

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 174
Committee Substitute Favorable 3/30/95

Short Title: Confirmation.

(Public)

Sponsors:

Referred to:

February 14, 1995

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR LEGISLATIVE CONFIRMATION OF CERTAIN
3 EXECUTIVE APPOINTMENTS.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 147-12(3c) reads as rewritten:

6 "(3c) Notwithstanding any other provision of law, whenever a statute calls for
7 the Governor to appoint a person to an office subject to confirmation by
8 the General Assembly, the Governor shall notify the President of the
9 Senate and the Speaker of the House of Representatives by May 15 of
10 the year in which the appointment is to be made of the name of the
11 person he is submitting to the General Assembly for confirmation.
12 Whenever a statute calls upon the Governor to appoint a person to an
13 office subject to confirmation by the General Assembly, the
14 confirmation shall be by joint resolution, except as otherwise provided
15 by the Constitution."

16 Sec. 2. G.S. 147-12 is amended by adding new subdivisions to read:

17 "(3e) Whenever a statute calls upon the Governor to appoint a person to an
18 office, subject to confirmation by the General Assembly, and that
19 statute refers to this subdivision, no appointee of the Governor shall

1 take office until the appointee shall have been confirmed by joint
2 resolution of the General Assembly, unless the vacancy occurs after
3 the General Assembly has adjourned sine die or for more than 10
4 days and has not reconvened. If the vacancy occurs after the
5 General Assembly has adjourned sine die or for more than 10 days
6 and has not reconvened, the Governor shall appoint a replacement
7 who shall assume office and serve until no later than the sixtieth
8 calendar day following the next day either house of the General
9 Assembly is in session; except that if the office is for a fixed term,
10 this sentence does not operate to extend that term of office and that
11 term still expires on the date provided by law. For such person to
12 continue in office after that sixtieth day, the appointment must be
13 confirmed by joint resolution of the General Assembly. If the joint
14 resolution has not been ratified by that date, the appointee vacates
15 the office, the person does not hold over, and the person may not be
16 reappointed to fill the vacancy:

- 17 a. If the term is fixed, during the remainder of that term of office;
18 and
19 b. If the appointment is at the pleasure of the Governor, by that
20 same Governor.

21 (3f) Subdivision (3e) of this section does not affect the right of the
22 Governor to appoint an acting officer under G.S. 147-12(3) without
23 confirmation by the General Assembly, but that person may not
24 serve:

- 25 a. For more than 60 calendar days if the vacancy occurs while the
26 General Assembly is in session;
27 b. After the sixtieth calendar day following the next day either
28 house of the General Assembly is in session if the vacancy
29 occurs after the General Assembly has adjourned sine die or for
30 more than 10 days and has not reconvened; or
31 c. If that person is prevented from serving by the last sentence of
32 subdivision (3e) of this section."

33 Sec. 3. G.S. 143B-9 reads as rewritten:

34 "**§ 143B-9. Appointment of officers and employees.**

35 The head of each principal State department, except those departments headed by
36 popularly elected officers, shall be appointed by the ~~Governor~~ Governor, subject to
37 confirmation by the General Assembly as provided by G.S. 147-12(3e) as to those
38 listed in G.S. 143B-6(1) through (9) and serve at his pleasure. shall serve at the pleasure of
39 the Governor.

40 The salary of the head of each of the principal State departments and of elected
41 officials shall be as provided by law.

42 The head of a principal State department shall appoint a chief deputy or chief
43 assistant, and such chief deputy or chief assistant shall not be subject to the State

1 Personnel Act. The salary of such chief deputy or chief assistant shall, upon the
2 recommendation of the Governor, be set by the General Assembly. Unless otherwise
3 provided for in the Executive Organization Act of 1973, and subject to the provisions of
4 the Personnel Act, the head of each principal State department shall designate the
5 administrative head of each transferred agency and all employees of each division,
6 section, or other unit of the principal State department."

7 Sec. 4. G.S. 18B-200 reads as rewritten:

8 **"§ 18B-200. North Carolina Alcoholic Beverage Control Commission.**

9 (a) Creation of Commission; compensation. – The North Carolina Alcoholic
10 Beverage Control Commission is created to consist of a chairman and two associate
11 members. The chairman shall devote his full time to his official duties and receive a
12 salary fixed by the General Assembly in the Current Operations Appropriations Act. The
13 associate members shall be compensated for per diem, subsistence and travel as provided
14 in Chapter 138 of the General Statutes.

