

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 5

Short Title: Education Governance Changes.

(Public)

---

Sponsors: Senators Winner; Albertson, Conder, Cooper, Gulley, Hoyle, Kinnaird, Lee, Lucas, Martin of Guilford, Odom, Perdue, Plyler, Rand, Shaw of Cumberland, Soles, Warren, Weinstein, and Wellons.

---

Referred to: Education/Higher Education.

---

February 3, 1997

A BILL TO BE ENTITLED

1 AN ACT TO AMEND THE CONSTITUTION TO CHANGE THE COMPOSITION OF  
2 THE STATE BOARD OF EDUCATION AND MAKE THE SUPERINTENDENT  
3 OF PUBLIC INSTRUCTION AN APPOINTEE OF THE STATE BOARD OF  
4 EDUCATION, AND TO MAKE CORRESPONDING STATUTORY CHANGES.  
5

6 The General Assembly of North Carolina enacts:

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

8 "(1) **Board.** The State Board of Education shall consist of the Lieutenant  
9 Governor, the Treasurer, ~~and eleven members appointed by the Governor, subject to~~  
10 ~~confirmation by the General Assembly in joint session.~~ nine members appointed by the  
11 Governor, three members appointed by the General Assembly upon the recommendation  
12 of the President Pro Tempore of the Senate, and three members appointed by the General  
13 Assembly upon the recommendation of the Speaker of the House of Representatives. The  
14 General Assembly shall divide the State into eight educational districts. Of the ~~appointive~~  
15 ~~members of the Board, Governor's nine appointees,~~ one shall be appointed from each of the  
16 eight educational districts and ~~three~~ one who shall serve as chair shall be appointed from  
17 the State at large. Appointments shall be for overlapping terms of ~~eight~~ four years. The  
18 General Assembly may provide by statute for any qualifications of Board members and

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

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

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

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

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

17 Section 4. G.S. 115C-10 reads as rewritten:

18 "**§ 115C-10. Appointment of Board.**

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

40 (b) All initial terms shall begin July 1, 1999. The nine initial members appointed  
41 by the Governor, one from each of the eight educational districts and one from the State  
42 at large who shall serve as chair, shall serve terms ending February 28, 2001. The

1 remainder of the initial appointive members shall serve for terms ending July 1, 2003.  
2 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, 1999, and to end February 28,  
6 2001, may be reappointed for 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 Section 5. G.S. 115C-11(a) reads as rewritten:

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

26 Section 6. G.S. 115C-18 reads as rewritten:

27 "**§ 115C-18. Election ~~Appointment~~ of Superintendent of Public Instruction.**  
28 **Instruction; salary.**

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

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

1 ~~may appoint an interim officer to perform the duties of that office until a person is~~  
2 ~~appointed or elected pursuant to Article III, Sec. 7 of the Constitution of North Carolina~~  
3 ~~to fill the vacancy and is qualified.~~

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

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

11 Section 7. G.S. 115C-19 reads as rewritten:

12 **"§ 115C-19. Chief administrative officer of the State Board of Education.**

13 As provided in Article IX, Sec. 4(2) of the North Carolina Constitution, the  
14 Superintendent of Public Instruction shall be the secretary and chief administrative  
15 officer of the State Board of Education. ~~As secretary and chief administrative officer of the~~  
16 ~~State Board of Education, the Superintendent manages on a day to day basis the administration~~  
17 ~~of the free public school system, subject to the direction, control, and approval of the State~~  
18 ~~Board. Subject to the direction, control, and approval of the State Board of Education, the~~  
19 ~~Superintendent of Public Instruction shall carry out the duties prescribed under G.S. 115C-21.~~  
20 The Board shall define the specific duties of the Superintendent as secretary and chief  
21 administrative officer of the Board. The Superintendent of Public Instruction shall  
22 perform these duties and any other duties that the Board may assign to the  
23 Superintendent."

24 Section 8. G.S. 115C-20 is repealed.

25 Section 9. G.S. 115C-21 is repealed.

26 Section 10. G.S. 120-123 is amended by adding a new subdivision to read:

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

28 Section 11. G.S. 147-3(c) reads as rewritten:

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

30 (1) A Governor;

31 (2) A Lieutenant Governor;

32 (3) Private secretary for the Governor;

33 (4) A Secretary of State;

34 (5) An Auditor;

35 (6) A Treasurer;

36 (7) An Attorney General;

37 ~~(8) A Superintendent of Public Instruction;~~

38 (9) The members of the Governor's Council;

39 (10) A Commissioner of Agriculture;

40 (11) A Commissioner of Labor;

41 (12) A Commissioner of Insurance."

