

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 773*

Short Title: Educational Governance Framework. (Public)

Sponsors: Senators Stevens; Boseman, Brunstetter, and Clodfelter.

Referred to: Education/Higher Education.

March 24, 2009

A BILL TO BE ENTITLED

AN ACT CREATING AN EDUCATIONAL GOVERNANCE FRAMEWORK FOR THE
TWENTY-FIRST CENTURY.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Section 4(1) of Article IX of the North Carolina Constitution reads as rewritten:

"(1) Board. The State Board of Education shall consist of the Lieutenant Governor, the Treasurer, a chair appointed by the Governor, and eleven ~~eight~~ members appointed by the Governor, subject to confirmation by the General Assembly in joint session. Governor, three members appointed by the Speaker of the House of Representatives, and three members appointed by the President Pro Tempore of the Senate. The General Assembly shall divide the State into eight educational districts. Of the appointive members of the ~~Board,~~ Board appointed by the Governor, one shall be appointed from each of the eight educational ~~districts and three shall be appointed from the State at large.~~ districts. Appointments shall be for overlapping terms of eight ~~six~~ years. Appointments to fill vacancies shall be made by ~~the Governor for the unexpired terms and shall not be subject to confirmation.~~ the appointing authority. No member may be appointed to more than two consecutive full six-year terms."

SECTION 1.(b) Section 4(2) of Article IX of the North Carolina Constitution reads as rewritten:

"(2) ~~Superintendent of Public Instruction.~~ Commissioner of Education. The ~~Superintendent of Public Instruction~~ Commissioner of Education shall be the secretary and chief administrative officer of the State Board of Education. The Commissioner of Education shall be appointed by the State Board of Education and serve at its pleasure."

SECTION 1.(c) Section 7(1) of Article III of the North Carolina Constitution reads as rewritten:

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

SECTION 2.(a) The amendments set out in Section 1 of this act shall be submitted to the qualified voters of the State at a statewide general election on November 3, 2010, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:



"[] FOR [] AGAINST

Constitutional amendments to provide for an educational governance framework for the 21st Century by providing for a Commissioner of Education appointed by the State Board of Education to be the chief administrative officer of that board, and reconstituting the membership of the State Board of Education."

SECTION 2.(b) If a majority of votes cast on the question are in favor of the amendments set out in Section 1 of this act, the State Board of Elections shall certify the amendments to the Secretary of State. The Secretary of State shall enroll the amendments so certified among the permanent records of that office. The amendment set out in Section 1(a) of this act becomes effective February 28, 2011. The amendments set out in Sections 1(b) and 1(c) of this act shall become effective January 1, 2012, but no Superintendent of Public Instruction shall be elected in 2012.

SECTION 3. The terms of office of the State Board of Education terminate February 28, 2011. New members shall be appointed for terms beginning March 1, 2011, as follows:

- (1) Of the appointees of the Governor, three shall serve initial terms of six years, three shall serve initial terms of four years, and two shall serve initial terms of two years.
- (2) Of the appointees of the Speaker of the House of Representatives, one shall serve an initial term of six years, one shall serve an initial term of four years, and one shall serve an initial term of two years.
- (3) Of the appointees of the President Pro Tempore of the Senate, one shall serve an initial term of six years, one shall serve an initial term of four years, and one shall serve an initial term of two years.
- (4) The chair shall serve an initial term of four years.

All succeeding terms shall be for six years.

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

"§ 115C-18. Election-Appointment of Superintendent of Public Instruction-Commissioner of Education.

~~The Superintendent of Public Instruction-Commissioner of Education shall be appointed by the State Board of Education and serve at its pleasure. elected by the qualified voters of the State in 1972 and every four years thereafter at the same time and places as members of the General Assembly are elected. His term of office shall be four years and shall commence on the first day of January next after election and continue until his successor is elected and qualified.~~

~~If the office of the Superintendent of Public Instruction is vacated by death, resignation, or otherwise, it shall be the duty of the Governor to appoint another to serve until his successor is elected and qualified. Every such vacancy shall be filled by election at the first election for members of the General Assembly that occurs more than 30 days after the vacancy has taken place, and the person chosen shall hold the office for the remainder of the unexpired term fixed in Article III, Sec. 7 of the Constitution of North Carolina. When a vacancy occurs in the office 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 for any of the causes stated herein, the Governor may appoint an interim officer to perform the duties of that office until a person is appointed or elected pursuant to Article III, Sec. 7 of the Constitution of North Carolina to fill the vacancy and is qualified.~~

