

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H.B. 133
Feb 16, 2017
HOUSE PRINCIPAL CLERK

H

D

HOUSE BILL DRH40072-TC-2 (01/27)

Short Title: Elect the State Board of Education. (Public)

Sponsors: Representatives Elmore, Conrad, and Bert Jones (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE NORTH CAROLINA CONSTITUTION TO PROVIDE FOR THE
3 ELECTION OF THE STATE BOARD OF EDUCATION.

4 The General Assembly of North Carolina enacts:

5 SECTION 1.1. Section 4 of Article IX of the North Carolina Constitution reads as
6 rewritten:

7 "Sec. 4. State Board of Education.

8 (1) Board. The State Board of Education shall consist of a chair appointed by the
9 Governor, the Lieutenant Governor, the Treasurer, and eleven members appointed by the
10 Governor, subject to confirmation by the General Assembly in joint session. The General
11 Assembly shall divide the State into eight educational districts. Of the appointive members of the
12 Board, one shall be appointed from each of the eight educational districts and three shall be
13 appointed from the State at large. Appointments shall be for overlapping terms of eight years.
14 Appointments to fill vacancies shall be made by the Governor for the unexpired terms and shall
15 not be subject to confirmation. the Superintendent of Public Instruction, and a number of elected
16 members equal to the membership of the United States House of Representatives apportioned to
17 the State by federal law.

18 (2) Superintendent of Public Instruction. The Superintendent of Public ~~Instruction~~
19 Instruction, in addition to voting membership on the State Board of Education, shall be the
20 secretary and chief administrative officer of the State Board of Education.

21 (3) Chair. The chair of the State Board of Education appointed by the Governor shall serve
22 a four-year term. The chair shall vote only in the event of a tie. The Governor shall appoint any
23 vacancy for the chair.

24 (4) Elected Members. Members elected to the State Board of Education shall be elected
25 from the districts established by the General Assembly for members of the United States House of
26 Representatives. Elected members shall serve staggered four-year terms in the manner prescribed
27 by law. Vacancies shall be filled in the manner prescribed by law."

28 SECTION 1.2. The amendment set out in Section 1.1 of this act shall be submitted to
29 the qualified voters of the State at a statewide election held on the date of the first primary in 2018,
30 which election shall be conducted under the laws then governing elections in the State. Ballots,
31 voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The
32 question to be used in the voting systems and ballots shall be:

33 "[] FOR [] AGAINST

34 Constitutional amendment to elect the majority of the membership of the State Board
35 of Education from the same districts used for Congressional elections, to make the Superintendent
36 of Public Instruction a voting member of the State Board of Education, to eliminate the State



1 Treasurer as a member of the State Board of Education, to require the Governor to appoint the
2 chair of the State Board of Education and provide that the chair votes only in the event of a tie, to
3 eliminate the requirement that the General Assembly confirm appointments to the State Board of
4 Education by the Governor, and to reduce the term of office for elected and appointed members to
5 four years."

6 **SECTION 1.3.** If a majority of votes cast on the question are in favor of the
7 amendment set out in Section 1.1 of this act, the State Board of Elections shall certify the
8 amendment to the Secretary of State. The Secretary of State shall enroll the amendment so
9 certified among the permanent records of that office. The amendment set out in Section 1.1 of this
10 act becomes effective January 1, 2021, and elected members of the State Board of Education shall
11 be elected from Congressional districts at the general election held in 2020. The terms of all
12 appointed members of the State Board of Education serving on March 31, 2021, shall expire on
13 that date.

14 **SECTION 2.(a)** G.S. 115C-10 reads as rewritten:

15 "**§ 115C-10. Appointment-Composition and election of Board.**

16 (a) Composition. – The State Board of Education shall consist of a chair appointed by the
17 Governor, the Lieutenant Governor, the State Treasurer, and 11 members appointed by the
18 Governor, subject to confirmation by the General Assembly in joint session. Not more than two
19 public school employees paid from State or local funds may serve as appointive members of the
20 State Board of Education. No spouse of any public school employee paid from State or local funds
21 and no spouse of any employee of the Department of Public Instruction may serve as an
22 appointive member of the State Board of Education. Of the appointive members of the State Board
23 of Education, one shall be appointed from each of the eight educational districts and three shall be
24 appointed as members at large. Appointments shall be for terms of eight years and shall be made
25 in four classes. Appointments to fill vacancies shall be made by the Governor for the unexpired
26 terms and shall not be subject to confirmation. the State Superintendent of Public Instruction, and a
27 number of elected members equal to the membership of the United States House of
28 Representatives apportioned to the State by federal law.