15 (b) Appointment of Members. – Members of the Commission shall be appointed
16 by the Governor to serve at his pleasure. Governor subject to confirmation by the General
17 Assembly as provided by G.S. 147-12(3e), to serve at the pleasure of the Governor.

18 (c) Vacancy. – The Governor shall fill any vacancy on the Commission by
19 appointing a ~~successor~~ successor, subject to confirmation by the General Assembly as
20 provided by G.S. 147-12(3e), to serve at the Governor's pleasure. If the chairman's seat
21 becomes vacant, the Governor may designate either the new member or an existing
22 member of the Commission as the chairman.

23 (d) Employees. – The Commission may authorize the chairman to employ,
24 discharge, and otherwise supervise subordinate personnel of the Commission. The
25 Commission shall appoint at least one employee to make investigations, hold hearings
26 requested under G.S. 18B-1205, and represent the Commission in contested case hearings
27 or perform any other duties authorized by Chapter 150B."

28 Sec. 5. (a) G.S. 113A-104(b) reads as rewritten:

29 "(b) Composition. – The Coastal Resources Commission shall consist of 15
30 members appointed by the Governor, except that the at-large members appointed under
31 subdivision (12) of this subsection shall be appointed by the Governor subject to
32 confirmation by the General Assembly as provided by G.S. 147-12(3e), as follows:

- 33 (1) One who shall at the time of appointment be actively connected with
34 or have experience in commercial fishing.
- 35 (2) One who shall at the time of appointment be actively connected with
36 or have experience in wildlife or sports fishing.
- 37 (3) One who shall at the time of appointment be actively connected with
38 or have experience in marine ecology.
- 39 (4) One who shall at the time of appointment be actively connected with
40 or have experience in coastal agriculture.
- 41 (5) One who shall at the time of appointment be actively connected with
42 or have experience in coastal forestry.

- 1 (6) One who shall at the time of appointment be actively connected with
2 or have experience in coastal land development.
- 3 (7) One who shall at the time of appointment be actively connected with
4 or have experience in marine-related business (other than fishing and
5 wildlife).
- 6 (8) One who shall at the time of appointment be actively connected with
7 or have experience in engineering in the coastal area.
- 8 (9) One who shall at the time of appointment be actively associated with
9 a State or national conservation organization.
- 10 (10) One who shall at the time of appointment be actively connected with
11 or have experience in financing of coastal land development.
- 12 (11) Two who shall at the time of appointment be actively connected with
13 or have experience in local government within the coastal area.
- 14 (12) Three at-large members."

15 (b) G.S. 113A-104(i) reads as rewritten:

16 "(i) Officers. – The chairman shall be designated by the ~~Governor~~ Governor, subject
17 to confirmation by the General Assembly as provided by G.S. 147-12(3e), from among
18 the members of the Commission to serve as chairman at the pleasure of the Governor.
19 The vice-chairman shall be elected by and from the members of the Commission and
20 shall serve for a term of two years or until the expiration of his regularly appointed term."

21 Sec. 6. G.S. 143B-478(b)(5) reads as rewritten:

22 "(5) The Governor may serve as chairman, designating a vice-chairman
23 to serve at his pleasure, or he may designate a chairman and vice-
24 chairman both of whom shall serve at his ~~pleasure~~ pleasure; provided
25 that a designation of a chairman by the Governor is subject to
26 confirmation by the General Assembly as provided by G.S. 147-
27 12(3e)."

28 Sec. 7. G.S. 97-77 reads as rewritten:

29 "**§ 97-77. North Carolina Industrial Commission created; members appointed by**
30 **Governor; terms of office; chairman.**

31 (a) There is hereby created a commission to be known as the North Carolina
32 Industrial Commission, consisting of seven commissioners who shall devote their entire
33 time to the duties of the Commission. The Governor shall appoint the members of the
34 Commission, one for a term of two years, one for a term of four years, and one for a term
35 of six years. Of the additional appointments made in 1994, one shall be for a term
36 expiring June 30, 1996, one for a term expiring June 30, 1998, and two for terms expiring
37 June 30, 2000. Upon the expiration of each term as above mentioned, the ~~Governor~~
38 Governor, subject to confirmation by the General Assembly as provided by G.S. 147-
39 12(3e) shall appoint a successor for a term of six years, and thereafter the term of office
40 of each commissioner shall be six years. Not more than three appointees shall be persons
41 who, on account of their previous vocations, employment or affiliations, can be classed as
42 representatives of employers, and not more than three appointees shall be persons who,

1 on account of their previous vocations, employment or affiliations, can be classed as
2 representatives of employees.

