

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 318

Short Title: School Superintendent Appointed.

(Public)

Sponsors: Senators Cochrane; Allran, Daughtry, Forrester, Simpson, and Smith.

Referred to: Constitution.

March 27, 1991

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CONSTITUTION TO MAKE THE SUPERINTENDENT OF PUBLIC INSTRUCTION AN APPOINTEE OF THE STATE BOARD OF EDUCATION AND TO MAKE HIM CHIEF EXECUTIVE OFFICER OF THE STATE BOARD OF EDUCATION.

The General Assembly of North Carolina enacts:

Section 1. Section 7(1) of Article III of the 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."

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

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

Sec. 3. G.S. 115C-18 reads as rewritten:

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

~~The Superintendent of Public Instruction 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. His term of office shall be four years and~~

1 shall commence on the first day of January next after election and continue until his
2 successor is elected and qualified.

3 If the office of the Superintendent of Public Instruction is vacated by death,
4 resignation, or otherwise, it shall be the duty of the Governor to appoint another to serve
5 until his successor is elected and qualified. Every such vacancy shall be filled by
6 election at the first election for members of the General Assembly that occurs more than
7 30 days after the vacancy has taken place, and the person chosen shall hold the office
8 for the remainder of the unexpired term fixed in Article III, Sec. 7 of the Constitution of
9 North Carolina. When a vacancy occurs in the office and the term expires on the first
10 day of January succeeding the next election for members of the General Assembly, the
11 Governor shall appoint to fill the vacancy for the unexpired term of the office. Upon the
12 occurrence of a vacancy in the office for any of the causes stated herein, the Governor
13 may appoint an interim officer to perform the duties of that office until a person is
14 appointed or elected pursuant to Article III, Sec. 7 of the Constitution of North Carolina
15 to fill the vacancy and is qualified.

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

19 The election, term and induction into office of the Superintendent of Public
20 Instruction shall be in accordance with the provisions of G.S. 147-4. appointed by the
21 State Board of Education and shall serve at the pleasure of the State Board of
22 Education."

23 Sec. 4. G.S. 115C-19 reads as rewritten:

24 "**§ 115C-19. Chief administrative-executive officer of the State Board of Education.**

25 As provided in Article IX, Sec. 4(2) of the North Carolina Constitution, the
26 Superintendent of Public Instruction shall be the secretary and chief administrative
27 executive officer of the State Board of Education. The Superintendent of Public
28 Instruction shall administer the policies adopted by the State Board of Education."

29 Sec. 5. G.S. 115C-21(a) reads as rewritten:

30 "(a) Administrative-Executive Duties. – It shall be the duty of the Superintendent of
31 Public Instruction:

- 32 (1) To organize and establish a Department of Public Instruction which
33 shall include such divisions and departments as are necessary for
34 supervision and administration of the public school system, to
35 administer the funds for the operation of the Department of Public
36 Instruction, and to enter into contracts for the operations of the
37 Department of Public Instruction.
- 38 (2) To keep the public informed as to the problems and needs of the public
39 schools by constant contact with all school administrators and
40 teachers, by his personal appearance at public gatherings, and by
41 information furnished to the press of the State.
- 42 (3) To report biennially to the Governor 30 days prior to each regular
43 session of the General Assembly, such report to include information
44 and statistics of the public schools, with recommendations for their

1 improvement and for such changes in the school law as shall occur to
2 him.

3 (4) To have printed and distributed such educational bulletins as he shall
4 deem necessary for the professional improvement of teachers and for
5 the cultivation of public sentiment for public education, and to have
6 printed all forms necessary and proper for the administration of the
7 Department of Public Instruction.

8 (5) To have under his direction, in his capacity as the ~~constitutional head of~~
9 ~~the public school system,~~ chief executive officer of the State Board of
10 Education, all those matters relating to the supervision and
11 administration of the public school system.