29 The Governor shall transmit to the presiding officers of the Senate and the House of
30 Representatives, on or before the sixtieth legislative day of the General Assembly, the names of
31 the persons appointed by the Governor and submitted to the General Assembly for confirmation;
32 thereafter, pursuant to joint resolution, the Senate and the House of Representatives shall meet in
33 joint session for consideration of an action upon such appointments.

34 (b) Appointed Chair. – The chair of the State Board of Education appointed by the
35 Governor shall serve a four-year term beginning April 1 of the year immediately following the
36 gubernatorial election. The chair shall vote only in the event of a tie. The Governor shall appoint
37 any vacancy in the office of chair.

38 (c) Elected Members. – Members elected to the State Board of Education shall be elected
39 from the districts established by the General Assembly for members of the United States House of
40 Representatives in Article 17 of Chapter 163 of the General Statutes. Elected members shall serve
41 staggered four-year terms. Members elected from odd-numbered Congressional districts shall be
42 elected in 2020 and every four years thereafter for a four-year term beginning April 1 of the
43 following year. Members elected from even-numbered Congressional districts shall be elected in
44 2020 for a two-year term beginning April 1 of the following year and shall be elected in 2022 and
45 every four years thereafter for a four-year term beginning April 1 of the following year. Members
46 shall be elected and vacancies in office filled as provided in Chapter 163 of the General Statutes."

47 **SECTION 2.(b)** G.S. 115C-11(a) reads as rewritten:

48 "(a) Presiding Officer-Organization of Board. – The State Board of Education shall elect
49 from its membership a chairman and vice-chairman. vice-chair. A majority of the Board shall
50 constitute a quorum for the transaction of business. Per diem and expenses of the appointive and
51 elected members of the Board shall be provided by the General Assembly. The chairman-chair of

1 the Board shall preside at all meetings of the Board. In the absence of the ~~chairman, chair~~, the
 2 ~~vice-chairman-vice-chair~~ shall preside; in the absence of both the ~~chairman-chair~~ and the
 3 ~~vice-chairman,vice-chair~~, the Board shall name one of its own members as ~~chairman-pro~~
 4 ~~tempore-chair.~~"

5 **SECTION 3.(a)** G.S. 163-1 reads as rewritten:

6 **"§ 163-1. Time of regular elections and primaries.**

7 ...

8 (d) If primaries for the State Senate or State House of Representatives are temporarily
 9 moved from the date provided in subsection (b) of this section for any election year, all primaries
 10 shall be held on the same day.

11 OFFICE	JURISDICTION	DATE OF ELECTION	TERM OF OFFICE
12 Governor	State	Tuesday next after the 13 first Monday in November 14 1968 and every four years 15 thereafter	Four years, from 16 first day of January 17 next after election
17 Lieutenant 18 Governor	State	Tuesday next after the 19 first Monday in November 20 1968 and every four years 21 thereafter	Four years, from 22 first day of January 23 next after election
22 Secretary of 23 State	State	Tuesday next after the 24 first Monday in November 25 1968 and every four years 26 thereafter	Four years, from 27 first day of January 28 next after election
27 Auditor	State	Tuesday next after the 28 first Monday in November 29 1968 and every four years 30 thereafter	Four years, from 31 first day of January 32 next after election
32 Treasurer	State	Tuesday next after the 33 first Monday in November 34 1968 and every four years 35 thereafter	Four years, from 36 first day of January 37 next after election
37 Superintendent 38 of Public 39 Instruction	State	Tuesday next after the 40 first Monday in November 41 1968 and every four years 42 thereafter	Four years, from 43 first day of January 44 next after election
41 Attorney 42 General	State	Tuesday next after the 43 first Monday in November 44 1968 and every four years 45 thereafter	Four years, from 46 first day of January 47 next after election
47 Commissioner 48 of Agriculture	State	Tuesday next after the 49 first Monday in November 50 1968 and every four years 51 thereafter	Four years, from first day of January next after election