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

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

SECTION 5. G.S. 147-3(c) reads as rewritten:

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

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

14 **SECTION 6.** G.S. 147-4 reads as rewritten:

15 **"§ 147-4. Executive officers – election; term; induction into office.**

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

27 **SECTION 7.** G.S. 147-11.1 reads as rewritten:

28 **"§ 147-11.1. Succession to office of Governor; Acting Governor.**

29 (a) Lieutenant Governor. –

30 (1) The Lieutenant Governor-elect shall become Governor upon the failure of
31 the Governor-elect to qualify. The Lieutenant Governor shall become
32 Governor upon the death, resignation, or removal from office of the
33 Governor. The further order of succession to the office of Governor shall be
34 prescribed by law. A successor shall serve for the remainder of the term of
35 the Governor whom he succeeds and until a new Governor is elected and
36 qualified.

37 (2) During the absence of the Governor from the State, or during the physical or
38 mental incapacity of the Governor to perform the duties of his office, the
39 Lieutenant Governor shall be Acting Governor. The further order of
40 succession as Acting Governor shall be prescribed by law.

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

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

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

- 1 (3) If, at the time when under subdivision (2) of this subsection the Speaker of
2 the House of Representatives is to become Governor, there is no Speaker of
3 the House of Representatives, or the Speaker of the House of
4 Representatives fails to qualify as Governor, then that officer of the State of
5 North Carolina who is highest on the following list, and who is not under
6 disability to serve as Governor, shall, upon his resignation of the office
7 which places him in the order of succession, become Governor: Secretary of
8 State, Auditor, Treasurer, ~~Superintendent of Public Instruction~~, Attorney
9 General, Commissioner of Agriculture, Commissioner of Labor, and
10 Commissioner of Insurance.
- 11 (c) Acting Governor Generally. –
- 12 (1) If, by reason of absence from the State or physical or mental incapacity,
13 there is neither a Governor nor a Lieutenant Governor qualified to discharge
14 the powers and duties of the office of Governor, then the President of the
15 Senate shall become Acting Governor.
- 16 (2) If, at the time when under subdivision (1) of this subsection the President of
17 the Senate is to become Acting Governor, there is no President of the Senate,
18 or the President of the Senate fails to qualify as Acting Governor, then the
19 Speaker of the House of Representatives shall become Acting Governor.
- 20 (3) If, at the time when under subdivision (2) of this subsection the Speaker of
21 the House of Representatives is to become Acting Governor, there is no
22 Speaker of the House of Representatives, or the Speaker of the House of
23 Representatives fails to qualify as Acting Governor, then that officer of the
24 State of North Carolina who is highest on the following list, and who is not
25 under disability to serve as Acting Governor, shall become Acting Governor:
26 Secretary of State, Auditor, Treasurer, ~~Superintendent of Public Instruction~~,
27 Attorney General, Commissioner of Agriculture, Commissioner of Labor,
28 and Commissioner of Insurance.
- 29 (d) Governor Serving under Subsection (c). – An individual serving as Acting Governor
30 under subsection (c) of this section shall continue to act for the remainder of the term of the
31 Governor whom he succeeds and until a new Governor is elected and qualified, except that:
- 32 (1) If his tenure as Acting Governor is founded in whole or in part upon the
33 absence of both the Governor and Lieutenant Governor from the State, then
34 he shall act only until the Governor or Lieutenant Governor returns to the
35 State; and
- 36 (2) If his tenure as Acting Governor is founded in whole or in part upon the
37 physical or mental incapacity of the Governor or Lieutenant Governor, then
38 he shall act only until the removal of the incapacity of the Governor or
39 Lieutenant Governor.
- 40 (e) Officers to Which Subsections (b), (c) and (d) Applicable. – Subsections (b), (c),
41 and (d) of this section shall apply only to such officers as are eligible to the office of Governor
42 under the Constitution of North Carolina, and only to officers who are not under impeachment
43 by the House of Representatives at the time they are to become Governor or Acting Governor.
- 44 (f) Compensation of Acting Governor. – During the period that any individual serves as
45 Acting Governor under subsection (c) of this section, his compensation shall be at the rate then
46 provided by law in the case of the Governor."

