

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 24

Short Title: Change Public School Governance.

(Public)

Sponsors: Representatives C. Wilson; Arnold, Balmer, Berry, Brawley, J. Brown, Brubaker, Culp, Daughtry, Dickson, Dockham, Easterling, Ellis, Howard, Ives, Nichols, J. Preston, Russell, G. Thompson, Weatherly, P. Wilson, and Wood.

Referred to: Education.

February 1, 1993

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT A RECOMMENDATION OF THE GOVERNMENT PERFORMANCE AUDIT COMMITTEE TO AMEND THE CONSTITUTION TO CHANGE THE STATE BOARD OF EDUCATION APPOINTMENT PROCESS AND TO AUTHORIZE THE STATE BOARD OF EDUCATION TO APPOINT THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION.

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~~ a chair and six other members appointed by the Governor, ~~subject to confirmation by the General Assembly in joint session. The General Assembly shall divide the State into eight educational districts. Of the appointive members of the Board, one shall be appointed from each of the eight educational districts and three shall be appointed from the State at large. three members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, and three members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives. Appointments made by the General Assembly shall be made as provided by statute. Appointments shall be for overlapping terms of eight years. terms of four years, except that three initial appointees shall serve one-year terms, three shall serve two-year terms, and three shall serve three-year terms. The initial appointees, except for the chair, shall draw lots to determine the length of their terms. The chair shall serve a four-year term. Initial terms shall commence July 1, 1994. Appointments~~

1 to fill vacancies in positions filled by the Governor shall be made by the ~~Governor for the~~  
2 ~~unexpired terms and shall not be subject to confirmation.~~ ~~Governor.~~ Appointments to fill  
3 vacancies in positions filled by the General Assembly shall be made as provided by  
4 statute."

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

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

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

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

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

19 "**§ 115C-10. Appointment of Board.**

20 The State Board of Education shall consist of the Lieutenant Governor, the State  
21 Treasurer, ~~and 11~~ a chair and six other members appointed by the Governor, ~~subject to~~  
22 ~~confirmation by the General Assembly in joint session.~~ three members appointed by the  
23 General Assembly upon the recommendation of the President Pro Tempore of the  
24 Senate, and three members appointed by the General Assembly upon the  
25 recommendation of the Speaker of the House of Representatives. Appointments made  
26 by the General Assembly shall be made in accordance with G.S. 120-121. Not more  
27 than one public school employee paid from State or local funds may serve as an  
28 appointive member of the State Board of Education. No spouse of any public school  
29 employee paid from State or local funds and no employee of the Department of Public  
30 Instruction or his spouse, may serve as an appointive member of the State Board of  
31 Education. ~~Of the appointive members of the State Board of Education, one shall be~~  
32 appointed from each of the eight educational districts and three shall be appointed as members  
33 at large. Appointments shall be for terms of eight years and shall be made in four classes.  
34 four years, except that three initial appointees shall serve one-year terms, three shall  
35 serve two-year terms, and three shall serve three-year terms. The initial appointees,  
36 except for the chair, shall draw lots to determine the length of their terms. The chair  
37 shall serve a four-year term. Initial terms shall commence July 1, 1994. Appointments  
38 to fill vacancies in positions filled by the Governor shall be made by the Governor for the  
39 unexpired terms and shall not be subject to confirmation. Appointments to fill vacancies in  
40 positions filled by the General Assembly shall be made in accordance with G.S. 120-  
41 122.

42 ~~The Governor shall transmit to the presiding officers of the Senate and the House of~~  
43 ~~Representatives, on or before the sixtieth legislative day of the General Assembly, the~~  
44 ~~names of the persons appointed by him and submitted to the General Assembly for~~

1 confirmation; thereafter, pursuant to joint resolution, the Senate and the House of  
2 Representatives shall meet in joint session for consideration of an action upon such  
3 appointments."

4 Sec. 5. G.S. 115C-65 is repealed.

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

6 **"§ 115C-18. Election-Appointment of Superintendent of Public Instruction.**

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

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

25 The time of the election of the Superintendent of Public Instruction shall be in  
26 accordance with the provisions of Article 1 of Subchapter I of Chapter 163 of the  
27 General Statutes.

28 The election, term and induction into office of the Superintendent of Public  
29 Instruction shall be in accordance with the provisions of G.S. 147-4. appointed by the  
30 State Board of Education and shall serve at the pleasure of the State Board of  
31 Education."