1	Commissioner	State	Tuesday next after the	Four years, from
2	of Labor		first Monday in November	first day of January
3			1968 and every four years	next after election
4			thereafter	
5				
6	Commissioner	State	Tuesday next after the	Four years, from
7	of Insurance		first Monday in November	first day of January
8			1968 and every four years	next after election
9			thereafter	
10				
11	<u>State Board of</u>	<u>Congressional</u>	<u>At the regular election for</u>	<u>Four years, from</u>
12	<u>Education</u>	<u>district</u>	<u>members of the General</u>	<u>first day of April</u>
13	<u>Member</u>		<u>Assembly immediately</u>	<u>next after election</u>
14			<u>preceding the termination</u>	
15			<u>of each regular term</u>	
16"			

17 **SECTION 3.(b)** Notwithstanding G.S. 163-1, as amended by subsection (a) of this
 18 section, members elected in 2020 from even-numbered Congressional districts shall serve for a
 19 two-year term beginning April 1 of the following year.

20 **SECTION 3.(c)** Article 2 of Chapter 163 of the General Statutes is amended by
 21 adding a new section to read:

22 **"§ 163-14. Filling vacancy in the State Board of Education.**

23 (a) If a vacancy shall occur among the elected members of the State Board of Education by
 24 death, resignation, or otherwise than by expiration of term, the Governor shall immediately
 25 appoint the person recommended by the political party executive committee provided by this
 26 section to serve until the vacating member's successor is elected and qualified. Each such vacancy
 27 shall be filled by election at the first election for members of the General Assembly that occurs
 28 more than 60 days after the vacancy has taken place, and the person chosen shall hold the office
 29 for the remainder of the unexpired four-year term. However, if the term expires on the first day of
 30 April succeeding the next election for members of the General Assembly, the Governor shall
 31 appoint to fill the vacancy for the unexpired term of the office. The Governor shall make the
 32 appointment within seven days of receiving the recommendation of the committee. If the
 33 Governor fails to make the appointment within the required period, the Governor shall be
 34 presumed to have made the appointment and the State Board of Education is directed to seat the
 35 appointee as a member in good standing.

36 (b) The Governor shall appoint for the unexpired portion of the term the person
 37 recommended by the Congressional district committee of the political party with which the
 38 vacating member was affiliated when elected. In the case where all of a county is included within
 39 a Congressional district, the county convention or county executive committee of that political
 40 party shall elect or appoint at least one member from that county to serve on the Congressional
 41 district executive committee. In the case where only part of a county is included within a
 42 Congressional district, the county convention or county executive committee of that political party
 43 shall elect or appoint at least one member from that county to serve on the Congressional district
 44 committee, but only the delegates to the county convention or the members of the county
 45 executive committee who reside in the district may vote in electing the district committee member.
 46 When the Congressional district committee meets, a member shall be entitled to cast for his or her
 47 county (or the part of his or her county within the district) one vote for each 300 persons or major
 48 fraction thereof residing within that county, or in the case where less than the whole county is in
 49 the district, one vote for each 300 persons or major fraction thereof residing in that part of the
 50 district within the county.

1 A county convention or county executive committee may elect more than one member to the
 2 Congressional district committee, but in the event that more than one member is selected from that
 3 county, each member shall cast an equal share of the votes allotted to the county.

4 (c) No person is eligible for appointment to fill a vacancy in the State Board of Education
 5 under this section, unless that person would have been qualified to vote as an elector for that office
 6 if an election were to be held on the date of appointment. This section is intended to implement the
 7 provisions of Section 8 of Article VI of the North Carolina Constitution."

8 **SECTION 3.(d)** G.S. 163-106(c) reads as rewritten:

9 "(c) Time for Filing Notice of Candidacy. – Candidates seeking party primary nominations
 10 for the following offices shall file their notice of candidacy with the State Board of Elections no
 11 earlier than 12:00 noon on the second Monday in February and no later than 12:00 noon on the
 12 last business day in February preceding the primary:

- 13 Governor
- 14 Lieutenant Governor
- 15 All State executive officers
- 16 United States Senators
- 17 Members of the House of Representatives of the United States
- 18 Members of the State Board of Education
- 19 District attorneys

20 Candidates seeking party primary nominations for the following offices shall file their notice
 21 of candidacy with the county board of elections no earlier than 12:00 noon on the second Monday
 22 in February and no later than 12:00 noon on the last business day in February preceding the
 23 primary:

- 24 State Senators
- 25 Members of the State House of Representatives
- 26 All county offices."