12 (6) To create a special fund within the Department of Public Instruction to
13 manage funds received as grants from nongovernmental sources in
14 support of public education. The Superintendent may accept grants
15 and gifts from corporations and other sources made in support of
16 public education and may hold and disburse such funds, in accordance
17 with the purposes, conditions, and limitations associated with such
18 grants and gifts. Any special fund created pursuant to this subdivision
19 shall be subject to audit by the State Auditor."

20 Sec. 6. G.S. 143-42 reads as rewritten:

21 **"§ 143A-42. Superintendent of Public Instruction; transfer of office and**
22 **Department of Public Instruction; powers and duties.**

23 The office of the Superintendent of Public Instruction, as provided for by ~~Article III,~~
24 ~~Sec. 7,~~ Article IX, Sec. 4(2), of the Constitution, and the Department of Public
25 Instruction are hereby transferred to the Department of Public Education. The
26 Superintendent of Public Instruction shall be the secretary and chief ~~administrative~~
27 executive officer of the State Board of Education, and shall have such powers and duties
28 as are conferred by the Constitution, by the State Board of Education, Chapter 115C of
29 the General Statutes, and the laws of this State."

30 Sec. 7. G.S. 147-3(c) reads as rewritten:

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

- 32 (1) A Governor;
- 33 (2) A Lieutenant Governor;
- 34 (3) Private secretary for the Governor;
- 35 (4) A Secretary of State;
- 36 (5) An Auditor;
- 37 (6) A Treasurer;
- 38 (7) An Attorney General;
- 39 ~~(8) A Superintendent of Public Instruction;~~
- 40 (9) The members of the Governor's Council;
- 41 (10) A Commissioner of Agriculture;
- 42 (11) A Commissioner of Labor;
- 43 (12) A Commissioner of Insurance."

44 Sec. 8. G.S. 147-4 reads as rewritten:

1 **"§ 147-4. Executive officers – election; term; induction into office.**

2 The executive department shall consist of a Governor, a Lieutenant Governor, a
3 Secretary of State, an Auditor, a Treasurer, a ~~Superintendent of Public Instruction,~~ an
4 Attorney General, a Commissioner of Agriculture, a Commissioner of Insurance, and a
5 Commissioner of Labor, who shall be elected for a term of four years, by the qualified
6 electors of the State, at the same time and places, and in the same manner, as members
7 of the General Assembly are elected. Their term of office shall commence on the first
8 day of January next after their election and continue until their successors are elected
9 and qualified. The persons having the highest number of votes, respectively, shall be
10 declared duly elected, but if two or more be equal and highest in votes for the same
11 office, then one of them shall be chosen by joint ballot of both houses of the General
12 Assembly. Contested elections shall be determined by a joint ballot of both houses of
13 the General Assembly in such manner as shall be prescribed by law."

14 Sec. 9. G.S. 147-11.1 reads as rewritten:

15 **"§ 147-11.1. Succession to office of Governor; Acting Governor.**

16 (a) Lieutenant Governor. –

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

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

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

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

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

40 (3) If, at the time when under subdivision (2) of this subsection the
41 Speaker of the House of Representatives is to become Governor, there
42 is no Speaker of the House of Representatives, or the Speaker of the
43 House of Representatives fails to qualify as Governor, then that officer
44 of the State of North Carolina who is highest on the following list, and

1 who is not under disability to serve as Governor, shall, upon his
2 resignation of the office which places him in the order of succession,
3 become Governor: Secretary of State, Auditor, Treasurer,
4 ~~Superintendent of Public Instruction~~, Attorney General, Commissioner of
5 Agriculture, Commissioner of Labor, and Commissioner of Insurance.

6 (c) Acting Governor Generally. –

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

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

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

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

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

34 (2) If his tenure as Acting Governor is founded in whole or in part upon
35 the physical or mental incapacity of the Governor or Lieutenant
36 Governor, then he shall act only until the removal of the incapacity of
37 the Governor or Lieutenant Governor.