3 (b) One member, to be designated by the Governor, subject to confirmation by the
4 General Assembly as provided by G.S. 147-12(3e), shall act as chairman. The chairman
5 shall be the chief judicial officer and the chief executive officer of the Industrial
6 Commission; such authority shall be exercised pursuant to the provisions of Chapter 126
7 of the General Statutes and the rules and policies of the State Personnel Commission.
8 Notwithstanding the provisions of this Chapter, the chairman shall have such authority as
9 is necessary to direct and oversee the Commission. The chairman may delegate any
10 duties and responsibilities as may be necessary to ensure the proper management of the
11 Industrial Commission. Notwithstanding the provisions of this Chapter, Chapter 143A,
12 and Chapter 143B of the General Statutes, the chairman may hire or fire personnel and
13 transfer personnel within the Industrial Commission.

14 The Governor may designate one vice-chairman from the remaining commissioners.
15 The vice-chairman shall assume the powers of the chairman upon request of the chairman
16 or when the chairman is absent for 24 hours or more. The authority delegated to the vice-
17 chairman shall be relinquished immediately upon the return of the chairman or at the
18 request of the chairman."

19 Sec. 8. G.S. 143B-267 reads as rewritten:

20 **"§ 143B-267. Post-Release Supervision and Parole Commission – members;**
21 **selection; removal; chairman; compensation; quorum; services.**

22 The Post-Release Supervision and Parole Commission shall consist of five full-time
23 members. The five full-time members shall be appointed by the ~~Governor~~ Governor,
24 subject to confirmation by the General Assembly as provided by G.S. 147-12(3e), from
25 persons whose recognized ability, training, experience, and character qualify them for
26 service on the Commission. The terms of office of the five members presently serving on
27 the Commission shall expire on June 30, 1993. The terms of three members appointed
28 effective July 1, 1993, shall be for three years. The terms of two members appointed
29 effective July 1, 1993, shall be for four years. Thereafter, the terms of office of persons
30 appointed by the Governor as members of the Commission shall be for four years or until
31 their successors are appointed and qualify. Any appointment to fill a vacancy on the
32 Commission created by the resignation, removal, death or disability of a full-time
33 member shall be for the balance of the unexpired term only.

34 The Governor shall have the authority to remove any member of the Commission
35 from office for misfeasance, malfeasance or nonfeasance, pursuant to the provisions of
36 G.S. 143B-13. The Governor shall ~~designate~~ designate, subject to confirmation by the
37 General Assembly as provided by G.S. 147-12(3e), a full-time member of the
38 Commission to serve as chairman of the Commission at the pleasure of the Governor.

39 With regard to the transaction of the business of the Commission the following
40 procedure shall be followed: The chairman shall designate panels of two voting
41 Commission members and shall designate a third commissioner to serve as an alternate
42 member of a panel. Insofar as practicable, the chairman shall assign the members to
43 panels in such fashion that each commissioner sits a substantially equal number of times

1 with each other commissioner. Whenever any matter of business, such as the granting,
2 denying, revoking or rescinding of parole, or the authorization of work-release privileges
3 to a prisoner, shall come before the Commission for consideration and action, the
4 chairman shall refer such matter to a panel. Action may be taken by concurring vote of
5 the two sitting panel members. If there is not a concurring vote of the two panel
6 members, the matter will be referred to the alternate member who shall cast the deciding
7 vote. However, no person serving a sentence of life imprisonment shall be granted parole
8 or work-release privileges except by majority vote of the full Commission.

9 The full-time members of the Commission shall receive the salary fixed by the
10 General Assembly in the Current Operations Appropriations Act and shall receive
11 necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-
12 6.