27 **SECTION 3.(e)** G.S. 163-107(a) reads as rewritten:

28 "(a) Fee Schedule. – At the time of filing a notice of candidacy, each candidate shall pay to
 29 the board of elections with which ~~he~~the candidate files under the provisions of G.S. 163-106 a
 30 filing fee for the office ~~he~~the candidate seeks in the amount specified in the following tabulation:

32 Office Sought	32 Amount of Filing Fee
33 Governor	33 One percent (1%) of the annual salary of the
	34 office sought
35 Lieutenant Governor	35 One percent (1%) of the annual salary of the
	36 office sought
37 All State executive offices	37 One percent (1%) of the annual salary of the
	38 office sought
39 All District Attorneys of the General	39 One percent (1%) of the annual salary of
40 Court of Justice	40 the office sought
41 United States Senator	41 One percent (1%) of the annual salary of the
	42 office sought
43 Members of the United States House	43 One percent (1%) of the annual salary of
44 of Representatives	44 the office sought
45 State Senator	45 One percent (1%) of the annual salary of the
	46 office sought
47 Member of the State House of	47 One percent (1%) of the annual salary of
48 Representatives	48 the office sought
49 <u>Member of the State Board of</u>	49 <u>One percent (1%) of the prior year average</u>
50 <u>Education</u>	50 <u>annual per diem of the office sought</u>

1 All county offices not compensated by fees One percent (1%) of the annual salary of the
 2 office sought
 3 All county offices compensated partly One percent (1%) of the first annual
 4 by salary and partly by fees salary to be received (exclusive of fees)

5 The salary of any office that is the basis for calculating the filing fee is the starting salary for
 6 the office, rather than the salary received by the incumbent, if different. If no starting salary can be
 7 determined for the office, then the salary used for calculation is the salary of the incumbent, as of
 8 January 1 of the election year."

9 **SECTION 3.(f)** G.S. 163-107.1(c) reads as rewritten:

10 "(c) County, Municipal and District Primaries. – If the candidate is seeking one of the
 11 offices set forth in G.S. 163-106(c) but which is not listed in subsection (b) of this section, or a
 12 municipal or any other office requiring a partisan primary which is not set forth in G.S. 163-106(c)
 13 or (d), he shall file a written petition with the appropriate board of elections no later than 12:00
 14 noon on Monday preceding the filing deadline before the primary. The petition shall be signed by
 15 five percent (5%) of the registered voters of the election area in which the office will be voted for,
 16 who are affiliated with the same political party in whose primary the candidate desires to run, or in
 17 the alternative, the petition shall be signed by no less than 200 registered voters regardless of said
 18 voter's political party affiliation, whichever requirement is greater. The board of elections shall
 19 verify the names on the petition, and if the petition is found to be sufficient, the candidate's name
 20 shall be printed on the appropriate primary ballot. Petitions for candidates for member of the U.S.
 21 House of Representatives, member of the State Board of Education, District Attorney, and
 22 members of the State House of Representatives from multi-county districts or members of the
 23 State Senate from multi-county districts must be presented to the county board of elections for
 24 verification at least 15 days before the petition is due to be filed with the State Board of Elections,
 25 and such petition must be filed with the State Board of Elections no later than 12:00 noon on
 26 Monday preceding the filing deadline. The State Board of Elections may adopt rules to implement
 27 this section and to provide standard petition forms."