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

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

4 Sec. 10. G.S. 163-1 is amended by deleting the entry in the table for
5 "Superintendent of Public Instruction".

6 Sec. 11. G.S. 163-8 reads as rewritten:

7 **"§ 163-8. Filling vacancies in State executive offices.**

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

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

26 Sec. 12. G.S. 163-278.27 reads as rewritten:

27 **"§ 163-278.27. Penalty for violations; duty to report and prosecute.**

28 (a) Any individual, candidate, political committee, referendum committee,
29 treasurer, person or media who violates the provisions of G.S. 163-278.7, 163-278.8,
30 163-278.9, 163-278.10, 163-278.11, 163-278.12, 163-278.14, 163-278.16, 163-278.17,
31 163-278.18, 163-278.40A, 163-278.40B, 163-278.40C, 163-278.40D or 163-278.40E is
32 guilty of a misdemeanor.

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

- 36 (1) In the case of a candidate for nomination or election to the State Senate
37 or State House of Representatives: report to the district attorney of the
38 prosecutorial district in which the candidate for nomination or election
39 resides;
- 40 (2) In the case of a candidate for nomination or election to the office of
41 Governor, Lieutenant Governor, Secretary of State, State Auditor,
42 State Treasurer, ~~State Superintendent of Public Instruction,~~ State Attorney
43 General, State Commissioner of Agriculture, State Commissioner of
44 Labor, State Commissioner of Insurance, and all other State elective

1 offices, Justice of the Supreme Court, Judge of the Court of Appeals,
2 judge of a superior court, judge of a district court, and district attorney
3 of the superior court: report to the district attorney of the prosecutorial
4 district in which Wake County is located;

5 (3) In the case of an individual other than a candidate, including, without
6 limitation, violations by members of political committees, referendum
7 committees or treasurers: report to the district attorney of the
8 prosecutorial district in which the individual resides; and

9 (4) In the case of a person or any group of individuals: report to the
10 district attorney or district attorneys of the prosecutorial district or
11 districts in which any of the officers, directors, agents, employees or
12 members of the person or group reside.

13 (c) Upon receipt of such a report from the Board, the appropriate district attorney
14 shall prosecute the individual or persons alleged to have violated a section or sections of
15 this Article."

16 Sec. 13. The amendments set out in Sections 1 and 2 of this act shall be
17 submitted to the qualified voters of the State at an election to be held on November 5,
18 1991, which election shall be conducted under the laws then governing elections in the
19 State. At that election, each qualified voter desiring to vote shall be provided a ballot on
20 which shall be printed the following:

21 "[] FOR Constitutional amendments to make the Superintendent of Public
22 Instruction an appointee of the State Board of Education and to make
23 the Superintendent of Public Instruction the chief executive officer of
24 the State Board of Education.

25 [] AGAINST Constitutional amendments to make the Superintendent of
26 Public Instruction an appointee of the State Board of Education and to
27 make the Superintendent of Public Instruction the chief executive
28 officer of the State Board of Education."

29 Those qualified voters favoring the amendments set out in Sections 1 and 2
30 of this act shall vote by making an X or a check mark in the square beside the statement
31 beginning "FOR", and those qualified voters opposed to those amendments shall vote
32 by making an X or check mark in the square beside the statement beginning
33 "AGAINST".

34 Notwithstanding the foregoing provisions of this section, voting machines
35 may be used in accordance with rules and regulations prescribed by the State Board of
36 Elections.

37 Sec. 14. If a majority of votes cast thereon are in favor of the amendments set
38 out in Sections 1 and 2 of this act, the State Board of Elections shall certify the
39 amendments to the Secretary of State, who shall enroll the amendments so certified
40 among the permanent records of his office, and the amendments shall become effective
41 upon such certification, except that such amendments do not affect the manner of filling
42 vacancies of the Superintendent of Public Instruction for the term that commenced
43 January 1, 1989.

1 Sec. 15. Sections 3 through 12 of this act shall become effective only if the
2 constitutional amendments set out in Sections 1 and 2 of this act are approved by the
3 voters. If the constitutional amendments are approved by the voters, Sections 3 through
4 12 of this act shall become effective January 1, 1993. Sections 14 and 15 of this act are
5 effective upon ratification.

6 Sec. 16. This act is effective upon ratification.