

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE BILL 779\*

Short Title: Educational Governance Framework. (Public)

Sponsors: Representatives Carney, Yongue, Johnson, Lucas (Primary Sponsors); England, Glazier, Rapp, Sutton, Tarleton, Tolson, and Tucker.

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

March 26, 2009

1 A BILL TO BE ENTITLED  
2 AN ACT CREATING AN EDUCATIONAL GOVERNANCE FRAMEWORK FOR THE  
3 TWENTY-FIRST CENTURY.

4 The General Assembly of North Carolina enacts:

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

7 "(1) Board. The State Board of Education shall consist of the Lieutenant Governor, the  
8 Treasurer, a chair appointed by the Governor, and eleven ~~eight~~ members appointed by the  
9 ~~Governor, subject to confirmation by the General Assembly in joint session.~~ Governor, three  
10 members appointed by the Speaker of the House of Representatives, and three members  
11 appointed by the President Pro Tempore of the Senate. The General Assembly shall divide the  
12 State into eight educational districts. Of the appointive members of the ~~Board,~~ Board appointed  
13 by the Governor, one shall be appointed from each of the eight educational ~~districts and three~~  
14 ~~shall be appointed from the State at large.~~ districts. Appointments shall be for overlapping  
15 terms of ~~eight~~ six years. Appointments to fill vacancies shall be made by ~~the Governor for the~~  
16 ~~unexpired terms and shall not be subject to confirmation.~~ the appointing authority. No member  
17 may be appointed to more than two consecutive full six-year terms."

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

20 "(2) ~~Superintendent of Public Instruction.~~ Commissioner of Education. The  
21 ~~Superintendent of Public Instruction~~ Commissioner of Education shall be the secretary and  
22 chief administrative officer of the State Board of Education. The Commissioner of Education  
23 shall be appointed by the State Board of Education and serve at its pleasure."

24 **SECTION 1.(c)** Section 7(1) of Article III of the North Carolina Constitution reads  
25 as rewritten:

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

33 **SECTION 2.(a)** The amendments set out in Section 1 of this act shall be submitted  
34 to the qualified voters of the State at a statewide general election on November 3, 2010, which  
35 election shall be conducted under the laws then governing elections in the State. Ballots, voting



1 systems, or both may be used in accordance with Chapter 163 of the General Statutes. The  
2 question to be used in the voting systems and ballots shall be:

3 "[ ] FOR [ ] AGAINST

4 Constitutional amendments to provide for an educational governance framework for  
5 the 21<sup>st</sup> Century by providing for a Commissioner of Education appointed by the State Board of  
6 Education to be the chief administrative officer of that board, and reconstituting the  
7 membership of the State Board of Education."

8 **SECTION 2.(b)** If a majority of votes cast on the question are in favor of the  
9 amendments set out in Section 1 of this act, the State Board of Elections shall certify the  
10 amendments to the Secretary of State. The Secretary of State shall enroll the amendments so  
11 certified among the permanent records of that office. The amendment set out in Section 1(a)  
12 of this act becomes effective February 28, 2011. The amendments set out in Sections 1(b) and 1(c)  
13 of this act shall become effective January 1, 2012, but no Superintendent of Public Instruction  
14 shall be elected in 2012.

15 **SECTION 3.** The terms of office of the State Board of Education terminate  
16 February 28, 2011. New members shall be appointed for terms beginning March 1, 2011, as  
17 follows:

- 18 (1) Of the appointees of the Governor, three shall serve initial terms of six years,  
19 three shall serve initial terms of four years, and two shall serve initial terms  
20 of two years.
- 21 (2) Of the appointees of the Speaker of the House of Representatives, one shall  
22 serve an initial term of six years, one shall serve an initial term of four years,  
23 and one shall serve an initial term of two years.
- 24 (3) Of the appointees of the President Pro Tempore of the Senate, one shall  
25 serve an initial term of six years, one shall serve an initial term of four years,  
26 and one shall serve an initial term of two years.
- 27 (4) The chair shall serve an initial term of four years.