13 All clerical and other services required by the Commission shall be supplied by the
14 Secretary of Correction."

15 Sec. 9. G.S. 143B-350(c) reads as rewritten:

16 "(c) The Board of Transportation shall have 20 members appointed by the ~~Governor.~~
17 Governor, subject to confirmation by the General Assembly as provided by G.S. 147-
18 12(3e). One member shall be appointed from each of the 14 transportation engineering
19 divisions and six members shall be appointed from the State at large. One at-large
20 member shall be a registered voter of a political party other than the political party of the
21 Governor. At least one at-large member shall possess a broad knowledge of public
22 transportation matters. No more than two members provided for in this subsection shall
23 reside in the same engineering division while serving in office. The initial members shall
24 serve terms beginning July 1, 1977, and ending January 14, 1981, or until their successors
25 are appointed and qualified. The succeeding terms of office shall be for a period of four
26 years beginning January 15, 1981, and each four years thereafter. The Governor shall
27 have the authority to remove for cause sufficient to himself, any member appointed by
28 the Governor."

29 Sec. 10. (a) G.S. 116-31(d) reads as rewritten:

30 "(d) Effective July 1, 1973, each of the 16 constituent institutions shall have board
31 of trustees composed of 13 persons chosen as follows:

- 32 (1) Eight elected by the Board of Governors,
- 33 (2) Four appointed by the Governor, subject to confirmation by the
34 General Assembly as provided by G.S. 147-12(3e), and
- 35 (3) The president of the student government ex officio."

36 (b) G.S. 116-31(j) reads as rewritten:

37 "(j) From and after July 1, 1973, whenever any vacancy shall occur in the
38 membership of a board of trustees among those appointed by the Governor, it shall be the
39 duty of the secretary of the board to inform the Governor of the existence of such
40 vacancy, and the ~~Governor~~ Governor, subject to confirmation by the General Assembly as
41 provided by G.S. 147-12(3e), shall appoint a person to fill the unexpired term, and
42 whenever any vacancy shall occur among those elected by the Board of Governors, it
43 shall be the duty of the secretary of the board to inform the Board of Governors of the

1 existence of the vacancy, and the Board of Governors shall elect a person to fill the
2 unexpired term. Whenever a member shall fail, for any reason other than ill health or
3 service in the interest of the State or nation, to be present for three successive regular
4 meetings of a board of trustees, his place as a member shall be deemed vacant."

5 Sec. 11. G.S. 163-27 reads as rewritten:

6 **"§ 163-27. Executive Secretary-Director to be appointed by Board.**

7 The appointment of the Executive Secretary-Director of the State Board of Elections
8 is extended to May 15, 1989, unless removed for proper cause, and thereafter the Board
9 ~~shall~~ shall, subject to confirmation by the General Assembly as provided by G.S. 147-
10 12(3e) as if the appointment was made by the Governor, appoint an Executive
11 Secretary-Director for a term of four years with compensation to be determined by the
12 Department of Personnel. He shall serve, unless removed for cause, until his successor is
13 appointed. Such Executive Secretary-Director shall be responsible for staffing,
14 administration, execution of the Board's decisions and orders and shall perform such
15 other responsibilities as may be assigned by the Board. In the event of a vacancy, the
16 vacancy shall be filled for the remainder of the term. An acting Executive Secretary-
17 Director may be appointed by the State Board of Elections under the same procedures as
18 the Governor may appoint an acting officer under G.S. 147-12(3) and G.S. 147-12(3f)."

19 Sec. 12. G.S. 143B-452 reads as rewritten:

20 **"§ 143B-452. Creation of Authority – membership; appointment, terms and**
21 **vacancies; officers; meetings and quorum; compensation.**

22 The North Carolina State Ports Authority is hereby created. It shall be governed by a
23 board composed of nine members and hereby designated as the Authority. Effective July
24 1, 1983, it shall be governed by a board composed of 11 members and hereby designated
25 as the Authority. The General Assembly suggests and recommends that no person be
26 appointed to the Authority who is domiciled in the district of the North Carolina House of
27 Representatives or the North Carolina Senate in which a State port is located. The
28 ~~Governor~~ Governor, subject to confirmation by the General Assembly as provided by G.S.
29 147-12(3e), shall appoint seven members to the Authority, and the General Assembly
30 shall appoint two members of the Authority. Effective July 1, 1983, the Authority shall
31 consist of seven persons appointed by the Governor, and four persons appointed by the
32 General Assembly. Effective July 1, 1989, the Governor shall appoint six members to the
33 Authority, in addition to the Secretary of Commerce, who shall serve as a voting member
34 of the Authority by virtue of his office. The Secretary of Commerce shall fill the first
35 vacancy occurring after July 1, 1989, in a position on the Authority over which the
36 Governor has appointive power.

