

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

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SENATE BILL 1124

Short Title: Superintendent of Pub. Instruction Appointed. (Public)

Sponsors: Senators Clodfelter; Albertson and Stevens.

Referred to: Ways and Means.

March 22, 2007

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE CONSTITUTION TO PROVIDE THAT THE
3 SUPERINTENDENT OF PUBLIC INSTRUCTION SHALL BE APPOINTED BY
4 THE STATE BOARD OF EDUCATION AND TO MAKE CORRESPONDING
5 STATUTORY CHANGES.

6 The General Assembly of North Carolina enacts:

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

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

12 **SECTION 2.** Section 7(1) of Article III of the North Carolina Constitution
13 reads as rewritten:

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

21 **SECTION 3.** The amendments set out in Sections 1 and 2 of this act shall be
22 submitted to the qualified voters of the State at the statewide general election on
23 November 6, 2007, which election shall be conducted under the laws then governing
24 elections in the State. Ballots, voting systems, or both may be used in accordance with
25 Chapter 163 of the General Statutes. The question to be used in the voting systems and
26 ballots shall be:

" [] FOR [] AGAINST

27
28 Constitutional amendments to make the Superintendent of Public Instruction
29 an appointee of the State Board of Education."

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 Secretary of State shall enroll the
4 amendments so certified among the permanent records of that office. If a majority of
5 votes cast on the question are in favor of the amendments set out in Sections 1 and 2 of
6 this act, the amendments shall become effective the earlier of January 1, 2009, and the
7 date that a vacancy occurs in the office of Superintendent of Public Instruction. There
8 shall be no election of Superintendent of Public Instruction in 2008 or thereafter.

9 **SECTION 5.** G.S. 115C-18 reads as rewritten:

10 "**§ 115C-18. Election-Appointment of Superintendent of Public Instruction.**

11 (a) The Superintendent of Public Instruction shall be appointed by the State
12 Board of Education, elected by the qualified voters of the State in 1972 and every four
13 years thereafter at the same time and places as members of the General Assembly are
14 elected. His term of office shall be four years and shall commence on the first day of
15 January next after election and continue until his successor is elected and qualified.

16 ~~If the office of the Superintendent of Public Instruction is vacated by death,~~
17 ~~resignation, or otherwise, it shall be the duty of the Governor to appoint another to serve~~
18 ~~until his successor is elected and qualified. Every such vacancy shall be filled by~~
19 ~~election at the first election for members of the General Assembly that occurs more than~~
20 ~~30 days after the vacancy has taken place, and the person chosen shall hold the office~~
21 ~~for the remainder of the unexpired term fixed in Article III, Sec. 7 of the Constitution of~~
22 ~~North Carolina. When a vacancy occurs in the office and the term expires on the first~~
23 ~~day of January succeeding the next election for members of the General Assembly, the~~
24 ~~Governor shall appoint to fill the vacancy for the unexpired term of the office. Upon the~~
25 ~~occurrence of a vacancy in the office for any of the causes stated herein, the Governor~~
26 ~~may appoint an interim officer to perform the duties of that office until a person is~~
27 ~~appointed or elected pursuant to Article III, Sec. 7 of the Constitution of North Carolina~~
28 ~~to fill the vacancy and is qualified.~~

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

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

34 **SECTION 6.** G.S. 147-3(c) reads as rewritten:

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

- 36 (1) A Governor;
- 37 (2) A Lieutenant Governor;
- 38 (3) Private secretary for the Governor;
- 39 (4) A Secretary of State;
- 40 (5) An Auditor;
- 41 (6) A Treasurer;
- 42 (7) An Attorney General;
- 43 ~~(8) A Superintendent of Public Instruction;~~
- 44 (9) The members of the Governor's Council;

- 1 (10) A Commissioner of Agriculture;
- 2 (11) A Commissioner of Labor;
- 3 (12) A Commissioner of Insurance."

4 **SECTION 7.** G.S. 147-4 reads as rewritten:

5 **"§ 147-4. Executive officers – election; term; induction into office.**

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

18 **SECTION 8.** G.S. 147-11.1 reads as rewritten:

19 **"§ 147-11.1. Succession to office of Governor; Acting Governor.**

20 (a) Lieutenant Governor. –

- 21 (1) The Lieutenant Governor-elect shall become Governor upon the
22 failure of the Governor-elect to qualify. The Lieutenant Governor shall
23 become Governor upon the death, resignation, or removal from office
24 of the Governor. The further order of succession to the office of
25 Governor shall be prescribed by law. A successor shall serve for the
26 remainder of the term of the Governor whom he succeeds and until a
27 new Governor is elected and qualified.
- 28 (2) During the absence of the Governor from the State, or during the
29 physical or mental incapacity of the Governor to perform the duties of
30 his office, the Lieutenant Governor shall be Acting Governor. The
31 further order of succession as Acting Governor shall be prescribed by
32 law.

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

- 34 (1) If, by reason of failure to qualify, death, resignation, or removal from
35 office, there is neither a Governor nor a Lieutenant Governor to
36 discharge the powers and duties of the office of Governor, then the
37 President of the Senate shall, upon his resignation as President of the
38 Senate and as Senator, become Governor.
- 39 (2) If, at the time when under subdivision (1) of this subsection the
40 President of the Senate is to become Governor, there is no President of
41 the Senate, or the President of the Senate fails to qualify as Governor,
42 then the Speaker of the House of Representatives shall, upon his
43 resignation as Speaker and as Representative, become Governor.

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

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

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

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

11 **SECTION 10.** G.S. 163-8 reads as rewritten:
12 "**§ 163-8. Filling vacancies in State executive offices.**

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

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

31 **SECTION 11.** G.S. 163-278.27(b) reads as rewritten:

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

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

- 1 Court of Appeals, judge of a superior court, judge of a district court,
2 and district attorney of the superior court: report to the district attorney
3 of the prosecutorial district in which Wake County is located;
- 4 (3) In the case of an individual other than a candidate, including, without
5 limitation, violations by members of political committees, referendum
6 committees or treasurers: report to the district attorney of the
7 prosecutorial district in which the individual resides; and
- 8 (4) In the case of a person or any group of individuals: report to the
9 district attorney or district attorneys of the prosecutorial district or
10 districts in which any of the officers, directors, agents, employees or
11 members of the person or group reside."

12 **SECTION 12.** Sections 5 through 11 of this act become effective only if the
13 voters approve the constitutional amendments set out in Sections 1 and 2 of this act. If
14 the voters approve the constitutional amendments, Sections 5 through 11 of this act shall
15 become effective on the earlier of January 1, 2009, and the date that a vacancy occurs in
16 the office of Superintendent of Public Instruction, and no Superintendent of Public
17 Instruction shall be elected in 2008 or thereafter.

18 **SECTION 13.** This act is effective when it becomes law.