

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 941

Short Title: Lt. Governor/Secretary of State.

(Public)

Sponsors: Senator Rand.

Referred to: State Government, Local Government, and Personnel.

April 17, 1997

A BILL TO BE ENTITLED

1 AN ACT TO AMEND THE CONSTITUTION OF NORTH CAROLINA TO
2 ABOLISH THE OFFICE OF SECRETARY OF STATE AND ASSIGN MOST OF
3 ITS DUTIES ON THE LIEUTENANT GOVERNOR.
4

5 The General Assembly of North Carolina enacts:

6 Section 1. Section 7 of Article III of the Constitution of North Carolina reads
7 as rewritten:

8 "Sec. 7. Other elective officers.

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

16 (2) Duties. Their respective duties shall be prescribed by law.

17 (3) Vacancies. If the office of any of these officers or the Office of the Lieutenant
18 Governor is vacated by death, resignation, or otherwise, it shall be the duty of the
19 Governor to appoint another to serve until his successor is elected and qualified. Every
20 such vacancy shall be filled by election at the first election for members of the General

1 Assembly that occurs more than 60 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 this Section.
3 When a vacancy occurs in the office of any of the officers named in this Section and the
4 term expires on the first day of January succeeding the next election for members of the
5 General Assembly, the Governor shall appoint to fill the vacancy for the unexpired term
6 of the office.

7 (4) Interim officers. Upon the occurrence of a vacancy in the office of any one of
8 these officers for any of the causes stated in the preceding paragraph, the Governor may
9 appoint an interim officer to perform the duties of that office other than the duties of
10 President of the Senate until a person is appointed or elected pursuant to this Section to
11 fill the vacancy and is qualified.

12 (5) Acting officers. During the physical or mental incapacity of any one of these
13 officers to perform the duties of his office, as determined pursuant to this Section, the
14 duties of his office other than the duties of President of the Senate shall be performed by
15 an acting officer who shall be appointed by the Governor.

16 (6) Determination of incapacity. The General Assembly shall by law prescribe
17 with respect to those officers, other than the Governor, whose offices are created by this
18 Article, procedures for determining the physical or mental incapacity of any officer to
19 perform the duties of his office, and for determining whether an officer who has been
20 temporarily incapacitated has sufficiently recovered his physical or mental capacity to
21 perform the duties of his office. Removal of those officers from office for any other
22 cause shall be by impeachment.

23 (7) Special Qualifications for Attorney General. Only persons duly authorized to
24 practice law in the courts of this State shall be eligible for appointment or election as
25 Attorney General."

26 Section 2. Section 14(1) of Article II of the Constitution of North Carolina
27 reads as rewritten:

28 "(1) President Pro Tempore - succession to presidency. The Senate shall elect from
29 its membership a President Pro Tempore, who shall become President of the Senate upon
30 the failure of the Lieutenant Governor-elect to qualify, or upon succession by the
31 Lieutenant Governor to the office of Governor, or upon the death, resignation, or removal
32 from office of the President of the Senate, and who shall serve until the expiration of his
33 term of office as ~~Senator~~ Senator or the qualification of a Lieutenant Governor,
34 whichever comes first."

35 Section 3. The amendments set out in Sections 1 and 2 of this act shall be
36 submitted to the qualified voters of the State at the general election in November 1998,
37 which election shall be conducted under the laws then governing elections in the State.
38 Ballots, voting systems, or both may be used in accordance with Chapter 163 of the
39 General Statutes. The question to be used in the voting systems and ballots shall be:

40 **"[] FOR [] AGAINST**

41 Constitutional amendments abolishing the office of Secretary of State and
42 implementing statutes assigning most of the powers of the Secretary of State to the
43 Lieutenant Governor."

1 Section 4. If a majority of votes cast on the question are in favor of the
2 amendments set out in Sections 1 and 2 of this act, the State Board of Elections shall
3 certify the amendments to the Secretary of State. The amendments become effective
4 December 31, 2000. The Secretary of State shall enroll the amendments so certified
5 among the permanent records of that office.

6 Section 5. G.S. 147-35 is repealed.

7 Section 6. Article 4 of Chapter 147 of the General Statutes is amended by
8 adding a new section to read:

9 **"§ 147-34.1. Lieutenant Governor ex officio Secretary of State.**

10 The Lieutenant Governor is ex officio Secretary of State, except if the Lieutenant
11 Governor is Acting Governor, then for the purpose of any act where the Secretary of
12 State is to attest to or otherwise certify an act of the Acting Governor, then for that
13 purpose the Attorney General is ex officio Secretary of State."

14 Section 7. (a) The Department of the Secretary of State, except for the
15 administration of Chapter 78A of the General Statutes, the North Carolina Securities Act,
16 is transferred to the Office of the Lieutenant Governor. This transfer has the elements of
17 a Type I transfer as defined by G.S. 143A-6(a).