37 The initial appointments by the Governor shall be made on or after March 8, 1977,
38 two terms to expire July 1, 1979; two terms to expire July 1, 1981; and three terms to
39 expire July 1, 1983. Thereafter, at the expiration of each stipulated term of office all
40 appointments made by the Governor shall be for a term of six years.

41 To stagger further the terms of members:

- 42 (1) Of the members appointed by the Governor to replace the members
43 whose terms expire on July 1, 1991, one member shall be appointed

1 to a term of five years, to expire on June 30, 1996; the other member
2 shall be appointed for a term of six years, to expire on June 30,
3 1997;

4 (2) Of the members appointed by the Governor to replace the members
5 whose terms expire on July 1, 1993, one member shall be appointed
6 to a term of five years, to expire on June 30, 1998; the other member
7 shall be appointed to a term of six years, to expire on June 30, 1999;

8 (3) Of those members appointed by the Governor to replace the
9 members whose terms expire on July 1, 1995, one member shall be
10 appointed to a term of five years, to expire on June 30, 2000; the
11 other member shall be appointed to a term of six years, to expire on
12 June 30, 2001.

13 Thereafter, at the expiration of each stipulated term of office all appointments made
14 by the governor shall be for a term of six years.

15 The members of the Authority appointed by the Governor shall be selected from the
16 State-at-large and insofar as practicable shall represent each section of the State in all of
17 the business, agriculture, and industrial interests of the State. Any vacancy occurring in
18 the membership of the Authority appointed by the Governor shall be filled by the
19 Governor for the unexpired term. The Governor may remove a member appointed by the
20 Governor only for reasons provided by G.S. 143B-13.

21 The General Assembly shall appoint two persons to serve terms expiring June 30,
22 1983. The General Assembly shall appoint four persons to serve terms beginning July 1,
23 1983, to serve until June 30, 1985, and successors shall serve for two-year terms. Of the
24 two appointments to be made in 1982, one shall be made upon the recommendation of the
25 Speaker, and one shall be made upon the recommendation of the President of the Senate.
26 Of the four appointments made in 1983 and biennially thereafter, two shall be made upon
27 the recommendation of the President of the Senate, and two shall be made upon the
28 recommendation of the Speaker. To stagger further the terms of members:

29 (1) Of the members appointed upon the recommendation of the Speaker
30 to replace the members whose terms expire on June 30, 1991, one
31 member shall be appointed to a term of one year, to expire on June
32 30, 1992; the other member shall be appointed to a term of two
33 years, to expire on June 30, 1993;

34 (2) Of the members appointed upon the recommendation of the
35 President of the Senate to replace the members whose terms expire
36 on June 30, 1991, one member shall be appointed to a term of one
37 year, to expire on June 30, 1992; the other member shall be
38 appointed to a term of two years, to expire on June 30, 1993.

39 Thereafter, at the expiration of each stipulated term of office all appointments made
40 by the General Assembly shall be for terms of two years.

41 Appointments by the General Assembly shall be made in accordance with G.S. 120-
42 121, and vacancies in those appointments shall be filled in accordance with G.S. 120-122.

1 Members appointed by the General Assembly may be removed only for reasons provided
2 by G. S. 143B-13.

3 The Governor shall appoint from the members of the Authority the chairman and
4 vice-chairman of the Authority. The members of the Authority shall appoint a treasurer
5 and secretary of the Authority.

6 The Authority shall meet once in each 60 days at such regular meeting time as the
7 Authority by rule may provide and at any place within the State as the Authority may
8 provide, and shall also meet upon the call of its chairman or a majority of its members. A
9 majority of its members shall constitute a quorum for the transaction of business. The
10 members of the Authority shall not be entitled to compensation for their services, but
11 they shall receive per diem and necessary travel and subsistence expense in accordance
12 with G.S. 138-5."