28 All succeeding terms shall be for six years.

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

30 "**§ 115C-18. Election-Appointment of Superintendent of Public Instruction-Commissioner**  
31 **of Education.**

32 ~~The Superintendent of Public Instruction-Commissioner of Education shall be appointed by~~  
33 ~~the State Board of Education and serve at its pleasure, elected by the qualified voters of the~~  
34 ~~State in 1972 and every four years thereafter at the same time and places as members of the~~  
35 ~~General Assembly are elected. His term of office shall be four years and shall commence on the~~  
36 ~~first day of January next after election and continue until his successor is elected and qualified.~~

37 ~~If the office of the Superintendent of Public Instruction is vacated by death, resignation, or~~  
38 ~~otherwise, it shall be the duty of the Governor to appoint another to serve until his successor is~~  
39 ~~elected and qualified. Every such vacancy shall be filled by election at the first election for~~  
40 ~~members of the General Assembly that occurs more than 30 days after the vacancy has taken~~  
41 ~~place, and the person chosen shall hold the office for the remainder of the unexpired term fixed~~  
42 ~~in Article III, Sec. 7 of the Constitution of North Carolina. When a vacancy occurs in the office~~  
43 ~~and the term expires on the first day of January succeeding the next election for members of the~~  
44 ~~General Assembly, the Governor shall appoint to fill the vacancy for the unexpired term of the~~  
45 ~~office. Upon the occurrence of a vacancy in the office for any of the causes stated herein, the~~  
46 ~~Governor may appoint an interim officer to perform the duties of that office until a person is~~  
47 ~~appointed or elected pursuant to Article III, Sec. 7 of the Constitution of North Carolina to fill~~  
48 ~~the vacancy and is qualified.~~

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

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

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

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

- 5           (1)    A Governor;
- 6           (2)    A Lieutenant Governor;
- 7           (3)    Private secretary for the Governor;
- 8           (4)    A Secretary of State;
- 9           (5)    An Auditor;
- 10          (6)    A Treasurer;
- 11          (7)    An Attorney General;
- 12          ~~(8)    A Superintendent of Public Instruction;~~
- 13          (9)    The members of the Governor's Council;
- 14          (10)   A Commissioner of Agriculture;
- 15          (11)   A Commissioner of Labor;
- 16          (12)   A Commissioner of Insurance."

17       **SECTION 6.** 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 Secretary  
20 of State, an Auditor, a Treasurer, ~~a Superintendent of Public Instruction~~, an Attorney General, a  
21 Commissioner of Agriculture, a Commissioner of Insurance, and a Commissioner of Labor,  
22 who shall be elected for a term of four years, by the qualified electors of the State, at the same  
23 time and places, and in the same manner, as members of the General Assembly are elected.  
24 Their term of office shall commence on the first day of January next after their election and  
25 continue until their successors are elected and qualified. The persons having the highest number  
26 of votes, respectively, shall be declared duly elected, but if two or more be equal and highest in  
27 votes for the same office, then one of them shall be chosen by joint ballot of both houses of the  
28 General Assembly. Contested elections shall be determined by a joint ballot of both houses of  
29 the General Assembly in such manner as shall be prescribed by law."

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

31       **"§ 147-11.1. Succession to office of Governor; Acting Governor.**

32       (a)    Lieutenant Governor. –

- 33           (1)    The Lieutenant Governor-elect shall become Governor upon the failure of  
34                  the Governor-elect to qualify. The Lieutenant Governor shall become  
35                  Governor upon the death, resignation, or removal from office of the  
36                  Governor. The further order of succession to the office of Governor shall be  
37                  prescribed by law. A successor shall serve for the remainder of the term of  
38                  the Governor whom he succeeds and until a new Governor is elected and  
39                  qualified.
- 40           (2)    During the absence of the Governor from the State, or during the physical or  
41                  mental incapacity of the Governor to perform the duties of his office, the  
42                  Lieutenant Governor shall be Acting Governor. The further order of  
43                  succession as Acting Governor shall be prescribed by law.