42 Section 12. G.S. 147-4 reads as rewritten:

43 **"§ 147-4. Executive officers – election; term; induction into office.**

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

13 Section 13. G.S. 147-11.1 reads as rewritten:

14 **"§ 147-11.1. Succession to office of Governor; Acting Governor.**

15 (a) Lieutenant Governor. –

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

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

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

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

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

39 (3) If, at the time when under subdivision (2) of this subsection the Speaker  
40 of the House of Representatives is to become Governor, there is no  
41 Speaker of the House of Representatives, or the Speaker of the House of  
42 Representatives fails to qualify as Governor, then that officer of the  
43 State of North Carolina who is highest on the following list, and who is

1 not under disability to serve as Governor, shall, upon his resignation of  
2 the office which places him in the order of succession, become  
3 Governor: Secretary of State, Auditor, Treasurer, ~~Superintendent of~~  
4 ~~Public Instruction,~~ Attorney General, Commissioner of Agriculture,  
5 Commissioner of Labor, and Commissioner of Insurance.

6 (c) Acting Governor Generally. –

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

11 (2) If, at the time when under subdivision (1) of this subsection the  
12 President of the Senate is to become Acting Governor, there is no  
13 President of the Senate, or the President of the Senate fails to qualify as  
14 Acting Governor, then the Speaker of the House of Representatives  
15 shall become Acting Governor.

16 (3) If, at the time when under subdivision (2) of this subsection the Speaker  
17 of the House of Representatives is to become Acting Governor, there is  
18 no Speaker of the House of Representatives, or the Speaker of the  
19 House of Representatives fails to qualify as Acting Governor, then that  
20 officer of the State of North Carolina who is highest on the following  
21 list, and who is not under disability to serve as Acting Governor, shall  
22 become Acting Governor: Secretary of State, Auditor, Treasurer,  
23 ~~Superintendent of Public Instruction,~~ Attorney General, Commissioner of  
24 Agriculture, Commissioner of Labor, and Commissioner of Insurance.

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

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

33 (2) If his tenure as Acting Governor is founded in whole or in part upon the  
34 physical or mental incapacity of the Governor or Lieutenant Governor,  
35 then he shall act only until the removal of the incapacity of the  
36 Governor or Lieutenant Governor.

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

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

4 Section 14. G.S. 163-1 is amended by deleting the entries in the table for  
5 "Superintendent of Public Instruction".

6 Section 15. G.S. 163-8 reads as rewritten:

7 **"§ 163-8. Filling vacancies in State executive offices.**

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

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

26 Section 16. G.S. 163-278.27(b) reads as rewritten:

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

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

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

1 (3) In the case of an individual other than a candidate, including, without  
2 limitation, violations by members of political committees, referendum  
3 committees or treasurers: report to the district attorney of the  
4 prosecutorial district in which the individual resides; and

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

9 Section 17. The amendments set out in Sections 1, 2, and 3 of this act shall be  
10 submitted to the qualified voters of the State at a statewide general election on November  
11 3, 1998, which election shall be conducted under the laws then governing elections in the  
12 State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of  
13 the General Statutes. The question to be used in the voting systems and ballots shall be:

14 **"[ ] FOR [ ] AGAINST**

15 Constitutional amendments to make the Superintendent of Public Instruction  
16 an appointee of the State Board of Education, rather than an elected position, to change  
17 the composition of the State Board of Education, and to change the length of terms for  
18 members of the State Board of Education."

19 Section 18. If a majority of votes cast on the question are in favor of the  
20 amendments set out in Sections 1, 2, and 3 of this act, the State Board of Elections shall  
21 certify the amendments to the Secretary of State. The Secretary of State shall enroll the  
22 amendments so certified among the permanent records of that office. The amendments  
23 shall become effective as follows:

24 (1) The amendment set out in Section 1 of this act shall become effective  
25 upon such certification except that the term of office of all members of  
26 the State Board of Education who were appointed to the State Board of  
27 Education prior to July 1, 1999, and were serving as members on June  
28 30, 1999, shall expire on July 1, 1999.

29 (2) The amendments set out in Sections 2 and 3 of this act shall  
30 become effective the later of January 1, 2001, and the date that those  
31 sections are precleared under section 5 of the Voting Rights Act of  
32 1965.

33 Section 19. Sections 4 through 16 of this act become effective only if the  
34 constitutional amendments set out in Sections 1, 2, and 3 of this act are approved by the  
35 voters. If the constitutional amendments are approved by the voters:

36 (1) Sections 4, 5, and 10 of this act shall become effective July 1, 1999:  
37 Provided, however, the General Assembly and the Governor may  
38 appoint members to the State Board of Education in accordance with  
39 Section 4 of this act, prior to July 1, 1999, for terms of office beginning  
40 July 1, 1999.

41 (2) Sections 6, 7, 8, 9, and 11 through 16 of this act shall become effective  
42 on the later of January 1, 2001, and the date that those sections are  
43 precleared under section 5 of the Voting Rights Act of 1965.



1           Section 20. This act is effective when it becomes law.