

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 5

Short Title: School Governance Changes.

(Public)

Sponsors: Senators Winner; Albertson, Perdue, Plyler, Hoyle, Martin of Guilford, Odom, Rand, Plyler, Gulley, Lucas, Allran, Carpenter, and Cooper.

Referred to: Judiciary I/Constitution.

January 26, 1995

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CONSTITUTION TO CHANGE THE COMPOSITION OF THE STATE BOARD OF EDUCATION AND MAKE THE SUPERINTENDENT OF PUBLIC INSTRUCTION AN APPOINTEE OF THE STATE BOARD OF EDUCATION, AND TO MAKE CORRESPONDING STATUTORY CHANGES.

The General Assembly of North Carolina enacts:

Section 1. Section 4(1) of Article IX of the Constitution reads as rewritten:

"(1) **Board.** The State Board of Education shall consist of the Lieutenant Governor, the Treasurer, and ~~eleven members appointed by the Governor, subject to confirmation by the General Assembly in joint session,~~ nine members appointed by the Governor, four members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, and four members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives. The General Assembly shall divide the State into eight educational ~~districts,~~ districts. ~~Of the Governor's nine appointees,~~ one shall be appointed from each of the eight educational districts and ~~three~~ one shall be appointed from the State at large. ~~Appointments—Terms shall be for overlapping terms of eight years—four years, except as provided by statute.~~ The General Assembly may provide by statute for any qualifications of Board members and any limitation on the number of

1 terms a member may serve on the Board. Appointments to fill vacancies shall be made by  
2 the Governor for the unexpired terms and shall not be subject to confirmation, as provided by  
3 law.

4 The Governor shall designate one member of the Board as chair for a term as chair of  
5 two years."

6 Sec. 2. Section 4(2) of Article IX of the Constitution reads as rewritten:

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

11 Sec. 3. Section 7(1) of Article III of the Constitution reads as rewritten:

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

19 Sec. 4. G.S. 115C-10 reads as rewritten:

20 "**§ 115C-10. Appointment of Board.**

21 (a) The State Board of Education shall consist of the Lieutenant Governor, the  
22 State Treasurer, and ~~11~~ nine members appointed by the Governor, four members  
23 appointed by the General Assembly upon the recommendation of the President Pro  
24 Tempore of the Senate in accordance with G.S. 120-121, and four members appointed by  
25 the General Assembly upon the recommendation of the Speaker of the House of  
26 Representatives in accordance with G.S. 120-121. ~~Governor, subject to confirmation by the~~  
27 ~~General Assembly in joint session. Not more than one public school employee paid from State~~  
28 ~~or local funds may serve as an appointive member of the State Board of Education. No spouse~~  
29 ~~of any public school employee paid from State or local funds and no employee of the~~  
30 ~~Department of Public Instruction or his spouse, may serve as an appointive member of the State~~  
31 ~~Board of Education. Of the appointive members of the State Board of Education, one shall be~~  
32 ~~appointed~~ Of the Governor's nine appointments, one shall be appointed from each of the  
33 ~~eight educational districts and ~~three~~ one shall be appointed as ~~members~~ a member at large.~~  
34 ~~Appointments shall be for terms of eight years and shall be made in four classes. Appointments~~  
35 ~~to fill vacancies shall be made by the Governor for the unexpired terms and shall not be subject~~  
36 ~~to confirmation.~~

37 (b) All initial terms shall begin July 1, 1996. Four of the initial members  
38 appointed by the Governor, two of the initial members appointed by the General  
39 Assembly upon the recommendation of the President Pro Tempore of the Senate in  
40 accordance with G.S. 120-121, and two of the initial members appointed by the General  
41 Assembly upon the recommendation of the Speaker of the House of Representatives in  
42 accordance with G.S. 120-121, shall serve for terms ending February 28, 1997. The

1 remainder of the initial appointive members shall serve for terms ending February 28,  
2 1999. All subsequent terms shall be for four years.

3 No member shall serve more than two full four-year terms in succession. Resignation  
4 from a term of office does not constitute a break in service for the purpose of this  
5 subsection. Members appointed for a term to begin July 1, 1996, may be reappointed for  
6 two additional successive terms.

7 (c) Appointments to fill vacancies in positions filled by the Governor shall be  
8 made by the Governor for the unexpired terms. Appointments by the General Assembly  
9 shall be made in accordance with G.S. 120-121, and appointments to fill vacancies in  
10 those positions shall be made in accordance with G.S. 120-122.