32 Sec. 7. G.S. 115C-21(a) reads as rewritten:

33 "(a) Administrative Duties. – It shall be the duty of the Superintendent of Public  
34 Instruction:

35 (1) To organize and establish a Department of Public Instruction which  
36 shall include such divisions and departments as are necessary for  
37 supervision and administration of the public school system, to  
38 administer the funds for the operation of the Department of Public  
39 Instruction, and to enter into contracts for the operations of the  
40 Department of Public Instruction.

41 (2) To keep the public informed as to the problems and needs of the public  
42 schools by constant contact with all school administrators and  
43 teachers, by his personal appearance at public gatherings, and by  
44 information furnished to the press of the State.

- 1 (3) To report biennially to the Governor 30 days prior to each regular  
 2 session of the General Assembly, such report to include information  
 3 and statistics of the public schools, with recommendations for their  
 4 improvement and for such changes in the school law as shall occur to  
 5 him.
- 6 (4) To have printed and distributed such educational bulletins as he shall  
 7 deem necessary for the professional improvement of teachers and for  
 8 the cultivation of public sentiment for public education, and to have  
 9 printed all forms necessary and proper for the administration of the  
 10 Department of Public Instruction.
- 11 (5) To have under his direction, in his capacity as the ~~constitutional head of~~  
 12 ~~the public school system,~~ chief administrative officer of the State Board  
 13 of Education, all those matters relating to the supervision and  
 14 administration of the public school system."

15 Sec. 8. G.S. 143A-42 reads as rewritten:

16 **"§ 143A-42. Superintendent of Public Instruction; transfer of office and**  
 17 **Department of Public Instruction; powers and duties.**

18 The office of the Superintendent of Public Instruction, as provided for by ~~Article III,~~  
 19 ~~Sec. 7,~~ Article IX, Sec. 4(2), of the Constitution, and the Department of Public  
 20 Instruction are hereby transferred to the Department of Public Education. The  
 21 Superintendent of Public Instruction shall be the secretary and chief administrative  
 22 officer of the State Board of Education, and shall have such powers and duties as are  
 23 conferred by the Constitution, by the State Board of Education, Chapter 115C of the  
 24 General Statutes, and the laws of this State."

25 Sec. 9. G.S. 147-3(c) reads as rewritten:

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

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

39 Sec. 10. G.S. 147-4 reads as rewritten:

40 **"§ 147-4. Executive officers – election; term; induction into office.**

41 The executive department shall consist of a Governor, a Lieutenant Governor, a  
 42 Secretary of State, an Auditor, a Treasurer, ~~a Superintendent of Public Instruction,~~ an  
 43 Attorney General, a Commissioner of Agriculture, a Commissioner of Insurance, and a  
 44 Commissioner of Labor, who shall be elected for a term of four years, by the qualified

1 electors of the State, at the same time and places, and in the same manner, as members  
2 of the General Assembly are elected. Their term of office shall commence on the first  
3 day of January next after their election and continue until their successors are elected  
4 and qualified. The persons having the highest number of votes, respectively, shall be  
5 declared duly elected, but if two or more be equal and highest in votes for the same  
6 office, then one of them shall be chosen by joint ballot of both houses of the General  
7 Assembly. Contested elections shall be determined by a joint ballot of both houses of  
8 the General Assembly in such manner as shall be prescribed by law."

9 Sec. 11. G.S. 147-11.1 reads as rewritten:

10 **"§ 147-11.1. Succession to office of Governor; Acting Governor.**

11 (a) Lieutenant Governor. –

12 (1) The Lieutenant Governor-elect shall become Governor upon the  
13 failure of the Governor-elect to qualify. The Lieutenant Governor shall  
14 become Governor upon the death, resignation, or removal from office  
15 of the Governor. The further order of succession to the office of  
16 Governor shall be prescribed by law. A successor shall serve for the  
17 remainder of the term of the Governor whom he succeeds and until a  
18 new Governor is elected and qualified.

19 (2) During the absence of the Governor from the State, or during the  
20 physical or mental incapacity of the Governor to perform the duties of  
21 his office, the Lieutenant Governor shall be Acting Governor. The  
22 further order of succession as Acting Governor shall be prescribed by  
23 law.

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

25 (1) If, by reason of failure to qualify, death, resignation, or removal from  
26 office, there is neither a Governor nor a Lieutenant Governor to  
27 discharge the powers and duties of the office of Governor, then the  
28 President of the Senate shall, upon his resignation as President of the  
29 Senate and as Senator, become Governor.