28 **SECTION 3.(g)** G.S. 163-111(c)(1) reads as rewritten:

29 "(1) A candidate who is apparently entitled to demand a second primary, according
 30 to the unofficial results, for one of the following offices listed below, and
 31 desiring to do so, shall file a request for a second primary in writing with the
 32 Executive Director of the State Board of Elections no later than 12:00 noon on
 33 the ninth day (including Saturdays and Sundays) following the date on which
 34 the primary was conducted, and such request shall be subject to the certification
 35 of the official results by the State Board of Elections. If the vote certification by
 36 the State Board of Elections determines that a candidate who was not originally
 37 thought to be eligible to call for a second primary is in fact eligible to call for a
 38 second primary, the Executive Director of the State Board of Elections shall
 39 immediately notify such candidate and permit him to exercise any options
 40 available to him within a 48-hour period following the notification:

- 41 ~~Governor, Governor.~~
- 42 Lieutenant ~~Governor, Governor.~~
- 43 All State executive ~~officers, officers.~~
- 44 District Attorneys of the General Court of ~~Justice, Justice.~~
- 45 United States ~~Senators, Senators.~~
- 46 Members of the State Board of Education.
- 47 Members of the United States House of
 48 ~~Representatives, Representatives.~~
- 49 State Senators in multi-county senatorial ~~districts, and districts.~~
- 50 Members of the State House of Representatives in multi-county
 51 representative districts."

1 **SECTION 3.(h)** G.S. 163-114 reads as rewritten:
 2 "**§ 163-114. Filling vacancies among party nominees occurring after nomination and before**
 3 **election.**

4 If any person nominated as a candidate of a political party for one of the offices listed below
 5 (either in a primary or convention or by virtue of having no opposition in a primary) dies, resigns,
 6 or for any reason becomes ineligible or disqualified before the date of the ensuing general election,
 7 the vacancy shall be filled by appointment according to the following instructions:

9 Position	
10 President	Vacancy is to be filled by appointment of
11 Vice President	national executive committee of
	political party in which vacancy occurs
14 Presidential elector or alternate elector	Vacancy is to be filled by appointment of
15 Any elective State office	State executive committee of political
16 United States Senator	party in which vacancy occurs
18 A district office, including:	Appropriate district executive committee of
19 Member of the United States House	political party in which vacancy occurs
20 of Representatives	
21 <u>Member of the State Board of</u>	
22 <u>Education</u>	
23 District Attorney	
24 State Senator in a multi-county	
25 senatorial district	
26 Member of State House of	
27 Representatives in a multi-county	
28 representative district	
30 State Senator in a single-county	County executive committee of political
31 senatorial district	party in which vacancy occurs,
32 Member of State House of	provided, in the case of the State
33 Representatives in a single-county	Senator or State Representative in a
34 representative district	single-county district where not all the
35 Any elective county office	county is located in that district, then in
	voting, only those members of the
	county executive committee who reside
	within the district shall vote

40 The party executive making a nomination in accordance with the provisions of this section shall
 41 certify the name of its nominee to the chairman of the board of elections, State or county, that has
 42 jurisdiction over the ballot item under G.S. 163-182.4. If at the time a nomination is made under
 43 this section the general election ballots have already been printed, the provisions of
 44 G.S.163-165.3(c) shall apply. If a vacancy occurs in a nomination of a political party and that
 45 vacancy arises from a cause other than death and the vacancy in nomination occurs more than 120
 46 days before the general election, the vacancy in nomination may be filled under this section only if
 47 the appropriate executive committee certifies the name of the nominee in accordance with this
 48 paragraph at least 75 days before the general election.

49 In a county not all of which is located in one congressional district, in choosing the
 50 congressional district executive committee member or members from that area of the county, only

1 the county convention delegates or county executive committee members who reside within the
2 area of the county which is within the congressional district may vote.

3 In a county which is partly in a multi-county senatorial district or which is partly in a
4 multi-county House of Representatives district, in choosing that county's member or members of
5 the senatorial district executive committee or House of Representatives district executive
6 committee for the multi-county district, only the county convention delegates or county executive
7 committee members who reside within the area of the county which is within that multi-county
8 district may vote.

9 An individual whose name appeared on the ballot in a primary election preliminary to the
10 general election shall not be eligible to be nominated to fill a vacancy in the nomination of another
11 party for the same office in the same year."

12 **SECTION 4.** If a majority of votes cast on the question are in favor of the amendment
13 set out in Section 1.1 of this act and the State Board of Elections certifies the amendment to the
14 Secretary of State, Section 2 of this act becomes effective April 1, 2021, and Section 3 of this act
15 becomes effective January 1, 2020, and applies to elections conducted on and after that date.
16 Except as otherwise provided, the remainder of this act is effective when it becomes law.