47 **SECTION 8.** G.S. 163-8 reads as rewritten:

48 "**§ 163-8. Filling vacancies in State executive offices.**

49 If the office of Governor or Lieutenant Governor shall become vacant, the provisions of
50 G.S. 147-11.1 shall apply. If the office of any of the following officers shall be vacated by
51 death, resignation, or otherwise than by expiration of term, it shall be the duty of the Governor

1 to appoint another to serve until his successor is elected and qualified: Secretary of State,
2 Auditor, Treasurer, ~~Superintendent of Public Instruction~~, Attorney General, Commissioner of
3 Agriculture, Commissioner of Labor, and Commissioner of Insurance. Each such vacancy shall
4 be filled by election at the first election for members of the General Assembly that occurs more
5 than 60 days after the vacancy has taken place, and the person chosen shall hold the office for
6 the remainder of the unexpired four-year term: Provided, that when a vacancy occurs in any of
7 the offices named in this section and the term expires on the first day of January succeeding the
8 next election for members of the General Assembly, the Governor shall appoint to fill the
9 vacancy for the unexpired term of the office.

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

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

16 **SECTION 10.** G.S. 163-278.27(b) reads as rewritten:

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

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

41 **SECTION 11.** G.S. 163-278.95 reads as rewritten:

42 **"§ 163-278.95. Purpose and establishment of Voter-Owned Elections Act.**

43 The purpose of this Article is to ensure the vitality and fairness of democratic elections in
44 North Carolina to the end that any eligible citizen of this State can realistically choose to seek
45 and run for public office. It is also the purpose of this Article to protect the constitutional rights
46 of voters and candidates from the detrimental effects of increasingly large amounts of money
47 being raised and spent in North Carolina to influence the outcome of elections. It is essential to
48 the public interest that the potential for corruption or the appearance of corruption is minimized
49 and that the equal and meaningful participation of all citizens in the democratic process is
50 ensured. Accordingly, this Article establishes the North Carolina Voter-Owned Elections Fund
51 as an alternative source of campaign financing for candidates who obtain a sufficient number of

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

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

6 "**§ 163-278.96. Definitions.**

7 The following definitions apply in this Article:

8 ...

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

11 **SECTION 13.** Sections 4 through 12 of this act become effective only if the voters
12 approve the constitutional amendments set out in Section 1 of this act. If the voters approve the
13 constitutional amendments, Sections 4 through 8 of this act become effective January 1, 2011.
14 Sections 9 through 11 of this act become effective beginning with the 2010 election.

15 **SECTION 14.** G.S. 143A-44.1 reads as rewritten:

16 "**§ 143A-44.1. Creation.**

17 There is hereby created a Department of Public Instruction. The head of the Department of
18 Public Instruction is the ~~State Board of Education, Commissioner of Education~~, as provided for
19 ~~by Article III, Section 7 of the Constitution. Any provision of G.S. 143A-9 to the contrary~~
20 ~~notwithstanding, the appointment of the State Board of Education shall be as prescribed in~~
21 ~~Article IX, Section (4)(1) of the Constitution."~~

22 **SECTION 15.** G.S. 143A-44.2 reads as rewritten:

23 "**§ 143A-44.2. State Board of Education; transfer of powers and duties to State Board.**

24 The State Board of Education shall have all powers and duties conferred on the Board by
25 this Article, delegated to the Board by the Governor, and conferred by the Constitution and
26 laws of this State. Any provision of G.S. 143A-9 to the contrary notwithstanding, the
27 appointment of the State Board of Education shall be as prescribed in Article IX, Section (4)(1)
28 of the Constitution."

29 **SECTION 16.** Sections 14 and 15 of this act become effective only if the voters do
30 not approve the constitutional amendments set out in Section 1 of this act. If the voters do not
31 approve the constitutional amendments, Sections 14 and 15 of this act become effective
32 January 1, 2011.

33 **SECTION 17.** This act is effective when it becomes law.