

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE BILL 155

Short Title: Appoint State School Superintendent. (Public)

Sponsors: Representatives Haire, Brubaker, Johnson, Lucas (Primary Sponsors); Burr, Cleveland, Dockham, Frye, and Tarleton.

Referred to: Education, if favorable, Judiciary III, if favorable, Appropriations.

February 16, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA CONSTITUTION TO MAKE THE SUPERINTENDENT OF PUBLIC INSTRUCTION AN APPOINTEE OF THE GOVERNOR AND TO MAKE CORRESPONDING STATUTORY CHANGES.

The General Assembly of North Carolina enacts:

**SECTION 1.(a)** 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 the secretary and chief administrative officer of the State Board of Education. The Superintendent shall be appointed by the Governor."

**SECTION 1.(b)** 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.** 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 make the Superintendent of Public Instruction an appointee of the Governor."

**SECTION 3.** 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 amendments set out in Section 1 of this act shall become effective January 1, 2013, but no election for that office shall take place in 2012.

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

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



1 The Superintendent of Public Instruction shall be appointed by the Governor, ~~elected by the~~  
2 ~~qualified voters of the State in 1972 and every four years thereafter at the same time and places~~  
3 ~~as members of the General Assembly are elected. His term of office shall be four years and~~  
4 ~~shall commence on the first day of January next after election and continue until his successor~~  
5 ~~is elected and qualified.~~

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

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

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

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

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

- 24 (1) A Governor;
- 25 (2) A Lieutenant Governor;
- 26 (3) Private secretary for the Governor;
- 27 (4) A Secretary of State;
- 28 (5) An Auditor;
- 29 (6) A Treasurer;
- 30 (7) An Attorney General;
- 31 ~~(8) A Superintendent of Public Instruction;~~
- 32 (9) The members of the Governor's Council;
- 33 (10) A Commissioner of Agriculture;
- 34 (11) A Commissioner of Labor;
- 35 (12) A Commissioner of Insurance."

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

37 **"§ 147-4. Executive officers – election; term; induction into office.**

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

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

50 **"§ 147-11.1. Succession to office of Governor; Acting Governor.**

- 51 (a) Lieutenant Governor. –

- 1 (1) The Lieutenant Governor-elect shall become Governor upon the failure of  
2 the Governor-elect to qualify. The Lieutenant Governor shall become  
3 Governor upon the death, resignation, or removal from office of the  
4 Governor. The further order of succession to the office of Governor shall be  
5 prescribed by law. A successor shall serve for the remainder of the term of  
6 the Governor whom he succeeds and until a new Governor is elected and  
7 qualified.
- 8 (2) During the absence of the Governor from the State, or during the physical or  
9 mental incapacity of the Governor to perform the duties of his office, the  
10 Lieutenant Governor shall be Acting Governor. The further order of  
11 succession as Acting Governor shall be prescribed by law.
- 12 (b) President of Senate, Speaker of the House and Other Officers. –
- 13 (1) If, by reason of failure to qualify, death, resignation, or removal from office,  
14 there is neither a Governor nor a Lieutenant Governor to discharge the  
15 powers and duties of the office of Governor, then the President of the Senate  
16 shall, upon his resignation as President of the Senate and as Senator, become  
17 Governor.
- 18 (2) If, at the time when under subdivision (1) of this subsection the President of  
19 the Senate is to become Governor, there is no President of the Senate, or the  
20 President of the Senate fails to qualify as Governor, then the Speaker of the  
21 House of Representatives shall, upon his resignation as Speaker and as  
22 Representative, become Governor.
- 23 (3) If, at the time when under subdivision (2) of this subsection the Speaker of  
24 the House of Representatives is to become Governor, there is no Speaker of  
25 the House of Representatives, or the Speaker of the House of  
26 Representatives fails to qualify as Governor, then that officer of the State of  
27 North Carolina who is highest on the following list, and who is not under  
28 disability to serve as Governor, shall, upon his resignation of the office  
29 which places him in the order of succession, become Governor: Secretary of  
30 State, Auditor, Treasurer, ~~Superintendent of Public Instruction~~, Attorney  
31 General, Commissioner of Agriculture, Commissioner of Labor, and  
32 Commissioner of Insurance.
- 33 (c) Acting Governor Generally. –
- 34 (1) If, by reason of absence from the State or physical or mental incapacity,  
35 there is neither a Governor nor a Lieutenant Governor qualified to discharge  
36 the powers and duties of the office of Governor, then the President of the  
37 Senate shall become Acting Governor.
- 38 (2) If, at the time when under subdivision (1) of this subsection the President of  
39 the Senate is to become Acting Governor, there is no President of the Senate,  
40 or the President of the Senate fails to qualify as Acting Governor, then the  
41 Speaker of the House of Representatives shall become Acting Governor.
- 42 (3) If, at the time when under subdivision (2) of this subsection the Speaker of  
43 the House of Representatives is to become Acting Governor, there is no  
44 Speaker of the House of Representatives, or the Speaker of the House of  
45 Representatives fails to qualify as Acting Governor, then that officer of the  
46 State of North Carolina who is highest on the following list, and who is not  
47 under disability to serve as Acting Governor, shall become Acting Governor:  
48 Secretary of State, Auditor, Treasurer, ~~Superintendent of Public Instruction~~,  
49 Attorney General, Commissioner of Agriculture, Commissioner of Labor,  
50 and Commissioner of Insurance.

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

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

8 (2) If his tenure as Acting Governor is founded in whole or in part upon the  
9 physical or mental incapacity of the Governor or Lieutenant Governor, then  
10 he shall act only until the removal of the incapacity of the Governor or  
11 Lieutenant Governor.

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

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

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

20 "**§ 163-8. Filling vacancies in State executive offices.**

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

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

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

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

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

43 (1) In the case of a candidate for nomination or election to the State Senate or  
44 State House of Representatives: report to the district attorney of the  
45 prosecutorial district in which the candidate for nomination or election  
46 resides;

47 (2) In the case of a candidate for nomination or election to the office of  
48 Governor, Lieutenant Governor, Secretary of State, State Auditor, State  
49 Treasurer, ~~State Superintendent of Public Instruction~~, State Attorney  
50 General, State Commissioner of Agriculture, State Commissioner of Labor,  
51 State Commissioner of Insurance, and all other State elective offices, Justice

1 of the Supreme Court, Judge of the Court of Appeals, judge of a superior  
2 court, judge of a district court, and district attorney of the superior court:  
3 report to the district attorney of the prosecutorial district in which Wake  
4 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 prosecutorial  
8 district in which the individual resides; and

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

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

14 "**§ 163-278.95. Purpose and establishment of Voter-Owned Elections Act.**

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

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

29 "**§ 163-278.96. Definitions.**

30 The following definitions apply in this Article:

31 ...

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

34 **SECTION 13.** Sections 4 through 12 of this act become effective only if the voters  
35 approve the constitutional amendments set out in Section 1 of this act. If the voters approve the  
36 constitutional amendments, Sections 4 through 8 of this act become effective January 1, 2013.  
37 Sections 9 through 11 of this act become effective beginning with the 2012 election.

38 **SECTION 14.** This act is effective when it becomes law.