30 (2) If, at the time when under subdivision (1) of this subsection the  
31 President of the Senate is to become Governor, there is no President of  
32 the Senate, or the President of the Senate fails to qualify as Governor,  
33 then the Speaker of the House of Representatives shall, upon his  
34 resignation as Speaker and as Representative, become Governor.

35 (3) If, at the time when under subdivision (2) of this subsection the  
36 Speaker of the House of Representatives is to become Governor, there  
37 is no Speaker of the House of Representatives, or the Speaker of the  
38 House of Representatives fails to qualify as Governor, then that officer  
39 of the State of North Carolina who is highest on the following list, and  
40 who is not under disability to serve as Governor, shall, upon his  
41 resignation of the office which places him in the order of succession,  
42 become Governor: Secretary of State, Auditor, Treasurer,  
43 ~~Superintendent of Public Instruction~~, Attorney General, Commissioner of  
44 Agriculture, Commissioner of Labor, and Commissioner of Insurance.

- 1 (c) Acting Governor Generally. –  
2 (1) If, by reason of absence from the State or physical or mental  
3 incapacity, there is neither a Governor nor a Lieutenant Governor  
4 qualified to discharge the powers and duties of the office of Governor,  
5 then the President of the Senate shall become Acting Governor.  
6 (2) If, at the time when under subdivision (1) of this subsection the  
7 President of the Senate is to become Acting Governor, there is no  
8 President of the Senate, or the President of the Senate fails to qualify  
9 as Acting Governor, then the Speaker of the House of Representatives  
10 shall become Acting Governor.  
11 (3) If, at the time when under subdivision (2) of this subsection the  
12 Speaker of the House of Representatives is to become Acting  
13 Governor, there is no Speaker of the House of Representatives, or the  
14 Speaker of the House of Representatives fails to qualify as Acting  
15 Governor, then that officer of the State of North Carolina who is  
16 highest on the following list, and who is not under disability to serve  
17 as Acting Governor, shall become Acting Governor: Secretary of  
18 State, Auditor, Treasurer, ~~Superintendent of Public Instruction~~, Attorney  
19 General, Commissioner of Agriculture, Commissioner of Labor, and  
20 Commissioner of Insurance.
- 21 (d) Governor Serving under Subsection (c). – An individual serving as Acting  
22 Governor under subsection (c) of this section shall continue to act for the remainder of  
23 the term of the Governor whom he succeeds and until a new Governor is elected and  
24 qualified, except that:  
25 (1) If his tenure as Acting Governor is founded in whole or in part upon  
26 the absence of both the Governor and Lieutenant Governor from the  
27 State, then he shall act only until the Governor or Lieutenant Governor  
28 returns to the State; and  
29 (2) If his tenure as Acting Governor is founded in whole or in part upon  
30 the physical or mental incapacity of the Governor or Lieutenant  
31 Governor, then he shall act only until the removal of the incapacity of  
32 the Governor or Lieutenant Governor.
- 33 (e) Officers to Which Subsections (b), (c) and (d) Applicable. – Subsections (b),  
34 (c), and (d) of this section shall apply only to such officers as are eligible to the office of  
35 Governor under the Constitution of North Carolina, and only to officers who are not  
36 under impeachment by the House of Representatives at the time they are to become  
37 Governor or Acting Governor.
- 38 (f) Compensation of Acting Governor. – During the period that any individual  
39 serves as Acting Governor under subsection (c) of this section, his compensation shall  
40 be at the rate then provided by law in the case of the Governor."
- 41 Sec. 12. G.S. 163-1 is amended by deleting the entry in the table for  
42 "Superintendent of Public Instruction".
- 43 Sec. 13. G.S. 163-8 reads as rewritten:  
44 **"§ 163-8. Filling vacancies in State executive offices.**

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

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

19 Sec. 14. G.S. 163-278.27 reads as rewritten:

20 **"§ 163-278.27. Penalty for violations; duty to report and prosecute.**

21 (a) Any individual, candidate, political committee, referendum committee,  
22 treasurer, person or media who violates the provisions of G.S. 163-278.7, 163-278.8,  
23 163-278.9, 163-278.10, 163-278.11, 163-278.12, 163-278.14, 163-278.16, 163-278.17,  
24 163-278.18, 163-278.40A, 163-278.40B, 163-278.40C, 163-278.40D or 163-278.40E is  
25 guilty of a misdemeanor.