18 (b) The functions of the Department of the Secretary of State for the
19 administration of Chapter 78A of the General Statutes, the North Carolina Securities Act,
20 are transferred to the Department of Justice. This transfer has the elements of a Type I
21 transfer as defined by G.S. 143A-6(a).

22 Section 8. G.S. 78A-45(a) reads as rewritten:

23 "(a) This Chapter shall be administered by the ~~Secretary of State~~ Attorney General.
24 ~~The Secretary of State~~ Attorney General as Administrator may delegate all or part of the
25 authority under this Chapter to the Deputy Securities Administrator including, but not
26 limited to, the authority to conduct hearings, make, execute and issue final agency orders
27 and decisions. The Secretary of State may appoint such clerks and other assistants as may
28 from time to time be needed."

29 Section 9. G.S. 8-34 reads as rewritten:

30 **"§ 8-34. Copies of official writings.**

31 Copies of all official bonds, writings, papers, or documents, recorded or filed as
32 records in any court, or public office, or lodged in the office of the Governor, Treasurer,
33 Auditor, ~~Secretary of State~~, Lieutenant Governor, Attorney General, Adjutant General, or
34 the State Department of Cultural Resources, shall be as competent evidence as the
35 originals, when certified by the keeper of such records or writings under the seal of his
36 office when there is such seal, or under his hand when there is no such seal, unless the
37 court shall order the production of the original. Copies of the records of the board of
38 county commissioners shall be evidence when certified by the clerk of the board under
39 his hand and seal of the county."

40 Section 10. G.S. 126-5(d)(1) reads as rewritten:

41 "(d) (1) General. – The Governor may designate as exempt
42 policymaking positions, as provided below, in each of the following
43 departments:

- 1 a. Department of Administration;
- 2 b. Department of Commerce;
- 3 c. Department of Correction;
- 4 d. Department of Crime Control and Public Safety;
- 5 e. Department of Cultural Resources;
- 6 f. Department of Human Resources;
- 7 g. Department of Environment, Health, and Natural Resources;
- 8 h. Department of Revenue; and
- 9 i. Department of Transportation.

10 The ~~Secretary of State, Lieutenant Governor,~~ the Auditor, the Treasurer,
11 the Attorney General, the Commissioner of Agriculture, the
12 Commissioner of Insurance, and the Labor Commissioner may
13 designate as exempt policymaking positions, as provided below, in their
14 respective offices. The State Board of Education may designate as
15 exempt policymaking positions, as provided below, in the Department
16 of Public Instruction."

17 Section 11. G.S. 147-4 reads as rewritten:

18 **"§ 147-4. Executive officers – election; term; induction into office.**

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

31 Section 12. G.S. 159-3(a) reads as rewritten:

32 "(a) The Local Government Commission consists of nine members. The State
33 Treasurer, the State Auditor, the ~~Secretary of State, Lieutenant Governor,~~ and the Secretary
34 of Revenue each serve ex officio; the remaining five members are appointed to four-year
35 terms as follows: three by the Governor, one by the General Assembly upon the
36 recommendation of the President Pro Tempore in accordance with G.S. 120-121, and one
37 by the General Assembly upon the recommendation of the Speaker of the House in
38 accordance with G.S. 120-121. Of the three members appointed by the Governor, one
39 shall be or have been the mayor or a member of the governing board of a city and one
40 shall be or have been a member of a county board of commissioners. The State Treasurer
41 is chairman ex officio of the Local Government Commission. Membership on the
42 Commission is an office that may be held concurrently with one other office, as permitted
43 by G.S. 128-1.1."

1 Section 13. 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 of
4 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~~ a successor is elected and qualified:
7 ~~Secretary of State, Lieutenant Governor, Auditor, Treasurer, Superintendent of Public~~
8 ~~Instruction, Attorney General, Commissioner of Agriculture, Commissioner of Labor,~~
9 ~~and Commissioner of Insurance.~~ Each such vacancy shall be filled by election at the first
10 election for members of the General Assembly that occurs more than 60 days after the
11 vacancy has taken place, and the person chosen shall hold the office for the remainder of
12 the unexpired four-year term: Provided, that when a vacancy occurs in any of the offices
13 named in this section and the term expires on the first day of January succeeding the next
14 election for members of the General Assembly, the Governor shall appoint to fill the
15 vacancy for the unexpired 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 Section 14. G.S. 163-278.27(b)(2) reads as rewritten:

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

31 Section 15. Sections 5 through 14 of this act become effective only if the
32 constitutional amendments proposed by Sections 1 and 2 of this act are approved by the
33 voters as provided in Sections 3 and 4 of this act. If they are approved, then Sections 5
34 through 14 of this act become effective January 1, 2001.

35 Section 16. This act is effective when it becomes law.