11 ~~The Governor shall transmit to the presiding officers of the Senate and the House of~~  
12 ~~Representatives, on or before the sixtieth legislative day of the General Assembly, the~~  
13 ~~names of the persons appointed by him and submitted to the General Assembly for~~  
14 ~~confirmation; thereafter, pursuant to joint resolution, the Senate and the House of~~  
15 ~~Representatives shall meet in joint session for consideration of an action upon such~~  
16 ~~appointments."~~

17 Sec. 5. G.S. 115C-11(a) reads as rewritten:

18 "(a) Presiding Officer. – The Governor shall select one member of the Board to  
19 serve as chair. The chair shall serve at the pleasure of the Governor. The State Board of  
20 Education shall elect from its membership a chairman and vice-chairman. A majority of  
21 the Board shall constitute a quorum for the transaction of business. Per diem and  
22 expenses of the appointive members of the Board shall be provided by the General  
23 Assembly. The chairman of the Board shall preside at all meetings of the Board. In the  
24 absence of the chairman, the vice-chairman shall preside; in the absence of both the  
25 chairman and the vice-chairman, the Board shall name one of its own members as  
26 chairman pro tempore."

27 Sec. 6. G.S. 115C-18 reads as rewritten:

28 "**§ 115C-18. Election—Appointment of Superintendent of Public Instruction.**  
29 **Instruction; salary.**

30 The Superintendent of Public Instruction shall be elected by the qualified voters of the  
31 State in 1972 and every four years thereafter at the same time and places as members of  
32 the General Assembly are elected. His term of office shall be four years and shall  
33 commence on the first day of January next after election and continue until his successor  
34 is elected and qualified.

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

1 occurrence of a vacancy in the office for any of the causes stated herein, the Governor  
2 may appoint an interim officer to perform the duties of that office until a person is  
3 appointed or elected pursuant to Article III, Sec. 7 of the Constitution of North Carolina  
4 to fill the vacancy and is qualified.

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

8 The election, term and induction into office of the Superintendent of Public  
9 Instruction shall be in accordance with the provisions of G.S. 147-4, appointed by the  
10 State Board of Education and shall serve at the pleasure of the State Board of Education.  
11 The salary of the Superintendent shall be set by the State Board of Education."

12 Sec. 7. G.S. 115C-20 is repealed.

13 Sec. 8. G.S. 115C-21 reads as rewritten:

14 **"§ 115C-21. Powers and duties generally.**

15 (a) Administrative Duties. – It shall be the duty of the Superintendent of Public  
16 Instruction:

17 (1) To organize and establish a Department of Public Instruction which  
18 shall include such divisions and departments as are necessary for  
19 supervision and administration of the public school system, to  
20 administer the funds for the operation of the Department of Public  
21 Instruction, and to enter into contracts for the operations of the  
22 Department of Public Instruction.

23 (2) To keep the public informed as to the problems and needs of the public  
24 schools by constant contact with all school administrators and teachers,  
25 by ~~his personal appearance~~ personally appearing at public gatherings, and  
26 by information furnished to the press of the State.

27 (3) To report biennially to the Governor 30 days prior to each regular  
28 session of the General Assembly, ~~Assembly.~~ such report to ~~The report~~  
29 shall include information and statistics ~~of concerning~~ the public schools,  
30 with and recommendations for their the improvement of the public  
31 schools and for such changes in the public school law. ~~law as shall occur to~~  
32 ~~him.~~

33 (4) To have printed and distributed such educational bulletins as ~~he shall~~  
34 ~~deem~~ necessary for the professional improvement of teachers and for  
35 the cultivation of public sentiment for public education, and to have  
36 printed all forms necessary and proper for the administration of the  
37 Department of Public Instruction.

38 (5) ~~To have under his direction, in his capacity as the constitutional head of the~~  
39 ~~public school system,~~ As chief administrative officer of the State Board of  
40 Education, to direct all those matters relating to the supervision and  
41 administration of the public school system.

42 (b) Duties as Secretary to the State Board of Education. – As secretary, under the  
43 direction of the Board, it shall be the duty of the Superintendent of Public Instruction:

- 1 (1) To administer through the Department of Public Instruction, all policies  
2 established by the Board.
- 3 (1a) To administer the funds appropriated for the operations of the State  
4 Board of Education and for aid to local school administrative units.
- 5 (2) To keep the Board informed regarding developments in the field of  
6 public education.
- 7 (3) To make recommendations to the Board with regard to the problems and  
8 needs of education in North Carolina.
- 9 (4) To make available to the public schools a continuous program of  
10 comprehensive supervisory services.
- 11 (5) To collect and organize information regarding the public schools, ~~on the~~  
12 ~~basis of which he shall~~ and to use this information to furnish the Board  
13 such tabulations and reports as may be required by the Board.
- 14 (6) To communicate to the public school administrators all information and  
15 instructions regarding instructional policies and procedures adopted by  
16 the Board.
- 17 (7) To have custody of the official seal of the Board and to attest all deeds,  
18 leases, or written contracts executed in the name of the Board. All deeds  
19 of conveyance, leases, and contracts affecting real estate, title to which  
20 is held by the Board, and all contracts of the Board required to be in  
21 writing and under seal, shall be executed in the name of the Board by  
22 the chairman and attested by the secretary; and proof of the execution, if  
23 required or desired, may be had as provided by law for the proof of  
24 corporate instruments.
- 25 (8) To attend all meetings of the Board and to keep the minutes of the  
26 proceedings of the Board in a well-bound and suitable book, which  
27 minutes shall be approved by the Board prior to its adjournment; and, as  
28 soon thereafter as possible, to furnish to each member of the Board a  
29 copy of said minutes.
- 30 (9) To perform such other duties as the Board may ~~assign to him from time to~~  
31 ~~time.~~ assign."

32 Sec. 9. G.S. 120-123 is amended by adding a new subdivision to read:

33 "(63) The State Board of Education, as established in G.S. 115C-10."

34 Sec. 10. 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;~~

- 1 (9) The members of the Governor's Council;
- 2 (10) A Commissioner of Agriculture;
- 3 (11) A Commissioner of Labor;
- 4 (12) A Commissioner of Insurance."

5 Sec. 11. G.S. 147-4 reads as rewritten:

6 **"§ 147-4. Executive officers – election; term; induction into office.**

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

19 Sec. 12. G.S. 147-11.1 reads as rewritten:

20 **"§ 147-11.1. Succession to office of Governor; Acting Governor.**

21 (a) Lieutenant Governor. –

22 (1) The Lieutenant Governor-elect shall become Governor upon the failure  
23 of the Governor-elect to qualify. The Lieutenant Governor shall become  
24 Governor upon the death, resignation, or removal from office of the  
25 Governor. The further order of succession to the office of Governor  
26 shall be prescribed by law. A successor shall serve for the remainder of  
27 the term of the Governor whom he succeeds and until a new Governor is  
28 elected and qualified.

29 (2) During the absence of the Governor from the State, or during the  
30 physical or mental incapacity of the Governor to perform the duties of  
31 his office, the Lieutenant Governor shall be Acting Governor. The  
32 further order of succession as Acting Governor shall be prescribed by  
33 law.

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

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

40 (2) If, at the time when under subdivision (1) of this subsection the  
41 President of the Senate is to become Governor, there is no President of  
42 the Senate, or the President of the Senate fails to qualify as Governor,

1 then the Speaker of the House of Representatives shall, upon his  
2 resignation as Speaker and as Representative, become Governor.

- 3 (3) If, at the time when under subdivision (2) of this subsection the Speaker  
4 of the House of Representatives is to become Governor, there is no  
5 Speaker of the House of Representatives, or the Speaker of the House of  
6 Representatives fails to qualify as Governor, then that officer of the  
7 State of North Carolina who is highest on the following list, and who is  
8 not under disability to serve as Governor, shall, upon his resignation of  
9 the office which places him in the order of succession, become  
10 Governor: Secretary of State, Auditor, Treasurer, ~~Superintendent of~~  
11 ~~Public Instruction,~~ Attorney General, Commissioner of Agriculture,  
12 Commissioner of Labor, and Commissioner of Insurance.

13 (c) Acting Governor Generally. –

- 14 (1) If, by reason of absence from the State or physical or mental incapacity,  
15 there is neither a Governor nor a Lieutenant Governor qualified to  
16 discharge the powers and duties of the office of Governor, then the  
17 President of the Senate shall become Acting Governor.

- 18 (2) If, at the time when under subdivision (1) of this subsection the  
19 President of the Senate is to become Acting Governor, there is no  
20 President of the Senate, or the President of the Senate fails to qualify as  
21 Acting Governor, then the Speaker of the House of Representatives  
22 shall become Acting Governor.

- 23 (3) If, at the time when under subdivision (2) of this subsection the Speaker  
24 of the House of Representatives is to become Acting Governor, there is  
25 no Speaker of the House of Representatives, or the Speaker of the  
26 House of Representatives fails to qualify as Acting Governor, then that  
27 officer of the State of North Carolina who is highest on the following  
28 list, and who is not under disability to serve as Acting Governor, shall  
29 become Acting Governor: Secretary of State, Auditor, Treasurer,  
30 ~~Superintendent of Public Instruction,~~ Attorney General, Commissioner of  
31 Agriculture, Commissioner of 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 the  
37 absence of both the Governor and Lieutenant Governor from the State,  
38 then he shall act only until the Governor or Lieutenant Governor returns  
39 to the State; and

- 40 (2) If his tenure as Acting Governor is founded in whole or in part upon the  
41 physical or mental incapacity of the Governor or Lieutenant Governor,  
42 then he shall act only until the removal of the incapacity of the  
43 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 be  
8 at the rate then provided by law in the case of the Governor."