13 Sec. 13. G.S. 122A-4(f) reads as rewritten:

14 "(f) The Governor shall designate from among the members of the Board a
15 chairman and a vice-chairman. The terms of the chairman and vice-chairman shall extend
16 to the earlier of either two years or the date of expiration of their then current terms as
17 members of the Board of Directors of the Agency. The Agency shall exercise all of its
18 prescribed statutory powers independently of any principal State Department except as
19 described in this Chapter. The Executive Director of the Agency shall be appointed by
20 the Board of Directors, subject to approval by the ~~Governor.~~ Governor, subject to
21 confirmation by the General Assembly as provided by G.S. 147-12(3e). An acting
22 Executive Director may be appointed by the Board of Directors, subject to approval by
23 the Governor, under the same procedures as the Governor may appoint an acting officer
24 under G.S. 147-12(3) and G.S. 147-12(3f). All staff and employees of the Agency shall
25 be appointed by the Executive Director, subject to approval by the Board of Directors;
26 shall be eligible for participation in the State Employees' Retirement System; and shall be
27 exempt from the provisions of the State Personnel Act. All employees other than the
28 Executive Director shall be compensated in accordance with the salary schedules adopted
29 pursuant to the State Personnel Act. The salary of the Executive Director shall be fixed
30 by the General Assembly in the Current Operations Appropriations Act. The salary of the
31 Executive Director and all staff and employees of the Agency shall not be subject to any
32 limitations imposed pursuant to any salary schedule adopted pursuant to the terms of the
33 State Personnel Act. The Board of Directors shall, subject to the approval of the
34 Governor, elect and prescribe the duties of any other officers it finds necessary or
35 advisable, and the General Assembly shall fix the compensation of these officers in the
36 Current Operations Appropriations Act. The books and records of the Agency shall be
37 maintained by the Agency and shall be subject to periodic review and audit by the State.

38 No part of the revenues or assets of the Agency shall inure to the benefit of or be
39 distributable to its members or officers or other private persons. The members of the
40 Agency shall receive no compensation for their services but shall be entitled to receive,
41 from funds of the Agency, for attendance at meetings of the Agency or any committee
42 thereof and for other services for the Agency reimbursement for such actual expenses as
43 may be incurred for travel and subsistence in the performance of official duties and such

1 per diem as is allowed by law for members of other State boards, commissions and
2 committees.

3 The Executive Director shall administer, manage and direct the affairs and business of
4 the Agency, subject to the policies, control and direction of the members of the Agency
5 Board of Directors. The Secretary of the Agency shall keep a record of the proceedings
6 of the Agency and shall be custodian of all books, documents and papers filed with the
7 Agency, the minute book or journal of the Agency and its official seal. The Secretary
8 may have copies made of all minutes and other records and documents of the Agency and
9 may give certificates under the official seal of the Agency to the effect that such copies
10 are true copies, and all persons dealing with the Agency may rely upon such certificates.
11 Seven members of the Board of Directors of the Agency shall constitute a quorum and
12 the affirmative vote of a majority of the members present at a meeting of the Board of
13 Directors duly called and held shall be necessary for any action taken by the Board of
14 Directors of the Agency, except adjournment; provided, however, that the Board of
15 Directors may appoint an executive committee to act in behalf of said Board during the
16 period between regular meetings of said Board, and said committee shall have full power
17 to act upon the vote of a majority of its members. No vacancy in the membership of the
18 Agency shall impair the rights of a quorum to exercise all the rights and to perform all the
19 duties of the Agency."

20 Sec. 14. This act shall become effective only if the constitutional amendments
21 proposed in Chapter 5 of the 1995 Session Laws, AN ACT TO PROVIDE FOR A
22 REFERENDUM TO AMEND THE CONSTITUTION TO PROVIDE FOR A
23 GUBERNATORIAL VETO, are approved by the qualified voters of this State in the
24 referendum held pursuant to Chapter 5 of the 1995 Session Laws. If those constitutional
25 amendments are approved, then this act shall become effective upon the certification by
26 the State Board of Elections to the Secretary of State that those amendments have been
27 approved and shall apply to terms of office and vacancies occurring on or after that
28 certification.