

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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SENATE BILL 12

Short Title: Appoint Superintendent of Public Instruction. (Public)

Sponsors: Senators Tillman (Primary Sponsor); and Apodaca.

Referred to: Rules and Operations of the Senate.

January 31, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CONSTITUTION TO AUTHORIZE THE GOVERNOR TO  
APPOINT THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION.

The General Assembly of North Carolina enacts:

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

"(2) Superintendent of Public Instruction. The Superintendent of Public Instruction shall  
be appointed by the Governor and shall be the secretary and chief administrative officer of the  
State Board of Education."

**SECTION 2.** 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 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 shall commence on the first  
day of January next after election and continue until his successor is elected and  
qualified.~~ appointed by the Governor. The Governor shall make an appointment to fill any  
vacancy in the office of the Superintendent of Public Instruction. ~~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~~



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

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

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

7 **SECTION 4.** G.S. 143A-44.3 reads as rewritten:

8 "**§ 143A-44.3. Superintendent of Public Instruction; creation; transfer of powers and**  
9 **duties.**

10 The office of the Superintendent of Public Instruction, as provided for by ~~Article III,~~  
11 ~~Section 7~~Article IX, Section 4(2) of the Constitution, and the Department of Public Instruction  
12 are transferred to the Department of Public Instruction. The Superintendent of Public  
13 Instruction shall be the Secretary and Chief Administrative Officer of the State Board of  
14 Education, and shall have all powers and duties conferred by the Constitution, by the State  
15 Board of Education, Chapter 115C of the General Statutes, and the laws of this State."

16 **SECTION 5.** G.S. 147-4 reads as rewritten:

17 "**§ 147-4. Executive officers – election; term; induction into office.**

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

29 **SECTION 6.** G.S. 147-11.1 reads as rewritten:

30 "**§ 147-11.1. Succession to office of Governor; Acting Governor.**

31 ...

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

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

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

43 (3) If, at the time when under subdivision (2) of this subsection the Speaker of  
44 the House of Representatives is to become Governor, there is no Speaker of  
45 the House of Representatives, or the Speaker of the House of  
46 Representatives fails to qualify as Governor, then that officer of the State of  
47 North Carolina who is highest on the following list, and who is not under  
48 disability to serve as Governor, shall, upon ~~his~~ resignation of the office  
49 which places ~~him~~ the officer in the order of succession, become Governor:  
50 Secretary of State, Auditor, Treasurer, ~~Superintendent of Public Instruction,~~

- 1 Attorney General, Commissioner of Agriculture, Commissioner of Labor,  
 2 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 discharge  
 6 the powers and duties of the office of Governor, then the President of the  
 7 Senate shall become Acting Governor.
- 8 (2) If, at the time when under subdivision (1) of this subsection the President of  
 9 the Senate is to become Acting Governor, there is no President of the Senate,  
 10 or the President of the Senate fails to qualify as Acting Governor, then the  
 11 Speaker of the House of Representatives shall become Acting Governor.
- 12 (3) If, at the time when under subdivision (2) of this subsection the Speaker of  
 13 the House of Representatives is to become Acting Governor, there is no  
 14 Speaker of the House of Representatives, or the Speaker of the House of  
 15 Representatives fails to qualify as Acting Governor, then that officer of the  
 16 State of North Carolina who is highest on the following list, and who is not  
 17 under disability to serve as Acting Governor, shall become Acting Governor:  
 18 Secretary of State, Auditor, Treasurer, ~~Superintendent of Public Instruction,~~  
 19 Attorney General, Commissioner of Agriculture, Commissioner of Labor,  
 20 and Commissioner of Insurance.

21 ...."

22 **SECTION 7.** G.S. 163-1(d) reads as rewritten:

23 "(d) If primaries for the State Senate or State House of Representatives are temporarily  
 24 moved from the date provided in subsection (b) of this section for any election year, all  
 25 primaries shall be held on the same day.