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

29 (1) In the case of a candidate for nomination or election to the State Senate  
30 or State House of Representatives: report to the district attorney of the  
31 prosecutorial district in which the candidate for nomination or election  
32 resides;

33 (2) In the case of a candidate for nomination or election to the office of  
34 Governor, Lieutenant Governor, Secretary of State, State Auditor,  
35 State Treasurer, ~~State Superintendent of Public Instruction,~~ State Attorney  
36 General, State Commissioner of Agriculture, State Commissioner of  
37 Labor, State Commissioner of Insurance, and all other State elective  
38 offices, Justice of the Supreme Court, Judge of the Court of Appeals,  
39 judge of a superior court, judge of a district court, and district attorney  
40 of the superior court: report to the district attorney of the prosecutorial  
41 district in which Wake County is located;

42 (3) In the case of an individual other than a candidate, including, without  
43 limitation, violations by members of political committees, referendum

1 committees or treasurers: report to the district attorney of the  
2 prosecutorial district in which the individual resides; and  
3 (4) In the case of a person or any group of individuals: report to the  
4 district attorney or district attorneys of the prosecutorial district or  
5 districts in which any of the officers, directors, agents, employees or  
6 members of the person or group reside.

7 (c) Upon receipt of such a report from the Board, the appropriate district attorney  
8 shall prosecute the individual or persons alleged to have violated a section or sections of  
9 this Article."

10 Sec. 15. The amendments set out in Sections 1 through 3 of this act shall be  
11 submitted to the qualified voters of the State on November 8, 1993, which election shall  
12 be conducted under the laws then governing elections in the State. At that election, each  
13 qualified voter desiring to vote shall be provided a ballot on which shall be printed the  
14 following:

15 "[] FOR constitutional amendments to change the method of appointing  
16 the State Board of Education and to make the Superintendent of Public  
17 Instruction an appointee of the State Board of Education.

18 [] AGAINST constitutional amendments to change the method of  
19 appointing the State Board of Education and to make the  
20 Superintendent of Public Instruction an appointee of the State Board of  
21 Education."

22 Those qualified voters favoring the amendments set out in Sections 1  
23 through 3 of this act shall vote by making an X or a check mark in the square beside the  
24 statement beginning "FOR", and those qualified voters opposed to those amendments  
25 shall vote by making an X or check mark in the square beside the statement beginning  
26 "AGAINST".

27 Notwithstanding the foregoing provisions of this section, voting machines  
28 may be used in accordance with rules and regulations prescribed by the State Board of  
29 Elections.

30 Sec. 16. If a majority of votes cast thereon are in favor of the amendments set  
31 out in Sections 1 through 3 of this act, the State Board of Elections shall certify the  
32 amendments to the Secretary of State, who shall enroll the amendments so certified  
33 among the permanent records of his office, and the amendments shall become effective  
34 as follows:

35 (1) The amendment set out in Section 1 of this act shall become effective  
36 upon such certification except that the term of office of all members of  
37 the State Board of Education who were appointed to the State Board of  
38 Education prior to July 1, 1994, and were serving as members on June  
39 30, 1991, shall expire on July 1, 1994.

40 (2) The amendments set out in Sections 2 and 3 of this act shall  
41 become effective on the earlier of January 1, 1997, and the date that  
42 a vacancy occurs in the office of Superintendent of Public  
43 Instruction, except that there shall be no election held to fill the



1 office of Superintendent for a term beginning on or after December  
2 31, 1996.

3 Sec. 17. Sections 4 through 14 of this act become effective only if the  
4 constitutional amendments set out in Sections 1 through 3 of this act are approved by  
5 the voters. If the constitutional amendments are approved by the voters:

6 (1) Sections 4 and 5 of this act shall become effective July 1, 1994:  
7 Provided, however, the General Assembly and the Governor may  
8 appoint members to the State Board of Education in accordance with  
9 Section 4 of this act, prior to July 1, 1994, for terms of office  
10 beginning July 1, 1994.

11 (2) Sections 6 through 14 of this act shall become effective the earlier of  
12 January 1, 1997, and the date that a vacancy occurs in the office of  
13 Superintendent of Public Instruction, except that there shall be no  
14 election held to fill the office of Superintendent for a term beginning  
15 on or after December 31, 1996.

16 Sec. 18. This act is effective upon ratification.