9 Sec. 13. G.S. 163-1 is amended by deleting the entries in the table for  
10 "Superintendent of Public Instruction".

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

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

31 Sec. 15. 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, State  
41 Treasurer, ~~State Superintendent of Public Instruction,~~ State Attorney  
42 General, State Commissioner of Agriculture, State Commissioner of  
43 Labor, State Commissioner of Insurance, and all other State elective



1 offices, Justice of the Supreme Court, Judge of the Court of Appeals,  
2 judge of a superior court, judge of a district court, and district attorney  
3 of the superior court: report to the district attorney of the prosecutorial  
4 district in which Wake 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  
8 prosecutorial 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  
11 which any of the officers, directors, agents, employees or members of  
12 the person or group reside."

13 Sec. 16. Notwithstanding G.S. 163-107(c), in 1996 only, if at the time filing of  
14 notices for candidacy for the office of Superintendent of Public Instruction is to open  
15 under G.S. 163-106(c), the provisions of this act that provide that that office is no longer  
16 elective have not been approved under Section 5 of the Voting Rights Act of 1965, then  
17 notices of candidacy for that office shall not be filed with the State Board of Elections  
18 earlier than the third Monday in January.

19 Sec. 17. The amendments set out in Sections 1, 2, and 3 of this act shall be  
20 submitted to the qualified voters of the State at a statewide general election on November  
21 7, 1995, which election shall be conducted under the laws then governing elections in the  
22 State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of  
23 the General Statutes. The question to be used in the voting systems and ballots shall be:

24 **"[ ] FOR [ ] AGAINST**

25 Constitutional amendments to change the composition of the State Board of  
26 Education, to change the length of terms for members of the State Board of Education,  
27 and to make the Superintendent of Public Instruction an appointee of the State Board of  
28 Education."

29 Sec. 18. If a majority of votes cast on the question are in favor of the  
30 amendments set out in Sections 1, 2, and 3 of this act, the State Board of Elections shall  
31 certify the amendments to the Secretary of State. The Secretary of State shall enroll the  
32 amendments so certified among the permanent records of that office. The amendments  
33 shall become effective as follows:

34 (1) The amendment set out in Section 1 of this act shall become effective  
35 upon such certification except that the term of office of all members of  
36 the State Board of Education who were appointed to the State Board of  
37 Education prior to July 1, 1996, and were serving as members on June  
38 30, 1996, shall expire on July 1, 1996.

39 (2) The amendments set out in Sections 2 and 3 of this act shall  
40 become effective the later of January 1, 1997, and the date that those  
41 sections are precleared under Section 5 of the Voting Rights Act of  
42 1965. If because of the date of preclearance of those sections under  
43 Section 5 of the Voting Rights Act of 1965, an election is conducted

1 in 1996 for the office of Superintendent of Public Instruction, the  
2 results of that election are vacated. If the amendments become  
3 effective after January 1, 1997, the term of office of the person then  
4 holding that office is terminated on the effective date.

5 Sec. 19. Sections 4 through 15 of this act become effective only if the  
6 constitutional amendments set out in Sections 1, 2, and 3 of this act are approved by the  
7 voters. If the constitutional amendments are approved by the voters:

8 (1) Sections 4, 5, and 9 of this act shall become effective July 1, 1997:  
9 Provided, however, the General Assembly and the Governor may  
10 appoint members to the State Board of Education in accordance with  
11 Section 4 of this act, prior to July 1, 1996, for terms of office beginning  
12 July 1, 1996.

13 (2) Sections 6, 7, 8, and 10 through 15 of this act shall become effective on  
14 the later of January 1, 1997, and the date that those sections are  
15 precleared under Section 5 of the Voting Rights Act of 1965. If because  
16 of the date of preclearance of those sections under Section 5 of the  
17 Voting Rights Act of 1965, an election is conducted in 1996 for the  
18 office of Superintendent of Public Instruction, the results of that election  
19 are vacated. If the amendments become effective after January 1, 1997,  
20 the term of office of the person then holding that office is terminated on  
21 the effective date.

22 Sec. 20. This act is effective upon ratification.