| 27 OFFICE                    | JURISDICTION | DATE OF ELECTION  | TERM OF OFFICE   |
|------------------------------|--------------|---|--|
| 28 Governor                  | State        | 29 Tuesday next after<br>30 the first Monday<br>31 in November 1968<br>32 and every four<br>33 years thereafter | 34 Four years, from<br>35 first day of<br>36 January next<br>37 after election |
| 33 Lieutenant<br>34 Governor | State        | 35 Tuesday next after<br>36 the first Monday<br>37 in November 1968<br>38 and every four<br>39 years thereafter | 40 Four years, from<br>41 first day of<br>42 January next<br>43 after election |
| 38 Secretary of<br>39 State  | State        | 40 Tuesday next after<br>41 the first Monday<br>42 in November 1968<br>43 and every four<br>44 years thereafter | 45 Four years, from<br>46 first day of<br>47 January next<br>48 after election |
| 43 Auditor                   | State        | 44 Tuesday next after<br>45 the first Monday<br>46 in November 1968<br>47 and every four<br>48 years thereafter | 49 Four years, from<br>50 first day of<br>51 January next<br>after election    |
| 48 Treasurer                 | State        | 49 Tuesday next after<br>50 the first Monday<br>51 in November 1968<br>and every four                           | Four years, from<br>first day of<br>January next<br>after election             |

|   |             |       |                    |                  |
|---|-------------|-------|--------------------|------------------|
| 1 |             |       | years thereafter   |                  |
| 2 | Superinten- | State | Tuesday next after | Four years, from |
| 3 | dent of     |       | the first Monday   | first day of     |
| 4 | Public      |       | in November 1968   | January next     |
| 5 | Instruction |       | and every four     | after election   |
| 6 |             |       | years thereafter   |                  |
| 7 | ...."       |       |                    |                  |

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

9   **"§ 163-8. Filling vacancies in State executive offices.**

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

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

26           **SECTION 9.** G.S. 163-278.27(b)(2) reads as rewritten:

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 Labor,  
31 State Commissioner of Insurance, and all other State elective offices, Justice  
32 of the Supreme Court, Judge of the Court of Appeals, judge of a superior  
33 court, judge of a district court, and district attorney of the superior court:  
34 report to the district attorney of the prosecutorial district in which Wake  
35 County is located;"

36           **SECTION 10.** G.S. 163-278.95 reads as rewritten:

37   **"§ 163-278.95. Purpose and establishment of Voter-Owned Elections Act.**

38       The purpose of this Article is to ensure the vitality and fairness of democratic elections in  
39 North Carolina to the end that any eligible citizen of this State can realistically choose to seek  
40 and run for public office. It is also the purpose of this Article to protect the constitutional rights  
41 of voters and candidates from the detrimental effects of increasingly large amounts of money  
42 being raised and spent in North Carolina to influence the outcome of elections. It is essential to  
43 the public interest that the potential for corruption or the appearance of corruption is minimized  
44 and that the equal and meaningful participation of all citizens in the democratic process is  
45 ensured. Accordingly, this Article establishes the North Carolina Voter-Owned Elections Fund  
46 as an alternative source of campaign financing for candidates who obtain a sufficient number of  
47 qualifying contributions from registered voters and who voluntarily accept strict fund-raising  
48 and spending limits. This Article is available to candidates for the Council of State offices of  
49 ~~Auditor, Superintendent of Public Instruction,~~Auditor and Commissioner of Insurance in  
50 elections to be held in 2008 and thereafter."

51           **SECTION 11.** G.S. 163-278.96(12) reads as rewritten:

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

3           **SECTION 12.** The amendments set out in Sections 1 and 2 of this act shall be  
4 submitted to the qualified voters of the State at a statewide election to be conducted on  
5 November 4, 2014, which election shall be conducted under the laws then governing elections  
6 in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of  
7 the General Statutes. The question to be used in the voting systems and ballots shall be:

8   " FOR        AGAINST

9           Constitutional amendments to make the Superintendent of Public Instruction a  
10 position appointed by the Governor."

11           **SECTION 13.** If a majority of votes cast on the question are in favor of the  
12 amendments set out in Sections 1 and 2 of this act, the State Board of Elections shall certify the  
13 amendments to the Secretary of State. The Secretary of State shall enroll the amendments so  
14 certified among the permanent records of that office. The amendments set out in Sections 1 and  
15 2 of this act shall become effective January 1, 2017, except that there shall be no election held  
16 to fill the office of Superintendent of Public Instruction for a term beginning on or after  
17 December 31, 2016.

18           **SECTION 14.** Sections 3 through 11 of this act become effective only if the  
19 qualified voters approve the constitutional amendments set out in Sections 1 and 2 of this act. If  
20 the voters approve the constitutional amendments, Sections 3 through 11 of this act become  
21 effective January 1, 2017. The remainder of this act is effective when the act becomes law.