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

- 45           (1)    If, by reason of failure to qualify, death, resignation, or removal from office,  
46                  there is neither a Governor nor a Lieutenant Governor to discharge the  
47                  powers and duties of the office of Governor, then the President of the Senate  
48                  shall, upon his resignation as President of the Senate and as Senator, become  
49                  Governor.
- 50           (2)    If, at the time when under subdivision (1) of this subsection the President of  
51                  the Senate is to become Governor, there is no President of the Senate, or the

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

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

51 **"§ 163-8. Filling vacancies in State executive offices.**

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

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

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

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

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

- 23 (1) In the case of a candidate for nomination or election to the State Senate or  
24 State House of Representatives: report to the district attorney of the  
25 prosecutorial district in which the candidate for nomination or election  
26 resides;
- 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 (3) In the case of an individual other than a candidate, including, without  
37 limitation, violations by members of political committees, referendum  
38 committees or treasurers: report to the district attorney of the prosecutorial  
39 district in which the individual resides; and
- 40 (4) In the case of a person or any group of individuals: report to the district  
41 attorney or district attorneys of the prosecutorial district or districts in which  
42 any of the officers, directors, agents, employees or members of the person or  
43 group reside."

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

45 **"§ 163-278.95. Purpose and establishment of Voter-Owned Elections Act.**

46 The purpose of this Article is to ensure the vitality and fairness of democratic elections in  
47 North Carolina to the end that any eligible citizen of this State can realistically choose to seek  
48 and run for public office. It is also the purpose of this Article to protect the constitutional rights  
49 of voters and candidates from the detrimental effects of increasingly large amounts of money  
50 being raised and spent in North Carolina to influence the outcome of elections. It is essential to  
51 the public interest that the potential for corruption or the appearance of corruption is minimized

1 and that the equal and meaningful participation of all citizens in the democratic process is  
2 ensured. Accordingly, this Article establishes the North Carolina Voter-Owned Elections Fund  
3 as an alternative source of campaign financing for candidates who obtain a sufficient number of  
4 qualifying contributions from registered voters and who voluntarily accept strict fund-raising  
5 and spending limits. This Article is available to candidates for the Council of State offices of  
6 ~~Auditor, Superintendent of Public Instruction, Auditor~~ and Commissioner of Insurance in  
7 elections to be held in 2008 and thereafter."

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

9 **"§ 163-278.96. Definitions.**

10 The following definitions apply in this Article:

11 ...

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

14 **SECTION 13.** Sections 4 through 12 of this act become effective only if the voters  
15 approve the constitutional amendments set out in Section 1 of this act. If the voters approve the  
16 constitutional amendments, Sections 4 through 8 of this act become effective January 1, 2011.  
17 Sections 9 through 11 of this act become effective beginning with the 2010 election.

18 **SECTION 14.** G.S. 143A-44.1 reads as rewritten:

19 **"§ 143A-44.1. Creation.**

20 There is hereby created a Department of Public Instruction. The head of the Department of  
21 Public Instruction is the ~~State Board of Education. Commissioner of Education, as provided for~~  
22 ~~by Article III, Section 7 of the Constitution. Any provision of G.S. 143A-9 to the contrary~~  
23 ~~notwithstanding, the appointment of the State Board of Education shall be as prescribed in~~  
24 ~~Article IX, Section (4)(1) of the Constitution."~~

25 **SECTION 15.** G.S. 143A-44.2 reads as rewritten:

26 **"§ 143A-44.2. State Board of Education; transfer of powers and duties to State Board.**

27 The State Board of Education shall have all powers and duties conferred on the Board by  
28 this Article, delegated to the Board by the Governor, and conferred by the Constitution and  
29 laws of this State. Any provision of G.S. 143A-9 to the contrary notwithstanding, the  
30 appointment of the State Board of Education shall be as prescribed in Article IX, Section (4)(1)  
31 of the Constitution."

32 **SECTION 16.** Sections 14 and 15 of this act become effective only if the voters do  
33 not approve the constitutional amendments set out in Section 1 of this act. If the voters do not  
34 approve the constitutional amendments, Sections 14 and 15 of this act become effective  
35 January 1, 2011.

36 **SECTION 17.** This act is effective when it becomes law.