of Education."

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

11 "**§ 115C-19. Chief administrative officer of the State Board of Education.**

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

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

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

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

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

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

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

25 (1) A Governor;

26 (2) A Lieutenant Governor;

27 (3) Private secretary for the Governor;

28 (4) A Secretary of State;

29 (5) An Auditor;

30 (6) A Treasurer;

31 (7) An Attorney General;

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

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

34 (10) A Commissioner of Agriculture;

35 (11) A Commissioner of Labor;

36 (12) A Commissioner of Insurance."

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

38 "**§ 147-4. Executive officers – election; term; induction into office.**

39 The executive department shall consist of a Governor, a Lieutenant Governor, a  
40 Secretary of State, an Auditor, a Treasurer, ~~a Superintendent of Public Instruction,~~ an  
41 Attorney General, a Commissioner of Agriculture, a Commissioner of Insurance, and a  
42 Commissioner of Labor, who shall be elected for a term of four years, by the qualified  
43 electors of the State, at the same time and places, and in the same manner, as members of

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

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

9 **"§ 147-11.1. Succession to office of Governor; Acting Governor.**

10 (a) Lieutenant Governor. –

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

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

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

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

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

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

1 (c) Acting Governor Generally. –

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

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

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

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

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

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

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

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

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

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

43 "**§ 163-8. Filling vacancies in State executive offices.**

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

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

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

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

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

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

7           Sec. 18. The amendments set out in Sections 1, 2, and 3 of this act shall be  
8 submitted to the qualified voters of the State at a statewide general election on November  
9 7, 1995, which election shall be conducted under the laws then governing elections in the  
10 State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of  
11 the General Statutes. The question to be used in the voting systems and ballots shall be:

12                                   " FOR  AGAINST

13           Constitutional amendments to change the composition of the State Board of  
14 Education, to change the length of terms for members of the State Board of Education,  
15 and to make the Superintendent of Public Instruction an appointee of the State Board of  
16 Education."

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

22           (1) The amendment set out in Section 1 of this act shall become effective  
23 upon such certification except that the term of office of all members of  
24 the State Board of Education who were appointed to the State Board of  
25 Education prior to July 1, 1996, and were serving as members on June  
26 30, 1996, shall expire on July 1, 1996. The initial overlapping term  
27 beginning July 1, 1996, for members of the State Board of Education  
28 shall be as follows: The eight initial members appointed by the  
29 Governor, one from each of the eight educational districts, shall serve  
30 for terms ending February 28, 1997, and the remainder of the initial  
31 appointive members shall serve for terms ending February 28, 1999.  
32 All subsequent terms shall be for four years.

33           (2) The amendments set out in Sections 2 and 3 of this act shall  
34 become effective the later of January 1, 1997, and the date that those  
35 sections are precleared under Section 5 of the Voting Rights Act of  
36 1965. If because of the date of preclearance of those sections under  
37 Section 5 of the Voting Rights Act of 1965, an election is conducted  
38 in 1996 for the office of Superintendent of Public Instruction, the  
39 results of that election are vacated. If the amendments become  
40 effective after January 1, 1997, the term of office of the person then  
41 holding that office is terminated on the effective date.



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

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

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

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